

**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 97bis

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. The Council, shall on the basis of the recommendations of the Commission, determine the relevant qualifications and experience for Inspectors to be included in the Roster of Inspectors appropriate to the areas of duty of an Inspector under this Part.

1 bis. States Parties may, subject to the requirements of this regulation, nominate Inspectors for consideration, and ~~{individual applications may be submitted directly for}~~ inclusion in the Roster of Inspectors. 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.

2. The Compliance Committee shall make recommendations, to the Council on the appointment, supervision and direction of Inspectors included in the Roster of Inspectors, and on an inspection programme and schedule for the Authority in accordance with any applicable Standards and taking into account any applicable Guidelines **and an agreed compliance strategy**.

3. The inspection programme shall be ~~{overseen}~~**managed** by the Council and ~~{managed}~~**administrated** 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 **in accordance with the code of conduct for Inspectors**. ~~{and {be guided by transparency, accountability and non-discrimination}}~~

5. The Authority will cooperate with the Sponsoring State or States to ensure that inspections performed by Inspectors are aligned with inspection and 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. The Chief Inspector shall transmit the report to the Compliance Committee with recommendations to address the difficulties identified.

...

7bis. The [Secretariat] shall establish a recruitment programme for the purposes of ensuring equitable geographical representation and gender balance of inspectors, providing the necessary training to recruits to meet qualifications pursuant to paragraph 1.

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

Regarding DR97(1bis), we would prefer to remove the State nomination requirements entirely, and instead to see an open recruitment process, where persons are able to apply directly and be selected against objective criteria, to avoid politicisation. At the very least, we believe the ability for individuals to apply should be retained. We also wonder if there should be an opportunity here for the ISA to build capacity and promote opportunities to personnel from developing States in accordance with Art 144. As such, we have suggested a new provision (7bis), which would direct the establishment of a recruitment programme.

Regarding (2), we recommend adding a reference to an agreed compliance strategy at the end of the para, which is the task we suggested the compliance committee undertake in DR 96.

Regarding (3), we support the language in the brackets, although we are a little unsure what the timing requirements are for the inspection programme and schedule, and the Council's approval. From discussions on the floor it seemed as though member States were in agreement that the ICE mechanism would need to be in place before the approval of the first Plan of Work, which we would agree. With that said, we would welcome clarity as to whether this is done on a one-off basis? Or perhaps on an annual basis? We would like to see flexibility maintained, so variations from the programme and schedule are permitted where there is good cause.

On (4), while we welcome the intention behind the additional language in brackets, we propose further elaboration of what is meant by independence and how it can be given operational effect is needed. We suggest this point should be covered by the code of conduct and the appropriate recruitment and conflict of interest management provisions 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. The passive drafting makes the provision unenforceable, as it reads as a simple statement of fact. We would welcome clarification, and drafting improvements, including clarification on what is meant by non-discrimination in this context, there appears to be something missing in the drafting.

Regarding (5), we recall that the point about enforcement here was designed to maximise the usefulness of ISA inspectors' evidence gathering at the national State level ie if the inspectors' reports or intelligence-gathering are not admissible in evidence in the sponsoring State's court system, then this would be an obstacle to effective enforcement. Hence the need for alignment. To us though, this should be a responsibility for the sponsoring State to ensure that its national rules of judicial evidence are updated, rather than an obligation for the ISA. As the ISA cannot really be expected to tailor its inspections from contract-to-contract, according to individual sponsoring states rules of evidence-gathering. If our recollection is correct, perhaps this para (5) would benefit from rewording by adding the words "inspection and" before "enforcement".

The provision should also include a role for the Chief Inspector in the last sentence - Inspectors would first report to the Chief Inspector who would then report to the Compliance Committee. We welcome any clarifications as to the next step in the process after the Compliance Committee 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?