

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 80

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.

Subject to regulation 103 (6), ~~[and depending on the seriousness of the breach,]~~ the Council may impose a monetary penalty ~~[or][and may]~~ suspend or terminate the exploitation contract in respect of a serious, persistent and willful violation ~~[gross and persistent] [material breach] [violation]~~ under this Part ~~[or of the contract] [and company principals would be barred from direct or indirect involvement with any Contractor or Subcontractor operating in the Area for a period of 10 years].]~~

Explanation / Comment

[...]

- One participant proposes that this paragraph should be deleted, as it overlaps and seems to conflict with other provisions in the Regulations including DR103, and Annex X, and is inconsistent with the Convention, which requires serious, persistent and willful violations of the fundamental terms of the contract, and the rules of the ISA, as well as warnings, before a contractor’s rights under their contract can be suspended or terminated by the ISA. It proposes revisiting this regulation after negotiations on DR103 have progressed.

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

- We agree with the position expressed in the Chair’s comment that the proposed wording of Draft Regulation 80 as it stands now is incompatible with the Convention. We are also supportive of removing this paragraph pending the negotiations on Draft Regulation 103.

- If the provision was maintained, we support adding a materiality threshold to Draft Regulation 80. However, we propose this should be “serious, persistent and wilful” violation. This would ensure Draft Regulation 80 is consistent with the Convention, under which suspension or termination of contract can only be for serious, persistent, and wilful violations or failure to comply with a dispute settlement decision.
- We propose removing the references to company principals. Barring participation in future activities 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.