

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 96

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.

[1. The [Council] ~~Commission~~ shall establish a Compliance Committee, [within the Commission], pursuant to Regulation 96 bis. **The Compliance Committee shall oversee the Authority’s inspections, compliance and enforcement function pursuant to these Regulations, and shall approve and keep updated the Authority’s Compliance Strategy.**

2. The ~~Secretary-General~~ **Compliance Committee** shall appoint an officer with suitable qualifications to be Chief Inspector. The Chief Inspector shall **report to the Compliance Committee and shall** undertake the day-to-day management and administration of a ~~r~~oster of Inspectors and inspection programme **in accordance the Authority’s Compliance Strategy.**

3. The Council shall, on the basis of the recommendations of the Commission, approve and maintain a code of conduct for Inspectors **based on the principles of independence, transparency, accountability, proportionality, expertise, probity and non-discrimination.]**

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

We support the need for a Chief Inspector, reporting to the Compliance Committee, as indicated in paragraph (2) of DR96. This paragraph, as drafted, raises a query for us: whether the appointment of the Chief Inspector necessarily makes him or her an officer of the Secretariat, and subordinate to the Secretary-General? We had understood proposals under discussion that envisaged the Chief Inspector maintaining some degree of independence from the Secretariat. This needs to be clarified.

We consider that DR96 is an appropriate place to require (and cross-refer to) an institutional Compliance Strategy, recalling several member States requesting this during 2023 Council sessions. This is a crucial means to enable proportionality, consistency and accountability of the regime, from the highest level. While a Code of Conduct is essential, it only goes so far, considering inspectors are not the only personnel who will be implementing compliance functions and decisions, and the Code of Conduct is about personal accountability, not institutional direction and policy. A Compliance Strategy would facilitate the ISA to take a flexible, risk and proportionality-based approach to its ICE regime. It would also be an opportunity for the ISA to set a higher-level decision-making framework that should not be left to individual inspectors to figure out e.g. exempting individuals from being involved in inspections or compliance decisions about a Contractor who shares their nationality.

Paragraph (2) references an 'inspection programme'. This is an important aspect of these ICE provisions, as it (presumably) dictates who will be inspected when (and why). We presume that the inspection programme would be tailored for each Contractor, and that it would be subject to continual review and updated, on a risk and proportionality basis (e.g. additional inspections may be required where new circumstances or intelligence arises; frequency of inspections may be reduced for a Contractor who has demonstrated consistently compliant track record, but may be increased for a Contractor for whom there have been previous findings of non-compliance etc.) A cross-reference here to a mandated Compliance Strategy for the ISA, will provide reassurance and information about what type of approach is planned.

With regard to paragraph (3), we support the principles listed for the code of conduct for Inspectors. We propose this list should also include: proportionality, expertise, probity as key principles that should guide the creation of the code.