

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH 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:

ICE

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

Federal Republic of Germany

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

New DR 96 bis (and suggested to be moved to a new DR 102 bis)

Red text is in original draft; **blue text** indicates Germany's textual proposals

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.

~~Regulation 96 bis~~ **Regulation 102bis**

Compliance Committee

1. A Compliance Committee ("the Committee") is hereby established to assist the Council in carrying out its responsibility to exercise control over activities in the Area as provided for under Part XI of the Convention. All instances of non-compliance shall be brought to the attention of the Committee, which shall report to the Council. The Committee shall comprise fifteen members. Each regional group shall designate two members from among Council members, who shall serve for a period of two years, with the possibility of extension. The remaining five members shall be designated by the Commission taking into account geographic representation and from among those with appropriate expertise within the Commission to carry out the functions of the Committee in accordance with this regulation.

2. Without limiting the powers and functions conferred upon another organ of the Authority the Committee shall:

(a) Administer and manage the roster of Inspectors and matters relating to inspection, compliance and enforcement in accordance with relevant policies or directions issued by the Council;

(b) Provide recommendations to the Council on matters relating to inspection, compliance, and enforcement including clarifying what constitutes non-compliance;

(c) Appoint Inspectors as required from the approved roster of inspectors, according to the approved inspection programme and schedule or as may be required;

- (d) Establish procedures and routines for investigation of possible instances of non-compliance;
- (e) Review the annual reports of Contractors, as examined by the Commission, and consider any instances of non-compliance;
- (f) Examine reports and recommendations from the Chief Inspector and Inspectors, and other relevant data and information and consider any instances of non-compliance;
- (g) Report to the Council the results of inspections and resulting recommendations for enforcement action, in a timely and comprehensive manner and coordinate compliance matters with other organs of the Authority that play a role in inspection, compliance and enforcement;
- (h) Investigate allegations from members of the Authority, members of the Commission, relevant coastal States or the Secretary-General, as well as from observers of the Authority and other Stakeholders on possible instances of Contractor non-compliance, including through any whistleblowing procedures under regulation 101 bis.;
- (i) Convene, with the support of the Secretary-General, a process to liaise with Contractors in cases of non-compliance or complaints, including conducting oral hearings and conduct an inquiry into any Incident;
- (j) Consult and cooperate, through the Secretary-General with sponsoring States, flag States, port States and competent international organizations as regards compliance and enforcement measures;
- (k) Issue compliance notices under regulation 103, and in urgent cases, take any appropriate interim measures where necessary;
- (l) Examining complaints under regulation 101 and making any recommendations to the Council;
- (m) Make recommendations to the Council for the issue of emergency orders and appropriate penalties; and
- (n) Undertake in collaboration with the Secretary-General compliance promotion activities to promote understanding of and compliance with the Rules of the Authority, including dissemination of best practice arising from inspection activities;
- (o) Appoint, where time is of the essence, a competent independent person to perform any or all of the functions of an Inspector where the nature or subject matter of an inspection requires specialist knowledge or experience that is not available on the approved roster of Inspectors; and
- (p) Perform any other duties that the Council directs in writing.

2 bis. Any recommendations from the Commission to the Council pursuant to Article 165(i), (j) and (k) of the Convention, as well as any instances of non-compliance identified by the Commission or the Secretariat in the course of carrying out their functions or otherwise, shall be promptly forwarded to the Committee in the form of a report for consideration and further action as appropriate. With the exception of complaints made against the Committee, all complaints received pursuant to Regulation 101 and 101bis shall also be immediately forwarded to the Committee for consideration and further action as appropriate. Nothing in this provision shall limit the right of the Committee to commence its own investigation of non-compliance. In cases where complaints are made against the Committee, the Council shall directly address such complaints and determine how to proceed.

3. The Committee shall develop its own rules of procedure, including for the convening of hearings, which shall be approved by the Council.

4. Decisions of the Committee shall be taken by consensus. If all efforts to achieve consensus has been exhausted, decisions shall be taken by a majority of members present and voting. In the case of a tie, the Chair of the Committee shall have the decisive vote.

5. The Committee shall meet at regular intervals preferably using virtual means, and in urgent cases involving possible instances of non-compliance, shall convene virtually and on short notice. Members of the Committee shall rotate among themselves on a monthly basis in order to ensure that one member is always available “on call” in cases of non-compliance that require urgent action. In addition, the Committee shall appoint its own chair and vice chair. Unless otherwise determined by the Committee, the Chair of the Commission, the Chief Inspector and a member of the Secretariat designated by the Secretary-General shall be invited to attend the meetings of the Committee but without the right to vote. The Secretary-General shall facilitate the meetings of the Committee.

6. Within 3 months of the end of a Calendar Year the Committee shall complete an annual inspection, compliance and enforcement report, together with a non-technical summary, and submit the report and summary to the Council for its consideration.

7. The report shall include details of any regulatory action taken by a sponsoring State or States as advised in writing to the Chief Inspector or Secretary-General, any corrective action undertaken by a Contractor and any recommendations as to any enforcement action to be taken by the Council to which regulation 100(2) refers. The report shall also include any findings and recommendations arising from inspections that may contribute to the development of Good Industry Practice, Best Environmental Practices and Best Available Techniques.

8. The Secretary-General shall make publicly available a copy of the Committee’s report and summary on the Authority’s website, with any Confidential Information redacted.

9. The Council shall review and ratify any interim measures imposed by the Committee, and consider any of its recommendations as soon as practicable or at its next meeting. A member of the Bureau of the Council shall be on-call and shall convene a virtual meeting of the Council in the case of matters for urgent consideration, including the issue of emergency orders by the Council.

10. The Secretary-General shall provide such administrative support to the Committee and the Chief Inspector as is required, including the processing of all formal communications and notifications to or from the Committee. All notifications to the Committee shall be addressed to the Secretary-General who shall promptly transmit them to Chair of the Committee.

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

- General comment: Germany has been participating in the intersessional work led by Norway and would like to record our appreciation for the progress in the working group. While we welcome the proposal to develop a “hybrid model” that assures impartiality and independence in terms of inspection, we would like to propose some modifications as we believe compliance and enforcement goes beyond inspection. Specifically, we believe a standalone body under the Council would be imperative for this purpose, but agree at the same time that existing institutional structures (notably the LTC) should be used where appropriate. We therefore propose that an arrangement be developed to function as an

intermediary between the Commission and the Council for the purposes of inspection, compliance and enforcement. This arrangement would bring several benefits, including the possibility to conduct hearings in cases of non-compliance, as well as to ensure that compliance measures are driven by the Council and its member states. A separate intermediary body between the LTC and the Council can also deal with inspector reports and contractor annual reports submitted to the LTC that have identified instances of non-compliance, as well as to deal with other complaints relating to compliance. This allows the Council to take better and more effective enforcement measures. Consequently, at the last meeting, Germany proposed a “mixed approach” or “mixed model” for the Compliance Committee, where we foresee a mix composition between members nominated by states and several representatives from the LTC. Germany suggests that the version proposed above be used for the next round of negotiations in place of the current text. (We note that most items in paras 4-10 do not necessarily need to be in the regulations and can be moved to the rules of procedure of the Committee, which is anticipated to be developed pursuant to para 3, but suggest they be retained here for the time being while member states negotiate the appropriate model.)

- General comment: We suggest renumbering this provision to DR102bis and to have a new Section 2 here with the heading “Compliance”. This would avoid confusion that the proposed compliance committee is only relevant to inspection by reason of it being placed in this section. This change acknowledges the division between inspection (section 1), compliance (new section 2) and enforcement (section 3). The sole provision in the current section 2 (DR102 on remote monitoring) may be moved elsewhere as some delegations suggested at the last meeting or kept in this new section 2. Several other provisions, namely the newly inserted DR 100bis, 101bis, and 104bis, which Germany supports, may be brought under the new section 2.
- General comment: Germany is of the view that the remaining provisions under ICE as well other relevant provisions in the regulations relating to compliance and enforcement should be revisited once the member states have decided on an appropriate model for compliance. It remains a difficult task to make substantial comments without first having certainty on the compliance model. Germany retains the right to revisit these provisions at a later date and to make textual proposals accordingly.