

**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 78

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.

2. Where, for the purposes of calculating any amounts due under this Part VII **or any associated Standard or Guidelines**, any costs, prices and revenues have not been charged or determined on an arm’s-length basis, pursuant to a contract or transaction between a Contractor and a related party, the ~~{Secretary- General}~~ **{Council}** may adjust the value of such costs, prices and revenues to reflect an arm’s-length value ~~[, taking into account the recommendations of the Commission]~~ in accordance with internationally accepted principles.

~~{2alt 1. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm’s-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Council may propose to adjust the value of such costs, prices and revenues to reflect an arm’s-length value, taking into account the recommendations of the Commission, in accordance with internationally accepted principles.~~

~~2alt 2. Where, for the purposes of calculating any amounts due under this Part VII, any costs, prices and revenues have not been charged or determined on an arm’s-length basis, pursuant to a contract or transaction between a Contractor and a related party, the Secretary-General may make recommendations to the Commission on the adjustment of the value of such costs, prices and revenues.]~~

3. The Secretary-General shall provide the Contractor with written notice of any proposed adjustment under paragraph 2 above. The Contractor may make written representations to the Secretary-General within ~~60~~90 Days of the date of such written notice. If the Contractor submits written representations, the Secretary-General shall affirm, amend or revoke the adjustment, taking into account the further

[information provided by the Contractor, within 60 days of being provided with that further information.](#)

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

- We consider the Secretary-General is best placed to make the adjustments contemplated in paragraph 2 as the Secretary-General facilitates other decision-making powers in Part VII and is the counter-party to an exploitation contract.
- We propose the amendments reflected in paragraph 2 above.
- We do not support paragraphs 2alt 1 or 2alt 2. For efficiency, we consider the Secretary-General is best placed to make the adjustments contemplated in paragraph 2 rather than the Council. We also do not consider it would be appropriate for the Secretary-General to make recommendations to the Commission.
- Further, if a Contractor disagrees with an adjustment, the Contractor will have no internal recourse or method for reviewing an adjustment decision. We consider this lacks procedural fairness, and our proposed amendment to paragraph 3 provides an internal mechanism for reviewing an adjustment decisions, and providing an opportunity for a Contractor to provide further information in support of that review.