

**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:

Open-ended Working Group of the Council on the Financial Terms of a Contract

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 64Qua (1)-(4)

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. If required under regulation [64Bis], a Contractor, from the [commencement of the Second Period of Commercial Production][~~fifth anniversary of the date of commencement of Commercial Production~~], shall pay a Top-up Profit Share Payment { as provided for in Appendix IV to these regulations}.

2. The Authority shall set an Assumed CIT Rate in respect of Top-up Profit Share Payment to be paid by the Contractor to the Authority, as set out in the relevant Standard and applicable Guidelines.

~~3. The Assumed CIT Rate shall be [25%].~~

4. The Top-up Profit Share Payment payable to the Authority for each {royalty return period}[~~Calendar Year~~] shall be equal to A minus B, where:

(a) A is the Assumed CIT Rate multiplied by Profits for that [royalty return period][~~Calendar Year~~]; and

(b) B is Total Eligible Payments for that year,

calculated in accordance with the Standard and taking into account the Guidelines. In no circumstances shall the Top-up Profit Share Payment be less than zero.

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

- It is not clear to us how Draft Regulation 64Qua(2) and (3) are intended to operate together. Paragraph 2 specifies that the Authority shall set the Applicable Additional

Royalty Rate, but paragraph 3 then purports to establish a set rate. We suggest this needs to be clarified by deleting paragraph 3.

- We propose that the specific rate is set in a Standard or Guideline to ensure that it is sufficiently flexible and can be changed without the need to amend Exploitation Regulations
- In relation to Draft Regulation 64Ter(4), if the Top-up Profit Share Payment will be paid alongside the royalty, we support the use of the royalty return period as the appropriate time period.

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Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

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Draft Regulation 64Qua (5), (6), (9)-(12)

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.

5. Profits for the {royalty return period}{Calendar Year} are equal to C plus D plus E (without double counting) where:

(a) C is the sum of the Income for that {royalty return period}{Calendar Year} from Relevant Activities from all Related Entities that have not met the Inclusion Criteria;

(b) D is the sum of the Income for that {royalty return period}{Calendar Year} from all activities from all Related Entities that have met the Inclusion Criteria; and

(c) E is the Income of the Contractor for that {royalty return period}{Calendar Year}.

6. Total Eligible Payments for a {royalty return period}{Calendar Year} are equal to Eligible Royalty Payments to the Sponsoring State(s) for that {royalty return period}{Calendar Year} plus Eligible Tax Payments for that {royalty return period}{Calendar Year}.

[...]

9. A Contractor shall lodge with the Secretary-General a Top-up Profit Share Return not later than 90 Days after the end of each {royalty return period}{Calendar Year}

10. A Top-up Profit Share Return shall include the following information for each {royalty return period}{Calendar Year}, in accordance with the Standard and taking into account the Guidelines:

(a) the Top-up Profit Share Payment due, Profits, Income, Income included in Profits, Total Eligible Payments, Eligible Royalty Payments, and Eligible Tax Payments for that

~~{royalty return period}{Calendar Year};~~

~~(b) for each Related Entity, whether it meets the Inclusion Criteria;~~

~~(c) for each Related Entity that meets the Inclusion Criteria, its Income, Total Eligible Payments, and Eligible Tax Payments;~~

~~(d) for each Related Entity that does not meet the Inclusion Criteria, its Income from relevant Activities, Total Eligible Payments, and Eligible Tax Payments;~~

~~(e) audited accounts for the Contractor and its Related Entities;~~

~~(f) for each Related Entity that does not meet the Inclusion Criteria, audited segmented accounts for each of those Related Entities showing the Income, Eligible Tax Payments and Covered Tax payments from Relevant Activities and separately from non-Relevant Activities; and~~

~~(g) any other information, document or anything required under the Standards, Guidelines or reasonably requested by the Authority for the administration and validation of the Top Up Profit Share Payment.~~

~~11. A Profit Share Audit shall be carried out by an Independent Auditor {employed by and reporting to the Authority and} in accordance with the relevant Standard and applicable Guidelines.~~

~~12. A Contractor will pay for each Profit Share Audit.~~

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

- While Draft Regulation 64Qua(5) acknowledges the need to avoid double counting, it is unclear how exactly this will work in practice, and we suggest greater clarity and specificity is needed here.
- If the Top-up Profit Share Payment will be paid alongside the royalty, we support the use of the royalty return period as the appropriate time period.
- In relation to Draft Regulation 64Qua(11), to the extent any audits are required, we would support this being done by an auditor employed directly by the Authority as part of its ordinary regulatory functions. We do not consider it appropriate to require Contractors to pay for this regulatory activity and so propose deleting paragraph 12.