

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

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

1. Name of Working Group:

Open Ended Working Group

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

Canada and Australia

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

DR 78 - Arm's-length adjustments

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. For the purposes of this regulation:

- (a) "Arm's length", in relation to contracts and transactions, means contracts and transactions that are entered into freely and independently by parties that are not related parties; and
- (b) "Arm's-length value", in relation to costs, prices and revenues, means the value ~~agreed by that~~ a willing buyer and willing seller, who are not related parties; ~~would agree is fair under the circumstances.~~

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

Canada and Australia recommend that the phrase "is fair under the circumstances" is removed. Making this conditional on "fairness under the circumstances" is vague. Saying that "Arms length value" should be based on agreement between non-related parties should be sufficient. Regarding Draft Regulation 78, paragraph 1(a), Canada and Australia recommend that a definition be provided for "not related parties". It will be essential to define this so that the payments to the ISA, and the common heritage of humankind are accurate and in line with the objectives and principles of the Convention and Implementing Agreement. The arm's length regulation may be useful regarding SOEs (it could be noted that all SOE transactions will deemed non-arms length unless proven otherwise).