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## **Steps required at the national level for ratification, accession, approval or acceptance of the Protocol to Eliminate Illicit Trade in Tobacco Products**

### **Checklist<sup>1</sup>**

Before a State can ratify, accede to, approve or accept<sup>2</sup> a treaty in accordance with the provisions of the Law of Treaties, it has to complete the necessary procedures at the national level. These procedures are governed by national law, frequently the national constitution. National law determines whether a given treaty is to be ratified by the executive or by parliament, and which procedure must be followed. It also determines whether a treaty automatically becomes domestically binding once it has become internationally binding, or whether implementing legislation is required. As the systems of different countries vary widely in this respect, the following is limited to a broad outline of the main steps and options. In each country, the lead ministry or authority with responsibility for the Protocol will need to identify the applicable procedures and responsibilities.

As a general rule, the following steps will need to be taken:<sup>3</sup>

#### **1. Preparatory analysis and collection of documentation**

The lead ministry or authority for the Protocol may wish to undertake the following:

- Translation of the Protocol and ancillary documents into the national language;
- Collection of all relevant documentation;
- Survey of the existing legal and institutional framework to determine which legislative and administrative measures need to be taken to implement the Protocol;
- Cost-benefit analysis of becoming a Party to the Protocol, including implementation of the measures identified;
- Assessment of whether the legal regime established by the Protocol would be beneficial to the State.

#### **2. Consult with the government office responsible for issuing ratification instruments**

The lead ministry/authority for the Protocol will consult with the government office responsible for drafting ratification instruments for international agreements. This is often a legal unit in the Ministry of

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<sup>1</sup> Prepared by the Convention Secretariat. Annexes provide model instruments of (1) ratification/acceptance/approval, and (2) accession.

<sup>2</sup> For reasons of simplicity, only the term “ratify” (or “ratification”) is used in the following text. The references to ratification are intended to apply also to the other forms of becoming a party to a treaty.

<sup>3</sup> Basis of this note: Checklist of general steps to be taken prior to lodging instruments of ratification, acceptance, approval, accession or the like with the Secretary-General of the United Nations, prepared by the interim Secretariat of the Stockholm Convention on Persistent Organic Pollutants in consultation with the Treaty Section of the United Nations Secretariat.

Foreign Affairs. This unit will identify who at the national level would, as a rule, approve ratification of the Protocol (e.g. parliament or executive). The approval will provide the basis for the issuance of an instrument of ratification by the competent government office.

### 3. Identify the constitutional requirements and process for domestic approval of ratification

The lead ministry/authority will contact the office or administration of the supreme national authority entitled to decide on ratification (as identified under 2. above), in order to identify the steps that will lead to the approval of ratification of the Protocol. Assuming that there is political will to proceed, the supreme national authority will indicate the necessary decision-making processes that will have to be completed before the instrument of ratification can be signed and deposited. In addition to obtaining necessary approvals within the administration of the head of state or head of government, or parliamentary debate, such processes may include passing law, a judiciary review, or evaluation at different state levels. The following principal questions will have to be answered:

#### *(a) Approval of ratification by parliament or executive body?*

This will depend on the constitution of the country. As this is unique for each country, there is a large variety of options. The authority to approve ratification may rest with (examples):

- The executive (national government)/head of state/head of government, for all treaties;
- The executive/head of state/head of government, for all treaties, while parliament is consulted/informed but does not need to give formal approval;
- The legislature (parliament), for all treaties;
- The legislature, for treaties with major political importance for the country (e.g. peace treaties, trade treaties, treaties on an international organization), and the executive/head of state/head of government, for all other treaties;
- The legislature if implementing legislation must be passed, the executive/head of state/head of government for all other treaties.

#### *(b) Procedure by which ratification takes place?*

This is again unique for each country. The following procedures may apply (examples):

- Approval first by one and then the other chamber of parliament, prevalence of one chamber in case of disagreement;
- Approval by only one chamber of parliament.

#### *(c) Necessity of passing implementing legislation?*

In some countries, an international treaty automatically becomes binding national law when it enters into force for the country. As such, it directly creates rights and obligations for national actors, even without implementing legislation. Nevertheless, the text of a treaty may not be specific enough to allow direct application at the country level. If legislation or regulations to clarify the rights and obligations of national actors is needed, this will have to be adopted through the applicable parliamentary procedures.

In other countries, international treaties do not become immediately binding at the national level. They must first be transposed into national legislation, which establishes the corresponding rights and obligations. The legislation will also have to be adopted through the applicable domestic procedures.

Whichever the system, an assessment of the existing legal, regulatory and policy frameworks is advisable to determine the need for implementing legislation. At the request of the Conference of the Parties to the WHO FCTC at its fifth session, the Convention Secretariat developed a self-assessment checklist that can be used by Parties to the WHO FCTC in assessing their legal, regulatory and policy frameworks in view of the requirements of the Protocol. The checklist is available at <http://www.who.int/fctc/protocol/en/>.

Depending on their particular situation, some countries may not be in a position to ratify a treaty until the implementing legislation has been enacted.

*(d) Need for a judiciary review?*

In some countries, a treaty must be submitted to judiciary review by the competent court, normally the constitutional court. Only if the court determines that the treaty is consistent with the constitution of the country may ratification proceed.

*(e) Need to consult sub-national governmental entities?*

In federal States where sub-national governmental entities (e.g. states, provinces, cantons, Länder) have some competence in the matter covered by the treaty, there is a procedure to consult these entities as part of the ratification process.

#### 4. Examine the need for a declaration

When approving the ratification, the supreme national authority (executive or parliament) may wish to examine the need for a declaration to be made with the submission of the instrument of ratification. Declarations may be used, for example, to clarify a country's understanding of a specific clause of the treaty, or to specify whether or not the treaty applies to a country's dependent territories.

#### 5. Prepare and sign the instrument of ratification

After completion of the process outlined above, the government office responsible for doing so (see 2. above) will prepare the instrument of ratification, and an instrument of declaration if necessary. The instrument(s) must be signed by the head of state, head of government or minister of foreign affairs.

Model instruments of ratification/acceptance/approval and of accession are attached in the Annex. They are also available for download on the website of the Convention Secretariat<sup>4</sup>.

#### 6. Lodge instrument(s) with the Depositary

Finally, ratification becomes effective only upon deposit of the relevant instrument. The Secretary-General of the United Nations is the Depositary of the Protocol.<sup>5</sup>

States are advised to deliver instruments for deposit directly to the Treaty Section of the United Nations Secretariat in New York to ensure that they are promptly processed. The date of deposit is normally recorded as that on which the instrument is received at Headquarters, unless the instrument is subsequently deemed unacceptable. Persons who are delivering instruments of ratification do not require full powers.

States are encouraged to provide courtesy translations, where feasible, in English or French of any instruments in other languages that are submitted to the Treaty Section. This facilitates the prompt processing of the relevant actions.

Contact of the UN Treaty Section:  
Treaty Section, Office of Legal Affairs, United Nations, New York, NY 10017 USA  
Telephone: 212 963 5047 Facsimile: 212 963 3693 Website: <http://treaties.un.org>

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<sup>4</sup> <http://who.int/fctc/protocol/ratification/en/>.

<sup>5</sup> Article 46 of the Protocol.

## Annex 1

### **MODEL INSTRUMENT OF RATIFICATION/ACCEPTANCE/APPROVAL**

**(To be signed by the Head of State, Head of Government or Minister of Foreign Affairs)**

#### **INSTRUMENT OF RATIFICATION / ACCEPTANCE / APPROVAL**

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**WHEREAS** the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted on 12 November 2012 in Seoul, Republic of Korea,

**AND WHEREAS** the said Protocol to Eliminate Illicit Trade in Tobacco Products has been signed on behalf of the Government of **[name of State]** on **[date of State's signature of the Protocol to Eliminate Illicit Trade in Tobacco Products]**,

**NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs]** declare that the Government of **[name of State]**, having considered the above mentioned Protocol, ratifies/accepts/approves the same and undertakes faithfully to perform and carry out the stipulations therein contained.

**IN WITNESS WHEREOF**, I have signed this instrument of ratification/acceptance/approval at **[place]** on **[date]**.

**[Signature]**

## Annex 2

### **MODEL INSTRUMENT OF ACCESSION**

**(To be signed by the Head of State, Head of Government or Minister of Foreign Affairs)**

#### **INSTRUMENT OF ACCESSION**

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**WHEREAS** the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted on 12 November 2012 in Seoul, Republic of Korea,

**NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs]** declare that the Government of **[name of State]**, having considered the above mentioned Protocol, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

**IN WITNESS WHEREOF**, I have signed this instrument of accession at **[place]** on **[date]**.

**[Signature]**

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