

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 29TH SESSION:
COUNCIL - PART II**

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(s) of Delegation(s) making the proposal:

The Pew Charitable Trusts

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

DR 103

3. 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.

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 same to the Compliance Committee. Having considered the any such representations and taking account of any enforcement action taken or to be taken by the Sponsoring State or States, 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 has conducted its activities in such a way as to result in serious, persistent and wilful violations of the fundamental terms of the Exploitation Contract, provisions of Part XI of the Convention, the Agreement or the rules, regulations and procedures of the Authority, the Council ~~may~~ shall suspend or terminate the Exploitation Contract, **pursuant to regulation 29 ter**, by providing written notice of suspension or termination to the Contractor in accordance with the terms of the Exploitation Contract.

[5. **Bis Alt.** 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. The Compliance Committee shall include in their annual report to the Council a summary of any compliance notices issued.]

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

DR103 identifies what triggers a compliance action from the ISA, and what form that action can take. The initial trigger event is: breach of UNCLOS, RRs or Contract, and the principal response is a compliance notice. This makes sense. However, it occurs to us that the regulations are not clear when the CC should use its investigatory powers, or other powers provided to it in DR102 prior to using its most severe action: issuance of a compliance notice.

For example, regulators often have a role to try to safeguard the public trust and confidence in the relevant industry. With this in mind, if a Contractor acts in way that causes reputational risk to the sector, the ISA may wish to step in with an intervention lesser than a compliance notice. But the

regulations appear to largely focus on the powers provided to the CC under DR103 which would not be permissible to use in this situation as reputational issues are not a breach of contract.

To address this, we would like to see DR103 (or possibly a regulation before DR103) that outlines an escalating hierarchy of interventions to clarify the range of regulatory tools at the CC's disposal, rather than defaulting to compliance notices, suspension and termination – all at the more serious end of the regulatory spectrum, and with resource-intensive evidence and procedural requirements. As mentioned previously, this could also be done by empowering the CC to take any other reasonable action in line with the Compliance Strategy. The Compliance Strategy can then set out what types of response would be triggered by types of issues or evidence.

In para 4, we believe redrafting is necessary to clarify that the CC recommendation and a Council decision are mandatory. It may also be helpful to clarify in paragraph (4) that the Contractor is expected to comply with the compliance notice during the time that the Council's decision is awaited.

Where paragraph (5) refers to a suspension we suggest describing this as a suspension of 'operations' (as per UNCLOS Article 163(2)(w) and 165(2)(k)) or 'suspension of rights under the Contract' (as per UNCLOS Annex III Article 18(1)) rather than of the suspension of the Contract. We are not sure legally how the Contract itself could be suspended. We recommend also to add after the word 'suspend' the wording 'pursuant to regulation 29 ter', so that the suspension will be managed according to the due process set out therein, and to ensure consistency for all Contractors and all suspensions.

In paragraph (5)(alt) (which we presume should be (5)(bis), as it is an additional provision, not an alternative one), we suggest deletion of the wording 'subject to the confidentiality requirements of regulation 90'. The ISA's appropriate treatment of Confidential Information is covered by DR90 and need not be repeated in every regulation that relates to publication of information.

Paragraph (6) repeats UNCLOS. It would be helpful to give some more operational detail – both substantive and procedural. For example: in what circumstances and on what criteria would it be appropriate to choose monetary penalties rather than a compliance notice, or suspension or termination? Does Council take this decision directly, or should there be a recommendation from the CC? Does the Contractor have a right of reply or appeal within the ISA, before resorting to judicial remedies?