

Legislative Drafting Guidelines

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Forward

Introduction

acknowledgements

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rationale

African legal sources, and in particular legislation, are getting more and more complex. Increasingly intricate systems of norms and references are created, as new Acts and amending Acts produce multiple, overlapping, rapidly changing layers of legislation and as national legislatures take into account other (local, regional, and international) sources of law.

At the same time, we are currently witnessing the transition from paper to digital documents and records, resulting in unprecedented opportunities for better lawmaking. Information and communication technologies can provide African legislatures, courts, and other public institutions, as well as private enterprises, individuals and other stakeholders, with the tools to properly manage the proliferation of legislation in ways that satisfy the needs of all.

Under these conditions, better lawmaking has become a strategic component in the move toward the rule of law and good governance in Africa. Legislative Acts complying with principles of good legislative drafting on the one hand can be easily and clearly understood, and on the other hand can be effectively processed through advanced information and communication technologies. Good legislative drafting, combined with appropriate information technologies, can provide all stakeholders with the legal information they need, and in particular can enable citizens and operators to identify precisely their rights and obligations and courts to enforce the laws effectively. Moreover better lawmaking, on the basis of consistent legislative practices, can greatly facilitate the harmonisation of laws in Africa.

The Legislative Drafting Guidelines for Africa, by defining the common structural elements of legislation according to principles of good legislative drafting and legislative informatics, aim at providing African Parliaments with a shared approach to better legislation. Their adoption by all African Parliaments can contribute to the quality of African legislation, the harmonisation of African laws, and the development of advanced legal information services in Africa.

scope

The "**Legislative Drafting Guidelines for Africa**" aim at providing a set of principles and best practices for drafting both primary and secondary legislation.

The Guidelines promote a commitment to improving the quality of lawmaking and to achieving simplicity, clarity and consistency in the laws of African parliaments.

The Guidelines are neither binding nor exhaustive, and are not intended to override the legislative conventions and official drafting manuals of the respective countries. They can, however, promote a convergence of practices beneficial for the harmonisation of law in Africa. They are intended to serve as a reference for all bodies involved in the process of drafting legislation in Africa.

It is hoped that the Guidelines will assist all those involved, in any way, in drafting legislation within the institutions of the African Union. The Guidelines aim to make African legislation as clear, simple, concise and understandable as possible. They provide criteria against which the drafting of legislation may be checked, to enable citizens to understand the objectives of the laws and the means to achieve them, but also to ensure that the laws can be more easily processed by

information and communication technologies.

logo

The logo of the Legislative Drafting Guidelines comes from the Akan people of West Africa. It is the "nyansapo" ("wisdom knot"), symbol of wisdom, ingenuity, intelligence and patience. An especially revered symbol of the Akan, this symbol conveys the idea that a wise person has the capacity to choose the best means to attain a goal.



We think that it may well represent the ambitions of the Guidelines that want to promote a commitment to improving the quality of lawmaking and to achieving simplicity, clarity and consistency in the laws of Africa.

glossary

Basic-unit

The unit of text that is the basic component of an Act. In some legal traditions, this is known as section; in others, as article. The basic units of an Act contain its main normative provisions. They may be grouped into higher-divisions, and may be accompanied by schedules or annexes.

Definition unit

The basic-unit of the Act which contains the main definitions.

End-matter

Final part of an Act, which follows the basic-units and contains ending formulas, dates and places of adoption/enactment, and signatures.

Front-matter

Initial part of an Act, which precedes the basic-units and includes various elements meant to identify the Act, put it in context, and facilitate access to its contents.

General Principles (1-3)

Guideline 1

An Act must be clear, simple, and precise.

[collapse all examples](#)

[expand all examples](#)

1.1 An Act must be:

clear, easy to understand, and unambiguous;
simple and concise, containing no unnecessary elements;
precise, leaving no uncertainty in the mind of the reader.

[view example](#)

Example A

You should not write:

conduct is "unacceptable" or "intolerable".

You may rather write:

conduct is "prohibited" or "forbidden".

Example B

For instance you should not write:

Smoking in school is unacceptable and intolerable.

You may rather write:

Smoking in school is forbidden.

Commentary: The first rule identifies a behaviour (smoking) that is disfavoured, but it does so in very vague terms. The reader is left to wonder whether smoking in school is forbidden or merely discouraged, and what the consequence would be if someone does smoke in school.

Example C

You should not write:

an official is "authorized and directed" to take an action.

You may rather write:

the official "may" take the action (or the official "shall" or "must" take the action).

1.2 This common-sense principle is also the expression of general principles of law, such as:

the equality of citizens before the law, in that the law should be accessible and comprehensible for all;
legal certainty, in that it should be possible to foresee how the law will be applied.

1.2.1. The aim in applying the principle is twofold: first, to render legislation more comprehensible; second, to avoid disputes resulting from poor drafting.

1.2.2 The aim of comprehensibility is particularly important in respect of legal systems which are not only complex, but also multicultural and multilingual.

- 1.2.3. A provision that is not clear may be interpreted restrictively or extensively by the courts, possibly in a way that does not correspond to the legislative intent. The legislator can entrust judicial discretion with the task of specifying the meaning of a provision, but this should be a conscious choice, rather than the result of a drafting mistake.

[view example](#)

Example A

You should not write (in vague terms)-:

"The public administration shall provide education."

You may rather write (in more precise terms)-

"The public administration shall take care that every young person is provided with a primary level of education and with the opportunity to access free secondary education."

Example B

You should not write (without further specifications):

"People have the right to an education."

You may rather write (in a way that entrusts government with the power to issue regulations for implementing this right):

"1. People have the right to an education.

"2. The local authorities shall ensure that every child has the opportunity of attending public primary and secondary schools."

Example C

In case the legislator does not intend to entrust to judges the power to establish the appropriate quantity of cocoa in chocolate, you should not write:

"Chocolate must contain an appropriate quantity of cocoa and cocoa butter."

You may rather write:

"Chocolate must contain a quantity of cocoa or cocoa butter not inferior to 30 percent."

- 1.3. An Act must reduce the legislative intention to simple terms. As far as possible, everyday language should be used. Where necessary, clarity of expression should take precedence over style. For example, the use of synonyms and different expressions to convey the same idea should be avoided.

- 1.3.1. Each sentence should have a structure that is both unambiguous and easily comprehensible, so that grammatical relationships can be understood with no undue effort.

- 1.3.2. The grammatical relationship between the different parts of the sentence must be accurate and clear. A text that is grammatically correct and respects the rules of punctuation is easier to understand, and also easier to translate into other languages.

- 1.3.3. Punctuation marks should be used sparingly and must serve a purpose.

[view example](#)

Example A

You should not write:

"A liquor store must close for a regulatory inspection at sundown and noon Saturday, unless it has a permit to do so."

You may rather write:

"A liquor store must close for a regulatory inspection at sundown every day. A liquor store must also close for a regulatory inspection at noon Saturday, unless it has a permit to remain open during that inspection."

Commentary: The disfavoured formulation is ambiguous with regard to whether inspection at sundown is to take place on Saturday or on all other days (as the suggested formulation specifies).

Example B

You should not write:

'The market prices of [product X] shall be the prices ex-factory, exclusive of national taxes and charges:

(a) of the fresh product packaged in blocks;

(b) raised by an amount of [EUR X] to take account of the transport costs necessary.'

You may rather write :

'The market prices of [product X] shall be the prices ex-factory of the fresh product packaged in blocks, exclusive of national taxes and charges. Those prices shall be raised by an amount of [EUR X] to take account of the transport costs necessary.'

Example C

You should not write:

'All parties to the agreement must have access to the results of the work, subject to the understanding that research institutes have the possibility to reserve use of the results for subsequent research projects.'

You may rather write :

'All parties to the agreement must have access to the results of the work. However, research institutes may reserve use of the results for subsequent research projects.'

- 1.4. There may be a conflict between the requirements of simplicity and precision. Often simplification can diminish precision. In practice, a balance must be struck so that the provision is as precise as possible, but not to the point where it becomes too difficult to understand. That balance may vary according to the addressees of the provision.

[view example](#)

Example A

In the context of bread-making, you should not write:

"1 part sodium chloride for every 20 parts sucrose".

You may rather write:

"1 part salt for every 20 parts sugar".

Example B

In the context of chemistry, you should not write:

"salt" and "sugar".

You may rather write:

"sodium chloride" and "sucrose".

Guideline 2

An Act should take into account both the needs of the addressees, with a view to enabling them to identify their rights and obligations unambiguously, and the needs of the persons responsible for putting the Act into effect.

- 2.1. There are different categories of audiences and addressees of legislation, ranging from the population at large to specialists in particular fields. Each category is entitled to expect that the legislative provisions addressing them use language they can understand.

[view example](#)

Example A

In an inheritance statute, you should not write:

"A person who kills a family member with malice aforethought is not eligible to inherit from that family member".

You may rather write:

"A person who intentionally kills a family member is not eligible to inherit from that family member".

- 2.2. Legislation entails intervention by implementing agencies at different levels (for example civil servants, scientists, lawyers and courts). The language of legislation should take account of that. In particular, when legislation includes technical requirements, these should be understandable by the agencies and officials who will implement such requirements.

[view example](#)

Example A

You should not write:

a boat shall not be operated at a speed greater than "50 miles per hour".

You may rather write:

a boat shall not be operated at a speed greater than "44 knots".

- 2.3. An Act should use language that has a settled meaning in everyday use. Trendy words should be avoided because their meanings may not be adequately settled. Archaic words should be avoided because they are not in everyday use.

[view example](#)

Example A

You should not write:

"a devisee or legatee" shall pay an inheritance tax of 20 percent.

You may rather write:

"the inheriting person" shall pay an inheritance tax of 20 percent.

- 2.4. An Act should use characters and symbols consistently, in a way that ensures that the text is accessible to people with visual impairments.

[view example](#)

Example A

You should not write:

a person shall pay a fine of "\$1,000.00 to \$5000".

You may rather write:

a person shall pay a fine of "\$1,000 to \$5,000".

Guideline 3

An Act should be concise and its content should be as uniform as possible.

- 3.1. The characteristic of good legislative style is the succinct expression of the contents of the Act.

- 3.1.1. Illustrative clauses, intended to merely explain the text to the reader without stating additional norms or definitions, should be avoided.

3.1.2. To illustrate general concepts, specific examples can be listed, but it must be made clear that the list is non-exhaustive.

3.1.3. While keeping the main provisions in the body of the Act, it is often preferable to include detailed provisions in a schedule or an implementing measure to be effected through secondary legislation.

[view example](#)

Example A

If the intention of the legislator is to prohibit the sale of all food or drink that has minimal nutritional value.

You should not write:

"A school vending machine shall not offer cola or candy, since they have minimal nutritional value."

You may rather write:

"A school vending machine shall not offer cola, candy, or any other food or drink that has minimal nutritional value."

3.2. The text of the Act should be consistent.

3.2.1. The purpose of the Act must be respected throughout the Act. Rights and obligations must not extend to other fields, going beyond the scope of the Act.

3.2.2. Rights and obligations must be coherent and not contradictory.

3.2.3. The provisions should be grouped in a coordinated manner with obvious linkage.

3.2.4. An Act that is essentially temporary must not include provisions of a permanent nature.

[view example](#)

Commentary

*If the purpose of the Act is to improve the delivery of health care in rural areas, **it should not contain a** provision that creates a tax incentive for purchasers of fuel-efficient cars.*

3.3. An Act should also be consistent with other Acts and avoid overlaps with them. A new Act should not raise doubts concerning the applicability of an older Act.

[view example](#)

Commentary

If an existing Act gives the President the power to set tariff schedules for the import and export of electronics, and a new Act gives the Minister of Technology the power to set tariff schedules for the import and export of electronics, the new Act should make clear whether the President's power still exists and, if so, what its relationship is to the Minister's power.

3.4. Acts having a higher hierarchical level (in particular, legislation) should have more general and abstract contents, and correspondingly Acts having a lower hierarchical level (in particular, regulations) should have more specific and concrete contents.

[view example](#)

Commentary:

If an Act creates a program under which each government mine worker who is injured in a mining accident is entitled to compensation for the injury, it may be appropriate for the details to be set forth in regulations instead. The regulations could include specific and concrete details, such as who qualifies as a "government mine worker", what qualifies as an "injury" and a "mining accident", how the compensation is to be determined, and when and how it is to be paid.

Linguistic Aspects (4-8)

Guideline 4

Basic-units and sentences should be simple. Long basic-units, complicated sentences, and convoluted wording should be avoided.

4.1. The normative contents of the Act should be expressed in the Act's basic-units, usually called sections or articles. Each basic-unit should contain a single provision expressing only one idea. A single basic-unit may, however, both enunciate and elaborate on a single idea.

[view example](#)

Example A.

*In an Act against the use of child soldiers, **you should not write** a single basic-unit to state the purposes of the Act and to set forth the new criminal penalties, prevention programs, victim assistance programs, and so on.*

***You may rather write** one basic-unit to state the purposes of the Act, another to set forth the new criminal penalties, a third to set forth the prevention programs, a fourth to set forth the victim assistance programs, and so on.*

4.2. Long basic-units must be split into easily assimilated subdivisions, following a logical progression, since an excessively compact block of text is hard for the eye to follow and the mind to absorb. This must not, however, result in sentences being either artificially or unduly broken up.

4.2.1. It is not necessary for interpretation, nor desirable in the interests of clarity, for a single basic-unit to cover all aspects of an idea. It will often be preferable to deal with those aspects in several basic-units grouped together rather than in a single basic-unit.

4.2.2. Particularly in the initial stages of the adoption process, basic-units should not be too complex in structure.

Drafts and proposals for Acts (e.g. Bills) will be subject to deliberations and negotiations throughout the adoption process which, in most cases, will result in further additions and refinements. Subsequent amendments of the Act (often numerous) will also be difficult to insert if the basic-units are already over-complex.

[view example](#)

Example A

*In an Act creating a grant program for small businesses developing energy-efficient projects, **you should not write** a single basic-unit for the entire grant program, with subdivisions setting forth the purpose of the program, the authority for the program, the eligibility requirements, the application requirements, the criteria to be used for awarding grants, the monitoring and enforcement provisions, and so on..*

You may rather write a series of basic-units, one for each of those aspects of the program.

Example B

You should not write:

“4. The Government may take measures to derogate from paragraph 2, in respect of a given information society service, if the following conditions are fulfilled:

a) the measures shall be:

l) necessary for one of the following reasons:

public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;

the protection of public health;

public security, including the safeguarding of national security and defence;

the protection of consumers, including investors;

ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;

iii) proportionate to those objectives;

You may rather write:

“4.1. The Government may take measures to derogate from paragraph 2, against a given information society service which prejudices or presents a serious and grave risk of prejudicing, the following objectives:

public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;

the protection of public health;

public security, including the safeguarding of national security and defence;

the protection of consumers, including investors.

4.2. The measures indicated in subsection 4 may only be adopted when they are necessary and proportionate with regard to one of the objectives listed in subsection 4.1.

Commentary: *The disfavoured formulation has a uselessly convoluted syntactical structure, which does not correspond to the natural order of ideas. The favoured formulation is more easily understandable since it follows the natural order of ideas.*

- 4.3. It is sometimes easier to draft complicated sentences rather than make the effort of synthesis necessary to achieve clear wording. However, this effort is essential in order to achieve a legislative text that can be easily understood, translated, and implemented.

[view example](#)

Example A

You should not write:

‘If products do not satisfy the requirements laid down in Article 5, the Government shall take all necessary measures to restrict or prohibit the marketing of those products or to ensure they are withdrawn from the market, subject to administrative penalties for the other eventuality decided on by the government States.’

You may rather write :

‘If products do not satisfy the requirements laid down in Article 5, the Government shall take all necessary measures to restrict or prohibit the marketing of those products or to ensure they are withdrawn from the market. The Government shall determine the administrative penalties to be applied in the event of failure to comply with those restrictions, prohibitions or withdrawal from the market.’

Commentary: *If you think your draft is clear but another person thinks it is complicated or confusing, you should not assume that you are right and the other person is wrong.*

You should rather assume that your draft can always be made clearer, and if one person thinks it is complicated or confusing, there are many other people who will think so, too.

Guideline 5

Acronyms should be used sparingly.

- 5.1. Acronyms must be defined when first used and should be used sparingly, especially when they may be unfamiliar to the addressees of the Act.

[view example](#)

Example A

You should not write:

"The MOJ".

You may rather write:

"The Ministry of Justice".

Example B

You should not use *"The MOJ" each place the term appears.*

You should rather use *"The Ministry of Justice (in this Act referred to as the 'MOJ')" the first place the term appears, and the "MOJ" after that.*

Guideline 6

The terminology used in an Act should be consistent within that Act and with the terminology of other Acts already in force, especially in the same field.

- 6.1. In order to facilitate understanding and interpretation of legislation, the text must be consistent. A distinction can be drawn between terminological consistency, concerning only the use of terms, and logical consistency, which in a broader sense covers the absence of contradictions between the provisions in the Act.

[view example](#)

Example A

You should not write:

"Every individual citizen" has the right to vote, and "such a person" may do so in the town where he or she lives.

You may rather write:

"Every individual citizen" has the right to vote, and "such a citizen" may do so in the town where he or she lives.

- 6.2. Terminological consistency requires that the same terms are used to express the same concepts, and that identical terms are not used to express different concepts. The aim is to leave no ambiguities, contradictions, or doubts as to the meaning of a term. Any given term is therefore to be used in a uniform manner to refer to the same thing, and another term must be used to express a different concept.

- 6.2.1. The requirement of consistency does not concern only the provisions pertaining to a single Act, including the related annexes and secondary legislation, but it also concerns the provisions of related Acts, in particular implementing Acts and all other Acts covering the same area. In general, terminology should ideally be consistent within all the legislation in force.

- 6.2.2. Words must be used in their ordinary sense. If a word has one meaning in everyday or technical language, but a different meaning in legal language, the phrase must be formulated in such a way as to avoid any ambiguity.

- 6.2.3. Defined terms must be used in a uniform manner and their content must not diverge from the definitions given. If a term is used which was defined in a previous Act, a reference must be made to the previous definition, and the term should be used consistently with such a definition, unless a different interpretation is intended for the purpose of the new Act, in which case the required definition should be provided in the new Act.

[view example](#)

Example A

If an Act uses the term "minor", you should always use the term "minor" and not a similar term, such as "child".

Example B

In an inheritance statute, you should not use

the ambiguous term "child", which can mean "a person who is not an adult" but can also mean "a person, whether an adult or a minor, who is the offspring of another person".

You may rather use

an unambiguous term such as "minor" to mean "a person who is not an adult", and an unambiguous term such as "son or daughter" to mean "a person who is the offspring of another person".

Guideline 7

Gender-neutral language should be used, avoiding gender-specific terms.

- 7.1. Terms that only apply to one gender for referring to the exercise of a particular profession, function or activity, to family roles, or to access to education, as well as gender-specific pronouns should be avoided. [Standards having the effect of disqualifying one gender for a particular profession or activity should be avoided.]

[view example](#)

Example A

When referring to an individual of both sexes, you should not write: "he" or "his".

You may rather write *"he or she" or "his or hers", as the case may be,*

or

use "the individual" (instead of "he or she") or "the individual's" (instead of "his or hers").

*Example B***You should not write:***"policeman".***You may rather write:***"police officer".*

- 7.2. However, if the substance of a provision applies to one gender only, words that identify that gender should be used.

[view example](#)

Example A

*In an Act requiring the doctor presiding at a live birth to sign a form identifying the birth mother (and not one of the two parents indifferently), **you should not write** "the individual who gave birth", or "the parent of the child".*

You may rather write "the woman who gave birth" or "the birth mother".

Guideline 8

When an Act is expressed in different official languages, all language versions must be identical in structure and substantive meaning.

- 8.1. Each language version of an Act should be in correct grammatical language.

[view example](#)

Commentary

When providing different language versions of an Act, each version should cover the whole Act, and all terms in the Act should be appropriately translated. You should not assume that the person reading one language version also has access to the other language versions.

- 8.2. The structure of an Act must be the same in each language version with regard to both basic-units and their subdivisions, and with regard to the grouping of those basic-units into higher-divisions (see Guideline 18).

[view example](#)

Example A

*If the Act is expressed in English and in French, the English version of the Act **should have** the same structure as the French version. If the English version has a basic-unit 193(g), the French version **should also have** a basic-unit 193(g), with the same content.*

- 8.3. The overriding need for identity of substantive meaning in all languages may require certain linguistic compromises. Therefore the same syntax is not always necessary, nor possible: one version of a provision may contain a different number of sentences than the other, and a definition present in one language version need not necessarily be reproduced in another if it is not needed.

[view example](#)

Example A

*If the English version has a basic-unit 193(g) that contains four sentences, the French version **should have** the same number of sentences, unless using a different number of sentences (e.g. three or five) is required for having a better French formulation. In any case, the meaning of the English version of 193(g) and the meaning of the French version of 193(g) **should be** the same.*

Commentary:

One language may have a word that captures the intended meaning precisely, while another language may need several words, or an entire definition, to capture the intended meaning precisely. If so, the first language may use fewer words or sentences than the second language.

Structure of Legislative Acts (9-22)**Guideline 9**

All Acts must be structured according to national tradition. The basic-units are preceded by front-matter and may be followed by end-matter. Acts may include annexes.

- 9.1. The front matter of an Act includes various elements meant to identify the Act, put it in context, and facilitate access to its contents.

- 9.1.1. The front matter should always include the elements that are necessary to identify the Act (such as title, type, date, and name of the adopting/enacting authority). Different national traditions may mandate or permit the inclusion of further elements (such as serial number, reference to the authentic language version, date of entry into force, history of amendments, list of subordinate legislation issued under the Act, table of contents, recitals, statements of purpose, and enactment formulas).

- 9.1.2. Some elements of the front matter are part of the official legislative document considered by the enacting authority, some other elements are added after enactment by editors, as a convenience to readers. A clear structural distinction should be maintained between the front matter that is official and the front matter that is merely editorial.

[view example](#)

Commentary:

In some jurisdictions, after an Act is enacted, there are compilers or editors who add information for the convenience of the reader. For example, the jurisdiction may consolidate or arrange various Acts together and publish them as part of a code; if so, the compilers or editors may insert a marginal note to the Act to identify how the Act will appear in the code.

- 9.2. The basic-units of an Act are the main normative part of the Act. The basic-units may be grouped in higher-divisions and each basic-unit may be structured in subdivisions.

[view example](#)

Commentary:

The basic units of an Act should be structured in a logical and intuitive way. Related provisions should be grouped together and placed in a logical and intuitive sequence within the group. Related groups should be organized together into higher divisions and placed in a logical and intuitive sequence within the higher division.

Example A

In an Act creating several new crimes, the most logical and intuitive structure may be to arrange the crimes in order from most important to least important, or most serious to least serious.

Example B

In an Act setting forth rules of court procedure, the most logical and intuitive structure may be to arrange the rules in chronological order, beginning with rules that would apply at the beginning of the court proceeding and ending with rules that would apply at the end of the court proceeding.

Example C

In a basic-unit setting forth a list of definitions, the most logical and intuitive structure may be to arrange the definitions in alphabetical order within that basic-unit.

- 9.3. The end-matter of an Act may include ending formulas, dates and places of adoption/enactment, and signatures.

[view example](#)

Commentary:

As with the front-matter of an Act, the end-matter of an Act may include material added by compilers or editors for the convenience of the reader. For example, the end-matter of an Act may contain notes that identify other documents that are related to the Act (such as the legislative documents and reports that were created during the legislative process), and where those other documents are published.

- 9.4. The annexes of an Act complement the Act's content.

[view example](#)

Commentary:

In some cases, information needed to understand an Act cannot be presented effectively using only words and sentences. Such information can sometimes be presented more effectively in tables or in graphical form, such as with a map, diagram, or chart. If so, it may be best to place the table or graphic in an annex.

Guideline 10

The title of an Act should give a succinct, non-misleading and, where possible, complete indication of the subject matter.

- 10.1. The title of the Act should provide clear indications as to the main subject matter of that Act. In particular, it should make it possible to determine what is (or is not) dealt with in the Act. The title should not be cluttered with extraneous information, but rather should use keywords characteristic of the different areas of the Act. The title should not include biased, promotional, or wishful statements.

[view example](#)

Example A

You should not write:

"An Act to ensure peace".

You may rather write (using a more specific title):

"An Act to fund the military for fiscal year 2007".

- 10.2. The title should include the information needed to enable the readers directly affected (for example, not every farmer, but every apple producer) to be prompted to read the Act bearing that title.

[view example](#)

Example A

You should not write:

"An Act to require the licensing of certain vessels".

You may rather write (using a more specific title):

"An Act to require the licensing of personal watercraft known as 'jet skis'".

- 10.3. Where the title is the main means of identifying an Act, it must be different from the titles of other Acts in force.

[view example](#)

Example A

You should not write:

"An Act to provide funds for building roads".

You may rather write --

"An Act to provide funds for building roads for fiscal year 2007".

- 10.4. An Act amending an earlier Act should have a special title. The title of an amending Act should identify all the Acts which it amends. If the sole purpose of an Act is to amend other Acts, the title of the amending Act should also mention the titles of the amended Acts.

[view example](#)

Example A.

You should not write:

"An Act on the renewal of immigration permits".

You may rather write :

"An Act regulating the renewal of immigration permits, and amending the Immigration Act".

- 10.5. The title of secondary legislation should mention the primary legislation which it implements.

[view example](#)

Example A

You should not write:

"Regulations for industrial safety".

You may rather write:

"Regulations for industrial safety, as promulgated under the Industrial Safety Act."

Guideline 11

In some legal traditions the Act should have a short title.

- 11.1. If a short title is used, apply the following rules:

The short title should be different from the short titles of other Acts in force.

It should avoid esoteric acronyms, plays of language, and tributes or memorials to named persons who are not the subject of the Act.

Consideration should be given to easy and quick identification of the subject of the Act.

In some legal traditions it is required to use the long title when the Act is referred to for the first time in a later Act.

[view example](#)

Example A

You should not write:

"The Education Programs Reauthorization Act".

You may rather write:

"The Education Programs Reauthorization Act, 1990".

Example B

You should not write:

"The Protect Our River Transportation (PORT) Act".

You may rather write:

"The Port Security Act".

Example C

You should not write:

"The Julius Caesar State Secrets Act".

You may rather write:

"The State Secrets Act".

Guideline 12

In some legal traditions the front-matter may specify the legal basis of the Act and the main steps in the procedure leading to its adoption/enactment.

- 12.1. In some legal traditions, the Act's front-matter may include the indication of the following :
 the legal basis of the Act (the enabling provision which confers competence to adopt the Act);
 proposals, guidelines, initiatives, drafts, requests, and opinions which must be obtained and, where appropriate, the procedure to be followed;
 certain opinions and other non-mandatory procedural steps.

[view example](#)

Example A:

Having regard to the Article 100 of the Constitution,

Having regard to the proposal from the Government in accordance with the procedure referred to in Article 101 of the Constitution

Having regard to the opinion of the Economic and Social Committee

12.2. The front-matter should, where possible, use standardised wording.

[view example](#)*Commentary:*

In many jurisdictions, the front-matter can be used as a guide to the meaning of the basic-units. Generally, the drafting of the elements of the front-matter should follow the same principles as the drafting of basic-units: they should be clear, simple, consistent, and so on.

Guideline 13

In some Acts, the front-matter may include statements of purpose, which set out concise reasons for the basic-units, without reproducing or paraphrasing them.

13.1. The front-matter of an Act may include statements of purpose, which set out the reasons for, or principles underlying, the Act. Such statements should be clearly distinguished from the provisions in the basic-units.

[view example](#)*Commentary:*

A statement of purpose in the front-matter of an Act should be distinguished from the basic-units by using a specific wording (such as by using a series of clauses, each beginning with "Whereas").

Example A:

Act on Privacy in Telecommunication

...

Whereas

(1) data-processing systems must respect fundamental rights and freedoms, notably the right to privacy, and contribute to economic and social progress, trade expansion and the well-being of individuals;

(2) increasingly frequent recourse is being had to the processing of personal data in the various spheres of economic and social activity;

(3) the progress made in information technology is making the processing and exchange of such data considerably easier;

(4) the increase in scientific and technical cooperation and the coordinated introduction of new telecommunications networks necessitate and facilitate flows of personal data;

13.2. Each statement of purpose should have an alphanumeric designation or at least be placed in a separate paragraph. This practice is justified by obvious considerations of clarity of legislation and ease of reference, both before and after adoption of the Act.

[view example](#)*Example A*

You should not write:

"Given that the President called upon Parliament to solve the financial crisis and considering that the Parliament appointed a commission to study the financial crisis and make recommendations; and that the commission has made a report of its recommendations to Parliament; and that the Parliament hereby acts upon those recommendations;"

You may rather write:

"Whereas--

"(1) the President called upon Parliament to solve the financial crisis;

"(2) the Parliament appointed a commission ..." (and so on).

13.3. A statement of purpose should avoid substantive provisions or political exhortations.

[view example](#)*Example A*

You should not write:

Whereas it is forbidden to send unsolicited commercial communications

Whereas

The members of the High Court, being learned and wise, have ...".

You may rather write:

"Whereas the High Court has declared that sending unsolicited commercial communications is illegitimate ..."

13.4. The practice of including statements of purpose may apply not only to primary legislation, but also to secondary legislation.

[view example](#)*Commentary:*

In many jurisdictions, a statement of purpose in secondary legislation should, at minimum, identify the primary legislation it implements and state that its purpose is to implement that primary legislation.

Guideline 14

The basic-units of an Act should not include provisions having a non-normative nature, or restating

material already expressed in the same Act or in legal provisions already in force.

- 14.1. The basic-units of an Act should consist of operative legal provisions, including those setting out the indications (such as the scope and definitions) necessary to understand and apply the Act correctly. They should not include ideological or political statements, nor non-binding recommendations.

[view example](#)

Example A

You should not write:

The use of energy-saving cars is encouraged. The government wishes that public authorities will prefer to use them.

You should rather write (if the legislator intends to commit the administration to using energy-saving cars):

Public authorities shall use energy-saving cars, unless there are specific reasons for preferring non-energy saving ones.

- 14.2. The basic-units of an Act should not repeat the title of the Act. Even when it is impossible to avoid using words forming part of the title of the particular Act (for example, in the provision which defines the subject matter and scope of the Act), there should be some added specifications when such words are used in the text. Otherwise, such provisions have no normative content and may, moreover, create confusion as to the rights and obligations established by the Act.

[view example](#)

Example A

If the title of an Act is "An Act to ensure the historical preservation of information on government computers", you should not write:

"This Act operates to ensure the historical preservation of information on government computers, and each government employee has a duty to carry out this Act."

You may rather write (using more distinct language):

"For each agency within the government, the head of that agency shall ensure that all information on the computers of that agency is, on a periodic basis, archived and copied in a manner that ensures its historic preservation. The head of the agency shall establish rules and procedures for carrying out this Act, and those rules and procedures shall apply to all personnel of the agency."

- 14.3. The basic-units of an Act should not include provisions restating the same contents, by using similar or different words. Such repetitions are not only pointless but also dangerous, since the reader, in order to explain the duplication, will tend to assume that the two provisions have different meanings.

[view example](#)

Example A

You should not write:

Section 10. A person shall not walk a dog in a public park.

...

Section 20.

A dog owner shall not take his dog in a public park, unless in the areas where this is explicitly allowed.

You may rather write just one section:

Section 10. A person shall not walk a dog in a public park unless in the areas where this is explicitly allowed.

- 14.4. The basic-units of an Act should not merely reproduce or paraphrase passages or sections of another Act. This is a pointless and potentially dangerous practice, producing uncertainty. For instance, the interpreter will have doubt on which provision to apply, or on whether a modification to one of the two provisions also impacts on the other. Moreover, any departure from the original wording may give the impression that a different result was intended, and even give rise to a sort of presumption to that effect.

[view example](#)

Example A

If section 4 of the Wild Cats Act states, "If a person keeps a wild cat in a residential area and the wild cat escapes and causes bodily injury, the person is liable for that bodily injury whether or not the person was at fault for the escape", do not write (unless you also abrogate section 4) in a new Act:

"According to section 4 of the Wild Cats Act, if a person keeps a wild cat in a residential area and the wild cat escapes and causes bodily injury, the person is liable for that bodily injury whether or not the person was at fault for the escape. The same penalty also applies under the same conditions, to a person keeping a snake in a residential area."

You may rather write in the new Act

"If a person keeps a snake in a residential area and the snake escapes and causes bodily injury, the person is liable for that bodily injury whether or not the person was at fault for the escape."

Guideline 15

Where appropriate, provisions on the purpose and applicability of the Act should be included at the beginning of the basic-units.

- 15.1. The purpose of an Act is the issue the Act deals with, namely, the problem it intends to address. "Applicability" refers to the categories of situations, as well as the persons, to which the Act applies.

[view example](#)

Example A

"The purpose of this Act is to limit the liability of dentists" is a purpose provision.

"This Act applies to any act or omission of any dentist that occurs after the date of the enactment of this Act" is an applicability provision.

- 15.2. A first basic-unit, defining the applicability of the Act, is common in legislation and international agreements. Whether or not it is useful should be determined on a case-by-case basis.

[view example](#)

Example A

A provision regarding geographic applicability might provide, "This Act applies in all places, including extraterritorially."

Commentary: Whether or not a provision regarding geographic applicability is useful may depend on the default legal rules of the jurisdiction. If the presumption of the jurisdiction is that all Acts apply "in all places, including extraterritorially", unless stated otherwise, stating it in the Act may not be useful. If the presumption of the jurisdiction is, instead, that Acts do not apply "in all places, including extraterritorially", unless the Act contains express words to that effect, stating it in the Act is essential.

- 15.3. Such a basic-unit should not merely paraphrase the title. In contrast, it may provide information which was not included in the title (in the interests of brevity), but enables the reader to determine from the outset to what and to whom the Act applies. Since such a basic-unit gives the reader the first understanding of the Act, it should not be misleading.

[view example](#)

Example A

If the title of the Act is "An Act to regulate trafficking in firearms", a provision on applicability that states "This Act applies to trafficking in firearms" is not useful. However, a provision on applicability that states "This Act applies to any individual who possesses a firearm without a license to do so" may be useful.

- 15.4. The applicability of the Act should be specified directly through an appropriate provision, rather than by introducing, in the basic-unit that contains definitions, a term covering the entire applicability of the Act. Only a specific provision on applicability enables the user to grasp the applicability of the Act immediately.

[view example](#)

Example A

You should not write (using an applicability provision):

"This Act applies to any prohibited person" (while defining "prohibited person" elsewhere in the Act).

You may rather write:

"This Act applies to any individual who possesses a firearm without a license to do so".

Guideline 16

Definitions should be provided when necessary. In particular, they can be used for eliminating ambiguities or introducing new terms. They should be placed in a single basic-unit at the beginning or at the end of the Act.

- 16.1. Each term in an Act should be used, as far as possible, according to its ordinary (everyday) or technical meaning. A definition should be provided only when it is necessary for the sake of clarity and precision. In particular, a definition may be used for removing an ambiguity, for example, when a term has several dictionary meanings but should be understood in only one way within an Act. A definition may also be used for a new term or to limit or extend the meaning of an existing term.

[view example](#)

Example A

You should not write (as a definition):

"homicide" means the killing of a human being".

You may rather use the term "homicide" without a previous definition.

Example B

You should not use:

the term "child", without defining it.

You may rather use:-

"child", and specify whether it is being used to mean "a person who is not an adult" or "a person, whether an adult or a minor, who is the offspring of another person".

Example C

You should not use:

"wild dog", without defining it.

You may rather use:

"wild dog" and define it, such as: "the term 'wild dog' means a canine originating in the wild, and does not include a domestic dog that has become feral."

- 16.2. Definitions should be placed in a single basic-unit at the beginning or at the end of the Act (in some jurisdictions this is called the interpretation provision or the definition section).

[view example](#)

Example A

You should not write:

"A canine originating in the wild (a 'wild dog') cannot be kept without a valid license to do so (a 'proper license').",

You may rather write:

"A wild dog cannot be kept without a proper license", and provide definitions of those terms in the section devoted to definitions.

- 16.3. Definitions should only specify the meaning of terms, they should contain no substantive rules. This will avoid the danger of users overlooking these substantive rules.

[view example](#)

Example A

You should not write:

a definition containing a substantive rule, such as "the term 'environmentally protected area' means an area that the Director has designated under the Environmental Act, except that the President may include up to two other areas that the Director has not designated."

You may rather write:

a substantive basic-unit, such as "1. This Act applies to an area that the Director has designated under the Environmental Act, and up to two other areas included by the President." and a definition, such as "the term 'environmentally protected area' means any area to which this Act applies under basic-unit 1."

Example B

You should not write:

d) "complaint" means any information or report submitted by ... any person with an interest in the safety of the ship ... unless the Port Authority deems the report or complaint to be manifestly unfounded; the identity of the person lodging the report or the complaint must not be revealed to the master or the owner of the ship concerned."

You may rather write:

In the definition section: "complaint" includes any information or report submitted by ... any person with an interest in the safety of the ship.

In a following section: The Port Authority obliged to take the complaint into consideration, unless it is manifestly unfounded. In any case, the identity of the person lodging the complaint must not be revealed to the master or the owner of the ship concerned."

Guideline 17

It may be useful to structure the basic-units in a sequence of different kinds of provisions: provisions on purpose and applicability, definitions, rights and obligations, procedural provisions, sanctions, transitional and final provisions. It may also be useful to draft certain kinds of provisions in standard form.

- 17.1. The following kinds of provisions should be drafted in standard form:
- provisions on purpose and applicability;
 - definitions;
 - sanctions;
 - transitional and final provisions (covering all of the following: any repeal of earlier Acts, application provisions, saving provisions, notwithstanding provisions, sunset provisions, provisions amending earlier Acts, the commencement date of the Act, and the operational duration of the Act).

[view example](#)

Example A

A standard form for a sanction might be, "A person who violates this Act shall be punished with a fine under the Criminal Code, imprisonment of up to 3 years, or both."

- 17.2. It is difficult to prescribe standard forms for other kinds of provisions, including provisions on rights and obligations, and procedural provisions, since their structure depends on the objectives of the Act, as well as the degree of complexity of the system provided for.

[view example](#)

Commentary:

Even when a standard form is not possible, it is often useful to follow an analogous or similar form. For example, a provision that entitles old people to a pension and a provision that entitles young people to an education may not follow a standard form, but may follow an analogous or similar form.

Guideline 18

Basic-units can be subdivided into lower-divisions and grouped into higher-divisions.

- 18.1. A basic-unit may be divided into paragraphs. When a basic-unit contains a list, each element of the list should be related to the introductory words. To that end, inserting autonomous sentences or subparagraphs in a list should be avoided.

[view example](#)

Example A

You should not write:

"1. A bus driver shall have--

(a) a valid bus driver's license; and

(b) obey all traffic rules that apply to a car driver.

(c) A bus driver shall be at least 18 years of age."

You may rather write:

"1. A bus driver shall satisfy the following requirements:

"(a) have a valid bus driver's license;

"(b) obey all traffic rules that apply to a car driver; and

"(c) be at least 18 years of age."

- 18.2. In complex Acts, the basic-units can be grouped into higher-divisions, which usually start with chapters (divided, if necessary, into subchapters). When the text is extremely complex, chapters may be grouped into parts (which may, where necessary, be split into subparts). The chapters, subchapters, parts, and subparts should be designated with Arabic or Roman numbers. Each higher-division must, and each basic-unit may, be accompanied by a descriptive heading that summarises the matter which is covered.

[view example](#)

Example A

"CHAPTER 1. CRIMES AGAINST THE PERSON.

"CHAPTER 2. CRIMES AGAINST PROPERTY.

"CHAPTER 3. CRIMES AGAINST THE STATE.", and so on.

- 18.3. The basic-units should have a unique designation for the Act as a whole. The designations should be in Arabic numerals.

[view example](#)

Example A

If the basic-units of Chapter 1 are numbered 1 through 22, then the first basic-unit of Chapter 2 should be 23 or higher. In some jurisdictions, the custom may be for the basic-units of Chapter 1 to begin with 101, the basic-units of Chapter 2 to begin with 201, and so on.

- 18.4. Basic-units and their lower-divisions should be designated differently, to enable them to be clearly distinguished, and set out consecutively.

[view example](#)

Example A

If the basic-units are designated 1., 2., 3., and so on, then the first tier of subdivision within those basic-units should not also be designated 1., 2., 3., and so on; instead, they could be designated a., b., c.; (1), (2), (3); (i), (ii), (iii); or some other system of designation. If those subdivisions are further subdivided, each lower tier of subdivision should have its own system of designation.

For instance, under one system of designation:

basic-units are designated 1., 2., 3. ...

subdivisions (first tier) are designated (a), (b), (c) ...

subdivisions (second tier) are designated (1), (2), (3) ...

subdivisions (third tier) are designated (A), (B), (C) ...

subdivisions (fourth tier) are designated (i), (ii), (iii) ...

subdivisions (fifth tier) are designated (I), (II), (III).

- 18.5. Each higher-division, basic-unit, and lower-division may have "side notes" to classify the provisions. These may be located on the side of the page in a clear format so as not to confuse them with the descriptive heading (see Table 1 below). "Shoulder notes" placed on the shoulder of the provision serve the same purpose and are easier electronically. The notes should be short and should indicate the brief content of the provision.

[view example](#)

Commentary:

The purpose of a side note or shoulder note may vary by the customs and traditions of the jurisdiction. For example, in a jurisdiction in which an Act is presumed not to apply to the President unless it specifically states that it does, one purpose of a side note or shoulder note may be to signal to the reader that the provision does apply to the President (for example, the note may signal: "Applies to President").

Another purpose of a side note or shoulder note may be to provide additional reference information for the convenience of the reader. For example, if the provision refers to "section 23 of the Government Documents Act", the note may provide an alternative citation to that Act, if an alternative citation exists.

Table 1:

	Anglophone tradition	French tradition	Portuguese tradition
	Designation	Designation	Designation
Higher Division	Part	Partie (codes)	Parte (codes)
		Livre (codes)	Livro (codes)
	Chapter	Titre	Título
	Subchapter	Chapitre	Capítulo
Basic Unit	Section	Section (codes)	Secção
	Subdivision	Subsection (code)	SubSecção
		Article	Artigo
		Alinéa	Alíneas
		Paragraph	Parágrafo
Subparagraph			
Annex	Schedule	Annexe	Anexo

Guideline 19

An Act may be complemented by annexes or schedules, which should be introduced in the basic-units. There are three kinds of annexes: integral-part-annexes, attached instruments, and informative-annexes.

19.1. Annexes should be drafted consistently with the basic-units, as regards form, language, and terminology.

[view example](#)

Commentary:

Setting forth material in an annex rather than in the body of the Act itself is usually done for convenience rather than for any substantive reason. The material in the annex should, therefore, be drafted as if it were part of the Act itself. Stated another way, if a draft of a Tax Act is prepared in which a tax schedule appears as an annex, and a decision is made to change the draft so that the tax schedule appears instead in the body of the Tax Act (or vice versa, if the decision is made to change from having a tax schedule in the body of the Act to having it in an annex), the drafter will need to relocate the tax schedule but should not otherwise need to make any changes to its form, language, or terminology.

19.2. Annexes should be organised in a clear hierarchical structure and should follow a standardised format.

[view example](#)

Example A

If the first annex is Annex A, the second one should be Annex B, and so on.

Commentary: The annexes should be placed in a logical and intuitive order, such as the order in which they are referenced in the Act.

Guideline 20

Integral-part-annexes are used to set out provisions (or parts of provisions) which expand on or complement the basic-units of the Act.

20.1. An annex to an Act is presumed to be an integral-part-annex, unless stated otherwise. Consequently there is no need to state that the annex is an integral part of the Act.

[view example](#)

Commentary:

Only if there is reason to doubt whether an annex will be considered to be an integral-part-annex, an appropriate phrase may be used, such as "The provisions of Annex I are hereby incorporated by reference."

If an annex is not to be an integral part of the Act, that fact should be stated, either in the Act itself or in the annex. An appropriate phrase should be used, such as "The provisions of Annex I are illustrative only and do not have force of law."

20.2. Integral-part-annexes are used as a means of presenting provisions or parts of provisions separately from the basic-units of the Act, in particular because of their technical nature. Examples might be: rules to be applied by customs officers, doctors, or veterinarians (such as chemical analysis techniques, sampling methods, and forms to be used), lists of products, tables of figures, plans, fees, and drawings.

[view example](#)

Example A

A Tariff Act may have an annex of tariff schedules, and a Budget Act may have an annex containing lists of programs to be funded and the amount funded. An Act providing for a conveyance of land may have an annex setting forth a survey of the land.

20.3. Where there are practical obstacles to incorporating technical rules or data in the basic-units, they should be put in an integral-part-annex. There must be a clear reference in the appropriate basic-units to the link between those provisions and the annex (using phrases such as "listed in the Annex" or "set out in Annex I").

[view example](#)

Commentary:

The words used to express the clear reference may vary according to custom.

20.4. An appropriate word (such as "Annex" or "Schedule") must appear at the beginning of the integral-part annex, and it is useful to indicate the basic-unit to which the annex relates (there will often be no need for any other heading). If there are multiple annexes, they should be designated in a way that is clearly distinct from the numbering of the basic-units of the Act. For instance Roman numerals (I, II, III, etc.) or alphabetic characters (A, B, C, etc.) may be used.

[view example](#)

Example A

If a Tax Act includes several chapters of tax rules, each with a corresponding tax schedule in an annex, rather than using-- "Annex 1" to correspond to the rules in Chapter 1, use--

"Annex I" or "Annex A" to correspond to the rules in Chapter 1.

20.5. Although there are no specific rules governing the presentation of an integral-part-annex, it should have a uniform structure and be subdivided in such a way that the content is as clear as possible, in spite of its technical nature. Any appropriate system of designating or subdividing the annex may be used. A table structure should be avoided.

[view example](#)

Commentary:

The material in an annex is often complex. The drafter should take care to use any aids to the reader that may be useful. If data is presented in rows and columns, it may be useful to provide horizontal or vertical lines at regular intervals to help the reader follow along a row or column.

Guideline 21

An attached instrument is an existing autonomous legal instrument. It is attached to the Act that confers additional legal effects on the attached instrument, generally by approving the attached instrument.

- 21.1. An Act may attach another legal instrument (typically an international agreement) in order to make that instrument binding in the internal legal system of a State.

[view example](#)

Commentary:

When the Government enters into a trade agreement, the Parliament may be required to ratify or implement the trade agreement through legislation. If so, it may also be customary for the Act ratifying or implementing the trade agreement to attach the trade agreement as an attached instrument.

- 21.2. An attached instrument is not preceded by the word "Annex", but such an instrument should have a proper title and should be organised as a normal Act. However in some jurisdictions an attached instrument should be titled as a schedule.

[view example](#)

Commentary:

The document that forms the attached instrument may be a retyped version of the original document, or it may be a direct copy of the original document. Either way, the attached instrument should begin with a proper title indicating its status as an attached instrument, such as "ATTACHMENT 1: CONVENTION ON THE LAW OF THE SEA".

- 21.3. An attached instrument may itself have annexes. This is typically the case for international agreement.

[view example](#)

Commentary:

This would be the case if, for example, a treaty has annexes, and the treaty is included with an Act as an attached instrument. In such a case, the drafter should take care that the documents are easy to distinguish from one another and use distinct systems of designation, so readers are not easily confused and precise references can be made.

Guideline 22

Informative annexes provide information on the Act they are attached to; they are not legal instruments.

- 22.1. An informative annex is not legally binding, although it forms part of an Act. An informative annex may consist of documentation, reports, and so on, attached to the Act only to facilitate its interpretation, understanding and application.

[view example](#)

Commentary:

An informative annex may consist of a document that was prepared during the legislative process, such as a legislative report. It may also consist of a document that illustrates some aspect of the Act, either through text or graphics. For example, an Act specifying motor vehicle driving rules may include diagrams of various driving situations.

Normative References (23-28)

Guideline 23

Reference to other Acts should be kept to a minimum.

- 23.1. Reference should be made to another Act only if:
it makes it possible to simplify the text of the Act making the reference, by not repeating the content of the provision referred to;
the comprehensibility of the provision making the reference is not affected; and
the Act referred to has been published or is sufficiently accessible to the public.

[view example](#)

Example A

If a Motor Vehicle Act creates a crime of driving while intoxicated, it may be appropriate for the Motor Vehicle Act to set forth the elements of the crime, while referring the reader to the Criminal Code to determine the punishment. For example, the Motor Vehicle Act may provide, "A person who operates a motor vehicle while impaired by drugs or alcohol commits a class B crime and shall be punished under the Crimes Act."

- 23.2. When a reference is made to a provision, the subject matter of that provision should be indicated.
23.2.1. References made merely by citing another provision in brackets must be avoided.

- 23.2.2. References to existing provisions just for the purpose of requiring their application in unspecified analogous cases (as is done by using words such as “mutatis mutandis”) should be avoided. The purpose for which the reference is made should be stated, or the reference should not be made at all.
- 23.2.3. Reference to existing provisions just for the purpose of excluding that the new Act interferes with such provisions (as is done by using words like “without prejudice”) should be avoided. Such references indicate contradictions between the Act containing the reference, and the Act to which reference is thus made, and they should be made unnecessary by better circumscribing the applicability of the new Act.

[view example](#)

Example A

You should not write:

"Without prejudice to the Crimes Act, a person who violates this section shall be imprisoned for at least 5 years."

You may rather write:

"A person who violates this section shall be imprisoned for at least 5 years. However, in accordance with section 15 of the Crimes Act, the court may set that person free without imprisonment if it is in the interest of justice to do so."

- 23.3. An Act should not reproduce the provisions of another Act, but should refer to those provisions. In particular, provisions of primary legislation should never be reproduced in secondary legislation.

[view example](#)

Example A

When a requirement is stated twice, having been first stated in one Act and then reproduced in another Act, any later effort to change or repeal the requirement may be ambiguous. For example, if section 12 of the Buy African Act states, "Whenever a government agency purchases a product, it shall give priority to purchasing a product from an African source", and the intent is to create a new government agency (the "New Agency") and specify that the rule also applies to that agency, do not write:

"Whenever the New Agency purchases a product, it shall give priority to purchasing a product from an African source".

You should rather write:

"Whenever the New Agency purchases a product, section 12 of the Buy African Act applies", or

"Section 12 of the Buy African Act applies to the New Agency in the same manner as it applies to any other government agency."

Example B

When Act X established the Government's obligation to adopt certain measure, you should not write, in a new Act:

With a view to establishing that system in Act X, the Government shall adopt the measures provided for in Articles 3, 4 and 5 of Act X.

You should rather omit the reference.

- 23.4. References should be used in moderation, because of the principle of transparency. It should be possible to read and understand an Act without consulting other Acts, and the use of references should not affect the comprehensibility of the text.

[view example](#)

Commentary:

If an Act is so closely connected to another Act that many references are needed, it may be more appropriate to amend the other Act.

Guideline 24

Internal and external references must be precise, to enable unequivocal identification of the provisions referred to.

- 24.1. References should be explicit and complete. They should clearly indicate the Act (type of the document, identification number, date of adoption, etc.) and the particular provisions referred to (higher-division or lower-division) to facilitate human and machine detection. The reference should not contain editorial elements like page or line numbers.

References should be drafted, as much as possible, using formulas corresponding to the tradition of the legal system concerned (e.g. "Chapter I, section 2, subsection c");

References should not be specified through the use of exception clauses (e.g. "Chapter III except section 21 and section 32");

Partial references should be avoided (e.g. "section 2 of the Act above" where previously the full citation of the Act was given);

References covering a range of sections should be avoided (e.g. "section 2-7"). It is better to list all the elements of a multiple reference (e.g. "section 2, 3, 4, 4A, 5, 6, 7");

Where several provisions are referred to, the information about the hierarchical structures should be repeated for every reference (e.g. "section 3, subsection a, paragraph i) and paragraph iv), subsection c, paragraph ii)" should become "section 3, subsection a, paragraph i) and paragraph iv), and section 3, subsection c, paragraph ii));

References may use the short title of the Act, and they may refer to an entire higher-division.

[view example](#)

Commentary:

Some systems of designation are particularly well suited for short, accurate references, such as a system of designation that uses parentheses: "Section 4(a)(3), 5(b), and 22(g)".

- 24.2. Where an Act is referred to for the first time, its title should be given. In all subsequent references, the Act can be referred to by using its number or its short title. For an Act which is generally known though its short title,

the short title of the Act can be used also in the first reference, accompanied by the Act's year and number.

[view example](#)

Example A

For example, a first reference to "the Environmental Protection Act of 1990 (Public Law 98-33)" would comply with this guideline.

- 24.3. The first reference to an Act requires a complete citation also when the reference is contained in the front-matter (usually in the recitals). When the full citation of an Act has been provided in the front-matter, its abbreviated citation may be used in the basic units.

[view example](#)

Example A

A full reference to an Act may be in the form, "the Act of July 2, 1955, n. 300, referred to as the 'Tea Import Act', Consolidated Statutes No. 1312". The abbreviated citation may be in the form, "the Tea Import Act".

- 24.4. When an Act is cited in the title of another Act, an abbreviated citation should be used, while the complete citation should be included in the basic-units.

[view example](#)

Example A

If a new Act is issued which introduces new tariffs for tea, by amending the Tea Import Act, the following may be its title:

"An Act to establish new tariffs for tea, and amend the Tea Import Act."

In one of the basic-units there will be a full reference:

"Art. 3 of the Act of July 2, 1955, n. 300 (Tea Import Act) is substituted with the following text: ..."

- 24.5. The abbreviated citation should comply with the following rules:
the name of the enacting authority should not be repeated if both Acts are enacted by the same institution;
no reference should be made to the Official Gazette in which the cited Act was published; and
amending Acts should not be mentioned.

[view example](#)

Example A

If an Act makes reference to the Agriculture Act of 1978 (the last modification of which is the Agriculture Improvements Act of 2007), the first reference in the referring Act should be a full one, which may also include, if this is consistent with the legislative tradition, a reference to the last modification:

"Agriculture Act of 25 February 1978, n. 58, as last amended by the Agriculture Improvements Act of 30 January 2007, n. 15."

The reference to the last amendment could also be inserted in a footnote, if this corresponds to the legislative tradition.

Subsequent short references to the Agriculture Act do not need to mention the amendment to the Agriculture Act. A reference to "the Agriculture Act" is sufficient.

Guideline 25

A reference to another Act can be either dynamic or static, depending on the legal tradition or the particular circumstances, but the reader must be able to identify whether it is dynamic or static.

- 25.1. A dynamic reference refers to a provision in itself, rather than to a specific version of that provision. To determine the content of the provision referred to at a certain time, the reader must consider all amendments of that provision up to that time.

[view example](#)

Example A

In a legal tradition that presumes a reference is dynamic, a statement that "A grant made under this Act is subject to the Budget Act" is equivalent to "A grant made under this Act is subject to whatever version of the Budget Act is in effect at the time." The reference to the Budget Act is a dynamic reference.

- 25.2. A static reference refers to a provision as it stands on a specific date and should expressly indicate the version being referred to. This is usually done by specifying that the version being referred to is the original version of the provision, or the version resulting from a particular amendment, so that subsequent amendments are not to be considered.

[view example](#)

Example A

In a legal tradition that presumes a reference is static, a statement that "A grant made under this Act is subject to the Budget Act" is equivalent to "A grant made under this Act is subject to the Budget Act, as in effect on the date of the enactment of this Act." The reference to the Budget Act is a static reference.

- 25.3. A reference to another Act can be either dynamic or static, depending on the legal tradition or the particular circumstance, but the reader must be able to identify whether it is dynamic or static. For many legal traditions, a reference to an Act of the same legal system is presumed to be dynamic unless the contrary is indicated. In some legal traditions, however, this presumption does not hold.

[view example](#)

Commentary:

For most legal traditions, a reference to an Act of another legal system is presumed to be static, unless the contrary is indicated. Otherwise, the law of one legal system could change simply because another legal system has changed its law, which seems contrary to concepts of sovereignty and parliamentary supremacy. For example, a statement that "in the Corporations Act, the term 'corporation' has the meaning given that term in the Interpretation Act of California" is presumed to be a static reference. If California were to change its Interpretation Act, the change would not apply to the Corporations Act of the other country.

Guideline 26

References may have to be adapted when the text referred to has been modified.

- 26.1. It may be necessary for a reference to be adapted where:
 the provision referred to has been deleted and replaced by a new text;
 an amendment to the provision referred to has unintended repercussions on the provision to which the reference was made;
 the provision referred to has been redesignated.

[view example](#)

Commentary:

In many cases it is useful when enacting a new Act to include a series of technical or conforming changes to other Acts. For example, when drafting a new Act that repeals section 16 of the Drug Abuse Act, the drafter should attempt to identify all the other places in the statute book that refer to section 16 of the Drug Abuse Act, and ensure that the new Act includes technical and conforming changes that resolve those issues appropriately.

- 26.2. A provision that is the object of a static reference may be subsequently amended. In this case, if the intent is for the static reference to address the newly amended version of that provision, the static reference must be modified explicitly.

[view example](#)

Commentary:

When drafting a new Act that amends section 16 of the Drug Abuse Act, the drafter should attempt to identify all the other places in the statute book that refer to section 16 of the Drug Abuse Act by static reference, decide whether to revise each static reference, and, if so, include technical and conforming changes that do so appropriately.

- 26.3. For a generalised adaptation, a simple correlation provision is sufficient, but in some cases it may be appropriate to set out a correlation table in an annex.

[view example](#)

Example A

In some jurisdictions, the custom is to identify each provision in the statute book where a reference needs to be changed, and draft an amendment for each such provision separately. A practice to be avoided is to draft a general amendment to make conforming changes to an entire Act, such as by stating, "The Crime Act is amended in each place in which it refers to section 16 of the Drug Abuse Act so that it refers instead to section 16A of the Drug Abuse Act."

Example B

If a correlation table is used, you may write:

"References to the repealed Act shall be construed as references to this Act and be read in accordance with the correlation table set out in Annex IX."

Guideline 27

Circular references, serial references, and relative references should be avoided.

- 27.1. A circular reference is a reference to a provision which itself refers back to the provision making the reference. The circular reference must be avoided since it would make both provisions undetermined or unclear.

[view example](#)

Example A

"Section 3. The industrial activities subject to the authorisation of the Environmental Authority according to section 10 are deemed to be dangerous.

...

"Section 10. All industrial activities governed by Section 3 are subject to the authorisation of the Environmental Authority."

Commentary: given the two references above, the reader is unable to determine what are the activities at issue.

Example B

A different type of circularity occurs when the term being defined also appears within the expression specifying its meaning. Also this kind of circularity should be avoided.

You should not write:

"The term 'corporation' means only a corporation with fewer than 100 employees."

You may rather write:

"The term 'small corporation' means a corporation with fewer than 100 employees."

- 27.2. A serial reference is a reference to a provision, which itself refers to a further provision. In the interests of ease of understanding of Acts, such references should be avoided.

[view example](#)

Example A

A serial reference often appears in definitions. For example, the Interpretation Act may define the term 'person', and the Business

Act may define the term 'person' to have the same meaning as in the Interpretation Act. If a new Act were to define the term 'person' to have the same meaning as in the Business Act, that would be a serial reference; rather than doing so, the new Act should define the term 'person' to have the same meaning as in the Interpretation Act.

- 27.3. A relative reference is a reference to a provision on the basis of the latter's location relative to the provision making the reference (it uses words like "the previous provision" or "the next provision", or "above"). In the interests of ease of understanding of Acts, such references should be avoided. Besides, later amendments by way of insertions could change the location of the provision referred to, so that the reference would become mistaken (the provision referred to as the "above provision" could no longer be the above provision).

[view example](#)

Example A

After the following section of an Act:

"Section 2. The following industrial activities are subject to the authorisation for the Environmental Authority."

You should not write:

"Section 3. The request for authorisation concerning the activities indicated in the previous section must include an Environmental Impact Assessment."

You may rather write:

"Section 3. The request for authorisation concerning the activities indicated in the section 2 must include an Environmental Impact Assessment."

Guideline 28

Care should be used when an Act makes reference to a document that is not legally binding.

- 28.1. If the content of a document that is not legally binding (such as a technical standard) is to be made legally binding, that content should expressly be included as part of an Act, possibly as an integral-part-annex to it. In particular, this applies to technical standards (often drawn up by standardisation bodies).

[view example](#)

Commentary:

In some jurisdictions, it may be useful for reasons of parliamentary expedience (such as during an end-of-session emergency) to pass a single new Act that enacts, by reference, the contents of a series of other bills. While it would be better to rewrite the new Act to incorporate all the contents of those bills into the new Act, that may not be practical in some circumstances. Rather than simply refer to the other bills by name in the new Act, the drafter should consider providing an annex that includes accurate copies of the bills. This ensures that the bills that have been enacted by reference are actually published in a form that will be printed for immediate public use and will be available for future use.

Similar principles apply when a new Act enacts a standard that is not the product of the parliament itself, but the product of some other body.

- 28.2. If it is too onerous to expressly include such content as part of the Act (such as with a lengthy description of the conduct of laboratory tests), the Act may instead make reference to the document and require compliance with it.

[view example](#)

Example A

If such a reference is to be made, it should be as precise and accurate as possible (with respect to the content, and also with respect to the date or version of the content), and to a source publication that is widely available and likely to continue to be preserved into the future, such as in libraries. For example, "The builder of a government building shall comply with articles I, II, and IV of the Building Code of the International Building Code Advisory Group, dated January 1, 1993 (as published in the Journal of International Building Codes, volume 23, page 91 (1994))."

Example B

"The tar, nicotine and carbon monoxide yields referred to in Article 3(1), (2) and (3), which must be indicated on cigarette packets, shall be measured on the basis of ISO methods 4387 for tar, 10315 for nicotine, and 8454 for carb on monoxide.

The accuracy of the indications on the packets shall be verified in accordance with ISO standard 8243."

Commentary: In example B, it is clear that the use of the methods defined in the standard is compulsory.

- 28.3. Reference to a document that is not legally binding can be made static, by indicating the version of the document which is referred to. This should be clearly specified using an unambiguous formula such as "in the version of ...".

[view example](#)

Example A

For example, the Legislation Standards Act might provide, "The parliamentary drafters shall take care to ensure, wherever practicable, that all parliamentary bills are drafted consistent with the Legislative Drafting Guidelines for Africa (in the version of June 2006)."

- 28.4. Nevertheless, if control is to be retained over the text of the document, this text should be reproduced within the Act. When the document is reproduced only partially within the Act, it is often still useful to maintain the document's structure, with certain points or passages left blank, with an explanation in a footnote if necessary.

[view example](#)

Example A

If the intent of the Act is to require compliance with sections 92, 133, and 187 of a document, it may be useful to reproduce only

those sections. If so, the Act should clearly indicate that the sections do not represent the entire document but only the relevant parts of the document. For example:

"This Act requires compliance with sections 92, 133, and 187 of [the document], as follows:

"92. [reproduce text of section 92]

"* * *

"133. [reproduce text of section 133]

"* * *

"187. [reproduce text of section 187].

"* * *"

Modifications (29-34)

Guideline 29

Particular care should be used for drafting provisions affecting other provisions. The drafter should identify clearly the result to be produced on the other provisions and choose consequently the correct linguistic expression and legislative technique.

- 29.1. A provision can affect different aspects of other provisions:
 their content,
 their times of force or efficacy,
 their legal-value or status.

[view example](#)

Example A

Affecting content:

Section 2 of the Driving Age Act is amended by striking "18 years old" and inserting "16 years old".

Example B

Affecting time of efficacy:

Section 2 of the Driving Age Act will enter into effect on 1 January 2010.

Example C

Affecting legal value or status:

Schedule 2 to the Traffic Act can be modified by regulations of the Ministry of Transportation.

- 29.2. Each provision meant to affect another provision should unambiguously specify both the affected provision (by indicating its reference) and the operation performed upon it. When a provision is meant to govern the times of force/efficacy, the corresponding dates must also be clearly indicated.

[view example](#)

Example A

You should not write:

Provision regulating driving age shall be modified according to this Act.

You should rather write:

Section 1 of the Driving Age Act is substituted with the following ...

Section 2 of the Driving Age Act is amended by striking ...

Guideline 30

In order to affect the content of an existing provision, the drafter should explicitly amend the text of that provision.

- 30.1. Rather than drafting a separate provision meant to specify the meaning or the scope of another provision, it is usually preferable to amend the text of the latter provision, so that the amended text directly provides the new intended meaning or scope.

[view example](#)

Example A

You should not write:

"The driving age is reduced to 16 years, for the purpose of the application of Driving Age Act."

You should rather write:

"Section 2 of the Driving Age Act is amended by striking "18 years old" and inserting "16 years old"."

Guideline 31

A provision governing the force/efficacy of another provision must clearly specify whether it concerns force or efficacy, and it must indicate the time for the beginning or end of force/efficacy.

- 31.1. A provision governing the force/efficacy should either provide a specific date for time of force or efficacy of the affected provision, or make the time dependent upon an objectively ascertainable event.

[view example](#)

Example A

You should not write:

"Section 3 of the Traffic Act will enter into efficacy when the population will be ready to accept it."

You should rather write

"Section 3 of the Traffic Act will enter into efficacy on 1 January 2010."

- 31.2. Such a provision may postpone or anticipate the entry into force/efficacy or the end of force/efficacy of the whole Act or of particular provisions in it. It may also suspend force/efficacy for a period of time.

[view example](#)

Example A

Section 3 of the Traffic Act is suspended from 1 January 2008 to 30 December 2009.

- 31.3. A provision governing force/efficacy should be included in that very Act whose provisions they are meant to affect. This enables the reader to find both the affected provisions and the regulation of their force/efficacy in the same consolidated text (see also Guideline 37).

[view example](#)

Example A

You should not write in a subsequent Act:

"Section 3 of the Traffic Act is suspended from 1 January 2008 to 30 December 2009."

You should rather write an amendment to the Traffic Act:

The following text is inserted in the Traffic Act:

"Section 55 A. Section 3 of the Traffic Act is suspended from 1 January 2008 to 30 December 2009."

Guideline 32

A provision affecting the legal value or status of another provision should unambiguously specify the result it intends to achieve and the date from which it takes place.

- 32.1. A jurisdiction should use a standard form for expressing provisions effecting the following modifications in legal value or status:
- ratification (the regulation established through an international treaty is included in a municipal legal system);
 - conversion (a temporary ordinance is converted into a permanent Act);
 - delegification (a primary legislative source is made susceptible to modification through administrative regulations);
 - reiteration (a temporary decree after the expiration date re-approved as a temporary decree, rather than being converted into an ordinary Act).

[view example](#)

Examples

Kyoto Protocol Ratification Act 2009

- 32.2. A jurisdiction should use a standard form also for expressing the following functional connections between provisions:
- implementation (an Act implements a pre-existing provision);
 - application (an Act introduces provisions according to the requirements of a superior norm, as when a region applies a directive or issues a decree specifying the normative criteria stated by an Act);
 - recasting (an Act results from the rewriting of a pre-existing Act, while the topic remains the same);
 - republication (an Act is the republication in the Official Gazette of a pre-existing Act, but it is not an official legal document);
 - codification (an Act is the consolidated version of pre-existing legislation);
 - legislative delegation (an Act results from the Government's exercise of a legislative power delegated by the Parliament).

[view example](#)

Examples

Act implementing the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

Act implementing security requirement according to the Data Protection Act

Guideline 33

Modifications should be explicit, clearly detectable, and expressed using a standard form.

- 33.1. All modifications of a pre-existing Act should be explicit and well structured, with each modification set out separately.

[view example](#)

Example A

Section 1. Amendments to the Traffic Act

1. Section 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. ...”

(b) The following paragraph 5 is added:

“5. ...”

2. The following Section 7a is inserted:

“Section 7a ...”

33.2. Modifications should use the fixed formulas applicable in the relevant jurisdiction.

[view example](#)

Example A

‘Article X of Regulation ... is replaced by the following: ...’

‘The following Article Xa is inserted: ...’

‘In Article Y, the following paragraph ... is added: ...’

‘In Article Z, paragraph 3 is deleted.’

33.3. Modifications should not be conditioned on external or unpredictable events.

[view example](#)

Example A

Art. 20 shall be abrogated when the Parliament issues a new law on Data Protection

Example B

Art. 21 shall be abrogated when the Parliament ratifies the Treaty on Transborder data flows

33.4. Since-then (*ex-tunc*) modifications (namely, modifications with an earlier date of application than the date of entry into force of the amending Act) should be avoided. Such a modification interferes with amendments to the modified provision having already taken place, in the interval between the application date and the entry into force of the retroactive modification.

[view example](#)

Example A

For instance an Act entering into force on 1 January 2010 cannot delete a provision of a previous Act with effect from 2005.

Guideline 34

Any Act or provision rendered inapplicable, superfluous, or redundant by virtue of a new Act should be expressly repealed.

34.1. If the new Act makes an existing Act permanently inapplicable, then the existing Act should be expressly repealed for the sake of legal certainty. An Act may be no longer applicable not only when it is directly incompatible with the new provisions, but also when its application domain is completely covered by the new Act.

[view example](#)

Example:

If the new “Data Protection Code” is meant to govern all the area of data protection, including data protection in health care and in the judiciary, previously governed by the “Act on the Protection of Medical Data” and the “Act on the protection of judicial data”, the new Code should explicitly repeal both previous Acts.

34.2. The express repeal of certain provisions of an Act means that the other provisions of that Act are not implicitly repealed. This reduces the risk that the latter provisions will be considered to be implicitly repealed.

[view example](#)

Example A

You should not write:

Section 1 of the Traffic Act as well as the other provisions incompatible with the needs of modern traffic are abrogated.

You should rather write:

Sections 1, 3, and 7 of the Traffic Act are abrogated.

Amendments (35-44)

Guideline 35

All modifications of the provisions of an existing Act should be performed by amending that Act.

35.1. To modify the meaning of a provision of an existing Act, the new Act should amend the content of that provision.

[view example](#)

Example A

If section 2 of the Driving Age Act specifies that a person cannot operate a motor vehicle unless the person is at least 18 years old, and the intent is to lower that age to 16 years, you should not write:

Notwithstanding section 2 of the Driving Age Act, the driving age shall be 16 years.

You should instead write:

Section 2 of the Driving Age Act is amended by striking “18 years old” and inserting “16 years old”.

- 35.2. To modify the times of force/efficacy of a provision of an existing Act, the new Act should insert in the existing Act a new specification of the times of force/efficacy, by adding a new provision governing the time of force/efficacy or by amending the existing provision to this effect.

[view example](#)

Example A

If section 2 of the Small Business Tax Exemption Act provides that a small business is exempt from paying taxes for fiscal years 2010 through 2015, and the intent is to extend that period through 2020, but only for very small businesses, you should not write: Section 2 of the Small Business Tax Act is hereby extended through fiscal year 2020, but only for very small businesses.

You may instead write:

Section 2 of the Small Business Tax Act is amended by adding at the end: "In addition, a very small business is exempt from paying taxes for fiscal years 2016 through 2020."

Guideline 36

The title of an amending Act should include a reference to the amended Act.

- 36.1. The title of the amending Act should mention the Act being amended, by providing an unambiguous identifier of the Act, according to the national tradition (such as the indication of the kind of Act, the year of its enactment, and the number). It is preferable that the title of the amending Act also indicates the title of the amended Act, or specifies what is to be amended.

[view example](#)

Example A

If the amending Act amends the Crimes Act of 1993, you should not use as a title:

An Act creating certain new offences relating to computer crime.

You may instead use as a title:

An Act to amend the Crimes Act of 1993 to create certain new offences relating to computer crime.

- 36.2. If the amending Act is adopted by an institution other than the institution which adopted the original Act, the title should indicate the name of the latter institution.

[view example](#)

Example A

If the amending Act is adopted by the Parliament, and the original Act was adopted by an institution known as the Temporary Regional Authority, you should not use as a title:

An Act to amend the Crimes Act of 1993 to create certain new offences relating to computer crime.

You may instead use as a title:

An Act to amend the Crimes Act of 1993 (as enacted by the Temporary Regional Authority) to create certain new offences relating to computer crime.

- 36.3. The basic-unit amending the provisions of an Act should include in its title a precise reference to the amended parts of that Act.

[view example](#)

Example A

If section 44 of the Computer Crime Amendments Act of 2009 amends section 2(a)(3) of the Crimes Act of 1993, the heading of section 44 should indicate that it amends section 2(a)(3), or at the very least that it amends section 2. Thus:

44. AMENDMENT TO SECTION 2(A)(3) OF THE CRIMES ACT OF 1993.

Section 2(a)(3) of the Crimes Act of 1993 is amended ...

Guideline 37

An amending Act should not contain new autonomous provisions which are not related to the Act or Acts being amended.

- 37.1. An amending Act should contain only modifications to existing Acts and not contain new autonomous provisions which are not to be inserted in the Acts to be amended. Since an amending Act has the sole purpose to modify the amended Acts, it should exhaust its effect once the amendments come into operation. After the amendment, the Acts as amended should continue to govern the entire subject.

[view example](#)

Example A

If the Motor Vehicle Amendments Act of 2009 amends the Motor Vehicle Act of 1973, it should not also contain new autonomous provisions relating to motor vehicles.

- 37.2. This approach simplifies the codification of legislative texts considerably, since the presence of autonomous provisions within a body of amending provisions leads to a convoluted legal situation with substantive basic-units of the original Act scattered into a number of different Acts. (But see Guideline 43).

[view example](#)

Example A

Assume that the Motor Vehicle Act of 1973 needs to be amended by increasing fines for violations of the traffic codes (modifying

Section 30 of that Act) and with a provision which establishes the new obligation to wear a helmet when driving a motorcycle.

You should not write the Motor Vehicle Amendments Act of 2009 as follows

Section 1. Art. 30 of the Motor Vehicle Act of 1973 is substituted with the following: ...

Section 2. It is forbidden to circulate in a motorcycle without wearing a helmet ...

You should rather write:

Section 1. Art. 30 of the Motor Vehicle Act of 1973 is substituted with the following: ...

Section 2. The following art. 29.B is inserted in the Motor Vehicle Act of 1973:

It is forbidden to circulate in a motorcycle without wearing a helmet ...

Guideline 38

An amendment should be explicit, should concern a whole textual unit, and should specify the text to be inserted, added, deleted, or replaced in the amended Act.

- 38.1. Each amendment should be expressed clearly and in a complete way by a single provision that contains the following elements:
- reference(s) to the amended provisions (in case of multiple amended provisions, each reference should be specified with sufficient data to facilitate unique and clear identification);
 - date of the amendment's application, in case it is different to the date of the entry into force of the amending provision;
 - the word-sequence to be inserted, substituted, or deleted (which should be quoted and explicitly identified through a special notation defined with a standard format).

[view example](#)

Example A

If the intent of the amendment is to change "Minister of War" to "Minister of Defence" each place that term of appears in the National Defence Act, you should not write:

The National Defence Act is amended by striking "Minister of War" and inserting "Minister of Defence" each place such term appears.

You should instead reference each provision to be amended, such as by writing:

The following provisions of the National Defence Act are each amended by striking "Minister of War" and inserting "Minister of Defence": sections 1, 3, 7(e), 22, and 31(k)(6).

Example B

If the intent of the amendment is to change "Minister of War" to "Minister of Defence" in section 1 of the National Defence Act, and the change does not apply until March 1, 2011, you should not write:

Section 1 of the National Defence Act is amended by striking "Minister of War" and inserting "Minister of Defence".

You should instead reference the date of application, such as by writing:

Effective March 1, 2011, section 1 of the National Defence Act is amended by striking "Minister of War" and inserting "Minister of Defence".

- 38.2. An amendment should replace complete units of text (a basic-unit or a subdivision) rather than insert or delete single sentences or terms. Fragments of provisions should be amended only to substitute dates or figures, or to substitute the same terms within a whole Act.

[view example](#)

Example A

You should not write:

Section 1 of the Education Act is amended by inserting "primary" before "education".

You may instead write:

The Education Act is amended by striking section 1 as follows:

"1. RESPONSIBILITY OF MINISTRY OF EDUCATION.

The Ministry of Education shall be responsible for all education programs."

and inserting the following:

"1. RESPONSIBILITY OF MINISTRY OF EDUCATION.

The Ministry of Education shall be responsible for all primary education programs."

- 38.3. In a substitution, both the textual sequence to be deleted and the textual sequence to be inserted in its place must be specified.

[view example](#)

Example A

You should not write:

Section 12(b)(3) of the Transportation Act is amended by striking the last sentence.

You may instead write:

Section 12(b)(3) of the Transportation Act is amended by striking "This section does not apply to offenses committed after January 1, 2007."

- 38.4. In the case of multiple amendments (e.g. substitution of a word in several basic-units), an introductory standard formula can be used. However, multiple amendments should be avoided.

[view example](#)

Example A

The following is an example of an introductory standard formula:

The following provisions of the National Defence Act are each amended by striking "Minister of War" and inserting "Minister of

Defence: sections 1, 3, 7(e), 22, and 31(k)(6).

- 38.5. Where several provisions of the same Act are to be amended, it is usually preferable to combine and coordinate coherently all the amendments in a single basic-unit, comprising an introductory phrase and points following the numerical order of the basic-units to be amended. However, when the combination of too many amendments could lose the reader, it might be preferable, for the sake of clarity, to set out the amendments in separate basic-units.

[view example](#)

Example A

The following is an example of combining all the amendments in a single basic-unit:

The Government Ethics Act, 1993 is amended—

(1) in section 23 by striking “1998” and inserting “2023”;

(2) in section 25 by striking “1999” and inserting “2024”; and

(3) by adding at the end the following:

“122. INELIGIBLE FOR GOVERNMENT EMPLOYMENT.

“In addition to any other punishment that may otherwise be imposed by law, a person who wilfully violates this Act is thereafter ineligible for government employment.”

- 38.6. If several Acts are amended by a single amending Act, the amendments to each Act should be set out together in a separate section. A tabular schedule or annex could also be used for the purpose.

[view example](#)

Example A

The following is an example:

1. AMENDMENTS TO DRINKING WATER ACT.

The Drinking Water Act is amended—

(1) in section 2, by ...

(2) in section 4, by ...

2. AMENDMENTS TO CLEAN AIR ACT.

The Clean Air Act is amended—

(1) in section 18, by ...

(2) in section 32, by ...

- 38.7. When a whole Act or annex/schedule is to be deleted, then the whole Act should be expressly repealed.

[view example](#)

Example A

If the intent is to delete the Crimes Act of 1931, you should not write:

Upon the enactment of this Act, it is this Act and not the Crimes Act of 1931 that applies.

You should instead use words of express repeal, such as by writing:

Upon the enactment of this Act, the Crimes Act of 1931 is repealed.

Guideline 39

An amending Act should itself not be amended.

- 39.1. Since an amending Act must not contain any autonomous substantive provisions, an amending Act should not be amended. To modify the content of an already amended original Act, we should make a further amendment to the text of that Act.

[view example](#)

Example A

If section 22 of the Crimes Act of 1931 provides “A person who commits grand theft shall be punished by imprisonment for up to 20 years”, and section 3 of the Grand Theft Act of 1962 provides “Section 22 of the Crimes Act of 1931 is amended by striking ‘20 years’ and inserting ‘30 years’”, you should not write:

Section 3 of the Grand Theft Act of 1962 is amended by striking ‘30 years’ and inserting ‘40 years’.

You may instead write:

Section 22 of the Crimes Act of 1931 is amended by striking “30 years” and inserting “40 years”.

Guideline 40

Amendments should not alter in any way the structure or the hierarchical organisation of the amended Act.

- 40.1. Higher divisions, basic-units, subdivisions, or any other type of provision must not be redesignated, since changing the designation of a provision interferes with existing cross-references using the old designation of that provision. Such cross-references may exist not only in other Acts, but also in other legal documents (such as regulations and court opinions), and in other non-legal documents (such as books, newspapers, and so on).

[view example](#)

Example A

If the basic-units of the Crimes Act of 1931 are as follows:

1. Assault.
2. Battery.
3. Murder.
4. Theft.

and the intent is to add a new basic-unit for Fraud, you could reason that the basic-units are in alphabetical order and, therefore, Fraud should be inserted between Battery and Murder. However, you should not redesignate Murder and Theft from 3 and 4 to 4 and 5, respectively, to do so. You should instead insert Fraud between Battery and Murder with an intermediate designation, such as "2-A".

- 40.2. Blanks left by the deletion of higher divisions, basic-units or other designated parts of the text should not subsequently be filled by other provisions, except when the content is identical to the text deleted, since this may deceive the reader into assuming that pre-existing references to the deleted provision refer to the new one having the same designation. Even if the new provision is substantially similar to the repealed one, its designation should be different. Amendments should preserve the structure and hierarchical organisation of the amended Act.

[view example](#)

Example A

If the basic-units of the Crimes Act of 1931 were as follows:

- Assault.
Battery.
Fraud.
Murder.
Theft.*

and "3. Fraud" was then repealed, you should not later insert a new 3 (whether it relates to Fraud, Forced Entry, or anything else) unless the new 3 is identical to the Fraud provision that was repealed.

Guideline 41

An amending Act should be of the same type as the amended Act.

- 41.1. In principle, an amending Act should have the same hierarchical legislative level as the amended Act. Thus, in principle, a primary Act should not amend, nor be amended by, a secondary Act.

[view example](#)

Commentary:

In principle, a primary Act should not be modified by a regulation, nor should modify it.

- 41.2. However, a primary Act may give a delegated law-making authority the power to amend a primary Act through secondary legislation. In particular, a primary Act may provide that its schedules or annexes may be amended by secondary Acts. The delegating primary Act should preferably specify the admissible types of amending Acts. When authorising a subordinate authority to modify a primary Act, care should be taken with regard to the principle of separation of powers.

[view example](#)

Example A

In order to authorize the Minister of Health to amend through regulation Annex A to the Crimes Act, containing a list of prohibited drugs, you should not write:

"The Minister of Health can modify the Crimes Act of 1980."

Your should rather write:

"The Minister of Health can modify the list of prohibited drugs in Annex A of the Crimes Act".

Guideline 42

An amendment to an annex should be made in the annexes of the amending Act.

- 42.1. An amendment to an annex containing technical information should be made in an annex to the amending Act, except when the amendment is minor.

[view example](#)

Example A

If you want to make many modifications to the list of prohibited drugs in the Crimes Act, you should not include in the sections of the amending Act the statement of all modifications.

You should rather state the modifications in a schedule, or alternatively provide in a schedule a new list of prohibited drugs aimed to substitute the pre-existing one. A section of the amending Act should refer to the schedule. For instance you may say:

"Schedule I to the Crimes Act is amended in accordance with Schedule I to this Act."

- 42.2. In some legal systems, an annex to the amending Act includes an amendment table summarising all amendments effected by the Act. The amendment table must not introduce new amendments not included in the basic-units, since it is just a tool for the reader, without any normative effect.

[view example](#)

Example A

In the title of the Amendment Table annexed to the "Amendment to the School Act of 1973) you may write:

*Amendment table
(summary with no normative effect)*

*Amendment table
(summary with no normative effect of the Amendments brought about by the Amendment 2009 to the School Act)*

Provisions before the amended (before 1 December 2009)

Amended provisions (after 1 December 2009)

Guideline 43

An Act not primarily intended to amend other Acts may set out amendments of other Acts when they are required as a consequence of the new norms it introduces. Where such consequential amendments are important, a separate amending Act should be adopted.

- 43.1. An Act with autonomous provisions may alter the legal context of a given field to such an extent as to make it necessary to amend other Acts governing other areas within the same field. To the extent that the amendment remains altogether secondary to the main scope of the Act, the amending provisions can be included in the new Act, alongside with its autonomous provisions. Only in this case an exception is admitted to the prohibition set out in Guideline 37 on the inclusion of new autonomous provisions in amending Acts; if the amending provisions become preponderant, they should be placed in a separate Act.

[view example](#)

Example A

For example, when a new government agency is created that centralizes a function that previously was carried out by several other agencies, the Act that creates the new government agency may also include conforming amendments to the Acts relating to those other agencies.

- 43.2. Also, the amendments contained in an Act with autonomous provisions should be express and, where possible, textual.

[view example](#)

Example A

*You should not simply imply the repeal, such as by writing:
Any other provision of law inconsistent with this Act is repealed to the extent of the inconsistency.
You should instead identify each provision that is inconsistent and amend the text of that provision as appropriate.*

- 43.3. In order for the amendments to be apparent, the amended Acts must be mentioned in the title of the amending Act with autonomous provisions.

[view example](#)

Example A

*You should not write:
An Act to establish the Environmental Protection Ministry.
You should instead indicate the other amended Acts, such as by writing:
An Act to establish the Environmental Protection Ministry and to make conforming amendments to the Commerce Act, the Public Lands Act, and the Transportation Act.*

Guideline 44

References to amended provisions must be considered.

- 44.1. If a provision is amended, to which another provision makes a reference, the consequences for the latter provision must be considered.

[view example](#)

Example A

If section 2 of the Education Act defines the term "university" in a particular way, and the intent is to change or delete that definition, you should determine whether there are other provisions (in the Education Act or in other Acts) that rely upon that definition and consider how the change would affect them. If the change to section 2 of the Education Act would have unintended consequences on the provision, you should identify what modifications, if any, need to be made.

- 44.2. If the amendment is also intended to apply to the provision making the reference, nothing need be done in the case of a dynamic reference. On the contrary, in case of a static reference, the provision making the reference should be modified, in order to specify that it refers to the new version of the amended text.

[view example](#)

Example A

*Assume that the list of the mandatory vaccinations in Schedule I to the Children Health Act is modified on 1 January 2008 to cancel smallpox from the list.
Assume also that section 1 of the School Act establishes that parents have the obligation to ensure that their children are subject to all mandatory obligations according to Schedule I of Children Health Act, before entering primary school (this being a dynamic reference). Then smallpox vaccination will no longer be required by section 1 of the School Act after being cancelled from Schedule I to the Children Health Act.*

Assume on the contrary that section 1 of the School Act establishes that parents have the obligation to ensure that their children

are subject to all vaccinations in Schedule I of the Children Health Act, in the version of 1 January 1990 (a static reference, which only concerns the text of the Children Health Act on 1 January 1990). Then cancelling smallpox from the schedule to the Children Health Act will not be sufficient to exempt parents from the obligation that children are subject to the smallpox vaccination according to the School Act. For this purpose it will be necessary to modify the School Act, by cancelling the words “in the version of 1 January 1990” (making the reference dynamic) or by substituting them with “in the version of 1 January 2008”.

Norms Over Time (45-48)

Guideline 45

An Act enters into force on the date specified in it, or, after a period following that of their publication. In some cases entry into force is postponed to provide sufficient time to adapt.

45.1. In principle, legislation should give its addressees sufficient time to adapt.

[view example](#)

Example A

An Act that imposes new requirements on what must be taught in public schools should probably not take effect right away. It should allow teachers and schools enough time to develop a teaching plan and teaching materials, and it should allow students enough time to adjust to the new requirements.

45.2. The entry into force of the Act should be set on a specific date, or after a period from the date of publication, or on a future date to be determined by a competent person/body in a manner prescribed by law, or on the fulfilment of a condition.

45.2.1. The entry into force of the Act should not be earlier than the date of its publication.

45.2.2. As far as possible, the entry into force should not be determined by reference to a date to be set by a subsequent Act.

45.2.3. An Act based upon another Act must not enter into force before the date set for the entry into force of the Act on which it is based.

45.2.4. The entry into force of the Act must not be made dependent on the fulfilment of a condition of which the general public have no knowledge.

[view example](#)

Example A

You should not write:

This Act takes effect when the President so directs.

You may instead write:

This Act enters into force on a date specified by the President. The President shall specify the date in a notice to Parliament, and shall make the notice publicly available, at least 10 days before the date occurs.

Guideline 46

Only considerations of urgency justify entry into force prior to the due period after publication.

46.1. There should be clear grounds of urgency for entry into force prior to the publication of the Act. In each case the grounds for the urgency should be decided according to the rules of law (constitutional or otherwise) in each legal system.

[view example](#)

Example A

For example, an economic emergency, a national security crisis, or a natural disaster may be grounds for urgency, depending on the jurisdiction.

46.2. Entry into force on the day of publication should remain a real exception and be justified by an overriding need — to avoid a legal vacuum or to forestall speculation — closely linked to the nature of the Act.

[view example](#)

Example:

Act introducing urgent measures for the control of swine fever

Section 31. This Act shall enter into force on the day and time of its publication,

46.3. Urgent regulations dealing with fiscal measures may enter into force on the day of their publication, or on the following working day.

[view example](#)

Example:

Act modifying the fiscal regime of gasoline and other oil products

Section 31. This Act shall enter into force on the day following its publication

Guideline 47

Entry into efficacy of part of an Act may be deferred after, or anticipated before, entry into force of the Act. However, an Act should be given retroactive effect only in exceptional circumstances.

- 47.1. Where necessary, a distinction should be made between entry into entry into force of the whole Act, and the entry into efficacy of certain provisions of it. The date of entry into efficacy of certain provisions of an Act may be deferred after or anticipated before entry into force of the Act as a whole.

[view example](#)

Example A

This Act enters into force on 1 January 2010.

Section 10 shall enter into efficacy (apply) from 1 January 2011.

- 47.2. Should it prove necessary to defer or anticipate the efficacy of part of an Act, the Act should clearly specify the provisions concerned as well as the dates of their efficacy.

[view example](#)

Example A

You should not write:

Section 10 shall enter into efficacy when appropriate social conditions exist.

You should rather write:

Section 10 shall enter into efficacy from 1 January 2011.

Or

Section 10 shall enter into efficacy on the date fixed by the Minister of Health.

- 47.3. An Act has retroactive effect when the efficacy of the whole Act, or of part of it, is anticipated to a time earlier than the Act's enactment. Thus, an Act with retroactive efficacy also applies to facts having taken place before the Act's enactment, at the time when the Act's addressees could not be guided by the Act. Consequently, retroactive effect violates the requirement of legal certainty. Should it prove necessary to give an Act retroactive effect, this should be done respecting the rights of the Act's addressees. Retroactive effect must be indicated expressly.

[view example](#)

Example A

Section 10

Purchases of teaching materials by State schools are not subject to the value added tax.

Section 20

School Act of 1 January 2011

Section 10 shall have effect (apply) from 1 January 2008.

- 47.4. The final section of a retroactive Act should express clearly and precisely the date of starting of the Act's efficacy, using a standard formula, according to the national tradition. Similarly, when only single provisions of the Act have retroactive efficacy, their dates of entry into efficacy should be specified by using the corresponding formulas.

[view example](#)

Example A

Act on the revision of import quotas for agricultural products

Section 30

1. *The present Act shall have effect from 1 January 2008*

2. *Art. 17 shall have effect from 30 June 2007*

Guideline 48

Provisions providing dates, time-limits, exceptions, derogations and extensions, transitional provisions (in particular those relating to the effects of the Act on the existing law) and final provisions (entry into force - deadlines and temporal application of the Act) should be drafted in precise terms.

Example A:

1. *The beginning of a period may be expressed as follows:*

from ... [to] ...

2. *Entry into force may be expressed as follows:*

shall enter into force on ...

3. *The beginning period of efficacy may be expressed as follows:*

with effect from ...

shall take effect on ...

shall have effect from ...

Example B:

1. *The end of a period may be expressed as follows:*

until ...

... at the latest

from ...] to ...

2. The end of being in force may be expressed as follows:

shall expire on...

3. The ending period of efficacy may be expressed as follows:

shall cease to apply on ...

shall apply until the entry into force of ..., or ..., whichever is the earlier.

-
- 48.1. In the absence of express indications to the contrary, a temporal period begins at time 00:00 hours on the date indicated, and a temporal period ends at midnight on the date indicated.

[view example](#)

Example A:

According to the following provision

"The present Act shall enter into force on 10 September 2009"

the Act shall start being in force at time 00:00 on 10 September 2009

Example B:

According to the following provision

"The present Act shall expire into force on 10 September 2010"

the Act shall cease being in force at midnight of 10 September 2009

-
- 48.2 Provisions for deadlines for implementation Acts should specify a precise date or a period after publication.

[view example](#)

Example A

The Ministry of Health shall issue regulation for the implementation of this Act within 30 December 2011

Example B

The Ministry of Health shall issue regulation for the implementation of this Act within 1 year from its publication.



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