

**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 64Bis

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 a Contractor’s most recent Equalization Measure Audit confirms that:

(a) the Contractor does not have any Tax Exemptions from its Sponsoring State(s);
and

(b) the Contractor does not receive any Subsidies from its Sponsoring State(s), then the Contractor shall pay the Top-up Profit Share Payment to the Authority.

2. If a Contractor’s most recent Equalization Measure Audit confirms that:

(a) the Contractor does have Tax Exemptions from its Sponsoring State(s); and/or

(b) the Contractor does receive Subsidies from its Sponsoring State(s), then the Contractor shall pay the Additional Royalty to the Authority.

3. A Contractor shall ensure that an Equalization Measure Audit shall be carried out prior to the commencement of Commercial Production and periodically thereafter as determined by the Authority in accordance with the relevant Standard and applicable Guidelines. Promptly on its completion a Contractor shall forward a copy of the Equalization Measure Audit to the [Secretary-General][Commission].

~~**4. A Contractor will pay for each Equalization Measure Audit, which shall be undertaken by an Independent Auditor in accordance with the relevant Standard and applicable Guidelines.**~~

5. A Contractor and Sponsoring State(s) shall fully assist an Independent Auditor undertaking an Equalization Measure Audit and shall, [subject to measures or](#)

[redactions to protect confidential information](#), provide the Independent Auditor with all relevant documentation, including but not limited to the Contractor's audited accounts, any sponsorship agreement or other arrangements between the Contractor or any of its Related Entities and the Sponsoring State(s) or any other government authority in any jurisdiction, any contract, and any other documents that evidence or provide the Contractor with an actual or potential Tax Exemption or Subsidy.

6. If a Contractor or any of its Related Entities, at any time after the initial Equalization Measure Audit has been completed, enters into, or otherwise agrees, or receives the benefit of, any arrangement that could be considered to provide the Contractor with an actual or potential Tax Exemption or Subsidy, the Contractor shall immediately notify the [Secretary-General][Commission]. The {Commission} may, in accordance with the relevant Standard and applicable Guidelines, determine that an Equalization Measure Audit must be carried out.

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

- We consider that additional clarification is required regarding the equalization measures. While the concept of royalty payments is established and clear, we consider that the equalization measure is a new concept that would benefit from greater definition and clarity around its intent. As such, Draft Regulation 64Bis should begin with a clear statement regarding what the equalization measure is and why it is being imposed.
- It is also not clear when it is envisaged the equalization payments would be made. For example, the payment could be made alongside the Contractor's ordinary royalty payments, or it could be through a separate regular payment process.
- In relation to Draft Regulation 64Bis(4) we do not consider that Contractors should be required to pay for the Equalization Measure Audit, particularly if it is required to be done by an "Independent Auditor". Instead, this should be part of the Authority's ordinary regulatory functions.
- In relation to Draft Regulation 64Bis(5) we consider that the requirement to assist the audit should be subject to appropriate confidentiality protections.