

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

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:

IWG – Institutional matters

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

Submitted by 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 Regulation 7(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.

2. Each applicant, including the Enterprise, shall, as part of its application, provide a written undertaking to the Authority that it will:

(a) Accept ~~[as enforceable] during all stages of the process chain~~ and comply with the applicable obligations created by the provisions of Part XI of the Convention, the Agreement, the rules, regulations and procedures, **including the Standards** of the Authority, the decisions of the organs of the Authority and the terms of its contract with the Authority;

(b) Accept control by the Authority of activities in the Area ~~during all stages of the process chain~~ as authorized by the Convention;

(c) Provide the Authority with a written ~~substantiated~~ assurance that its obligations under its contract will be fulfilled in good faith; and

~~(c bis) Provide the Authority with written undertakings from parent or holding companies of the applicant, if any, to assume joint and several liability for damages to the Authority in the event of liability having been established against the applicant in carrying out of the plan of work.~~

~~(d) Comply with the national laws, regulations and administrative measures of the sponsoring State or States made pursuant to articles 139 and 153(4) of the Convention and article 4(4) of annex III to the Convention.~~

[alt. proposal to delete (2) and all its sub-paragraphs, on the basis that an applicant should already be subject to the relevant instruments and requirements, and a written statement does not give them new legal force.]

[Facilitators’ note: Article 4 of Annex III to the Convention requires the undertakings listed in sub-paragraphs (a)-(c) above to be included in every application].

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

- We consider that Draft Regulation 7(2)(c bis) would inappropriately purport to extend the reach of the Authority to a range of entities that are not in contractual or other legal relationship with the Authority. There is no basis for the Authority to require “written undertakings” from such a broad range of entities, none of which are party to the exploitation contract. We also note that this goes far beyond Article 4(6) of Annex III of the Convention requirements regarding undertakings.
- In relation to the alternative proposal to delete Draft Regulation 7(2), we are flexible but support inclusion of the paragraph if it reflects (and does not go beyond) Article 4 of Annex III.
- We can also accept the other deletions proposed to these paragraphs.

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

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:

IWG – Institutional matters

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

Submitted by 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 Regulations 7(3) and (3.bis)

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.

3. An application shall be prepared in accordance with these regulations and applicable Standards, taking into account applicable Guidelines, and ~~[alt 1. in accordance with] [alt 2. on the basis of] [alt 3. in line with] [alt 4. taking account of] [alt 5. taking into account] [alt 6. consistent with] the~~ respective Regional Environmental Management Plan.

3. bis. An application shall contain sufficient information to demonstrate that the applicant has ~~or will have~~ access to the necessary financial and technical capability and resources to carry out the proposed Plan of Work, and shall be accompanied by the following:

~~(a) The data and information to be provided pursuant to section 11.2 of the standard clauses for exploration contracts, as annexed to the relevant Exploration Regulations;~~

[...]

(h) An Environmental Management and Monitoring Plan prepared in accordance with regulation 48 and annex VII to these regulations ~~[which documents that management and monitoring [are in compliance with [take into account] the applicable Regional Environment Management Plan and based on the result of the Environmental Impact Assessment]; [including information regarding the environmental management system that the Contractor will implement in accordance with regulation 46 and the relevant Standards, taking account of Guidelines] [Facilitators’ note: delegates may wish to consider the need to avoid introducing text here, that is also, and more fully, covered in the relevant regulations and Annex that provide the requirements for the EMMP].~~

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

- We consider that alternatives 4 and 5 in Draft Regulation 7(3) are the most appropriate ways to refer to the REMP. This ensures the status of the REMP is appropriately accounted for in the regulation.

- In relation to Draft Regulation 7(3.bis)(a) it is unclear why applicants for exploitation contracts should be required to supply data and information that the Authority will already have as a result of Section 11.2 of the relevant exploration contract. As such, we propose deleting this sub-paragraph as it is unnecessary.
- We can also accept the other deletions proposed to these paragraphs.