

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto: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 Reg. 81(2).

**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.**

The Council, based on the recommendations of the Commission, may revise the system of payments in the light of changing circumstances and following any review under paragraph 1 above, taking into account the economic viability of the project save that any revision shall only apply to: (i) new exploitation contracts agreed between the Authority and a Contractor after the revised system of payments is in effect; and (ii) existing exploitation contracts if the Authority and Contractors so agree. ~~{to existing exploitation contracts by agreement between the Authority and the Contractor} [after five years of commercial production have been completed under that exploitation contract].~~

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

- We support the Council’s intent to review the system of payment as exploitation activities develop.
- However, we consider imposing changes on existing exploitation contracts is impermissible under the Convention and the 1994 Agreement, absent further agreement between the parties. Section 8(e), Annex, Part XI Implementation Agreement states:

“The system of payments may be revised periodically in the light of changing circumstances. Any changes shall be applied in a non-discriminatory manner. **Such changes may apply to existing contracts only at the election of the contractor.** Any subsequent change in choice between alternative systems shall be made by agreement between the Authority and the contractor”  
(emphasis added)

- Any revisions to the system of payments must apply only to exploitation contracts agreed after the revisions are in effect and/or to existing contracts amended by further agreement between the parties.