

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27<sup>TH</sup> SESSION:  
COUNCIL - PART II**

***Informal Working Group - Inspection, Compliance and Enforcement***

Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to [council2022@isa.org.jm](mailto:council2022@isa.org.jm).

**1. Name(s) of Delegation(s) making the proposal:**

The Pew Charitable Trusts

**2. Please indicate the relevant provision to which the textual proposal refers.**

DR 101

**3. 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.**

- The facilitator’s proposed amendments are reflected in **red**.
- Our proposed amendments are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

2. The [Secretary-General] may take such reasonable action as is necessary in response to the complaint **and inform the Council accordingly**.

**Regulation 101bis Complaints and whistle-blowing procedures**

1. [Director-General of the Inspectorate] shall develop and implement a whistle-blowing policy for its own staff and personnel of Contractors, and a public complaints procedure, to facilitate reporting to the Authority by any person of any concerns about the activities of a Contractor, or the Authority.

2. The Authority’s whistle-blowing and complaints procedures must:

- a) be publicly advertised,
- b) be easy to access and navigate,
- c) enable anonymous reporting,
- d) trigger investigations of reports by independent persons, and
- e) be proactively communicated by the Secretary-General to Contractors and their staff, and other Stakeholders.

3. A Contractor shall have in operation whistle-blowing and complaints procedures, which must be publicly advertised, and which should include details of the Authority’s equivalent procedures, to enable direct reporting to the Authority by a complainant where preferable.

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

Regarding paragraph 2, we believe that the Council should be informed of Inspector complaints. In addition, we recall other delegations in the past have requested more detail as to the meaning of ‘reasonable action’ in

paragraph (2) which is a good question, we would welcome more detail here. Or again, this may be a matter better covered by rules of procedure for an independent body, such as a Compliance Council or ISA Ombudsperson. Such independent bodies could also play an important role in upholding accountability of the ISA more widely, not only in relation to inspectors.

We note that draft Regulation 101 applies only to complaints about inspectors. We suggest that the Regulations should additionally include a more general third-party complaint mechanism, and a whistle-blowing mechanism (that is, a process for receiving and addressing reports from those employed in the industry, without them being victimized as a result or raising concerns). Such processes are important accountability mechanisms for any organization actually, but are currently absent at the ISA. For a regulated industry, open complaints mechanisms like this can also be a useful source for regulators to obtain new intelligence upon which to target investigative actions, and can be useful in identifying non-compliance at an early stage. Third parties may be able to access information and practices that the ISA and States may not see. Therefore, we propose addition of relevant complaints procedures in the Regulations, emphasising again that the administration of these mechanisms should be independent from the ISA's general operations. This could be inserted as a new draft Regulations 101bis (or elsewhere) and we would be pleased to propose some language accordingly by way of a written submission.