

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> 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](mailto: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 96

**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.**

For all of our submissions to for this working group:

- The facilitators’ proposed amendments are reflected in **red**.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Where we propose deletions of the facilitator’s text this is shown **in strikethrough and bold**.

1 bis. The [Council] ~~[Secretary-General]~~ shall on the basis of the recommendations of the Commission approve and maintain a code of conduct for Inspectors and inspections, prior to the approval of a plan of work, that takes into account the principles in paragraph (1) and includes provisions on identifying and managing conflicts of interest, and on information management and confidentiality.

2. The Contractor shall permit the Authority to send its Inspectors, who ~~[may]~~ [shall] [upon request by sponsoring States, any other State Party or other party concerned be accompanied by a representative of the sponsoring State, other State Party or other party concerned] , aboard all vessels and Installations ~~whether offshore or onshore~~, used in the Area by the Contractor to carry out Exploitation activities under an exploitation contract. ~~as well as to enter its offices wherever situated~~. To that end, States Parties, in particular ~~the sponsoring any~~ State or States in whose national jurisdiction or on whose vessel the Authority wishes to conduct inspection activities, shall assist the [Council], [Authority] and Inspectors in discharging their functions under the Rules of the Authority.

3. The [Inspectorate] [Compliance Committee] [The Inspector] shall give reasonable notice in the circumstances, of not less than (x) to the Contractor of the projected time and duration of inspections, ~~for a period as necessary~~ the names of the Inspector(s) and any activities that the Inspector(s) are to perform that are likely to require the availability of special equipment or special assistance from the personnel of the Contractor save in situations where the [Inspectorate] [Compliance Committee]

[Inspector] has reasonable grounds to consider the matter to be so urgent that notice cannot be given, in which case the [Inspectorate] [Inspectors] [Compliance Committee] may, where practicable, exercise the right to conduct an inspection without prior notification, such as when a compliance notice under regulation 103 has been issued to the Contractor in question or pursuant to Regulation 4(5) applies.

[4 alt. Inspectors may inspect any relevant documents ~~or items which are~~ necessary to monitor the Contractor's compliance under the exploitation contract and the Rules of the Authority inter alia, all ~~other~~ recorded data and samples and any vessel or Installation, including its log, ~~personnel~~, equipment, records and facilities, as well as interview personnel.]

5. The Contractor and its agents and employees shall cooperate with the Inspectors and give full assistance to the Inspectors in the performance of their duties, and shall:

(f) Accept the deployment of remote real-time monitoring and surveillance equipment, ~~where required~~ by the Inspectorate and facilitate the activities of Inspectors ~~in deploying such equipment and having access thereto~~ to observe the Contractor's monitoring operations.

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

General comment - As noted by many other delegations at the March ISA meeting, in the absence of an agreed upon inspection, compliance and enforcement mechanism it is very difficult to engage with this text (particularly the first few regulations - DR96-99). This is even more so the case when considering the divergence between the various proposals put forward on what a possible ICE mechanism/structure would look like. Since there is an intersessional working group focused on this issue (which we are participating in), we will refrain from opining on our preferred mechanism in these textual submissions, and suggest for the time being that brackets continue to be in place around regulatory entities.

For paras 1-1ter, as noted by several delegations, we support the proposals to include a timing requirement, ie for the Regulations to stipulate that the appropriate ICE mechanism must be established either before the first application of a plan of work for exploitation or before exploitation activities commence. We had previously proposed 'before the effective date of any exploitation contract' as a timeframe that lies more within the control of the ISA than perhaps receipt of an application, or commencement of activities.

Para. 1bis references principles in paragraph 1, which do not currently exist. Those principles do appear to be present in paragraph 1alt (e.g. transparency, accountability, independence, and the precautionary approach), though this could be more clear. We note that DR96 in the Norway proposal (that we collaborated on) provides language to address this issue that could be drawn on here. We also agree with the facilitator that the code of conduct should be under the Council not Secretary-General.

For para. 2, we support the new wording added to the last sentence - As it attempts to deal with potential issues arising from jurisdictional conflict. Generally, we believe the ISA (and these regulations) need to give significant further consideration as to how the inspection regime will work with port States and flag States who may not be the sponsoring State, and indeed may not even be an ISA member State bound by these Regulations. If ISA Inspectors

are lawfully denied permission to board relevant vessels, then the ISA inspection regime cannot operate. Equally enforcement activities in the event of unlawful mining may be difficult, if there are not arrangements in place with the port State, to which the minerals are transported and offloaded. While the Regulations currently recognise the different duties and jurisdictions between ISA and States, they do not attempt to deal with potential conflict. This may prove a problematic gap. One option, for example, would be to require contractors only to use vessels registered with ISA member States and ports located in ISA member States. This would at least ensure that the Regulations that purport to apply to flag and port States would have force. As mentioned by the African Group, further technical studies or inter-sessional working in this area may be helpful.

We prefer paragraph 3 over 3alt and 3bis. We do not consider these powers to fall within the administrative mandate of the Secretary-General. We also consider there may be circumstances in which an inspection without prior notification is warranted. For para. 3, we suggest deletion of the words in sub-paragraph (3): “for a period as necessary”. Firstly because it is unclear as drafted if this wording refers to the duration of the notice period, or the duration of inspection. Secondly, because of redundancy: there are other provisions that require the reasonableness of the notice periods and of inspection focus and conduct.

We prefer para 4 alt. though query if this would be more relevant in DR 98. We like that this paragraph does not contain temporal limitation, as it is possible allegations of non-compliance may come to light after a project closure. It is clear simply to state that the items inspected must relate to a Contractor’s contract, as that seems sufficient to give the ISA jurisdiction to inspect. We also prefer that alt 4 refers to ‘interview’ of personnel, rather than ‘inspection’, as use of the term inspection reads oddly and risks infringement of human rights..

For para 5(f), as was previously suggested by Costa Rica and Netherlands we recommend deletion of ‘where required’. Real-time monitoring and surveillance equipment will be an important source of information and should be standard practice for all, as a level playing field, not discretionary on a case-by-case basis.

For para 6(a), an obligation is placed upon inspectors to observe ‘good seamanship’. We consider it would be sensible for the Regulations to contain accompanying obligations on the ISA to consider this factor in recruiting and in training inspectors. We note that the Regulations currently provide that Inspectors ‘may be required to undertake training’ in DR97. We consider this could be strengthened, and more clearly assigned as a duty to the Council (or the Inspectorate itself) to ensure appropriate knowledge and skills for all inspectors. Indeed, there is an opportunity for the inspectorate to be used as an avenue for skills development and employment, including for personnel from developing countries, adding to the non-monetary benefits arising from activities in the Area. In our opinion those possibilities should be maximized, and this should be reflected in the inspector recruitment and training provisions of the Regulations.