

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto: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 75

**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.**

***Explanation / Comment***

- One participant proposes that this regulation duplicates Part XI on inspections and so should be deleted except to state “The Council or Compliance Committee may request an audit of the Contractor’s records, which shall be undertaken at the Contractor’s sole cost.” That participant also proposes that this regulation should be bracketed until Regulation 99 is progressed.
- Participants have mixed views on whether to include the word “inspection” in the title and in the body of the regulation. One participant argues that Audit and inspection are two different issues. Part XI of the Draft Regulations, entitled "Inspection, compliance and enforcement ", already contains provisions on matters relating to inspection, so it is proposed that Regulation 75 should only deal with audit matters, and that the contents relating to inspection should be provided for in Part XI. I invite comments.

[...]

- This Regulation as drafted suggests the possibility of some assaying of samples on-board the harvesting and/or transfer vessel. While the Valuation Point is the point that might be used as the weighing and sampling point, it is possible that detailed assaying of the samples is likely to take place at onshore facilities, and the grade will then be attributed retrospectively to the Valuation Point for the purpose of calculating the royalty on that shipment. It is therefore important to prescribe the

appropriate parameters for independent assaying in the Guidelines.

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

- We support the proposal for Draft Regulation 75 to be deleted and replaced with a simpler reference to the ability of the Council or Compliance Committee to request an audit be undertaken at the Contractor's cost.
- We also support the proposal that Draft Regulation 75 deal with audit matters only. Financial audits for the purpose of royalty payments are a distinct activity from inspection for the purpose of compliance with a broader set of regulations. Those matters should be dealt with in the relevant regulations specific to that issue.
- We note that it is likely that the detailed assaying of the samples is likely to take place at onshore facilities and the grade will only be attributed at that point in time. Metals grades are very consistent in deep seabed mining (contrary to terrestrial deposits). As such, there is unlikely to be need for laboratory equipment on board of the mining vessel.

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**3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 75(1)

**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. Once per year ~~The Secretary-General, {by itself or at the request of the Council} or Council, may, upon a genuine belief of non-compliance, {request an} audit of the Contractor’s records and {all subcontractors’ records engaging in associated with the exploitation activities} [the records of subcontractors’ directly engaged in the Contractor’s exploitation activities] in the Area.~~

***Explanation / Comment***

**Paragraph 1**

- At the March 2023 meeting the participants agreed to paragraphs 1, 2, 4 and 5. Two participants have proposed reopening the text of paragraph 1 to extend it to all Contractors’ and their sub-contractors’ records, not just those in relation to activities in the Area. One participant has proposed to narrow it to only subcontractor’s directly engaged in activities in the area.

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

- We support the Secretary-General or Council’s ability to request an audit of Contractors’ records relating to exploitation activities in the Area. However, we consider this should be subject to an appropriate threshold of concern or belief that such an audit is necessary. We have proposed amendments to Draft Regulation 75(1) accordingly.

- In relation to the reference to subcontractors in Draft Regulation 75(1), we note that this will be difficult to enforce as the Contractors themselves may not have a right to inspect all of the records of their subcontractors. This is likely outside of the jurisdiction of the Authority given subcontractors are not in a contractual relationship with the Authority.
- With respect to Chair's comment on paragraph 1, we note that just because a third party is a subcontractor, it does not mean a Contractor can access their records. It is not clear to us what will happen when a sub-contractor refuses to share records with the Contractor and the Authority and what methods of enforcement the Authority may have against subcontractors given the lack of a contractual relationship between the Authority and the sub-contractors.
- Due to the cost and time required for complying with such requests, we also suggest limiting such audits to once per annum.

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Draft Regulation 75(2)

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2. Any such audit shall be undertaken at the Contractor’s sole cost and shall be performed by [an] ~~[[Council approved] Inspector in accordance with Part XI of these regulations]~~ ~~[independent auditor approved by the Council]~~ and following consultation with and upon the agreement of the Contractor.

***Explanation / Comment***

**Paragraph 2**

- Two participants proposed that the Inspector be “Council-approved”. Some participants have proposed that a financial audit should be undertaken by an independent auditor or accountant, rather than an Inspector. One participant proposes that it should be expressly stated as an “independent auditor”, as Annex IV, article 11, paragraph 5, of the Convention provides that "the records, books and accounts of the Enterprise, including its annual financial statements, shall be audited annually by an independent auditor appointed by the Council." One participant proposes to remove “Council approved” as an Inspector will be Council approved under Part XI as being included on the roster with relevant audit experience. I propose that text regarding the qualifications and approval of Inspectors be addressed in the Standards, and invite participants to propose text . This will also ensure greater consistency. I propose that if there is support for that proposal, adjusting the qualifications and functions of an Inspector, to require an independent auditor or accountant, could be addressed in Part XI itself, which

contains provisions on Inspectors' functions.

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

- We consider that if Contractors are to incur the full costs of audits, it would be appropriate for Contractors to be consulted on and agree on the appointed auditor. This ensures Contractors are aware of and can manage the costs of such an audit.
- We also consider that past experience demonstrates the value in ensuring that audits have clear procedures and requirements that are followed to provide clarity and certainty to the Authority and Contractors. We propose such requirements be included in Standards and Guidelines.

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**3. Please indicate the relevant provision to which the textual proposal refers.**

Draft Regulation 75(3)(a)

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3. An Inspector may, in connection with a liability for a royalty payment:

- (a) ~~{Audit}~~ ~~{Inspect}~~ ~~{all corporate offices, plants and}~~ the mining and on-board processing facilities that are located within the Area with a view to verifying the accuracy of ~~{all information reported and the accuracy of}~~ the equipment measuring the quantity of Mineral ore ~~{sold or removed without sale from the Contract Area}~~;

[...]

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

- We consider that allowing Draft Regulation 75(3)(a) to apply to premises outside of the Area would go beyond the remit of the Authority under the Convention.
- Articles 153 of the Convention authorises the Authority to regulate activities within the Area. It does not enable the Authority to engage in inspection and enforcement activities in any jurisdiction throughout the world and of third-party processing plants wherever they are located. Such an approach unduly encroaches on the sovereign jurisdiction of States.

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Draft Regulation 75(3. ALT)

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~~{3. ALT An auditor may, in connection with a liability for a royalty payment require assistance from the Inspectors, through the Secretary General, and the Inspectors shall assist the auditors in discharging their functions under this part}~~

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

- We consider that the original Draft Regulation 75(3) is preferable to the proposed alternative as it clearly sets out the role of Inspectors in relation to audits and royalty payment issues. This is important given the broad powers granted to Inspectors.