

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS  
DURING THE 29<sup>TH</sup> 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](mailto:council@isa.org.jm).

**1. Name of Working Group:**

Informal Working Group on Institutional Matters

**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 13(1)(d), (e) bis; (2)(b),(e), (f); 3(b)

**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 13 [IWG IM]**

**Assessment of applications**

1. The Commission shall determine ~~[under consideration of] taking into account the relevant comments made by members of the Authority and Stakeholders, responses by the applicant and any additional information or comments provided by the Secretary-General if whether the applicant proposed Plan of Work and the accompanying plans and information:~~

[...]

(d) ~~Demonstrate that the applicant and, if applicable its parent company, legal predecessor, senior management and controlling shareholders, have~~ Has has satisfactorily discharged ~~their~~ its obligations to the Authority, including having a satisfactory record of past performance both within the Area ~~and in other jurisdictions~~;

[...]

[(e) bis Demonstrate that the applicant can or will be able to fulfil the obligations Fulfil the obligations to protect and preserve the Marine Environment in accordance with the Convention and the Agreement, and as listed out provided in the Rules rules, regulations and procedures of the Authority];

2. In considering the financial capability of an applicant, the Commission shall determine in accordance with Standards, and taking into ~~consideration account~~ Guidelines whether:

[...]

(b) The applicant is ~~{or will be}~~ capable of committing ~~{or raising}~~ sufficient financial resources to cover the estimated costs of the proposed Exploitation activities as set out in the proposed Plan of Work, and all other associated costs of complying with the terms of any exploitation contract, including: [...]

~~{(e) The applicant maintains an acceptable debt to equity ratio; and}~~

~~{(f) The terms of any loans used by the applicant to finance the proposed Exploitation adhere to Equator Principles, the performance standards of the International Financial Corporation or equivalent.}~~

3. In considering the technical capability of an applicant, the Commission shall determine, in accordance with applicable Standards and taking into consideration Guidelines, whether the applicant has provided sufficient information to demonstrate it has {or will have}

[...]

(b) The technology, knowledge, and procedures necessary to comply with the terms of the Environmental Management and Monitoring Plan and the Closure Plan, [and taking into account the applicable Regional Environmental Management Plan], including the technical capability to identify and monitor key environmental parameters and ecosystem components so as to detect any adverse effects and to modify management and operating procedures as required to avoid the potential for threat of Serious Harm];

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

- We continue to strongly oppose the inclusion of parent companies, legal predecessors, senior management and controlling shareholders in the scope of the Draft Regulations. The Authority cannot expand its jurisdiction to range of entities not party to the exploitation contract or otherwise subject to its jurisdiction. As such we propose amendments to Draft Regulation 13(1)(d) to focus on the applicant itself.
- We also object to the Commission looking to applicants' operating record regarding mining activities in other jurisdictions. This is not appropriate or relevant to activities proposed to be undertaken in the Area and we propose this is deleted.
- In relation to Draft Regulation 13(1)(e)bis we note that the Plans of Work cannot "fulfil the obligation", but can only demonstrate that the applicant has/will be able to fulfil the relevant obligation.
- We support the text of subparagraph 2(b) allowing the flexibility for the Contractors to raise funds after the submission of the application. This is critical given the nature of the industry and the way that funding operations. As such, we support the removal of the square brackets around the words "or will be" and "or raising".
- We oppose subparagraphs 2(e) and 2(f) as they constitute an inappropriate level of intrusion into the details of a Contractor that is not necessary to determine financial capability. This level of financial detail is often commercially sensitive and the Authority should not be inserting itself into the relationship between Contractors and their banks.
- We oppose the wording "threat of Serious Harm" in subparagraph 3(b) and, consistent with our earlier submissions, consider that a uniform standard of "Serious Harm" should be used throughout the Regulations.

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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 13(4), (5bis); Draft Regulation 16(3)

**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 13 [IWG IM]**

**Assessment of applications**

4. The Commission shall determine if the proposed Plan of Work foreseeably contributes to realizing the benefits for humankind as a whole and ~~complies is consistent~~ with the fundamental policies and principles contained in Regulation 2, and;

[...]

(e) [...] [For this purpose, the Commission shall determine whether the Plan of Work and accompanying plans and information demonstrate that:

(i) the ~~application for a draft~~ Plan of Work is based on adequate environmental baseline data, in accordance with applicable Standards and taking into consideration Guidelines;

[...]

5 bis The Commission shall determine whether the ~~application for a draft~~ Plan of Work and the accompanying plans and information demonstrate that the proposed activities will not interfere with any cultural rights or interests.

**Regulation 16 [IWG IM]**

**Consideration and approval of Plans of Work**

3. Alt. The Council shall, when approving a Plan of Work, request the Secretary-General to ensure that the contract to be concluded incorporates all conditions outlined in the ~~application for a draft~~ Plan of Work and the accompanying plans, as well as any additional conditions requested by the Commission or the Council.

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

- We have identified three references to “draft Plan of Work” in the Draft Regulations. These references risk confusion as to which document is referred to given it is not used consistently nor is it defined.
- We propose that the wording is substituted with “application for a Plan of Work” throughout the Draft Regulations for clarity.