

**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 70

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. A Contractor shall pay the royalty due for a royalty return period on the Day the royalty return is required to be lodged. ~~{The Council may request the advance payment of any royalty due by way of instalment where special circumstances exist, in accordance with relevant Standards and [Guidelines] [rules, regulations and procedures of the Authority], to reflect for instance impacts on ecosystem services and the natural capital.}~~

2. Payments to the Authority shall be made in United States dollars or other foreign currency which is freely convertible and approved in accordance with relevant Standards.

2.bis. A Contractor shall declare the currency to be used in the payment of royalties ~~{in the exploitation contract}~~ ~~{prior to the commencement of Commercial Production}~~.

2.ter. Unless otherwise decided by the Council, a Contractor may only change the currency used for the payment of royalties on the anniversary of the fifth year of Commercial Production and at the end of every subsequent ~~{fifth}~~ year of Commercial Production ~~{after requesting the change of currency, and only after obtaining [authorization from the Authority][approval of the Council], which shall decide on this after assessing that income will not be affected by the requested change}~~.

~~{ALT 2. bis/ter. The currency to be used in the payment of royalties must be stated in the exploitation contract and declared before the commencement of Commercial Production. Such currency may be changed by previous request of the Contractor and approval by the Council at the end of every subsequent fifth year of Commercial~~

~~Production.]~~

3. All payments made to the Authority ~~shall be made gross net and~~ shall be free of any deductions, transmission fees, levies or other charges.

~~[4. The Council may approve the payment of any royalty due by way of instalment where it determines that special [and extenuating] circumstances of force majeure exist, that justify payment by instalment, in accordance with [relevant][applicable] Standards, taking account of [relevant Guidelines] [rules, regulations and procedures of the Authority.]~~

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

- We consider that the new final sentence of Draft Regulation 70(1) is unnecessary as it is not clear why the Council should ever be able to request advance payments of royalties or what the relevance of ecosystem services impact is to the payment of royalties. This proposal also appears to have no basis in the Convention or 1994 Agreement.
- Royalties are payments made in exchange for obtaining title to minerals recovered. There is no justification for requiring advance payment of royalties due to extraneous factors such as those listed here. There are also other instruments that can be used to address potential environmental impact (e.g., environmental performance guarantee).
- In relation to Draft Regulation 70(2.bis), we consider that given that the Contractor can opt to change the currency used, there is no value in having it set in the contract which could then become outdated. Instead, the Draft Regulation regulations should simply require the Contractor to make an appropriate declaration prior to commencement of Commercial Production.
- We also consider that there is no need for the Authority or Council to authorise the change in currency that the Contractor will use under Draft Regulation 70(2.ter). The Contractor's initial declaration of currency does not require Council approval, and the choice of currencies is still limited by paragraph 2's requirements that they be "freely convertible and approved in accordance with relevant Standards." As such, the choice of currency should not materially impact upon Authority income and there is thus no need for Council approval. For the same reasons we also oppose paragraph ALT 2.bis/ter.
- In relation to Draft Regulation 70(3) we note that it is unclear to us what is meant with the wording that payments "shall be made net". We therefore propose removal of these words or, if the wording is kept, suggest this be clarified.
- In relation to Draft Regulation 70(4), we still consider the insertion of "and extenuating" is unnecessary and should be deleted. Similarly, a requirement of "force majeure" is too high a standard and it is not even clear how it would apply in relation to this determination. There should be a mechanism allowing the Council or the Secretary-General to approve the payment of any royalty in instalments where this is justified. The reference to "special circumstances...that justify payment by instalment" is sufficient to ensure this will only be used where it is justified by the particular circumstances.