

Sustainable Financing for Waste Management: Design It Yourself Workbook

# Step 6 - Legislative Assessment

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| **What Involved to Complete Step**Effective scheme legislation will provide for stakeholder confidence, consumer engagement, effectiveness, equality, and ability to enforce compliance of the scheme. Scheme legislation will reflect all aspects of scheme design.This step will help to identify what legislation and regulations may be required for the proposed ARFD scheme. Topics included in this step are: 1. Identifying aspects of scheme best captured in legislation and regulation
2. Assessment of GEDSI dimensions in scheme legislation
3. Determine options for where ARFD legislation can fit into existing legal environment to identify what Identify key principles to be included in ARFD legislative instruments
 | **Information / Consultation Recommended to Complete Step*** Findings from the pre-feasibility study and feasibility study
* Stakeholder consultation with legal / justice to confirm scheme legislation
 | **Resources Available**  Legislation for FSM, Kiribati, Palau, RMI, Tuvalu, NSW, Queensland (request from SPREP / PacWaste Plus) | PacWaste Plus Guide for Considering GEDSI in ARFD Design |
| 1. Identifying aspects of scheme best captured in legislation and regulation
 | The below summary provides information on aspects of scheme that may be best captured by either legislation, regulation, or schedule. Consider these and complete the table below in Step 6.4 to provide comments on what legislation/regulation/reforms may be required for each of the recommended principles to be included in ARFD scheme legislation.  |
| **Legislation – recommended to cover:*** + Purpose – description of purpose (e.g., to establish ARFD to sustainably finance recycling and provide for equality in recycling services across the country, in order to reduce harm to the environment and human health, and move to a more circular economy).
	+ Scope and terms/definitions – description of activities covered by legislation, and definition of key terms used
	+ Financial model – set out the model to be used, the purpose of the fund and financial controls to be imposed (i.e., empower monitoring, audit and transparency etc.), purpose that funds can be put to (e.g., funding of recycling depots, recycling/reuse/export of materials),
	+ Fees and deposits - description of methodology and responsibility for calculating fees, and collecting fees and deposits, including collection, if required, of start-up funding or a float at commencement of scheme
	+ Product inclusions - description of methodology to determine scheme inclusions (listed in Schedule) and how schedule can be updated by who (i.e., Schedule of products can be amended by Minister of Environment on basis of feasibility study findings, and completion industry and stakeholder consultation)
	+ Management, roles, and functions – sets out the roles and functions of the scheme partners or managing/governing agencies

Empowering regulation – a generic description of the regulatory powers necessary to implement the scheme and who has the authority to impose them (i.e., Minister and authorising relevant departments to operate and regulate scheme).  | **Regulations – recommended to cover:*** + Targets - description of targets to achieve purpose of scheme (e.g., achieve recycling performance of 80% for all scheme inclusions within 5 years)
	+ Establishment and operation of identified facilities (and any standards to be applied - number, locations, etc) for the collection, recycling, materials handling/disposal/treatment, and their end use and export
	+ Scheme requirements such as labelling of items
	+ Monitoring and data collection requirements of scheme partners
	+ Compliance and enforcement (including offences, fines, and authorising enforcement officers)
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| **Schedule – recommended to cover:*** + Items included in scheme
	+ Level of scheme deposits and fee

Recommended to list included items in a Schedule to enable amendment as new problematic products are identified in country, new materials processing facility established, or recycle technology developed, etc.  |
| 1. Assessment of GEDSI Dimensions
 | When considering scheme design and drafting scheme legislation, it is recommended to closely consider and consult with appropriate stakeholders to understand and reduce any impacts of GEDSI and marginalised groups. The below lists some questions to consider. Provide comments and reflect finding into scheme design and draft legislation.

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| --- | --- | --- |
| **GEDSI Factor** | **Relevant for Scheme?** **Y / N** | **Comment on Mitigation Measures and How Reflected in Scheme Design and Draft Legislation** |
| Could the legislation affect low-income households disproportionally? (i.e., low-income households will have to spend proportionally more of their income for purchasing the same items as people with a higher income)  |  |  |
| Will people without disabilities be able to return their containers and claim their refunds more easily than people with disabilities? |  |  |
| Will people in main towns be able to return their containers and claim their refunds more easily than residents of outer islands and rural or remote communities? |  |  |
| Will people without caregiving responsibilities be able to return their containers and claim their refunds more easily than people with caregiving responsibilities? |  |  |
| Will there be enough Collection Depots to provide for equality for all users of the scheme? |  |  |
| Could employment opportunities through the scheme favour employment of one sex or demographic group over another?  |  |  |
| Other  |  |  |
| Other |  |  |

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| 1. Key Principles Included Legislation
 | The table below provides recommended principles to be included in ARFD scheme legislation, regardless the legal instrument(s) selected. Consider each principle and provide comments on what legislation/regulation/reform may be appropriate to reflect. Some recommended principles may identify required reform or repeal to existing legislation (e.g., Customs, Finance, Criminal). It is recommended to clearly note these in the following table. **These findings will be key aspect for consultation with government departments.**When completing this exercise, it is recommended to keep in mind scheme purpose and GEDSI considerations. Note: in Step 10.1 further commentary on the recommended principles is provided along with exact text from existing schemes in Kiribati, Tuvalu, and Palau.  |
|  Recommended Principles to be Included in ARFD Legislative Instruments:

| Area | Key Principles | Principle Included in Scheme Legislation?Y / N | What NEW or PROPOSED Instrument to be Included in? What Reform Required?i.e. reform to Waste Management Act 2017 | Comments / Draft Wording for Principle | Guidance |
| --- | --- | --- | --- | --- | --- |
| *Purpose/Objective* | 1. *Outline a clear purpose/objective*
 | *Y* | *i.e. reform to Waste Management Act 2017 to state purpose/objective of ARFD**No reforms required* | *Proposed purpose:**Establish ARFD to sustainably finance recycling and provide for equality in recycling services across the country, in order to reduce harm to the environment and human health, and move to a more circular economy.* | The provisions and regulations give effect to the purpose or objectives of the legislation.Providing for GEDSI in purpose/objectives provides an over-arching recognition for GEDSI. If placing the ARFD regulation under an Environmental Management Act, the purpose of the Act could be updated to include provision for GEDSI.  |
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| The Fund | 1. Establish the dedicated fund and ringfence fees to waste management purposes only.
 |  |  |  | Depending on the option, a dedicated fund is recommended to be established |
| 1. Identify what purposes the fund may be used for
 |  |  |  | Purposes outside of recovery and payment of Deposits may be funded. Such as equipment purchases, Clean Up the World Day’s, training, updating Customs software and communications. |
| 1. Identify who administers the fund.
 |  |  |  | What agency identified as appropriate to undertake scheme financial management  |
| 1. Specify the role of Customs
 |  |  |  | Customs are usually the agency that applies the Fee to the imported items and charges the importer. The revenue office may have a tole if the ARFD is charged at point of sale. |
| 1. Identify who shall pay into the fund and how this will be done
 |  |  |  | This is usually importers and/or distributors and paid to Customs who directs the Fee into the appropriate fund. |
| 1. Identify procedures for payment from the fund
 |  |  |  | This may outline standard reporting forms and other supporting evidence such as recording sheets and receipts.These may also be standard forms under the regulation. This may tie into reporting requirements.  |
| 1. Specify how Deposits are paid to consumers
 |  |  |  | There are several methods that the Deposit could be paid out to consumers. They are in cash, cheque, credit vouchers for utilities, to charities.Regulation under the Act will need to specify delegated approvals to address the default requirement for the Secretary for Finance and Commerce to approve all payment from the Fund. |
| 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.
 |  |  |  | Items could be those that are littered often and difficult to deal with as per the Situation Review. Items may be set out by regulation, with potential to provide for the Secretary adding new materials. |
| 1. Identify the ARFD amount on each item
 |  |  |  | The ARFD should cover the costs associated with recovery (Administration and Handling Fees) and the Deposit paid to consumers. |
| 1. Identify the deposit amount on each item
 |  |  |  | The Deposit amount paid to consumers should be at a rate that incentivises returns balanced with keeping the total cost of the target item affordable. |
| The scheme and physical operations | 1. Establish the scheme
 |  |  |  | Provide for establishing the scheme, for example constructing and opening depots and materials processing facilities, building funds for scheme administration and potentially collecting ARFD for a period of time prior to paying Deposits to consumers for returned items. |
| 1. Identify who the financial administrator is for the scheme
 |  |  |  | This is usually the Finance Ministry.  |
| 1. Identify who coordinates the physical operations
 |  |  |  | What agency identified as appropriate to undertake physical operations for scheme |
| 1. Specify the physical operations
 |  |  |  | These may be:- Collection depots (provide for GEDSI)- Logistical services in-country and international- Resource recovery centre. – Communications  |
| 1. Identify whether any responsibilities will be contracted to Private Sector operators
 |  |  |  | The country may already have a Private Sector operator who may have been identified as appropriate as scheme partner. |
| 1. Identify which agency is the contract principle (if contracted)
 |  |  |  | What agency identified as appropriate for scheme management  |
| 1. Identify the condition of returned items that will allow payment of Deposits.
 |  |  |  | Items should be clean. The condition of the item will also be based on the countries processes for handling the redeemed items. Regulations will need to specify the condition of provide for the scheme operator or administrator to specify condition requirements. |
| 1. Require locating of collection depots in locations that ensure recovery target can be achieved.
 |  |  |  | Collection depots should be located to allow easy access by members of the community. This assists to achieve maximum return rates. |
| 1. Provide for an exemption with criteria to be met for disposal of recovered items should repatriation be unviable.
 |  |  |  | There may be times when a receiver for recyclables cannot be found so process can be designed to manage such an event such as an exemption for disposal to landfill or other measures. This could be subject to the approval of the Secretary or Minister. |
| Gender Equality, Disability, and Social Inclusion (GEDSI) | 1. Specify accessibility (GEDSI) requirements for collection depots.
 |  |  |  | Systems and collection depots should be accessible for all regardless of age, gender, and mobility level. The GEDSI plan should be referred to, to develop guidelines for location, operating hours and design of collection depots. |
| Offences | 1. Specify offences and penalties.
 |  |  |  | Offences can be made for actions that go against those obligations placed on parties and corruption within the scheme.  |
| 1. Specify how fraudulent activity will be investigated
 |  |  |  | There should be a provision in the legislation describing the procedure of investigation against fraudulent activities with police enforcement. Periodic auditing of operation and funds should also be indicated either in the policy or legislation. |
| Monitoring | 1. Establish the target for recovery.
 |  |  |  | Setting a target can help the country measure success against a goal. The target may be provided in the policy through an M&E framework policy and specified in contractual arrangements and not explicitly set in legislation/ regulation.  |
| 1. Outline measures for if targets are not met.
 |  |  |  | The ARFD system needs to have an M&E framework that will assist in measuring progress and evaluating reliability and effectiveness of the system. This will be a supporting document to the policy. Continuous improvement measures should be taken if the system shows poor performance. These measures can be recommended based on the audit and may include at a minimum, among others:1. Reassessing the location of collection depots and operating hours,
2. Assessing the way operators work
3. Carrying out education and awareness.
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| Auditing | 1. State requirement for auditing
 |  |  |  | Determine how often does the country want to audit the fund and the operations. Depending on government auditing capacity, would a separate audit need to be specified in ARFD legislation or would the ARFD be audited as per government procedures? The audit report may be written to be required by the governments audit entity. |
| Reporting | 1. Reporting and record keeping requirements for importers/ distributors
 |  |  |  | Importers/distributors can be required to keep records and provide reports to the schemes administrator/s. These can assist in auditing purposes. |
| 1. Reporting and record keeping requirements for fund administrator
 |  |  |  | Record keeping and reporting obligations ensure transparency of the scheme.Countries can outline timing of reporting and period for record keeping.The reports from the service suppliers will inform the fund administrator reporting. The reporting could assess performance against targets, against GEDSI requirements and income and expenditure for the next financial year.  |
| 1. Reporting and record keeping requirements for collection depot and logistical services
 |  |  |  | The country may specify reporting requirements and record keeping of deposits paid and materials shipped for a specified time.The country may identify documentation to support claims for expenses to the contract principal (if contracted) or administrator. Reporting may include performance against targets, against GEDSI requirements and income and expenditure for the next financial year.Reporting forms may be included in regulations under standards. |
| Partnerships | 1. Explicit provision for partnerships – Public Private Partnerships, partnership with community organisations.
 |  |  |  | Legislation can provide formal guidance for roles and responsibilities for partnerships. Partnerships could be provided for in Memorandums of Understanding, outlining the role of the involved organisations, such as with Customs. Provisions should keep possibilities open for non-government organisations to be included in partnerships.  |
| Start-up funding | 1. Building up funding from fees before starting to pay out deposits.
 |  |  |  | The country may need to build up ARFD to develop funding allocation for certain purposes such as those specified in 32, 33 and 34. Some countries have done this by delaying the payment of Deposits to consumers for a specified period (usually not less than six months) in order to generate enough seeding money. It could also be possible for the government to allocate a start-up fund from internal or external (donor or development partner) sources. These details can be provided in the legislation. |
| 1. Funding for establishing administration and management systems and capability.
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| 1. Funding for addressing legacy items.
 |  |  |  |
| 1. Funding for establishing depots (for material returns) and processing equipment
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| 1. Where Legislation Fits in Existing Legal Environment
 | Legal / Justice team are recommended to summarise the legal instruments identified to for scheme operation:

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| **Instrument Type** | **Instrument Name and Purpose** |
| Legislation |  |
| Regulation  |  |
| Schedule |  |
| Reforms needed to other legislation/regulations |  |
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| Notes for Follow-up / Further Research / Discussions: |