

**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 77(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. Where the Secretary-General reasonably considers that a Contractor has entered into any scheme, arrangement or understanding or has undertaken any steps which, directly or indirectly, ~~-(a) R~~ result in the avoidance, postponement or reduction of a liability for **any** payment ~~of a royalty~~ under this Part; and:

(~~a~~) Have not been carried out for bona fide commercial purposes; or

(~~b~~) Have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for **any** payment ~~of a royalty~~; then the Secretary- General shall determine the liability for a ~~royalty payment under this part~~ as if the avoidance, postponement or reduction of such liability had not been carried out by the Contractor and in accordance with this Part.

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

- We suggest amending Draft Regulation 77(1) to clarify that the Contractor’s conduct under scrutiny must “result in the avoidance, postponement or reduction of a liability for any payment under this Part” and either “have not been carried out for bona fide commercial purposes” or “have been carried out solely or mainly for the purposes of avoiding, postponing or reducing a liability for any payment...”.

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Draft Regulation 77(2.ALT.2)

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~~{2 ALT 2. The Secretary General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary General within 60 Days of the date of such written notice. The [Secretary General] shall consider such representations and shall determine the liability for a royalty for the original or revised amount. [If the Contractor is not satisfied with the Secretary General’s determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary General/the Council] to consider. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then re-consider and either affirm, revise, or revoke the decision made by the [Secretary General]}.~~

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

- We support the original Draft Regulation 77(2), which allows the Secretary-General to make the necessary decisions without the involvement of the Commission or the Council. This streamlines the process and ensures determinations can be made efficiently with a minimum of burden on both the Contractor and the Authority.

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

Draft Regulation 77(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.**

~~4. If the Contractor [incurs] [is found to be in] is in -a [gross and persistent breach] [serious, persistent and willful violation] -non-compliance of payment of a -of royalty any payment obligations in accordance with this Part, the Council shall suspend or rescind the [exploitation] contract pursuant to regulation 103 of these Regulations -[and the Contactor’s company principals shall be barred from direct or indirect involvement with any Contractor or subcontractor operating in the Area for a period of [10] years].]~~

**Explanation / Comment**

**Paragraph 2**

- Some participants note that if a Contractor disagrees with the decision of the Secretary-General, the Contractor will have no recourse or method for reviewing a decision unless the Contractor commences costly dispute resolution procedures pursuant to Section 5, Part XI of the Convention. I invite for discussions of this view.

**Paragraph 4**

[...]

- Three participants now propose additional language in this paragraph that would bar the Contractor, or its company principals from direct or indirect involvement with any Contractor or Subcontractor, operating in the Area for a period of, for example, 10 years. However, they recognize that this addition may be better suited to be included in Draft Regulation 103. I invite comments on the proposed text and proposed changes to Regulation 103.

- Several participants have proposed changes to paragraph 4. Some participants noted that Article 185 of the Convention limits suspension to circumstances of gross and persistent violations. I invite views on the text. One participant proposes that more appropriate language to use here would be ‘serious, persistent and wilful violation’ in accordance with Article 18 of Annex III,  
[...]
- A participant proposed paragraph 4 is deleted and discussed in Part XI of the Draft Regulations, entitled "Inspection, compliance and enforcement".

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

- We support the inclusion of the bracketed text “serious, persistent and wilful violation” in Draft Regulation 77(4). Article 18 of Annex III of the Convention limits the circumstances in which a contract can be suspended to “serious, persistent and wilful violations” or failure to comply with a dispute settlement decision. Inserting that standard here would ensure Draft Regulation 77(4) conforms with this standard.
- However, we do not consider it appropriate or fair for all of a Contractor’s principals to be barred from any direct or indirect involvement with any other Contractor or subcontractor operating in the Area. This is an onerous penalty provision that should not be applied absent a proper finding of specific wilful breach or negligence on the part of the relevant person. Further, it would be inappropriate for all company principals to be penalised for what could be the action of a limited few or one person.
- We also note that it is not clear to us how “company principals” will be defined and what executives the term may include.
- We also consider that, consistent with the Chair’s comments, it would indeed be appropriate for paragraph 4 to be deleted from the present section and the matters covered in it be discussed in Part XI.
- We note the Chair’s comment regarding the limited options for Contractors to seek review of the Secretary-General’s decisions under Draft Regulation 77. We agree that absent specific language, the only option available for Contractors would be through dispute settlement under the Convention. This would be costly and time-consuming to pursue. That is why we consider it important to include the language proposed at the end of Draft Regulation 77(2) which allows Contractors to seek a review of the Secretary-General’s decision.