

**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:

President's Text

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 Reg. 26(3)

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. The amount of an Environmental Performance Guarantee may be provided by way of instalments over a specified period. ~~[In such cases, commercial production may only commence once the full amount has been provided.]~~

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

- We reiterate our support for allowing Contractors to pay the Environmental Performance guarantee in instalments over a specified period of time.
- However, we oppose preventing Commercial Production from commencing until the full amount has been provided.
- Such a rule undermines the rationale behind an instalment-based Environmental Performance Guarantee, constraining the flexibility Contractors otherwise would enjoy. It may also materially limit the financing options available to the Contractors, constraining their ability to effectively engage in activities in the Area.

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Draft Reg. 26(4)

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4. The amount of the Environmental Performance Guarantee shall be reviewed and updated ~~[every five years]~~ ~~[annually by the Contractor]~~: [...]

~~(d) Inflation and other market or economic conditions impact on the amount of the guarantee that must be held.~~

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

- We support a review of the Environmental Performance Guarantee every five years. This will be sufficient to account for any change in the relevant economic conditions. Any further requirements will inject uncertainty and impose vague and ambiguous proof requirements on the Contractors.
- We also propose deleting sub-paragraph (d). It does not describe a clear trigger for the review of the Guarantee, unlike the other sub-paragraphs. Instead, it refers vaguely to "inflation and other market and economic conditions" impacting the requisite amount. This directive is not sufficiently clear to enable practical implementation and could be further described in a guideline if necessary.

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Draft Reg. 26(8)

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8. ~~{The lodging of an Environmental Performance Guarantee does not relieve the Contractor of its obligations that are subject of this regulation. Refusal or reluctance on the part of the Contractor to fulfil such obligations shall be subject to the relevant compliance measures under these Regulations.}~~ The provision of an Environmental Performance Guarantee by a Contractor does not limit the responsibility and liability of the Contractor under its exploitation contract in the amount of such guarantee. ~~{Should the Authority be compelled to make recourse to the Environmental Performance Guarantee due to any non-compliance by the Contractor of its obligations that are the subject of the Environmental Performance Guarantee, the Contractor remains liable to the Authority for any direct, incidental or additional costs incurred by the Authority.}~~

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

- We consider that some of the language added to Draft Regulation 26(8) is unnecessary. In particular, the Contractor is already subject to the relevant regulations and compliance measures in the event of breach. There is no need to re-state the penalties for failing to fulfil such obligations here. This is particularly so given the new sentence added at the end of the paragraph.
- It is also unclear to us how "reluctance" will be defined or assessed, or why "reluctance" in the absence of non-compliance should be subject to "compliance measures."