

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH 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.

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 104

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. If the Authority takes remedial action or measures under paragraph 1 above, the actual and reasonable costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor, and may be recovered from the Environmental Performance Guarantee lodged by the Contractor, ~~and thus extinguishing the Contractor’s debt and putting an end to the dispute~~.

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

Like Argentina, Chile, Costa Rica, and Mexico, we do not support this proposed additional text at the end of paragraph 2 of draft Regulation 104, regarding use of the environmental performance guarantee ‘putting an end to the dispute’. If a contractor has failed to take action required under DR103, that is a serious non-compliance concern, requiring regulatory action. The ISA can indeed use the Environmental Performance Guarantee to cover costs it may incur taking its own remedial action to make good the failure of the contractor. But we believe the ISA should also retain the option to invoke further sanctions in such a scenario. This may include sanctions not to cover costs, but that are aimed to avoid future incidents of non-compliance or indeed to penalise the contractor, such as monetary penalties, suspension, termination, if appropriate.