

**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:

Informal Working Group on 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.

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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.

1 bis. States Parties may, subject to the requirements of this regulation, 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. [Equitable geographical representation [and gender balance] will also be considered, in line with the Convention principle]. ~~[Subject to considerations of protection of personal data]~~. The roster of Inspectors shall be made publicly available on the Authority’s website....

~~[3.Alt. Such inspection programme shall be managed/overseen by the Council and administrated/managed by the Compliance Committee, and implemented by the Chief Inspector [and the Inspectors].~~...

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

5. [The Authority will ~~[work]~~ [cooperate] with the ~~[relevant]~~ sponsoring State [or State] to ensure that inspections performed by Inspectors are aligned with enforcement at the national level]. ~~[Inspectors shall report to the [Compliance Committee/Chief Inspector] in writing regarding any difficulties relating to the enforcement of the measures].~~

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

In para 1bis regarding the appointment of Inspectors, we would like to add the option for individual applications to be submitted directly for inclusion to the roster, in addition to the state nomination process as was raised by the UK in July.

Para 2 might need to be redrafted based on discussions on 96bis (2bis). In addition, it is also worth noting that this power is also reserved for the broader LTC under Article 165(2)(m) - so we query whether any recommendation given by the LTCCC along this mandate would also have to be considered and decided upon by the LTC before being passed along to the Council.

Regarding para 3(alt) we wonder if better terminology would be that the Council 'oversees' rather than 'manages' the programme. We still have reservations about the Compliance Committee managing the inspection programme vs. the Chief Inspector, but to be consistent with how these regulations are currently drafted it would seem to us that 'managing' is more appropriate terminology; and we would add at the end of the para that the Chief Inspector and the Inspectors are responsible for implementation of the inspection programme.

Regarding para 4, while we welcome the intention we propose further elaboration of what is meant by independence and how it can be given operational effect. We suggest this point should be covered by appropriate recruitment and conflict of interest management provisions (as well as the code of conduct, and complaint mechanisms), which can more specifically indicate what 'independence' means. We presume it relates to the Inspectors being uninfluenced by financial benefits from exploitation, or from other obligations arising out of being part of another organ of the ISA, or perhaps by reason of their nationality. It is also unclear from this regulation as drafted, whose responsibility it is to ensure this independence, and what the repercussions would be if an inspector is found not to have been independent. Vague and passive drafting will make the provision unenforceable. Therefore, we would welcome clarification, and drafting improvements for this term.

We prefer para 5 over para 5 alt. which we think more properly relates to matters within the Inspectors' control, and is aimed to ensure that evidence they gather is obtained and shared in such a way with the sponsoring State as to facilitate enforcement proceedings at the national level. Alt. 5 as drafted would not achieve the same goal since the regulations cannot provide that inspector's measures are enforceable in national regimes. That is a matter for domestic law. For paragraph 5, we believe there should be a role for the Chief Inspector in the last sentence - it would seem that Inspectors would first report to the Chief Inspector who would then report to the LTCCC. Lastly, we welcome any clarifications as to the next step in the process after the LTCCC receives this information - is it that the body will review the information? Or pass it on to the Council? If the difficulties are severe, how can this process be expedited to ensure swift and proportionate decision-making/action?