

**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 council@isa.org.jm.

1. Name of Working Group:

Open-ended Working Group of the Council on the financial terms

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

Submitted by Nauru Ocean Resources Inc. and Tonga Offshore Mining Ltd.

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

Draft Regulation 77

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. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly:

(a) Result in the avoidance, postponement or reduction of a liability for payment of a royalty under this Part;

(b) Have not been carried out for bona fide commercial purposes; or

(c) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for payment of a royalty; then the Secretary- General shall determine the liability for a royalty as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within ~~90~~60 Days of the date of such written notice. The Secretary-General shall consider such representations and shall determine the liability for a royalty for the original or revised amount. If the Contractor is not satisfied with the Secretary-General’s determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the Secretary-General to consider within 30 days of a decision being made. The Secretary-General shall then re-consider and either affirm, revise, or revoke the decision, taking into account the further information provided by the Contractor, within 60 days.

3. The Contractor shall pay any such royalty liability within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

4. If the Contractor engages in gross and persistent violations ~~incurs in a non-compliance of payment of a royalty~~ obligations in accordance with this Part, the Council shall suspend or rescind the Contract pursuant to regulation 103 of these Regulations.

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

- To ensure consistency with earlier provisions in the regulations, such as regulation 24(2), 68 and 71(3), we consider a Contractor should have 90 days from the Secretary-General's notice to make written representations.
- Article 185 of the Convention limits suspension in circumstances of gross and persistent violations.
- As presently drafted, a Contractor could be suspended for minor or non-material breaches. We have reflected Article 185 in paragraph 4 above.
- We note that if a Contractor disagrees with the decision of the Secretary-General, the Contractor will have no recourse or method for reviewing a decision unless the Contractor commences costly dispute resolution procedures pursuant to Section 5, Part XI of the Convention.
- We consider the inability to seek internal review of a decision lacks procedural fairness, and our proposed amendment to paragraph 2 provides an internal mechanism for reviewing certain decisions made by the Secretary-General.