

**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.

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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**.

1. The Council, ~~based shall~~ on the basis of the recommendations of the Commission, ~~shall~~ determine the relevant qualifications and experience appropriate to the areas of duty ~~areas of duty~~ fields of action of an Inspector under this Part. ~~[Based on that the Secretary-General will establish a roster of Inspectors.]~~

~~1ter Each Member of the Authority may, subject to the requirements of this regulation, designate~~ nominate its nationals as Inspectors for inclusion in the roster.

5. The Inspectors shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions of Part XI of the Convention, the Annexes relating thereto, and the rules, regulations and procedures of the Authority, and the plans approved under Regulation 15. Sponsoring States shall assist the Authority by taking all measures necessary to ensure such compliance in accordance with Article 139 of the Convention.

6. The Authority will work with the relevant sponsoring State to ensure that the Authority inspection measures are aligned with enforcement at the national level ~~Without prejudice to their enforcement under international law, measures adopted by the Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders. Inspectors shall report to the [Secretary-General] in writing any difficulties relating to the enforcement of their measures under national law.~~

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

The proposed paragraph 1 ter. relating to a roster seems sensible. We consider it would be helpful to clarify here that nominees will all undergo the same objective and transparent recruitment process against relevant

qualification criteria, before being included on the roster, so it is not a system of political appointment. Consideration may also be given to an open recruitment process, where qualified persons are able to apply directly, as well as requiring State nomination.

For paragraph 5, before offering any amendments We would welcome further clarification on the intent behind this proposal. This paragraph (5) may be taken to suggest that inspectors have enforcement powers akin to the Council (as Council is the ISA organ tasked to 'exercise control' over activities in the Area). Under the previous draft of this Part of the regulations, it seemed to be proposed only that Inspectors would have some time-limited enforcement powers usable in emergency scenarios until Council direction can be obtained, and otherwise for their default role to be monitoring and reporting to the Council, with Council the appropriate organ for enforcement decisions or action. If this new wording seeks to extend inspector powers to include enforcement actions, this would benefit from further elaboration. Indeed, this would be a point of likely interaction between the Inspectorate and a compliance committee if the intent is that the committee be comprised of Council member representatives, as this would be a way of engaging the Council's authority on behalf of inspectors.

Regarding paragraph 6, we would also welcome further clarification on the intent behind this proposal as it is not clear to us what is meant by this wording: "measures adopted by Inspectors shall be effectively enforceable by Sponsoring States in their national legal orders". Is this seeking to prescribe specific requirements for sponsoring State national laws? Or something else?

We are mindful that sponsoring States will be the responsible party for many types of enforcement action that the ISA would not be able to pursue. For example, a sponsoring State, if empowered by its laws and where procedural requirements were met, could conduct search of onland premises, could freeze bank accounts, could enforce judgements, could pursue criminal prosecutions. As any such steps will require evidence and a major source of such evidence is likely to be the ISA and particularly its inspectors, it would be helpful for ISA inspectors to collect evidence in a way that is usable under domestic civil and criminal procedure laws. Therefore, we would recommend that this point is addressed in this regulation, via a requirement for collaboration between the ISA and States to agree on appropriate evidence-gathering methods.