

**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 73

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 a royalty return shows any overpayment of royalties, a Contractor may apply to the Secretary-General to request a refund of any such overpayment. ~~{Contractors will properly demonstrate that an overpayment was made, and support their claim with all necessary documentation and justifications. The Secretary-General shall authorize refunds as an exceptional measure, but no more than [XX] times for the same Contractor.}~~

2. Where no such request is received by the Secretary-General within 90 Days of the due date of submission of the relevant royalty return, the Authority shall carry forward any overpayment and credit it against a future royalty amount payable under this Part, ~~or, if the exploitation contract has expired, refund the amount within 90 days.~~

3. Any request to reduce a royalty-related amount payable by a Contractor must be made within ~~[one year of an applicable financial report] [five years] [three years] [six months]~~ after the Day the relevant royalty return was lodged with the Authority.

4. Where any final royalty return shows an amount to be refunded, the Secretary-General shall refund such amount ~~within 90 days~~ provided he or she determines that such refund is properly due. The Secretary-General may request, and the Contractor shall provide, such additional information or confirmation, as he or she considers necessary to determine that such refund is correct and due to a Contractor.

Explanation / Comment

Paragraph 1

- One participant has proposed language that would impose additional obligations and restrictions on contractors seeking refund, on the explanation that overpaying royalty and then requesting refunds could become a path for obtaining other indirect benefits, such as corporate tax reductions in contractors' home countries, or others. I invite comments on the proposal.

[...]

Paragraph 3

- Two participants propose changing “5 years” to “6 months” on the basis that a five year period for paragraph 3 is too long. One participant proposes changing “5 years” to “one year of an applicable financial report”. One participant proposes 3 years. I welcome views on these proposals.

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

- We consider that refunds of overpayments should not only be available as “exceptional measures” nor limited to a certain number of times per Contractor, as currently contemplated by the new final sentence of Draft Regulation 73(1).
- Where the Authority has been overpaid, it should be refunding the extra amounts. With respect to paragraph 1 of the Chair’s comments we note that if the Contractors were indeed using the refunds improperly, this would amount to fraud, which is covered by domestic legal regimes.
- We are flexible on the requisite period for requesting reduction in royalty payments under Draft Regulation 73(3), however we consider that 6 months would be too short a time frame.