

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28TH SESSION:
COUNCIL - PART III**

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.

- **Red font** are proposed amendments by the Facilitator in this revised text.
- Our proposed amendments and our questions or comments regarding the facilitator’s remarks are indicated as in-line edits in **blue**. Proposed deletions of text proposed by the facilitator appears in strikethrough and **bold**.

1. At any time, if it appears to the Compliance Committee based on reasonable grounds, including a report from an Inspector, or failure to comply with a written instruction under regulation 99, that a Contractor is in breach of, ~~or is at risk of breaching~~, the terms and conditions of its exploitation contract, provisions of the Convention related to activities in the Area, the Agreement 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 shall issue a compliance notice to the Contractor requiring such action as may be specified in the compliance notice and shall report immediately to the Council on the issue of such notice 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.bis.Alt. The Authority should discuss the issue in detail with the Contractor to inform decisions of the Council.]~~

~~[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).]~~

2. ~~[A compliance notice may be issued only in case of breach of the terms and conditions of its exploitation contract, Part XI and provisions of the Convention related activities in the Area, the rules, regulations and procedures of the Authority, or these regulations].~~ A compliance notice shall:

(a) Describe the ~~[alleged]~~ breach and the factual basis for it; and

(b) Require the Contractor to take remedial or corrective action or other such steps as the Compliance Committee considers appropriate to ensure compliance within a specified time period and may include:

(i) the implementation of an improvement plan setting out 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; or

(ii) agreeing with the Contractor a modification to the Plan of Work in accordance with regulation 57.

2 bis. Actions specified in the compliance notice should be commensurate with the gravity, frequency or other circumstances of the ~~[alleged]~~ breach.

3. For the purposes of article 18 of annex III to the Convention, a compliance notice issued under this regulation constitutes a warning by the Authority.

4. The Contractor shall be given a reasonable opportunity not exceeding 30 days to make representations in writing to the Secretary General concerning any aspect of the compliance notice, who shall transmit ~~the~~ same to the Compliance Committee. Having considered the representations, the Compliance Committee may make recommendations to the Council to confirm, modify or withdraw the compliance notice.

5. If a Contractor, in spite of one or more warnings by the Authority, fails to implement the measures set out in a compliance notice and continues its activities in such a way as to result in violations of the fundamental terms of the exploitation contract, provisions of the Convention related activity in the Area, the Agreement or the rules, regulations and procedures of the Authority, the Council shall suspend or terminate the exploitation contract by providing written notice of suspension or termination to the Contractor in accordance with the terms of the exploitation contract.

~~5 bis. — The Secretary General shall make public any compliance notice issued to a Contractor, as well as any response received from the Contractor [and Sponsoring State], subject to the confidentiality obligations of Regulation 90, and shall present an annual report to the Council summarizing any compliance notices the Authority has issued.~~

[5. Bis Alt 1 The Secretary-General shall, ~~[subject to the confidentiality requirements of regulation 90]~~ make public any compliance notice issued to a Contractor, any response received from the Contractor or Sponsoring State or States ~~, subject to the confidentiality requirements of Regulation 90~~. The Compliance Committee ~~Inspector-General~~ shall ~~[include] [present]~~ in their annual report to the Council a summary of any compliance notices ~~the Inspectorate has issued.~~]

6. In the case of any violation of an exploitation contract not covered by paragraph 5 above, or in lieu of suspension or termination under paragraph 5 above, the Council may impose upon a Contractor monetary penalties proportionate to the seriousness of the violation which must be in line with indicative penalties set out in the relevant Standards, and which will include any administrative costs incurred by the Authority as a result of the violation.

7. Except for emergency orders under article 162 (2) (w) of the Convention, the Council may not execute a decision involving monetary penalties, suspension or termination until the Contractor has been accorded a reasonable opportunity to exhaust the judicial remedies available to it pursuant to section 5 of Part XI to the Convention.

7.bis. The Council shall invite the attention of the Assembly to cases of non-compliance in accordance with Article 162(2)(a) of the Convention. [The Council will bring to the attention of the Assembly instances of non-compliance, as established in article 162 \(2\)\(a\) of the Convention.](#)

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\(4\).](#)

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

We would like to retain the subparagraphs under DR103(1) that have currently been deleted and we would also propose alternative wording to the chapeau to better contextualise the sub provisions. It is important that a compliance notice not be assumed as the default disciplinary action nor the only regulatory tool available. Instead, the ISA should be empowered 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 but also dissuasive and enforceable.

We are unsure about the meaning or rationale of this new paragraph 1 bis Alt. The reference to ‘the Authority’ seems unclear. (Indeed this is true throughout DR103, and we recommend this be amended to cite specific organs, when the ICE structure has been more clearly delineated and agreed by Council).

Furthermore, we are generally unsure about the meaning or rationale of this new paragraph 1 bis Alt. If this suggestion is about trying to encourage a culture of iterative dialogue between the inspectorate and the contractors, this may be better dealt with by way of the ISA’s compliance strategy, than by regulations.

Regarding para 4, we are pleased to note that this provision gives the Council an opportunity to confirm, modify or withdraw the Compliance Notice as in our view a compliance notice from Compliance Committee should be seen as a temporary measure pending Council approval, in any event. However, it is unclear whether the Contractor is obliged to comply with the compliance notice during those 30 days, which we believe to be the intent. So, would welcome that clarity.

Regarding DR 103, para 5 and throughout the Regulations, we find the references to suspension inconsistent and suggest that they are harmonised. Firstly, there is inconsistency in the terminology used to describe what, specifically, is suspended (‘operations’, ‘activities’, ‘production’, or here: ‘contract’), and these terms tend not to be defined or explained. For example: in practice, how does one legally ‘suspend’ a contract? This may lead to ambiguity, subjective interpretation, and difficulty for the ISA to enforce the requirements. We would suggest to use one of those terms that UNCLOS uses, which are ‘suspension of operations’ (Article 163(2)(w), 165(2)(k)) or ‘suspension of rights under the contract’ [Annex III Article 18(1)].

Secondly, some of the suspension provisions – including this one in paragraph (5) lacks clear decision-making procedures and decision points, particularly with regard to when activities may or must re-commence.

Thirdly there are different provisions that enable different types of suspension for the same breach. For example this DR103, as well as DR80 and Annex X all provide slightly different decision-making criteria and processes, for a suspension for breach of contract.

In paragraph 7bis we are not sure why the reference to Assembly has been deleted. Although arguably it's unnecessary, as it is merely quoting UNCLOS, we did think it served a useful function to ensure that this reporting duty to Assembly is not overlooked.

We are also unsure why this paragraph 8 has been deleted. Notification of such a situation to the Council seems both helpful and necessary for the Council to fulfil its obligations and to ensure the prevention of serious harm. Though the Secretary-General is not the appropriate entity to notify the Council; this should be the Compliance Committee.