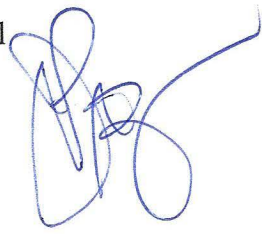


Administrative Instruction

Date: 27 October 2011
To: All UNOPS Personnel
From: James Provenzano,
General Counsel
AI Reference: AI/LPG/2011/01
Subject: **(1) UNOPS Legal Advisors & (2) Areas requiring and not requiring clearance from a UNOPS Legal Advisor**



I. INTRODUCTION

- 1.1. Organisational Directive (OD) No.15 states: “The core functions of the Legal Practice are (to):
- a) Articulate legal policies and processes; enable operationalization and managerial oversight through appropriate systems and reports; provide corporate advice and guidance; and strengthen the knowledge, skills and career development of legal practitioners;
 - b) Enable the organization’s legal and contracting activities to execute the organization’s business strategy.”
- 1.2. The Legal Practice Group (LPG) is headed by the General Counsel, who is accountable to the Deputy Executive Director.

II. CORE FUNCTIONS OF LPG

- 2.1. In order to properly carry out the core functions of the LPG, the General Counsel designates from time to time Legal Advisors¹ to assist him/her by posting the names of such Legal Advisors on the “About Us” section of the Legal practice page of the UNOPS intranet and/or by this Administrative Instruction (See section IV, below). Such Legal Advisors and only such Legal Advisors have, by such designation, the authority to perform core legal functions on behalf of UNOPS.
- 2.2. These core functions include:

¹ Title may also be Legal Specialist, Legal Officer, or Legal Analyst.

- 2.2.1 Providing legal advice on all institutional, commercial, and personnel-related matters;
 - 2.2.2 Clearing UNOPS documents where such legal clearance is required, pursuant to promulgated prescriptive content, pursuant to the specific areas of focus set forth in the next section of this Administrative Instruction, below, or where UNOPS managers so request;
 - 2.2.3 Representing UNOPS in matters under the Administration of Justice system and in commercial disputes with the assistance of the UN Office of Legal Affairs;
 - 2.2.4 Representing the General Counsel in internal and external meetings.
- 2.3. Legal Advisors do not undertake matters where the General Counsel is specifically and personally mandated, as well as for any matter involving the privileges and immunities of the UN and UNOPS, unless otherwise instructed by the General Counsel.
- 2.4. Legal Advisors may engage legal assistants through their operational group, such as the Regional Office. Legal assistants are not Legal Advisors unless so named by the General Counsel and included in this AI and/or on the intranet site. Such legal assistants shall be supervised by the Legal Advisor and especially shall not provide “clearances” with respect to core legal functions.

III. SPECIFIC AREAS OF LEGAL ADVISOR ACTION

Use of standard form contracts and templates approved by the LPG; use of other legal documents only with the approval of a Legal Advisor

- 3.1. The general rule in the United Nations system is that all contracts, agreements and amendments, including Memoranda of Understanding, Memoranda of Agreement, Inter-Agency Agreements, Letters of Agreement, Exchanges of Letters, Contracts for Works, Individual Contractor Agreements and Grant Agreements must be cleared by the organization’s legal office.
- 3.2. There are, however, sets of contract forms which are pre-approved by the LPG, and generally known as "standard form contracts" or “templates”. These standard form contracts and templates are posted on UNOPS intranet and are to be the formats to be used in all instances. UNOPS personnel may use these standard form contracts and templates without reference to the LPG, providing the necessary detail for the particular contract.
- 3.3. If a document is only partly based on a standard form contract or template (e.g. it does not include some provisions in the standard form contract or template, or it contains additional provisions, or it contains provisions that have been modified in a material way), it is considered nonstandard, and therefore requires the approval of a Legal

Advisor. The clauses which always materially affect the contract, and are of crucial importance to UN contracts in particular, are those dealing with:

- 3.3.1 UN privileges and immunities;
- 3.3.2 Applicable law;
- 3.3.3 Indemnification/liability;
- 3.3.4 Standards of conduct;
- 3.3.5 Dispute resolution, including arbitration;
- 3.3.6 Asset title and disposal;
- 3.3.7 Intellectual property rights;
- 3.3.8 Insurance;
- 3.3.9 Audit (or any other activity which would allow a non-UN party wide access to UNOPS' records or to assess UNOPS' internal control systems);
- 3.3.10 Events of *force majeure*;
- 3.3.11 Publicity and the use of name or emblem of UNOPS and/or the UN; and
- 3.3.12 Liquidated damages.

The above clauses must not be changed in any manner without the approval of a Legal Advisor. Another clause which is not UN-specific, but which is again crucial, is the termination clause (i.e. how to end a problematic contractual relationship with minimum adverse effects). This clause must be amended only with great caution, and reference to a Legal Advisor is required.

- 3.4. Contracts and agreements which are not in a UNOPS standard form or template must be submitted to a Legal Advisor for clearance before execution.
- 3.5. There is no pre-approved standard form for agreements with governments and other institutional partners regarding the status of UNOPS and the United Nations, and so they must be submitted to a Legal Advisor for clearance before execution.
- 3.6. Leases which involve rent or real property (or both) must also be submitted to a Legal Advisor for clearance, even if they have been prepared using a UNOPS standard form or template.
- 3.7. Termination letters should also be submitted to a Legal Advisor for clearance, even if they have been prepared using a UNOPS standard form or template.
- 3.8. Legal certification in Write Off submissions to HQCPC (according to which there is no legal basis to expect a third party to pay/reimburse UNOPS, pursuant to section 7.4.2(b) of OD 32) must be obtained only from a Legal Advisor.
- 3.9. Any correspondence that could reasonably pose legal, financial or reputational risks to UNOPS should also be reviewed by a Legal Advisor.

- 3.10. Insurance reporting to UNOPS insurance brokers of events covered under UNOPS insurance policy falls under the responsibility of the Legal Advisors. **All UNOPS personnel must immediately report to their region's Legal Advisor any event which may give rise to a substantial legal liability on the part of UNOPS (such as an accident causing injury to UNOPS personnel or a third party, or a dispute between UNOPS and a contractor, or a dispute between UNOPS and a client).**

IV. DESIGNATED LEGAL ADVISORS

- 4.1. The UNOPS Legal Advisors as of the date of this Administrative Instruction are:
- Claudio Lema Pose, Legal Specialist, Johannesburg - AFO
 - David Chillaron-Cortizo, Legal Specialist, Bangkok - APO
 - Benedetta Audia, Legal Specialist, Copenhagen - EMO
 - Fernando Cotrim Barbieri, Legal Specialist, Panama City - LCO
 - Salman Haq, Legal Specialist, New York - NAO
 - Kong Leong Toh, Legal Specialist, Copenhagen - HQ
 - Marlena Atanassova, Legal Analyst, Copenhagen - HQ
 - Guillaume Lemenez, Legal Specialist, New York
- 4.2. UNOPS personnel engaged for the purpose of providing legal advice regarding particular projects may continue to do so in accordance with their Terms of Reference, in consultation with the relevant Legal Advisor.
- 4.3. Legal advice provided to UNOPS personnel, whether given orally or in writing, is protected by attorney-client privilege, in addition to the privileges and immunities of UNOPS that are otherwise applicable. Accordingly, legal advice should be considered confidential information of UNOPS and not shared with any third parties except when determined by an authorised UNOPS official that it is in the best interest of UNOPS to do so.
- 4.4. Legal advice and/or clearance is not a substitute for and does not replace a business related decision; therefore obtaining legal advice and/or clearance does not discharge UNOPS personnel of their professional and personal liability arising from engagements undertaken on behalf of UNOPS within the respective delegated authority.

V. FINAL PROVISIONS

- 5.1 Effective 28 October 2011, AI/OLS/2005/002 is abolished.
- 5.2 This AI takes effect **28 October 2011**.