

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART I**

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to council2022@isa.org.jm.

1. Name of Working Group:

IWG of the Whole.

2. Name(s) of Delegation(s) making the proposal:

Submitted on behalf of Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd and Blue Minerals Jamaica Ltd.

3. Please indicate the relevant provision to which the textual proposal refers.

Draft Reg 39(1).

4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.

1. A Contractor shall keep ~~[at a place agreed by the Contractor and the Secretary General, and make available for inspection and audit under regulation 72]~~ a complete, ~~[accurate]~~ and proper set of books, accounts and financial records, consistent with internationally accepted accounting principles, ~~[that]~~ are subject to an annual independent audit ~~unless the Contractor is already subject to laws or regulations requiring the Contractor to undergo such audits and]~~ which must include information

(a) that fully discloses [all revenues and] actual and direct expenditures for Exploitation, including capital expenditures, [liabilities] and operating costs and such other information as will facilitate an effective audit of the Contractor’s expenditures and costs ~~[and]~~

~~(b) [to verify and support all returns or any other accounting or financial reports required by the Authority in relation to Exploitation, including:~~

~~(i) details of the quantity and grade of the Minerals recovered from each Mining Area; and~~

~~(ii) details and records, [including port inspections or customs records or processing plant receipt data or records] of sales, shipments, transfers, exchanges and other disposals of the Minerals from the Mining Area, including the time, destination, value and basis of valuation and the quantity and grade of each sale, shipment, transfer, exchange or other disposal;]~~

5. Please indicate the rationale for the proposal. [150 word limit]

- We oppose the proposed amendments to Draft Regulation 39(1).
- We consider that the existing text of Draft Regulation 39(1), together with other existing Draft Regulations, notably Draft Regulations 74 and 75, are sufficient to achieve the intended aim of the amendments.
- We consider that the requirement to keep records "*at a place agreed by the Contractor and the Secretary General, and make [them] available for inspection and audit under regulation 72*" is already provided by Draft Regulations 74 and 75.
- Further, the details and records required under Draft Regulation 39(1)(b) are already listed under Draft Regulation 74(2)(a) and 74(2)(b). Given that the proposed amendments relate to records, inspections and audits, we consider that the most appropriate place for such requirements is Part VII, Section 4 (*Records, inspection and audit*) of the Regulations. Given the commercial sensitivity of many of these records, we emphasize the importance of clearly defined recordkeeping obligations that are not overlapping or duplicative within the regulatory framework.
- We propose that the Regulations should recognize that some Contractors are publicly listed entities that are already subject to strict obligations to undergo auditing by accounting firms of international repute under national legal regimes, stock exchange listing rules and otherwise. In such instances, we consider that it is unnecessary to duplicate these obligations in the Draft Regulations.
- Likewise, it is unnecessary and confusing to require books, accounts and financial records to be "*accurate*" – the purpose of requiring independent audits is to ensure the accuracy of such records, and there should be no suggestion that Contractors are responsible for the accuracy of audits conducted by independent auditors.
- We also note that Draft Regulation 38(d) already requires Contractors to produce an annual financial report that conforms with internationally accepted accounting principles and is certified by a duly qualified firm of public accountants, serving the purposes of: (i) providing transparency in relation to Contractor finances; and (ii) ensuring high accounting quality standards.
- To the extent that concerns remain in relation to Contractor obligations regarding books, records and samples, we would emphasize the need for further details to be provided in the Standards and/or Guidelines. To ensure that Contractors can provide books and records of maximum utility to the Authority, we propose that

the Standards and Guidelines should provide detailed and specific guidance, including:

- expectations in relation to auditing requirements and accounting methods, such as confirmation that Generally Accepted Financial Practices (**GAAP**) is acceptable; and
- how Contractors can meet their obligations in relation to audits of assertions of metal content.