

**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:

OEWG.

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

Republic of Nauru

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

Regulation 77

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) 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.

[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~~ may suspend or ~~revoke~~ terminate the [~~exploitation~~] contract pursuant to regulation 103 of these Regulations [~~and the Contractor'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.~~]

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

We suggest an amendment in paragraph 1 to reflect the conduct that is under scrutiny which is then subject to the circumstances contemplated by (a) or (b).

Para 2Alt2: We note the Chair's comment regarding the limited options for Contractors to seek review of the Secretary-General's decisions under 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. While we support the language proposed at the end of paragraph 2 which allows Contractors to seek a review of the Secretary-General's decision, we are also open to considering paragraph 2Alt2 as this may allow for a fairer review mechanism for both contractors and the Authority,

albeit a more time-consuming process. We would also note that an “administrative review mechanism” has been under consideration by the IWG on institutional matters which may serve as an appropriate appeals mechanism.

Para 4: We would support the inclusion of the text “serious, persistent and wilful violation” in paragraph 4 as being reflective of article 18 of Annex III of the Convention which limits the circumstances in which a contract can be suspended to “serious, persistent and wilful violations”. 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 absent a proper finding of specific wilful breach or negligence on the part of the relevant person.

However, consistent with the Chair’s comments, it may be appropriate for paragraph 4 to be deleted from the present section and the matters covered by it be dealt with in Part XI.