Operational Instruction Ref. OI.LG.2018.03
Document Retention

Authority:

This Operational Instruction is promulgated by the General Counsel, Legal Group, under OD.LG.2018.01: Legal, under the authority of the Executive Director.

Purpose:

As stated in OD.EO.2017.02: Management of UNOPS Partners and Resulting Agreements, UNOPS partners with the United Nations system of organizations, international and regional financial institutions, intergovernmental organizations, governments, including at the national and sub-national levels, and the private sector.

The purpose of this OI is to provide instruction regarding document retention, in particular:

- To ensure transparency and traceability of UNOPS activities;
- To foster efficiency and effectiveness as regards the conduct, traceability and documentation of UNOPS activities.
- To ensure consistency in the retention of documents, including their classification to meet UNOPS's commitment to transparency while allowing personnel to work effectively with sensitive information.

Effective Date:

This OI shall become effective **immediately.**

Promulgation Date:

03 Apr 2018

Consequential changes:

This OI shall abolish and supersede OD 12: UNOPS Retention Policy and AI.LPG.2012.01: Mandatory initialization of all pages of documents forming part of contracts or agreement to which UNOPS is a party.

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1. Introduction

1.1. UNOPS produces records as part of its daily business and must therefore classify as well as register, file, transfer, archive, maintain and dispose of said records. In order to promote a transparent and traceable activities, UNOPS commits to controlling the records it produces as an organisation.

2. Definitions

2.1. Disposal: The transfer of non-current records to their final state, either destruction or storage in an archive, if so specified in the Record Retention and Disposition Schedule.

2.2. Intent of the Electronic records: Records created through means of Information Technology or transferred into electronic format (e.g. scanning).

2.3. Personnel: All UNOPS Staff members and other individuals engaged by UNOPS under specific contractual arrangements to perform services for project activities or administrative support, as defined in OI.PCG.2017.01: Personnel Management Framework.

2.4. Record: Any information, regardless of physical form or characteristic, which originate from or are received by UNOPS within the framework of its official activities. This includes electronic records stored in databases as well as physical or electronic documents.

2.5. Corporate Electronic Records Repository: An electronic centralised records repository established by UNOPS, complying with UNOPS ICT security standards and available through all UNOPS activities for storage of all records.

2.6. Corporate Electronic Signature Product: An electronic signature product established by UNOPS, complying with UNOPS ICT security standards, for secure signatures on electronic records. The electronic signature product should enable verification of signatories through storage of a tamper-proof version of the electronically signed record.

2.7. Retention and Disposition Schedule: A list formally defining records to be kept, as well as at least retention periods and consequent disposition actions authorized for those records contained in the schedule.

3. Scope

3.1. This OI covers the classification, registration, storage, transfer, maintenance and disposal of all records, paper-based or electronic, originating from or received by UNOPS.

4. Principles

4.1. Records must be captured and managed in a coherent, integrated way. The relationship between individual records must be treated as an integral component thereof.

4.2. In capturing and managing records, the duplication of efforts and the fragmentation of records should be minimized.

4.3. All electronic records should be stored in the Corporate Electronic Records Repository if such has been made available.

4.4. UNOPS business processes should be the basis for identifying and assigning ownership of records.

4.5. Paper-based and electronic records, including scanned documents, shall have equal validity, where electronic records are preferred to paper-based records.

5. Responsibilities

5.1. In the areas falling under their authority, UNOPS Group Directors shall be responsible and accountable for:

5.1.1 Defining which records must be kept and for how long; and establishing a framework for capturing the importance of records. In doing so, Group Directors should consider and align their decisions to relevant existing UN policies on Record Retention.

5.1.2 Establishing clear roles and responsibilities with regard to Record Retention. This shall include responsibilities for records from other offices, e.g. in case of closedown.

5.1.3 Ensuring the establishment of appropriate storing facilities for both electronic and paper-based records originating from their group.

5.1.4 All electronic records should be stored in the Corporate Electronic Records Repository if such has been made available. If a Corporate Electronic Records Repository has not been made available, alternative electronic storage facilities must be proposed and established through review and approval from UNOPS ICT.

5.2. Regional Directors shall be responsible and accountable for:

5.2.1 Acting in a consultative role to the Group Directors in defining the framework for record retention and disposition in UNOPS.

5.2.2 Ensuring the establishment of appropriate storing facilities for both electronic and paper-based records within their Region.

5.2.3 All electronic records should be stored in the Corporate Electronic Records Repository if such has been made available. If a Corporate Electronic Records Repository has not been made available, alternative electronic storage facilities must be proposed and established through review and approval from UNOPS ICT.

5.2.4 Ensuring that the established regulations and rules with regard to Record Retention are complied with.

5.2.5 Operationalizing the framework for record retention and disposition in their region business unit as established by the Group Directors.

5.3. UNOPS personnel shall be responsible and accountable for:

5.3.1 Complying with the record retention requirements.

6. Basic Requirements

6.1. All records that represent any administrative, fiscal, historical, informational or legal value shall be kept.

6.2. All records shall be kept as long as required in line with their content and under consideration of other relevant internal and external regulation.

6.3. Ownership of records must be established in line with the processes producing them. In cases where a record is co-produced by different practices, practices should duly coordinate to define ownership and responsibilities.

6.4. Records must, from the moment they are produced to, if applicable, the moment they are ultimately disposed of, remain legible, retrievable, and useful.

6.5. Amendments to agreements shall be reviewed by the respective delegated authority in line with their scope of delegation and, if necessary, resubmitted to the relevant DoA.

6.6. Records must be stored in the simplest way possible while sustaining their integrity, retrievability and legibility.

6.7. In capturing and managing records, existing tools including databases should be used. In cases where existing tools are insufficient or unavailable, justification must be presented to the owner of the relevant record retention schedule.

7. Classification and Disclosure of Sensitive Records

7.1. The overall approach to classifying records entrusted to or originating from UNOPS is based on the understanding that the work of UNOPS should be open and transparent.

7.2. Records may be considered as “confidential”, “strictly confidential” or “nonconfidential”.

7.2.1 The designation “confidential” shall apply to records whose unauthorized disclosure could reasonably be expected to cause damage to the work of UNOPS.

7.2.2 The designation “strictly confidential” shall apply to records whose unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to or impede correct practices.

7.2.3 The designation “unclassified” shall apply to records whose unauthorized disclosure could reasonably be expected not to cause damage to the work of UNOPS.

7.3. Information deemed to be considered as confidential or strictly confidential shall include the following:

7.3.1 Documents created by UNOPS, received from or sent to third parties, under an expectation of confidentiality;

7.3.2 Documents whose disclosure is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy;

7.3.3 Documents whose disclosure is likely to endanger the security of Partners or prejudice the security or proper conduct of any operation, project or activity of UNOPS

7.3.4 Documents covered by legal privilege or related to internal investigations;

7.3.5 Internal documents, including draft documents, if disclosure would undermine UNOPS' free and independent decision-making process;

7.3.6 Documents containing commercial information, if disclosure would harm either the financial interests of UNOPS or those of other partners and/or parties involved;

7.3.7 Any other kind of information, which because of the content or the circumstances of the creation or communication, must be deemed confidential

7.4. Records may be disclosed only in accordance with OI.LG.2018.04: Information Disclosure, in particular for records considered and/or marked as confidential or strictly confidential, which may only be disclosed upon consultation with the General Counsel, Legal Group, and if marked as confidential or strictly confidential, with the individual (or his/her successor) that marked the record as such.

8. Handling of Classified Records

8.1. The destruction by authorized means of non-current, classified documents that have no further administrative, fiscal, legal, historical or other informational value shall be authorized by UNOPS General Counsel.

9. Mandatory Initialization of Pages

9.1. All contracts and agreements to which UNOPS is a party must be in writing for the following reasons:

9.1.1 A contract or agreement sets out the rights and obligations of the parties and provides the foundation for the implementation of a project underlying such contract or agreement. It is therefore critical that all contracts or agreements to which UNOPS is a party be in writing so that the terms and conditions of the parties' respective rights and obligations are clearly set out.

9.1.2 In the event of a dispute (particularly in the context of a formal dispute resolution mechanism such as arbitration, adjudication or conciliation) the contract or agreement is the primary law for the purpose of determining the parties' respective rights and obligations. Absent a written contract or agreement, such determination would be uncertain, which would constitute a legal risk for UNOPS.

9.1.3 The resolution of a dispute through one of the dispute resolution mechanisms stated above requires evidence of the parties' agreement to resolve the dispute through such a dispute resolution mechanism. Absent a written contract or agreement to that effect, UNOPS could be deprived from having an appropriate forum to defend and enforce its rights against a defaulting party.

9.2. The authority reviewing a potential contractual dispute will refer to the contract or agreement as the main law governing the parties' respective rights and obligations. Therefore, the proper initialing of all pages of all the documents forming part of the contract or agreement is required. Absent such initialing the parties may disagree on which documents are parts of the contract or agreement, or on which particular version of such documents shall prevail. In addition, a party may claim it did not receive a particular page of a document forming part of a contract or agreement.

9.3. Such risks are exacerbated when there is a significant period of time between the signature and implementation of the contract or agreement and the dispute, and when the individuals involved may no longer be available.

9.4. This requirement applies to all contracts and agreements to which UNOPS is a party, including but not limited to, Contribution Agreements, Management Services Agreements, Grant Support Agreements, Exchanges of Letters, Inter Agency Agreements, Lease Agreements, Memoranda of Agreement, Memoranda of Understanding, Cooperative Arrangements with governments, Contracts for works, Contracts for goods and Contracts for services

9.5. All pages of all the documents forming part of a contract or agreement to which UNOPS is a party, including all attachments, need to be initialed by duly authorized representatives of the parties, except for the page that contains the full signature block, which shall be signed by such representatives. The requirement for initialization of all pages is not required if records are signed through a Corporate Electronic Signature Product since such a product would ensure the identity of the signatories and maintain a tamper-proof electronic copy of the document in its entirety.

9.6. Mandatory initialization of all pages is not required if records are signed through a Corporate Electronic Signature Product since such a product would ensure the identity of the signatories and maintain a tamper-proof electronic copy of the document in its entirety.

9.7. Once the contract has been prepared, there is no particular UNOPS practice regarding which of the contracting parties should first sign. However, in all cases, care must be taken to ensure that the signatories to the contract are legal persons for the purposes of contractual relations, and have the ability to represent and capacity to bind the respective contracting parties to the obligations there under.

9.8. A contract will come into force once it has been signed, in writing, by both contracting parties. In this respect, electronic or digital signatures will be considered valid only through the use of the Corporate Electronic Signature Product. Electronic or digital signatures through products other than the Corporate Electronic Signature Product will not suffice as legal proof of a party's will to commit to a valid and legally binding contract.