

# Standard Operating Procedure (SOP)

**SOP number: 34**

**Version: 1.0**  
(last update: 19 May 2016)

**Effective Date: 12 June 2014**

**Maintained by/Author: COB/OES**

**Title:** **Standard Operating Procedure on Legal Instruments No1 when receiving Funds from Donors ('Funds Received')**

**Description:** The present SOP describes processes and steps taken in the initiation, drafting, negotiation, clearance, signature, implementation and amendment of legal instruments by the Secretariats of the Basel, Rotterdam and Stockholm (BRS) conventions applied for legal instruments that involve the transfer of funds by donors to the Technical Cooperation and Voluntary Special Trust Funds of the three conventions ('Funds Received').

## General considerations:

1. In general,<sup>1</sup> the present SOP is drafted in line with the “**Guidelines for the Use of UNEP’s Standard Legal Instruments**”, as updated on 09 January 2014, and refers to UNEP’s templates for legal instruments based on the applicable UN/UNEP rules, regulations and policies.<sup>2</sup> These are also referred to in the Delegation of Authority to the Executive Secretary from UNEP’s Executive Director. The templates for standard legal instruments, as regularly updated, are also available on the “**BRS/Legal & Policy/Corporate Legal/Legal instruments**” shared drives.
2. This SOP on legal instruments is also to be read in conjunction with the one on Resource Mobilization, in cases where the Secretariat receives funds from donors.<sup>3</sup>
3. This SOP is complementary to the two other SOPs on legal instruments No2 ('Funds Transmitted') and No3 ('Non-Monetary Transactions').
4. Host Country Office and Meeting Agreements are addressed in a separate SOP.<sup>4</sup>
5. As per the Executive Secretary’s (ES) and Deputy Executive Secretary’s (DES) respective delegations of authority, there is no stated maximum amount of funding above which the ES/DES may not sign a legal instrument.

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<sup>1</sup> The present SOP applies to the UNEP-part of the Rotterdam Convention Secretariat. Please note that the FAO-part of the Rotterdam Convention Secretariat may also use its own templates and has to follow rules, procedures, policy and guidelines for legal instruments applicable to FAO.

<sup>2</sup> Available on the UNEP intranet under the quick link to “Legal Guidelines and Templates”.

<sup>3</sup>

<http://synergies.pops.int/ManagementReports/StandardOperatingProcedures/tabid/2828/language/en-US/Default.aspx> (see SOP for Resource Mobilization).

<sup>4</sup> See the SOP on Host Country Office and Meeting Agreements (to be developed).

6. In principle, Parties to a legal instrument should sign a legal instrument well in advance in order to allow for proper arrangements and in any event no later than 3 (three) weeks before an event takes place.
7. One original exemplary of the signed legal instrument is to be kept by each Party. For BRS, the original signed exemplary is kept and filed by BRS administrative team, for the purposes of processing transfers of funds, if any, and of uploading as well as reporting in relevant databases or files. In any event, for legal purposes, a scanned copy of the signed legal instrument, whether it implies a transfer of funds or not, is also to be sent to the legal officer responsible for corporate matters.
8. If a legal instrument has expired, although the project and activities covered still need to be implemented, a new legal instrument needs to be put into place to cover such remaining parts of projects and activities.
9. Budgets contained in annexes to the respective legal instruments have to be in conformity with the templates for annexes to UNEP's standard legal instruments and, only where relevant, the budget templates set out in the SOP on Resource Mobilization may be used (RM SOP).<sup>5</sup>

- Actors:**
1. Programme Officer (PO)
  2. Resource Mobilization Focal Point (RMFP)
  3. Resource Mobilization Coordination Group (RMCG)
  4. Administrative Officer (AO)
  5. Legal Officer (LO)
  6. Branch Chiefs and Coordinator of the Rome-based Rotterdam Convention Secretariat (BC/CRRCS)<sup>6</sup>
  7. Executive Secretary(ies) (ES)<sup>7</sup>/Deputy Executive Secretary (DES)
  8. Donor(s)

**Steps:**

**I. Initiation and drafting of the Legal Instrument**

**Note 1:** The SOPs for these cases start from the date of receipt of a donor pledge, which has been processed as set out in the RM SOP<sup>8</sup> and cleared by ES/DES.

**Note 2:** In case the donor is a non-governmental entity, the LO will initiate a due diligence process.<sup>9</sup> In such cases, the RM FP will inform the donor of the approval process. At the end of the due diligence process, the LO will prepare a recommendation, which will be submitted to the ES/DES, through the RMFP, to consider the potential Donor. The RMFP will inform the donor about the outcomes of the approval process. In case of approval by the ES/DES, when negotiating in accordance with the process described below, every effort should be made to negotiate consistent with applicable UN/UNEP

<sup>5</sup> See in Annex of the RM SOP.

<sup>6</sup> The coordinator of the Rome-based part of the Rotterdam Convention Secretariat is to be involved in activities involving the Rotterdam Convention.

<sup>7</sup> The Executive Secretary of the Rome-based part of the Rotterdam Convention Secretariat is to be involved in activities involving the Rotterdam Convention.

<sup>8</sup> See section IV. C. of the RM SOP.

<sup>9</sup> Due diligence criteria may differ when considering contributions from non-governmental entities from not-for-profit entities, and for profit entities.

*rules, regulations and policies, so as to find a common understanding with the donor.*

1. The RMFP (lead) initiates, as early as possible, and prepares with a team consisting of the RMFP herself or himself, the LO, the AO and, where applicable, the respective PO(s) a first draft legal instrument, using preferably UNEP templates, which conform to the financial rules and regulations of UN and UNEP, as available on the “**BRS/Legal & Policy/Corporate Legal/Legal instruments**” shared drives,<sup>10</sup> or the Donor’s templates, which shall then be tailored by the LO in order to contain also UNEP’s standard clauses. The team will also need to take into consideration BRS policies that may pertain to such legal instruments (e.g. those on gender and sustainability).

2. Each team member is responsible for obtaining the clearance of his or her respective BC/CRRCS where necessary,<sup>11</sup> before clearing herself or himself the first draft of the legal instrument. If necessary, the team may meet to resolve any outstanding issues (**timeframe: within one week from the date of receipt of the pledge from the donor**).

## **II. Negotiation of the Legal Instrument with the Donor**

3. The RMFP sends the first or revised draft legal instrument to the Donor for review.

4. Upon receipt of comment(s) from the Donor on the submitted first and subsequent draft versions, the team may meet, if necessary, to resolve any outstanding issues. Each team member is responsible for obtaining the clearance of his or her respective BC/CRRCS, where necessary,<sup>12</sup> before clearing herself or himself the revised drafts of the legal instrument (**timeframe: within 2 (two) weeks from the date of receipt of the comment(s) from the Donor**).

5. Steps 3 to 4 are repeated as many times as necessary.

## **III. Final clearance by the Secretariat**

**Note:** *A final draft should be essentially agreed in principle by both sides at this point.*

6. The RMFP initiates the final clearance of the legal instrument, printed in 2 (two) copies – one for the Secretariat and one for the Donor (clearance by the team members and their respective BCs<sup>13</sup>). The LO shall first compare the latest electronic version, as reviewed and agreed by the team members and the Donor, with the printed copies, in order to check whether there are any

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<sup>10</sup> In general, the UNEP template to be used with donors is the Donor Agreement template. However, if the donor is a UN entity, the UNEP “Letter of Agreement (LOA)-Part B” template or the “UN agency to UN agency Contribution Agreement-UNDG” template may be used. A Letter of Intent (LOI) or an Exchange of Letters (EOL) may also be used with any donors as points of entry. The FAO-part of the Rotterdam Convention Secretariat may also use its own templates.

<sup>11</sup> The functions of the RMFP and LO are performed in their capacity and as a result, the clearance of the first - or revised – draft by all BC/CRRS is not required, only by the respective PO(s)/BC(s) if appropriate. However, prior to the signature by the ES/DES, all **final drafts** should be i) cleared by the RMFP, LO and AO, as well as ii) cleared by the respective PO(s)’ and other BC(s) as appropriate.

<sup>12</sup> See footnote 10.

<sup>13</sup> See footnote 10.

inconsistencies or other noteworthy points to raise before engaging into the signing process.

#### **IV. Signatures and communication**

7. The legal instrument is signed<sup>14</sup> in **2 (two) original copies**, in principle first by the ES or DES and subsequently by the Donor. One original copy of the legal instrument, as signed by both parties, is to be kept by the Donor and the other copy is kept by BRS administrative team.

8. **A scanned copy** of the legal instrument, as signed by both parties, is to be sent to the AO, LO and the RMCG by the RMFP herself or himself or, where applicable, the PO(s), and is to be filed in the relevant databases as well as in the BRS shared drive under “**BRS\Legal & Policy\Corporate Legal\Legal instruments\5. Signed**”.

9. Following the signature of the legal instrument by both parties, the contribution pledge will be registered in the Resource Mobilization Database (RMDB) as set out in the RM SOP.<sup>15</sup>

#### **V. Implementation and monitoring of the Legal Instrument**

10. The RMCG tracks, with the help of the RMDB, possible reporting deadlines and donor requirements.<sup>16</sup>

11. The PO(s) implements the project covered by the donor contribution and activities covered by the legal instrument, taking into account possible donor requirements.<sup>17</sup> The PO(s), in the RMDB, note regular updates of the project status and provide at the beginning of each quarter a narrative description of the progress made in the implementation of the activities covered by the legal instrument.<sup>18</sup>

#### **VI. Amendment of the Legal Instrument**

12. The PO(s) monitor the timeframe and, if necessary, well in advance prior to the expiration of the legal instrument, informs the RMFP, with copy to the RMCG, AO and LO, of the need to amend the legal instrument.

13. The RMFP informs the ES/DES about the amendment of the legal instrument and asks for clearance. Following clearance by the ES/DES, the RMFP informs the donor about the possible amendment.

14. In case the donor agrees to the amendment of the legal instrument, steps I to V above are applied accordingly.

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<sup>14</sup> See footnote 10.

<sup>15</sup> See section IV.D. of the RM SOP.

<sup>16</sup> See section IV. E. of the RM SOP.

<sup>17</sup> Any such requirement is available to POs in the RMDB in the respective entry of the pledge.

<sup>18</sup> See section V. A. of the RM SOP.

### Document revision history

Version	Description	Date
0.0	Initial draft	19 January 2012
0.1	Adoption and final revisions at Management Team meeting	12 June 2014
0.2	Revision after Management Team discussion	19 May 2016
1.0	First version issued and posted	05 July 2016