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Sustainable Financing for Waste Management: Design It Yourself Workbook

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# Step 10 - Legal Drafting

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| **What Involved to Complete Step**  After approval of the policy paper, it is appropriate to commence legal drafting. Through approval of the policy political decision makers will instruct the justice / legal team to work with the relevant ministry to draft the identified legislation / regulation.  When drafting regulation, it is recommended to recap on any specific government requirements, such as:   * legislation must comply with government constitution * legislation must have political approval before drafted * legislation must be signed off by the Solicitor General * are there any acts that applies to all legislation * ensuring flexibility and future proofing (Act v Regulations) * regulations must accompany a proposed bill * specify commencement date for regulation * specify government partners to enact regulation and ensure approval of draft | | **Information / Consultation Recommended to Complete Step**  Findings from the feasibility study and detailed scheme design  Findings / feedback from political and stakeholder consultation (with communities, Government agencies, private sector, etc) | **Resources Available**  Legislation for FSM, Kiribati, Palau, RMI, Tuvalu, NSW, Queensland (request from SPREP / PacWaste Plus)  Framework Standard Operating Procedures (SOP) for aspects of scheme (request from SPREP / PacWaste Plus) |
| 1. Drafting Instructions | Use the approved Government / Ministry drafting instruction template if available or follow one of the guidance documents provided. Some details may be identified and included in steps above, copy and paste the relevant information.  In the second table below, exact text from existing schemes in Kiribati, Tuvalu, and Palau is provided for consideration of wording for legal drafting. This wording may not be appropriate for different context’ so use only as appropriate and if consistent with findings, analysis, and decisions made throughout the completion of steps above. SPREP / PacWastePlus also have annotated versions of scheme legislation from Australian schemes - please request if that guidance would be useful. | | |
| Templates for Drafting Instructions:   |  |  | | --- | --- | | **CONTACT INFORMATION** |  | | **URGENCY CONSIDERATIONS** |  | | **What is the proposed title** |  | | **What is the legislative problem to be remedied** |  | | **What is the legislation to do** |  | | **How is the legislation going to do it** |  | | **Who or what is the legislation to apply to** |  | | **How does the proposal relate to existing law** |  | | **What transitional and savings arrangements are needed** |  | | **What other consequential and related changes are required** |  | | **Details of any unresolved difficulties with the proposal** |  | | **Details of any matters that these instructions do not cover** |  | | **If the instructions are incomplete, when will complete instructions be available** |  | | **If the instructions are for a Bill, what regulations will be needed** |  | | **If the instructions are for regulations, are they within the limits of the authority of the empowering Act** |  | | **Is the proposal consistent with the Constitution** |  | | **Who will administer the legislation** |  | | **Is the proposal supported by operational staff** |  | | **Which government departments or agencies are affected by, or interested in, this legislation** |  | | **Are there other affected stakeholders who need to be consulted** |  | | **What consultation has been undertaken so far** |  | | **Other information that will assist the drafting process** |  | | | | |
| |  |  |  |  | | --- | --- | --- | --- | | Key Provision (from Step 6.3 and 9.1) | Reason for Provision | Other Legislation Affected | Consultations Had | |  |  |  |  | |  |  |  |  | |  |  |  |  | |  |  |  |  | |  |  |  |  | |  |  |  |  |  | Area | Key Principles | Draft Text for Proposed Scheme | *Republic of Kiribati – Dedicated ARFD Act and Regulation* | *Tuvalu – Waste Management Act and Levy Deposit Regulation* | *Palau – Recycling Act and Beverage Container Recycling Regulations* | | --- | --- | --- | --- | --- | --- | | Purpose/Objective | 1. Outline a clear purpose/objective. |  | *To levy fees for the recovery of waste materials in Kiribati and for connected purposes* | *State the principles and rules to support the recovery, processing, treatment, and shipment of incoming goods at the end of their operation conditions; provide mechanism for revenue collection and administration; and provide legal framework that encourages waste avoidance and resource recovery behaviour.* | *Establish a recycling program for the Republic of Palau, establishing a beverage ARFD fee, creating a Recycling Fund and for other related purposes.* | | The Fund | 1. Establish the dedicated fund and ringfence fees to scheme purposes only |  | *A Special Fund to be known as the Waste Material Recovery Fund is established under the Act.* | *Tuvalu fees are deposited into the annual budget of the Department of Waste Management. The regulation specifies portions of the funds to go to specific purposes.* | *Recycling Fund but within the National Treasury, to be separate from other funds in the National Treasury.* | | 1. Identify what purposes the fund may be used for |  | *The costs of recovering waste materials and expenses for the administration and carrying into effect of the provisions of the Act.* | *Support operational means of the system and finance educational and marketing needs.* | *Administration of the Recycling Program and payments required under Sec 6 and to a reserve to cover anticipated and unanticipated future expenses of the program.*  *Fund administrative, audit and compliance activities, conduct education and demonstration projects, promote recyclable market development activities.* | | 1. Identify who administers the fund. |  | *The Minister for finance (Sec 9 of Act).* | *Department of Treasury.* | *Maintained by the Ministry of Finance.* | | 1. Specify the role of Customs |  | *Customs applies the fee.* | *Customs collect levy fees paid by importers at point of entry, record into the Bill of Entry form, report their records through the system.* | *Customs applies the fee.* | | 1. Identify who shall pay into the fund and how this will be done |  | *Any person required to pay import duty under the customs legislation on the specified goods. Paid to Customs.*  *Any money appropriated for the purposes of the fund*  *Any other money lawfully available to the Fund.* | *Any person who imports the specified goods into the country. Paid to Customs.* | *Beverage distributors and importers. Paid to Customs.* | | 1. Identify procedures for payment from the fund |  | *No money shall be paid out except in accordance with a Warrant under the hand of the Minister responsible for finance.*  *The operator is entitled to be paid out of the fund.* | *Submission of an application for an ‘imprest’ in accordance with requirements and receipts of expenditure and payments.* | *Redemption Centres shall report on activities and provide written and verifiable proof to the Ministry of Finance of money expended on refunds.* | | 1. Specify how Deposits are paid to consumers |  | *Cash.* | *Paid in cash directly to customers at main centre. Issued via any suitable method of payment for consumers in the outer islands.* | *Cash or cheque, cheques only for $20 and above.* | | The items (products) | 1. Identify the items that will have a ARFD placed on them, ideally with the ability to introduce additional materials or items over time. |  | *Regulation – Schedule (clause 4)*  *Beverage and oil container s (bottles) made of PET.*  *Beverage container s made of aluminium.*  *Any type of lead acid battery.* | *Identified on Schedule 1 of the Act.*  *Beverages and oils in PET bottles and aluminium cans; lubricating oil, nappies, whiteware, heavy equipment, vehicles, batteries for vehicles and solar panels.* | *Beverage bottles 32oz and lower.* | | 1. Identify the ARFD amount on each item |  | *Regulation – Schedule (clause 4).* | *Identified on Schedule 1 of the Act.* | *10c on approved container.* | | 1. Identify the deposit amount on each item |  | *Schedule (regulation 10)* | *Schedule 2* | *5c.* | | The scheme and physical operations | 1. Establish the scheme |  | *Not specified* | *Not specified* | *Establishes a Recycling Program with the purpose of creating a self-supported, safe and efficient system of disposal of beverage container.* | | 1. Identify who the financial administrator is for the scheme |  | *Ministry of Finance and Economic Development.*  *Special Fund is coordinated by MELAD.* | *Treasury Department, Ministry of Finance*  *Department of Waste Management oversees and monitors the progress of the entire system: reconciliation of recorded waste levy fees with the Department of Treasury monthly; observe that payment be feeed into the annual budget of the Waste Department.* | *Ministry of Finance.* | | 1. Identify who coordinates the physical operations |  | *Ministry of Environment, Lands & Agricultural Development*  *Kaoki Mange.* | *Department of Waste Management.* | *Ministry of Public Infrastructure, Industries and Commerce – Implementation of recycling program, approve and monitor redemption centers, export recyclables.* | | 1. Specify the physical operations |  | *Waste recovery operator.* | *Waste operators*  *Transfer stations operate on the last five working days of every month* | *Redemption centres* | | 1. Identify whether any responsibilities will be contracted to Private Sector operators |  | *Republic may engage waste recovery operator* | *Yes, provided for* | *The Ministry of Public Infrastructure, Industries and Commerce may contract in other government agencies or private companies.* | | 1. Identify which agency is the contract principle (if contracted) |  | *Minister for environment – Ministry of Environment, Lands & Agricultural Development.* | *Department of Waste Management.* | *The Ministry of Public Infrastructure, Industries and Commerce*  *Ministry of Finance pays the Redemption Centre.* | | 1. Identify the condition of returned items that will allow payment of Deposits |  | *Waste material presented for refund must be reasonably clean.* | *Clean and without contaminants – soil and mud. No flattened items. No old, buried.* | *Clean and free from contamination.* | | 1. Require locating of collection depots in locations that ensure recovery target can be achieved |  | *Not specified.* | *Identifies locations for transfer stations in Schedule 4 of regulation.* | *Shall seek out one or more available Redemption Centres.* | | 1. Provide for an exemption with criteria to be met for disposal of recovered items should repatriation be unviable |  | *Not specified.* | *Not specified.* | *Not specified.* | | Gender Equality, Disability, and Social Inclusion (GEDSI) | 1. Specify accessibility (GEDSI) requirements for collection depots |  | *Not specified.* | *Operating hours may provide some equity.* | *Not specified.* | | Offences | 1. Specify offences and penalties |  | *Refusal to pay a fee, claims an exemption, contravenes provisions of the Act.* | *Corruption and illegal practices, litter, dumping.* | *Penalties for overdue fees, refusal to comply with provisions of the Act or regulation.* | | 1. Specify how fraudulent activity will be investigated |  | *Not specified however Sec 12 of Act states any deposit unpaid shall be recoverable as a civil debt.* | *Not specified.* | *Not specified.* | | Monitoring | 1. Establish the target for recovery |  | *Not specified.* | *Not specified.* | *Not specified.* | | 1. Outline measures for if targets are not met |  | *Not specified.* | *Not specified.* | *Not specified.* | | Auditing | 1. State requirement for auditing |  | *Audited accounts to be contained within six monthly reports.* | *Not specified.* | *Organisations registered under Sec 8 and 10 are subject to audits by the Ministry of Finance and the National Auditor.* | | Reporting | 1. Reporting and record keeping requirements for importers/ distributors |  | *Not specified.* | *Not specified.* | *Sec 9 – Fee beverage distributors, registration and record keeping.*  *Sec 10 – Record keeping requirements. Quarterly written reports.* | | 1. Reporting and record keeping requirements for fund administrator |  | *Sec 10 of the Act shall submit annual reports on the income and expenditure of the fund and estimates of the income and expenditure of the fund for the next financial year.*  *The Minister for finance shall submit to Maneaba ni Maungatabu six monthly report containing audited statement of accounts.* | *The Director of Waste Management maintains proper books and documents of accounts, prepares a statement of account to the Auditor-General.* | *Each fiscal year the Minister for Resources and Development submit to the President a complete report showing its activities under the Recycling Programme and the use and condition of the Recycling Fund. Shall also be examined by the Public Auditor annually.* | | 1. Reporting and record keeping requirements for collection depot and logistical services |  | *Not specified in legislation/ regulation.* | *Records kept and reported by the recycling supervisor monthly for date, name of consumer, description of waste, quantity of waste in tonnes and further information as may be required.*  *Recycling supervisor shall provide on a monthly basis record of each load of waste accepted into the waste disposal facility. Shall maintain daily records for waste that is exempt from the levy. Records to be kept for not less than 6 years.* | *Records must be kept for not less than thirty-six months after generation.* | | Partnerships | 1. Explicit provision for partnerships – Public Private Partnerships, partnership with community organisations |  | *Not specified.* | *Not specified.* | *Sec 16 of the regulation authorises issuance of memoranda of understanding.* | | Start-up funding | 1. Building up funding from fees before starting to pay out deposits |  | *Not specified in legislation.* | *Not specified in legislation, however 6-months of collecting fees without offering refund.* | *Sec 11 $100,000 grant from donor/government.*  *Not specified in legislation however, 4-months of collecting fees without offering refund.* | | 1. Funding for establishing administration and management systems and capability | | 1. Funding for addressing legacy items | | 1. Funding for establishing depots (for material returns) and processing equipment | | | | |
| Notes for Follow-up / Further Research / Discussions: | | | |