

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

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:

Informal Working Group on Institutional Measures

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 84(1) and (4)

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.

Regulation 84 [IWG IM]

Annual reporting fee

1. A Contractor shall pay to the Authority, from the effective date of an Exploitation Contract and for the term of the Exploitation Contract and any renewal thereof, an annual reporting fee as determined by a decision of the Council from time to time, based on the recommendation of the Finance Committee with the aim of covering the costs associated with the Authority's management and review of the Contractor's annual reports.

[...]

~~4. Where an annual reporting fee remains unpaid after the date it becomes due and payable:~~

~~(a) This constitutes a violation of the fundamental terms of the contract for the purposes of Regulation 103, and~~

~~(b) A Contractor shall, in addition to the amount due and payable, pay interest on the amount outstanding, beginning on the date the amount became due and payable, at an annual rate calculated by adding 5 per cent to the special drawing rights interest rate prevailing on the date the amount became due and payable.~~

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

- We consider it important to ensure that the purpose of the annual reporting fee is clear in Draft Regulation 84(1), particularly given the multiple fees currently contemplated under the Draft Regulations. Specifying the objective of each fee will help ensure that there is guidance for the Finance Committee and Council when setting these fees to

ensure they are appropriate and in line with similar fees under land-based mining regulatory regimes.

- We also consider that Draft Regulation 84(4)(a) creates far too low a trigger for deeming a contractor to have violated a fundamental term of their contract. As drafted, a single payment paid one day late would result in the contractor being in violation of a fundamental term of their contract.
- Given that violation of a fundamental term of the contract can result in suspension or termination under Article 18 of Annex III of the Convention or other serious consequences, it is not something that should be deemed to be the case lightly.
- Draft Regulation 103 sets out a proper procedure of warnings, representations and opportunities to resolve issues, prior to a finding of a violation of a fundamental term of a contract. This is the appropriate way to manage such a serious issue and ensure contractors are afforded due process when violations are alleged.
- Draft Regulation 84(4)(a) would be inconsistent with this proper approach and should be deleted.
- We also consider that details governing late fees and accumulated interest are matters best addressed in Standards or Guidelines or under the appropriate compliance and enforcement regulations. As such, Draft Regulation 84(4)(b) should be deleted as well.