

Standard Operating Procedure (SOP)

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Title: **Standard Operating Procedure on Legal Instruments No2 involving the Transfer of Funds by the Secretariats ('Funds Transmitted')**

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, as applied for the purposes that involve the transfer of funds by the Secretariat(s), from these Trust Funds, to United Nations entities or not-for-profit partners for the implementation of activities ('Funds Transmitted').

General considerations:

1. 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 policies¹. The templates for standard legal instruments, as regularly updated, are also available on the "**BRS/Legal & Policy/Corporate Legal/Legal instruments**" shared drives.
2. 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') are addressed in a separate SOP on legal instruments No1.
3. Legal instruments for activities undertaken with implementing partners that do not involve a transfer of funds ('Non-Monetary Transaction') are covered by the SOP on legal instruments No3.
4. Host Country Office and Meeting Agreements are addressed in a separate SOP.²
5. As per the Executive Secretary's (ES) respective delegations of authority, there is no stated maximum amount of funding above which the ES may not sign a Legal Instrument.
6. In principle, Parties to a legal instrument should sign a legal instrument **well in advance** in order to allow for proper arrangements, at least 3 (three) weeks before an event takes place.³

¹ See UNEP's intranet on guidelines and templates. Please note that the FAO-part of the Rotterdam Convention Secretariat may also use its own templates and follow policy and guidelines for legal instruments that are specific to FAO.

² See Host Country Office and Meeting Agreements SOP.

³ Please note that any reference to how long in advance an SSFA needs to be signed is relative to when the money is required by the Collaborating Partner. An additional consideration is whether the Collaborating Partner is registered in Umoja: under Umoja, now about two weeks are needed to

7. One original exemplary of the signed legal instrument, as initialized at all pages by both signatories, is to be kept by each Party. For BRS, the printed original signed exemplary is kept and filed by the administrative team, for the purposes of processing transfers of funds, 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. Please note that no payment can be made against expired contracts.
9. Budgets contained in annexes to the respective legal instruments must comply with UMOJA/IPSAS requirements. They are to be drafted using 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)⁴.
10. Please note that in the case of extra-budgetary funding, the contributions need to be received, recorded in Umoja and budgeted before they can be utilized.

- Actors:**
1. Programme Officer (PO)
 2. Resource Mobilization Focal Point (RMFP) - in case the funding source of the activity is a donor contribution (if any)
 3. Administrative Officer (AO)
 4. Legal Officer (LO)
 5. Branch Chiefs and Coordinator of the Rome-based Rotterdam Convention Secretariat (BC/CRRCS)⁵
 6. Executive Secretary(ies) (ES) ⁶/ Deputy Executive Secretary (DES)
 7. Collaborating Partner (CP)

Steps:

I. Initiation and drafting of the Legal Instrument

Note: The SOPs for these purposes are to be applied for any Programme of Work (PoW) activity for funding available in the Trust Funds of the three conventions (voluntary and assessed).

1. The PO (lead), who is responsible for implementing and monitoring the funded activity, initiates the process as early as possible, **at least 2 (two)**

register a new Collaborating Partner and about three to four weeks to process a payment (in advance of when it is required not when the event starts; e.g. in the case of a meeting, the Collaborating Partner needs the funds in order to make bookings etc. well in advance of the start of the meeting).

⁴ See in Annex of the RM SOP.

⁵ The coordinator of the Rome-based part of the Rotterdam Convention Secretariat is to be involved in activities involving the Rotterdam Convention.

⁶ The Executive Secretary of the Rome-based part of the Rotterdam Convention Secretariat is to be involved in activities involving the Rotterdam Convention.

months before the starting date of the activity⁷, by first: i) conducting a due diligence review on prospective partners, and ii) filling-out the corresponding Pre-Commitment Form, to be signed by the ES.

2. The PO then prepares, with a team consisting of the PO herself or himself, relevant other POs, the LO, AO - and, only where necessary in specific cases, the RMFP (in case the funding source of the activity covered by the legal instrument is fully or partially a donor contribution). **The first draft legal instrument (to be cleared by his/her Branch Chief and, when applicable, the Coordinator of the Rome-based Rotterdam Convention Secretariat)**, as well as any revised drafts thereafter, for implementing the funded activity, following the below guidelines pertaining to the different categories of legal instruments and consistent with the financial rules and regulations and the relevant rules for human resources of the UN, UNEP and conventions as well as the relevant decisions of the Conferences of the Parties. The PO will also need to take into consideration BRS policies that may pertain to such legal instruments (e.g., those on gender and sustainability).

3. Before proceeding further and negotiating a draft with the CP, the PO must have obtained the initial clearance of any drafts by his/her BC/CRRCS, the LO, the AO - who assigns a reference number among others - relevant POs and, only where necessary in specific cases the RMFP - **standard review time required per reviewer: three days from receipt of draft.**

The templates⁸ to be used under this SOP No2 are, to date, as follows:

With UN entities

- (a) Letter of Agreement (LOA)-Part B or UN Agency to UN Agency Contribution Agreement:

The use of a LOA-Part B or a UN Agency to UN Agency Contribution Agreement implies a transfer of funds between Parties to this legal instrument. It may be used with a project document where financial resources are to be transferred. This project document must indicate to which PoW output it is contributing and include a detailed budget and implementation plan (with provisions on cost/resource distribution).

With Non-UN and Not-for-Profit CPs

Note: *If the CP is a for-profit entity, the United Nations procurement rules and processes shall apply.*

- (b) Small-Scale-Funding Agreement (SSFA):

The use of an SSFA implies a transfer of funds **under USD 200,000 (Two Hundred Thousand United States Dollars)** to the CP. Please note that the cumulative amount of funds transferred to a particular CP may not exceed that amount in a

⁷ Under Umoja, approximately three weeks are now needed to make an initial payment - and one to two additional weeks if the Collaborating Partner has not been registered. As mentioned previously, dates need to be relative to when the money is needed by the Collaborating Partner.

⁸ The UNEP templates to be used are available on the “**BRS/Legal & Policy/Corporate Legal/Legal instruments**” shared drives. The FAO-part of the Rotterdam Convention Secretariat may also use its own templates.

particular calendar year; otherwise, a Project Cooperation Agreement needs to be concluded.

(c) Project Cooperation Agreement (PCA):

The use of PCAs implies a transfer of funds of **more than USD 200,000 (Two Hundred Thousand United States Dollars)** to the CP.

II. Negotiation of the Legal Instrument with the CP

4. The PO then shares the first draft legal instrument and any drafts revised thereafter, including the narrative description and the budget, with the CP for review.

5. Upon receipt of comment(s) and changes from the CP on the submitted first and subsequent draft versions, the PO consults with the LO, AO - and if necessary with the RMFP in the specific cases explained above **(standard timeframe for the overall review: within five days from the date of receipt of the comment(s) from the CP).**

6. Steps I and II are repeated as many times as necessary to arrive at a finalized draft legal instrument agreed i) internally, within the secretariat team drafting the legal instrument, and ii) externally, with the CP.

Note: The draft should be fully consulted with the CP at this point and take into account any other requirements as outlined in paragraph 1 above. The PO should check any changes to the draft with his/her BC/CRRCS, the LO, AO - and, if necessary, with the STA and/or the RMFP, before proceeding further.

III. Final clearance by the Secretariat

Note: A final draft should be agreed in principle by both the Secretariat and the CP at this stage.

7. Upon agreement on a final draft internally, by all relevant actors as described above, and externally, by the CP, the PO initiates the final clearance of the legal instrument, printed in 2 (two) original copies – one for the Secretariat and one for the CP (clearance by the Secretariat includes the clearance by the respective BC/CRRCS⁹). The LO shall first compare the latest electronic version with the printed copies, in order to check whether there are any inconsistencies or other noteworthy points to raise before engaging into the signing process.

IV. Signatures and communication

8. The legal instrument is signed¹⁰ in **2 (two) original printed copies, in principle** first by the ES or DES and subsequently by the CP. The legal instrument must also be initialized at all pages by both signatories.

⁹ Prior to the signature by the ES/DES, all **final drafts** should be cleared by: i) the respective PO(s)/BC(s)/CRRCS as appropriate, ii) the LO, and iii) the AO.

¹⁰ See footnote No9.

9. One original printed copy of the legal instrument, as signed by all, is to be kept by the CP and the other original printed copy is kept by the Secretariat administrative team.

10. The PO sends a **scanned copy** of the legal instrument, as signed by all, to the AO, LO and RMFP (in case the funding source of the activity is a donor contribution), in order to be filed in the relevant databases as well as in the BRS shared drive under "**BRS\Legal\Corporate Legal\Legal instruments\5. Signed**".

V. Implementation and monitoring of the Legal Instrument

11. The PO monitors the implementation of the activities covered by the legal instrument, taking into account possible donor requirements and reporting deadlines.¹¹

12. In case the funding source of the activity is a donor contribution, the PO includes the implementation of the legal instrument in his or her regular input into the Resource Mobilization Database (RMDB) for this contribution.¹²

13. The PO has to complete a form, upon receipt of the financial and substantive reports, indicating that: i) the PO has reviewed them, ii) they reflect the implementation of activities, and iii) all deliverables were received to the quality expected. This should also be signed by either the PO's BC/CRRCS.

14. Please note that the financial statements need to be as comprehensive as possible, aligned with the agreed budget, certified and stamped. Any supporting documents received by the PO that support expenditures incurred should be forwarded to the AO.

15. Please note that the PO is therefore fully responsible for any legal instruments that expire and needs to monitor closely their implementation.

VI. Amendment of the Legal Instrument

16. The PO monitors the timeframe and, if necessary, **well in advance prior to the expiration of the legal instrument**, informs the team, which is mentioned in step I, of the need to prepare an amendment to the legal instrument.

17. **In case the funding source of the activity is a donor contribution**, the PO informs the RMFP about the necessary amendment of the legal instrument, so that possible action with the donor can be taken should the amendment affect the reporting deadlines specified in the pledge. The RMFP needs to confirm that the amendment is not in conflict with the deadlines set out in a donor pledge before the PO proceeds with the amendment process.

18. The PO informs the **CP** about the possible amendment.

19. **Once the CP agrees** to the amendment of the legal instrument, **steps I to V** are applied accordingly.

¹¹ Any such requirement is available to POs in the RMDB in the respective entry of the pledge.

¹² See sections IV and V of the RM SOP.

VII. Closure of the Legal Instrument

20. When all activities under the legal instrument are completed, and further, when the legal instrument has expired, the relevant PO submits all the necessary paper work to the AO, which are necessary to close the legal instrument and wind-up all obligations under the legal instrument.

21. The AO then informs the PO when all expenditures incurred have been checked and relevant payments or reimbursements have taken effect, in order to archive the file.

Document revision history

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0.0	Initial draft	19 January 2012
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