

## EXPLANATORY NOTE

### ADOPTION OF THE FRAMEWORK CONVENTION ON TOURISM ETHICS AND SUBSEQUENT STEPS FOR ITS ENTRY INTO FORCE

#### I. Introduction

The present Note has been prepared by the Office of the Legal Counsel of UNWTO to help member States understand the procedure following the adoption of the Framework Convention on Tourism Ethics and the Optional Protocol to the Framework Convention on Tourism Ethics by the General Assembly and the process by which member States may become legally bound to the Convention<sup>1</sup>.

#### II. Adoption of the Convention

The Framework Convention on Tourism Ethics (hereinafter, “the Convention”) was adopted by the UNWTO General Assembly at its 23rd session held in St. Petersburg, Russian Federation, on 12 September 2019, through resolution A/RES/722(XXIII), in all the official languages of the Organization.

- **What are the obligations for Member States upon adoption of the Convention by the General Assembly?**

The adoption of the text by the General Assembly does not imply in any way an immediate obligation for the member States to comply with the provisions of the Convention.

The adoption only implies that the text has been authenticated, meaning that it is established as authentic and definitive, and that member States cannot unilaterally change its provisions.

Therefore, it will be up for any member State, if it so wishes and in accordance with its constitutional provisions and practice, to undertake the subsequent legal steps to express its consent to be bound by the Convention.

#### III. Signature of the Convention

Signature is the first step for a State to become party to a treaty.

Pursuant to its Article 18, “*the Convention shall be open for signature by all Member States of the UNWTO and all Member States of the United Nations at the Headquarters of the UNWTO in Madrid from 16 October 2019 to 15 October 2020*”.

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<sup>1</sup> This note has been prepared by the Office of the Legal Counsel of UNWTO with the available information, particularly with regard to the practice of the United Nations, to guide representatives of States in the adoption of the Framework Convention on Tourism Ethics and the subsequent steps for its entry into force. It does not claim to be exhaustive and does not represent an official interpretation of the practice of the United Nations.

Signature does not establish the consent to be bound by a treaty, but rather indicates the State's political intention to examine the treaty domestically and to take steps to express its consent to be bound by the treaty at a later date.

The Framework Convention on Tourism Ethics provides for signature, subject to ratification, acceptance or approval – also called “simple signature”. In such a case, signature does not impose on States any binding obligations under the treaty.

Once the time limit for signature has elapsed (i.e., 15 October 2020), it will be no longer possible to sign the Convention. Nevertheless, States do not lose the right to become party to the Convention and may still express their consent to be bound by the Convention at a later stage through the deposit of an instrument of ratification, acceptance, approval or accession to the Convention.

- **Who can sign the Convention?**

Only Heads of State, Heads of Government or Ministers for Foreign Affairs – also called “*qualified authorities*” - may, by virtue of their functions, sign the Convention on behalf of the State without an instrument of full powers<sup>2</sup>. Any person other than these qualified authorities must be in possession of a valid instrument of full powers.

"Full powers" means a document emanating from the competent authority of a State designating a person or persons to represent the state for signing a given treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty<sup>3</sup>.

There is no specific form for an instrument of full powers, but it has to include the following content:

1. Signature by the Head of State, Head of Government or Minister for Foreign Affairs or a person acting, *ad interim*, in one of the above positions;
2. Title of the treaty;
3. Express authorization to sign the treaty or undertake the treaty action concerned;
4. Full name and title of the person duly authorized to sign;
5. Date and place of signature of the instrument of full powers; and
6. Official seal. This is optional and cannot replace the signature of one of the three authorities of State.

A model instrument of full powers based on the UN Treaty Handbook is enclosed to the present Explanatory Note as Annex I.

- **What are the obligations of States upon signature?**

Member States do not take on any positive legal obligations under the Convention upon signature.

Signature does not create a binding obligation for the signatory State but indicates its political willingness to continue the treaty-making process and to express its consent to

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<sup>2</sup> The actual title of these qualified authorities may differ according to States' legislation or constitutions.

<sup>3</sup> Glossary UN Treaty Collection.

be bound by the treaty at a later date through the deposit of an instrument of ratification, acceptance, approval or accession.

Notwithstanding the foregoing, signature creates an obligation for a signatory State to refrain in good faith from acts that would defeat the object and the purpose of the treaty, until such State makes its intention clear not to become party to the treaty.

#### **IV. Ratification, Acceptance, Approval or Accession to the Convention**

Pursuant to its article 19, the Framework Convention on Tourism Ethics “*is subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval and accession shall be deposited with the Secretary-General of the UNWTO*”.

Ratification, acceptance, approval or accession expresses a State’s consent to be bound by the Convention, that is to say, its willingness to undertake the legal rights and obligations contained thereunder<sup>4</sup>. States wishing to ratify, accept, approve or accede to the Convention shall execute an instrument of ratification, acceptance, approval or accession.

Unlike signature, there is no time limit for the deposit of an instrument of ratification, acceptance, approval or accession to the Convention.

- **Deposit of an instrument of ratification, acceptance, approval or accession:**

An instrument of ratification, acceptance, approval or accession to the Convention becomes effective only when it is deposited with the UNWTO Secretary-General at the Organization’s Headquarters.

To that purpose, States are advised to deliver such instruments to the Depositary Section to ensure the action is promptly processed<sup>5</sup>.

Copies of signed instruments and full powers may be submitted by email to the Depositary Section (treatydepositary@unwto.org) for verification, provided that the originals are delivered as soon as possible thereafter to the Depositary Section at the Organization’s Headquarters.

- **Form an instrument of ratification, acceptance, approval or accession:**

There is no mandated form for the instrument of ratification, acceptance, approval or accession, but it must include the following elements:

1. Title, date and place of conclusion of the treaty concerned;
2. Full name and title of the person signing the instrument, i.e., the Head of State, Head of Government or Minister for Foreign Affairs or any other person acting in such a position for the time being or with full powers;

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<sup>4</sup> Please note that ratification, acceptance, approval or accession to a treaty have the same legal effects. Each State uses a different terminology depending on its national legislation. For the purpose of this Note, these terms are used interchangeably to denote a States’ consent to be bound by the Convention.

<sup>5</sup> It is recommended that States provide courtesy translations in English, Spanish or French of instruments and full powers in other languages in order to facilitate the prompt processing of the relevant actions.

3. An unambiguous expression of the intent of the Government, on behalf of the State, to consider itself bound by the treaty and to undertake faithfully to observe and implement its provisions;
4. Date and place where the instrument was issued; and
5. Signature of the Head of State, Head of Government or Minister for Foreign Affairs (the official seal only is not adequate) or any other person acting in such a position for the time being or with full powers.

A model instrument of ratification, acceptance or approval is enclosed to the present Note as Annex II.

- **Who can deposit an instrument of ratification, acceptance, approval and/ accession?**

Only Heads of State, Heads of Government or Ministers for Foreign Affairs – the so-called “*qualified authorities*” - may sign an instrument of ratification, acceptance or approval on behalf of the State without an instrument of full powers. All other individuals must be in possession of a valid instrument of full powers issued for that purpose by the above-mentioned authorities.

Notwithstanding the foregoing, the individual who delivers the instrument of ratification, acceptance, approval or accession does not require full powers.

- **What are the obligations for States upon ratification, acceptance, approval or accession?**

Ratification, acceptance, approval or accession expresses the States’ consent to be bound by that Convention at the international level. It indicates to the international community a State’s definitive commitment to undertake the rights and obligations under the Convention.

Once a State has expressed its consent to be bound through the deposit of an instrument of ratification, acceptance, approval or accession, its international responsibility is engaged. This does not necessarily imply the submission of the State to the treaty’s obligations because the treaty only acquires binding force when it enters into force.

It should be stressed that ratification at the international level - which expresses State’s consent to be bound by treaty internationally - differs from ratification at national level, which a State may be required to undertake in accordance with its constitutional provisions prior to undertaking the legal obligations at the international level. Ratification at national level refers to the act of the competent body, usually the national parliament, which approves the treaty and authorizes the competent body to perform international ratification.

For more information on the internal procedures for the ratification, acceptance, approval or accession to the Convention, States are invited to consult their internal legal services, as the applicable legislation and practice may vary from country to country.

It is reminded that the Optional Protocol is a separate and independent legal instrument which is open to ratification, acceptance, approval or accession by the States Parties to the Convention.

## **V. Entry into force of the Convention:**

The last step by which a multilateral treaty to become binding under International Law is the entry into force.

Pursuant to its article 21(1),” *the Framework Convention on Tourism Ethics will enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification, acceptance, approval or accession*”.

- **What are the obligations for States upon the entry into force of the Convention?**

Entry into force is the moment in which the treaty becomes legally binding under International Law for the parties having expressed their consent to be legally bound to it.

It is the moment in which the treaty becomes legally binding for the State concerned. Once in force, the State has to comply with the provisions of the treaty.

When a State gives its consent to be bound after the Convention has entered into force, the treaty will enter into force for that State thirty days after the deposit of the instrument of ratification, acceptance, approval or accession.

## ANNEX I

### MODEL INSTRUMENT OF FULL POWERS

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

#### FULL POWERS

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I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

**HEREBY AUTHORIZE** [name and title] to [ratify, accept, approve or accede to] the Framework Convention on Tourism Ethics [and its Optional Protocol] on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature]

## ANNEX II

### MODEL INSTRUMENT OF RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

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

[RATIFICATION / ACCEPTANCE / APPROVAL / ACCESSION]

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**WHEREAS** the Framework Convention on Tourism Ethics and its Optional Protocol was adopted by the General Assembly of the World Tourism Organization at its 23<sup>rd</sup> session held at Saint Petersburg, Russian Federation, on 12<sup>th</sup> September 2019, through resolution 722(XXIII),

**AND WHEREAS** the said Convention has been signed on behalf of the Government of [name of State] on [date],<sup>6</sup>

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

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

[Signature]

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<sup>6</sup> Please note that this sentence is not applicable under Accession.