

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART II**

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 the Working Group

Financial Terms of an Exploitation Contract

2. Name of the Working Group

Financial Terms of an Exploitation Contract

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

Brazil

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

DR76

5. 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.

2. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The [Secretary-General] shall consider such representations and shall determine the liability for a royalty for the original or revised amount. [If the Contractor is not satisfied with the Secretary-General’s determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary-General/the Council] to consider. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then re-consider and either affirm, revise, or revoke the decision made by the [Secretary-General].

[2. Alt. The Secretary-General shall provide the Contractor with written notice of any proposed determination under paragraph 1 above. The Contractor may make written representations to the Secretary-General within 60 Days of the date of such written notice. The [Secretary-General] shall consider such representations and shall determine the liability for a royalty for the original or revised amount. [If the Contractor is not satisfied with the Secretary-General’s determination, the Contractor may request a review of that decision in writing and provide any further information the Contractor wishes the [Secretary-General/the Council] to consider. The Commission and Finance Committee shall consider any such representations made by the Contractor at their respective next available meetings provided that the representations have been circulated at least 30 Days in advance of the respective

meetings. The Commission shall then prepare its report and recommendations to the Council based on consultation with the Finance Committee. The Council shall then reconsider and either affirm, revise, or revoke the decision made by the [Secretary-General].

2 bis. The Sponsoring State shall be informed at the beginning of any procedure potentially leading to a determination according to this Regulation, and may provide written representations to the Secretary-General, the Council or the Finance Committee.

3. The Contractor shall pay any such liability under this part within 30 Days of the date of the determination made by the Secretary-General under paragraph 2.

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

A finding of a breach under Regulation 76 may give rise to Sponsoring State's responsibility for failing to discharge its due diligence obligation to prevent such violations by its associated Contractor. Therefore, the whole procedure would be more legitimate and acceptable to all States if affected Sponsoring States could take part in the proceedings. Moreover, participant governments could provide clarification in matters of domestic law or governance that may appear to constitute a "scheme, arrangement or understanding". Finally, it is important to note that such "arrangements", which are object of Regulation 76, can depend on subjective interpretations or findings, given the broad language of Paragraph 1. In this vein, proposed Paragraph 2 bis would constitute a mitigation measure against innovative or exaggerated interpretations of Paragraph 1.