

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 31st 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:

Friends of the President (facilitated by the Kingdom of the Netherlands)

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

Draft Regulations 103 through 105

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.

Section 3

Enforcement and penalties

Regulation 103

Compliance and enforcement measures by the Compliance Committee

1. If the Compliance Committee determines, based on evidence, that a Contractor is not complying with its Exploitation Contract, or is at risk of not doing so, it may ~~;~~ in accordance with regulations [103] through [104]:

(a) take measures directly; and

(b) make recommendations to the Council to take measures, ~~in order to secure compliance with the Exploitation Contract by the Contractor, in accordance with regulations [103] through [104].~~

2. The Compliance Committee may, *inter alia*:

(a) inform a Contractor what action is needed to become or remain compliant with its Exploitation Contract;

(b) warn a Contractor that it is not compliant or at risk of being non-compliant with its Exploitation Contract;

(c) convene a meeting with the Compliance Committee for the Contractor to attend;

(d) instruct the Contractor to compile and implement an improvement plan setting out:

(i) actions to be taken to return to compliance with its Exploitation Contract;

(ii) how the actions' effectiveness will be monitored and reported; and

(iii) the period of time within which such actions ~~would~~shall be taken with the aim to ensure a return to compliance with its Exploitation Contract; ~~and~~

~~(iv) subsequent steps which the Contractor proposes to alternatively take, should the actions under (i) be unsuccessful, or should non-compliance continue;~~

(e) issue ~~written~~ instructions to the Contractor to take particular actions, in order to return to compliance with its Exploitation Contract, including subsequent steps should non-compliance continue; ~~or~~

(f) recommend that the [Roster of Inspectors/Chief Inspector] conducts more frequent inspections of the activities in the Area carried out by the Contractor;

(g) refer an urgent situation to the Commission, for the Commission to consider on a priority basis providing a recommendation to the Council to issue emergency orders; and

(h) confirm, revise or set aside an Inspector's instructions of a temporary nature as referred to in Regulation [99], or issue such emergency measures of a temporary nature on its own accord, which, in urgent situations, can remain in effect until the Council has decided on a recommendation to the Council pertain to emergency orders. The Compliance Committee can set aside the temporary measures it has issued, confirmed or revised, if the situation no longer warrants such measures remaining in place.

3. The Compliance Committee may recommend to the Council, *inter alia*, that the Council:

(a) requires a Contractor to pay monetary penalties, such as penalty payments or fines including by prescribing a specified time before which the Contractor must be compliant with its Exploitation Contract, failing which payment of a monetary penalty or penalties becomes due, as further set out in the applicable standard comprising the Compliance Strategy;

~~(b) [issues emergency orders;] or~~

~~(e)~~(b) suspends or terminates a Contractor's rights under an Exploitation Contract, if:

(i) in spite of warnings by the Authority, the Contractor 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, Part XI and the rules, regulations and procedures of the Authority; or

(ii) the Contractor has failed to comply with a final binding decision of the dispute settlement body applicable to it.

4. When taking or recommending measures under this regulation, the Compliance Committee may:

(a) provide that the Contractor is obliged to ensure it complies with the Exploitation Contract within a specified time limit;

(b) prescribe ~~that the~~ measures that are conditional on the occurrence, or non-occurrence, of particular circumstances;

(c) prescribe anticipatory measures which are to become effective if the Compliance Committee finds that the Contractor has breached or is at risk of breaching the Exploitation Contract ~~a second time~~ and has communicated such finding to the Contractor; and

(d) adopt a combination of measures.

5. Where a Contractor does not comply with one or more terms or conditions of the Exploitation Contract, measures may be imposed for each respective breach of the relevant term or condition.

6. The procedures through which the measures in paragraphs 2, 3 and 4 are to be taken or recommended, are further set out in a Standard, comprising the Compliance Strategy, which shall be applied by the Compliance Committee.

7. The Compliance Committee may, for the purposes of any finding under paragraph 1 that the Contractor is not complying with its Exploitation Contract or is at risk of not doing so,

request the Contractor through the Secretary-General to provide any relevant documents or other information and invite the Contractor to make any representations for consideration by the Compliance Committee.

8. The Compliance Committee may take measures by issuing a Non-Compliance Notice or otherwise. When making a recommendation to the Council, the Compliance Committee shall also issue a Non-Compliance Notice. A Non-Compliance Notice cannot be issued in cases of a determination of a risk of non-compliance.

9. If the Compliance Committee determines, based on evidence, that a Contractor's Managing Company, where applicable, is failing to meet, or lacks the capability to meet, its obligations under a Parent Company Liability Statement, it *mutatis mutandis* may (i) take measures directly and (ii) make recommendations to the Council to take measures, in order to secure compliance with the Parent Company Liability Statement by the Managing Company.

Regulation 103bis

Non-Compliance Notices

1. A Non-Compliance Notice shall:

- (a) describe the non-compliance, ~~or risk of such,~~ and the factual basis for it;
- (b) as appropriate, describe the place and time that the non-compliance, ~~or risk of such,~~ was observed;
- (c) mention the relevant obligation or obligations, including the legal basis;
- (d) describe the measure or measures imposed by the Compliance Committee;
- (e) contain the reasons why the imposed measure or measures are deemed necessary and appropriate; and
- (f) in the event a timeframe is imposed within which the Contractor must implement the measure or measures, specify such timeframe.

2. For the purposes of article 18 of Annex III to the Convention, a Non-Compliance Notice issued under this regulation constitutes a warning by the Authority.

3. A Non-Compliance Notice shall immediately be communicated by the Secretary-General to the Contractor in writing upon the instruction of the Compliance Committee. A Non-Compliance Notice shall, through the Secretary-General, be provided to the Sponsoring State or States immediately after it is communicated to the Contractor.

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 Non-Compliance Notice, who shall transmit the received information to the Compliance Committee without undue delay. Having considered 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~~shall make recommendations to the Council, which shall take a decision to confirm, modify or withdraw the Non-Compliance Notice. The measures specified in the Non-Compliance Notice shall remain in effect and shall be implemented by the Contractor during the period for making representations and pending any decision of the Council, unless the Compliance Committee decides otherwise.

Regulation 103ter

Proportionate measures commensurate to non-compliance

1. The Compliance Committee shall determine the extent and nature of the non-compliance with an Exploitation Contract, or risk thereof, by a Contractor, by assessing the consequences or possible consequences of the non-compliance and the conduct of the Contractor in relation to the non-compliance, in accordance with the applicable Standard, that comprises the Compliance Strategy.

2. The Compliance Committee shall take proportionate measures that are commensurate to the extent and nature of the non-compliance of the Exploitation Contract or risk thereof, as well as the circumstances of the non-compliance or risk thereof. Relevant to determining the proportionality of a measure are (a) the severity and frequency of the non-compliance or risk thereof and (b) the Contractor's conduct in relation to the non-compliance or risk thereof.

3. In determining the severity of the non-compliance or risk thereof, the Compliance Committee shall take, *inter alia*, the following circumstances into account, whether:

(a) the Contractor gained, or sought to gain, a financial advantage by the ~~breach~~non-compliance;

(b) the Contractor concealed relevant facts, provided information that is false or misleading, committed forgery of documents, ~~engaging~~engaged in corruption, or attempted any of the foregoing;

(c) ~~Inspectors have been hindered in the exercise~~Contractor has a history of ~~their duties~~non-compliance;

(d) human life has been endangered;

(e) the Contractor could reasonably foresee that its non-compliance could result in Serious Harm to the Marine Environment;

(f) ~~imposing a financial penalty on the Contractor will likely not cause the Contractor to comply with the Exploitation Contract~~;

~~(g) the Compliance Committee considers there is a need to deter further non-compliance by the Contractor~~has resulted in ~~the specific circumstances~~harmful effects to the marine environment;

~~(h)~~ the Contractor notified the Inspectors or the Compliance Committee directly about the circumstances leading to the non-compliance or the non-compliance itself, as well as the risk thereof;

~~(h)~~ the Contractor's failure to comply with the Exploitation Contract was caused by a Force Majeure;

~~(j) the breach occurred in the context of a change to the Authority's rules, regulations or procedures, and the Contractor is demonstrably taking reasonable steps, within a reasonable period, to bring its operations into conformity with the new requirements~~;

~~(k)~~(i) the Contractor took immediate steps to remedy the ~~breach~~non-compliance and prevent recurrence; or

~~(h)~~ the Contractor has hindered or obstructed Inspectors in the exercise of their duties or has fully cooperated with and facilitated the Authority's inspectionsInspectors in the exercise of their duties.

4. In its determination of which measures to prescribe, the Compliance Committee will apply the applicable Standard that comprises the Compliance Strategy.

[Regulation 103quat.

Specific procedures through the Council in relation to enforcement

1. The Compliance Committee shall submit cases of non-compliance with the Exploitation Contract to the Council [through an annual report]. The Council shall invite the attention of the Assembly to such cases of non-compliance, in accordance with article 162, paragraph 2, subparagraph (a), of the Convention.
2. Except for emergency orders under article 162, paragraph 2, subparagraph (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.
3. Upon exhaustion of the judicial remedies pursuant to paragraph 2 above, where the Authority requires a suspension of Exploitation activities in accordance with these Regulations, the Council upon a recommendation of the Commission will provide the Contractor with a suspension notice to specify the reasons for the suspension, what operations under the Plan of Work must cease, and which, if any, may continue, and any other relevant terms and conditions for the suspension.]
4. The Council may institute proceedings against a non-compliant Contractor before the Seabed Disputes Chamber on behalf of the Authority. The Commission may recommend to the Council that such proceedings be instituted on behalf of the Authority before the Seabed Disputes Chamber. The Compliance Committee may provide any and all assistance to the Commission and Council with respect to such proceedings before the Seabed Disputes Chamber-~~].]]~~

Regulation 104

Power to take remedial action

1. Where a Contractor fails to take [the necessary measures] required under regulation 103, the Authority:
 - (a) shall notify the Sponsoring State [or States] and coordinate with relevant officials of that State on further action that may be taken to enforce compliance by the Contractor; and]
 - (b) may carry out any remedial [actions] or take such measures as it considers reasonably necessary to prevent or Mitigate the effects or potential effects of a Contractor's failure to comply with the terms and conditions of an Exploitation Contract. The Council shall, based on the recommendations of the Commission, determine the nature of such [works]/[actions] or measures and the manner in which they are to be carried out.
2. If the Authority takes remedial action or measures under paragraph 1, subparagraph (b) above, the costs and expenses incurred by the Authority in taking that action are a debt due to the Authority from the Contractor [and, to the extent it is liable, the Sponsoring State [or States].
3. Notwithstanding the above, the Authority shall promptly notify the Sponsoring State concerned and attempt to coordinate any further action that may be taken to enforce compliance by the Contractor.]

Regulation 105

Sponsoring States

~~— Without prejudice to regulations 5, 6 and 21, and to the generality of their obligations under article 139, paragraph 2, and article 153, paragraph 4, of the Convention and article 4, paragraph 4, of Annex III to the Convention, Sponsoring States shall, in particular, take all necessary and appropriate measures to secure effective compliance by Contractors they have sponsored in accordance with Part XI of the Convention, the Agreement, rules, regulations and procedures of the Authority and the terms and conditions of the Exploitation Contract.~~

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

These changes reflect the outcome of the intersessional work conducted by the Friends of the President between the first and second parts of the 31st session of the Council.