

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH 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.

1. Name of Working Group:

Inspection, Compliance and Enforcement

2. Name(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

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

DR 103

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.

1alt At any time, if it appears to [the Compliance Committee] based on reasonable grounds, including a report from an Inspector, that a Contractor is in breach of, or is at risk of breaching, the terms and conditions of its exploitation contract, Part XI or the rules, regulations and procedures of the Authority or if requested by the Council to do so, the [Compliance Committee] may instruct the Secretary-General, with copy to the sponsoring State and the Council, to:

(i) seek dialogue with the Contractor to discuss and attempt to resolve the issue;

(ii) issue written warnings, including warnings in relation to possible action the Authority may take in the event of failure to act or future breaches;

(iii) agree with the Contractor on an improvement plan, which shall include: actions to be taken to return to compliance, how the actions' effectiveness will be monitored and reported, the time permitted for action, and subsequent steps should the actions be unsuccessful, or should non-compliance continue;

(iv) agree with the Contractor a modification to the Plan of Work, in accordance with regulation 57; or

(v) issue a compliance notice to the Contractor requiring the Contractor to take such action as may be specified in the compliance notice

1 bis. Actions taken under this Regulation by the Authority should be commensurate with the gravity, frequency, and other circumstances of the actual or anticipated breach by the Contractor, which may include taking account of the Contractor's previous conduct under contract with the Authority.]

1 ter. Paragraph (1) bis, notwithstanding, where regulations 4(5), 36(3), 52(8), 99(3) and 102(3) apply, the Authority shall issue a compliance notice under paragraph 1(iv).

~~[8. The Secretary-General shall notify the Council as soon as reasonably practicable of~~

~~any matter requiring the Council to issue an emergency order under article 162(2)(w) of the Convention, in accordance with regulation 4(4).] - reinsert~~

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

For para 1alt, 1bis and 1ter, looking back at previous proposals it appears that the chapeau for the proposed alt1 was left out when it was carried over into the facilitator text. We have added back in that chapeau which, if retained, we would support. This addition does not default to a compliance notice as the only regulatory tool available, but instead empowers the ISA to take different progressive actions in the event of non-compliance, and where different types of events can trigger different types of regulatory responses, tailored and proportionate to the situation. This is the sort of approach that one would expect to see in a regulator's enforcement strategy. The ISA does not currently have an enforcement strategy, to our knowledge, which needs to be remedied.

It would be helpful to establish a link in this regulation between Inspector instructions issued under DR 99 and compliance notices issued under DR 103, as currently very little cross-reference is made. Our understanding is that an Inspector instruction is likely to come first, and then a compliance notice may follow, such as in the event the Inspector instruction is not complied with, or is not sufficient to remedy the breach. It is also our understanding that the same event should not be subject simultaneously to an Inspector instruction and a compliance notice, which could differ in their requirements. And that a contractor who has received an Inspector instruction should be given the opportunity to implement those instructions, before a Compliance Notice is issued. Having some cross-reference between the two provisions may assist to clarify the order of events, and inter-relation between these two different regulatory tools.

For para 8, we aren't sure why this proposal has been deleted. Notification of such a situation to the Council seems both helpful and necessary for the Council to fulfill its obligations and to ensure the prevention of serious harm. We do query whether the SG is the appropriate entity to notify the Council and if instead it should be the Inspectorate and/or Compliance Committee.