

TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 27TH SESSION:

COUNCIL - PART 3

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.

1. Name(s) of Delegation(s) making the proposal: Republic of Costa Rica

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

Regulation 97, ISBA/27/C/IWG/ICE/CRP.1/Rev.2

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.

Regulation 97

Inspectors: Appointment and supervision

1. The Council shall on the basis of the recommendations of the ~~Commission~~[Compliance Committee], determine the relevant qualifications and experience appropriate to the [areas of duty] of an Inspector under this Part.

[Based on that the ~~Secretary-General~~ Council will establish a roster of Inspectors.]

[1. ~~Alt 1. The Council~~] shall establish a roster of inspectors, based on the recommendations of the [Compliance Committee ~~Commission~~ on the relevant qualifications and appropriate experience required to perform their duties under these Regulations. [The roster shall be ~~administrated~~ administered by the Compliance Committee].

[1.bis ~~[[States Parties] [Each Member of the Authority]~~ may, subject to the requirements of this regulation, [~~designate~~] [nominate] its nationals as Inspectors for consideration, and] individual applications may be submitted directly for inclusion in the roster. Nominees and applicants will be considered against the qualification and experience requirements. The roster of Inspectors shall be made publicly available on the Authority's website.]

2. ~~The Compliance Committee shall make recommendations~~ to the Council on the appointment of Inspectors, and on an inspection programme and schedule, ~~[under the inspection mechanism]~~ [for the staff of Inspectors] established by the Council in regulation 96 (1) and in accordance with the Standards and taking into account the Guidelines.

3. The ~~[Secretary-General]~~ [Inspectorate] Compliance Committee shall manage and administer such inspection programme, including the appointment of Inspectors at the direction of the Council.

[4. The Inspectors shall be independent in the fulfilment of their tasks.

5. ~~[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]~~ Compliance Committee in writing any difficulties relating to the enforcement of the measures ~~their measures under national law~~. The Authority will work with the relevant sponsoring State to ensure that the Authority inspection measures are aligned with enforcement at the national level

6. Inspectors may be required to undertake relevant training programmes at the request of the Council, based on the recommendations of the ~~Commission~~ Compliance Committee. The Secretariat, shall facilitate the required training .

7. The [Compliance Committee] shall keep the roster of Inspectors under review and updated. The Council may, for reasonable cause, remove an Inspector from the roster, based on the recommendations of the [Compliance Committee] ~~Commission or on the recommendations of the Secretary General under regulation 101(2).~~

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

- For paragraph “1”, The decision on the qualifications , and the management of the inspectors, seem duties more appropriately allocated to a Compliance Committee, with specialist knowledge in this area (and who report to Council), rather than a duty for the LTC and Secretariat respectively. [We have the same comment for paragraph (2): unless the LTC’s composition is amended to include inspection and enforcement experts, we struggle to see how the LTC is best-placed to advise upon the appointment, supervision and direction of Inspectors.]
- For “1bis” It would be helpful to clarify that nominees must undergo an objective recruitment process against relevant qualification criteria, before being included on the roster, so nomination is not sufficient in itself to secure automatic appointment. This, to enable qualified persons to apply.
- In “5” for activities in the Area to be well-regulated, monitoring and enforcement duties fall not only to the ISA, but also to the sponsoring state. If the sponsoring State cannot access the evidence collected by the ISA Inspectors, or the evidence is not collected by ISA Inspectors in a way that is admissible in national court proceedings, then there will be a gap in the compliance regime. We therefore suggest some wording be included here, to encourage the ISA to develop its inspection measures in a way that aligns with enforcement at the national level.
- For “7” There must be procedures to review and update the roster of Inspectors as needed. This does not seem to be captured in DR97 currently. As such this added in a new paragraph.