

## TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS

### 1. Name of Working Group:

Working Group on Institutional Matters

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

Federative Republic of Brazil

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

Regulation 6

### 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 6 – Certificate of sponsorship

*2bis. For the purposes of issuance of a certificate of sponsorship, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.*

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

The proposed language is largely based on Article 9 of the International Law Commission’s Articles on Diplomatic Protection.<sup>1</sup> The International Law Commission was established by the UN General Assembly to “initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification”. After reviewing the question of *effective control* regarding the diplomatic protection over juridical persons in international law, the International Law Commission adopted a dual approach: while it accepted the basic premise that regulatory incorporation confers nationality on a corporation, it also established an exception in the situation where there is no significant link or connection between the State of incorporation and the corporation itself, and where certain significant connections exist with another State, in which case that other State is to be regarded as the State of nationality. By adopting the ILC’s approach, the proposed amendment intends to present a solution to the discussion on regulatory model *vs.* economic control model. In the first instance, the State in which a corporation is incorporated is the State of nationality for the purposes of issuance of the certificate of sponsorship. However, when the circumstances indicate that the corporation has a closer connection with another State, a State in which the seat of management and financial control is situated, that State shall be regarded as the State of nationality for the issuance of the certificate of sponsorship. In this case, certain conditions must thus be fulfilled: (i) the corporation must be controlled by nationals of another State; (ii) it must have no substantial business activities in the State of incorporation; and (iii) both the seat of management and the financial control of the corporation must be in a third State.

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<sup>1</sup> United Nations. 2006. Report of the International Law Commission at its fifty-eighth session, p. 36, Article 9.