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GENEVA

DRAFT

FINANCIAL REGULATIONS AND RULES OF UPOV

Document prepared by the Office of the Union

*to be considered by the Council at its forty-fourth ordinary session
to be held in Geneva on October 21, 2010*

Note for Draft version

~~Strikethrough~~ (highlighted) indicates deletion from the text of the “Financial Regulations and Rules of the World Intellectual Property Organization (WIPO)” applicable as from January 1, 2008, as amended on October 1, 2009, and January 1, 2010.

Underlining (highlighted) indicates insertion to the text of the “Financial Regulations and Rules of the World Intellectual Property Organization (WIPO)” applicable as from January 1, 2008, as amended on October 1, 2009, and January 1, 2010.

Footnotes will be retained in the published document.

Endnotes are background information when considering this draft and will not appear in the final, published document.

Specific UPOV provisions in the current Financial Regulations of UPOV (document UPOV/C/VI/15) are presented in dashed borders (as here). ~~Strikethrough~~ (highlighted) indicates deletion and double underlining (highlighted) indicates insertion to the relevant text of document UPOV/C/VI/15.

These Financial Regulations and Rules of UPOV replace the Financial Regulations adopted by the Council on October 8 and 9, 1969, and amended on October 29, 1970, and on November 10, 1972 (see documents CPU Doc. 10, CPU Doc. 17, UPOV/C/IV/5, UPOV/C/IV/17, UPOV/C/VI/12, UPOV/C/VI/15).

1. The “Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants (WIPO/UPOV Agreement)” (document UPOV/INF/8), signed on November 26, 1982, states that:

“Article 3

“Independence of WIPO and UPOV

“Without prejudice to the application of Articles 1 and 2, above, the International Bureau of WIPO shall exercise its functions in complete independence of UPOV, and the Office of UPOV shall exercise its functions in complete independence of WIPO.

“Article 8

“Administrative and Financial Regulations of UPOV

“(1) Subject to the other Articles of this Agreement and to paragraphs (2) and (3) of this Article, the provisions of the Staff Regulations and Staff Rules of WIPO and the provisions of the Financial Regulations and Rules of WIPO, including future modifications thereof, shall, *mutatis mutandis*, apply also in respect of the staff of the Office of UPOV and the finances of UPOV, provided that the Council of UPOV may agree with the Director General of WIPO to any exceptions and additions to the same in which case such agreed exceptions and additions shall prevail. The said texts shall be considered to constitute the administrative and financial regulations of UPOV referred to in Article 20¹ of the UPOV Convention.

[...]

“(3) In all financial matters concerning UPOV, the Controller of WIPO shall be responsible to the Council of UPOV.”

2. Subject to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 and as revised on November 10, 1972, on October 23, 1978, and on March 19, 1991 and the WIPO/UPOV Agreement, this document sets out the Financial Regulations and Rules of UPOV on the basis of the “Financial Regulations and Rules of the World Intellectual Property Organization (WIPO)”, as approved by the Assemblies of Member States of WIPO at its Forty-Third Series of Meetings, held in Geneva from September 24 to October 3, 2007 (Document A/43/13, paragraphs 256 to 261) and applicable as from January 1, 2008, as amended on October 1, 2009 and January 1, 2010, and amended, herein, according to:

(a) the changes in accordance with the principle of “*mutatis mutandis*”; and

(b) the exceptions and additions agreed by the Council of UPOV with the Director General of WIPO.

¹ Article 20 of the 1961 Convention and of the 1978 Act and Article 26 of the 1991 Act.

3. With regard to the financial administration of UPOV, the WIPO/UPOV Agreement states that:

“Article 1

“Requirements of UPOV

“(1) WIPO shall satisfy the requirements of UPOV as regards
[...]

“(iv) financial administration of UPOV (receiving and disbursing funds,
bookkeeping, internal financial control, etc.),
[...]

“(2) The requirements of UPOV shall be met on a basis of strict equality with the
requirements of the various Unions administered by WIPO.”

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CHAPTER 1: GENERAL PROVISIONS

Applicability and authority

Regulation 1.1

The Regulations shall govern the financial activities of the International Union for the Protection of New Varieties of Plants (UPOV) ~~World Intellectual Property Organization (WIPO)~~ (hereinafter referred to as the Organization “UPOV”) ~~and of the Unions administered by it.~~ They are approved by the General Assembly Council of UPOV (hereinafter referred to as the “Council”).

Rule 101.1

These Financial Rules are established by the Director-General Secretary-General in accordance with the provisions of the Financial Regulations, in a manner consistent with Regulation 5.8. The Program and Budget Committee Council is informed of any modification of the Financial Rules. They shall govern all the financial management activities of the Organization UPOV except as may otherwise explicitly be provided by the Council General Assembly or unless specifically exempted therefrom by the Director-General Secretary-General. The Director-General Secretary-General hereby delegates authority and assigns responsibility for the implementation of the Financial Regulations and Rules to the Controller of WIPO. The Controller of WIPO may in turn delegate aspects of his/her authority to other officers unless the Director-General Secretary-General indicates otherwise. In the application of the Financial Regulations and Rules, officers shall be guided by the principles of effective and efficient financial management and the exercise of economy.

Responsibility and accountability

Rule 101.2

All employees of the Organization UPOV are obliged to comply with the Financial Regulations and Rules and with Office Instructions issued in connection with those Regulations and Rules. Any employee who contravenes the Financial Regulations and Rules or corresponding Office Instructions may be held personally accountable and financially liable for his or her actions.

Definitions

Rule 101.3

For the purpose of these Rules:

(a) “Assemblies of the Unions” mean the Assemblies of each Union constituted by a treaty administered by WIPO “Council” is the Council of the International Union for the Protection of New Varieties of Plants, established by the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised on November 10, 1972, on October 23, 1978, and on March 19, 1991;

(b) “Coordination Committee” is the Committee referred to in Article 8 of the Convention Establishing the World Intellectual Property Organization, Stockholm, July 14, 1967, and as amended;

(c) “General Assembly” is the body of Member States referred to in Article 6 of the Convention Establishing the World Intellectual Property Organization, Stockholm, July 14, 1967, and as amended;

(d) ~~“Program and Budget Committee” means the Committee constituted by the General Assembly to deal with program, budget, personnel resources, premises, and finance~~ “Consultative Committee” means the Committee in charge of the preparation of the sessions of the Council;

(e) ~~“Appropriations~~ Appropriation” shall mean the budgetary expenditure authorization approved by the ~~General Assembly Council~~ for the financial period against which expenditures may be incurred for purposes specified by the ~~General Assembly Council~~;

(f) “Disbursement” shall mean the actual amount paid;

(g) “Employee” is a person engaged by ~~the Organization UPOV, or, as appropriate, by the World Intellectual Property Organization (WIPO),~~ under any type of contract, to perform duties;

(h) “Expenditure” shall mean the sum of disbursements and expense accruals;

(i) “Headquarters” shall mean the offices of ~~the Organization UPOV~~ located in Geneva;

(j) “Obligations” are amounts of orders placed, contracts awarded, and other transactions for which goods have been received or services rendered during the current financial period and which will require payment during the same or a future period;

(k) “Officer” is a person employed by ~~the Organization UPOV or, as appropriate, by WIPO,~~ on a fixed-term, permanent, or temporary appointment and whose relationship with ~~the Organization UPOV or, as appropriate, with WIPO,~~ is governed by the Staff Regulations and Staff Rules;

(l) “Pre-encumbrance” (“Commitment” or “Purchase Requisition”) shall mean an engagement involving an earmarking of funds against resources of ~~the Organization UPOV;~~

~~(m) “Program Manager” is a senior officer designated by the Director General to be in charge of one or more programs in the Program and Budget;~~

(n) “Reserve funds” shall mean funds established by the ~~Assemblies of the Member States and of the Unions, each as far as it is concerned, Council~~ in which ~~[unforeseen] surplus income from fees that exceeds~~ the amounts required to finance the program and budget ~~appropriations~~ appropriation should be deposited. Reserve funds shall be used in a manner decided by the ~~Assemblies of the Member States and of the Unions, each as far as it is concerned Council;~~

(o) “Special Account” shall mean an account for monies not being part of the ~~appropriations~~ appropriation but administered by ~~the Organization UPOV~~ on behalf of voluntary contributors for specific activities which must be consistent with the aims and policies of ~~the Organization UPOV;~~

(p) “Trust funds” shall mean funds held by ~~the Organization UPOV~~ on behalf of other entities;

(q) “Working capital funds” shall mean funds established for providing advance financing of ~~appropriations~~ the appropriation should there be a temporary liquidity shortfall and for such other purposes as the ~~Assemblies of the Member States and of the Unions Council, each as far as it is concerned,~~ shall decide.

Financial period**Regulation 1.2**

The financial period shall consist of two consecutive calendar years, the first of which shall be an even year.

Effective date**Regulation 1.3**

These Regulations shall become effective on the first of January of the first year of the financial period following the date of adoption of the Regulations by the ~~General Assembly Council~~.

CHAPTER 2: THE PROGRAM AND BUDGET**Authority and responsibility****Regulation 2.1**

The proposed program and budget for each financial period shall be prepared by the ~~Director General~~ Secretary-General.

Regulation 2.2

The involvement of ~~Member States~~ members of UPOV in the preparation of the proposed program and budget for the next financial period shall be in accordance with the mechanism that they adopted in that respect.

Rule 102.1

~~Program Managers~~ The Vice Secretary-General shall prepare program and budget proposals for the forthcoming financial period at such time and with such details as the ~~Director General~~ Secretary-General may prescribe.

~~^a (a) By September 1 of each year the Secretary General shall submit the budget for the following year to the Council of UPOV for approval.~~^b

~~(b) The budget shall be approved by the Council before the beginning of the financial period.~~^c

~~(c) The approval of the budget shall constitute authorization, for the Secretary General, to incur expenses and make payments for the purposes stated in the budget, and up to the amounts so stated.~~^d

Presentation, content and methodology**Regulation 2.3**

The proposed program and budget shall cover estimates for income and expenditure for the financial period to which it relates, in a consolidated form for ~~the Organization UPOV, as well as separately for each Union~~.

Regulation 2.4

All estimates of income and expenditure shall be presented in Swiss francs.

Regulation 2.5

~~The proposed program and budget shall be divided into programs. Proposed programs~~ The proposed program and budget shall include a narrative setting out objectives and expected

results during the biennium, together with financial and human resources required to achieve the objectives, expected results and benchmarks and indicators of achievement. The proposed program and budget shall be preceded by a statement explaining the content of the program and the volume of resources allocated to it in relation to the previous financial period. The proposed program and budget shall be accompanied by such information, annexes and explanatory statements as may be requested by the ~~General Assembly Council and the Assemblies of the Unions~~ and such further annexes or statements as the ~~Director General Secretary-General~~ may deem necessary and useful.

Rule 102.2

The proposed program and budget shall contain:

(a) A statement of financial and human resources requirements ~~by proposed program and by nature of expenditure in a consolidated form for the Organization UPOV, as well as separately for each Union~~; for purposes of comparison, the expenditures for the previous financial period, the adopted initial budget and the proposed revised budget for the current financial period shall be indicated alongside the resource requirements estimates for the forthcoming financial period;

(b) A statement of estimated income including income from contributions, fees for services rendered ~~under the PCT, Madrid, Hague and Lisbon systems~~ and income classified as miscellaneous in accordance with Regulation 3.13;

~~(c) A statement of estimated demand for services under the PCT, Madrid, Hague and Lisbon systems, respectively;~~

~~(d) A detailed organigram of the International Bureau including names of Directors and Program Managers.~~

Review and approval

Regulation 2.6

The ~~Director General Secretary-General~~ shall submit the proposed program and budget for the following financial period to the ~~Program and Budget Committee~~ Consultative Committee for discussion, comments and recommendations, including possible amendments, by the first of ~~July~~ September of the year preceding the financial period.

Regulation 2.7

The ~~Program and Budget Committee~~ Consultative Committee shall review the program and budget proposed by the ~~Director General Secretary-General~~ and transmit it to the ~~Assemblies of the Member States and of the Unions~~ Council with its recommendations.

Regulation 2.8

The ~~Assemblies of the Member States and of the Unions~~ Council, each as far as it is concerned, shall adopt the program and budget for the following financial period after consideration of the proposed program and budget and the recommendations of the ~~Program and Budget Committee~~ Consultative Committee thereon.

Publication of the approved program and budget

Rule 102.3

~~The Controller shall arrange for the publication of the program and budget as approved by the General Assembly.~~

Supplementary and revised budget requirements

Regulation 2.9

Supplementary and revised program and budget proposals may be submitted by the ~~Director General Secretary-General~~ whenever necessary. ~~[However, no such proposals are required in respect of transfers within the limits set in Regulation 5.5 and of flexibility adjustments made in accordance with Regulation 5.6. For purposes of disclosure to Member States members of UPOV, all such transfers and/or adjustments shall, however, be reflected in supplementary and/or revised program and budget proposals, if and when these proposals are submitted by the Director General Secretary General].~~

Regulation 2.10

(a) The supplementary and revised budget proposals shall reflect changes in the financial and human resources requirements associated with:

(i) activities which the ~~Director General Secretary-General~~ considers to be of the highest urgency and which could not have been foreseen at the time the initial program and budget proposals were prepared;

~~(ii) transfers of appropriations between programs under Regulation 5.5;~~

~~(iii) flexibility adjustments made in accordance with Regulation 5.6;~~

(iv) activities mentioned in earlier program and budget proposals as items for which later submissions would be made;

(v) inflation, mandatory salary scale adjustments, and currency fluctuations.

(b) The supplementary and revised budget proposals shall also provide:

~~(i) revised estimates of demand for services under the PCT, Madrid and Hague systems;~~

(ii) revised estimates of income, including from ~~the above services, and~~ miscellaneous income as defined in Regulation 3.13.

Supplementary and revised program and budget proposals: review and approval

Regulation 2.11

The ~~Director General Secretary-General~~ shall prepare the supplementary and revised program and budget proposals in a form consistent with the approved budget and shall submit such proposals to the ~~Program and Budget Committee Consultative Committee~~, at least six weeks before the relevant session. The ~~Program and Budget Committee Consultative Committee~~ shall review the proposals and transmit them to the ~~Assemblies of the Member States Council~~ with its recommendations.

Rule 102.4

~~Program Managers~~ The Vice Secretary-General shall prepare supplementary and revised program and budget proposals at such time and with such details as the ~~Director General Secretary-General~~ may prescribe.

Regulation 2.12

~~The Assemblies of the Member States and of the Unions, each as far as it is concerned, The Council~~ shall adopt the supplementary and/or revised program and budget proposals for the current financial period.

Unforeseen and extraordinary expenses

Regulation 2.13

The ~~Council General Assembly, and the Assemblies of the Unions, each as far as it is concerned,~~ may adopt a decision to authorize the ~~Director General Secretary-General~~ to incur unforeseen and extraordinary expenses which cannot be met from ~~the existing appropriations appropriation~~ up to such amounts and subject to such limits as included in the authorizing decision.

Rule 102.5

(a) Authorizations to incur commitments in accordance with the ~~General Assembly Council~~ decision, ~~and that of the Assemblies of the Unions, each as far as it is concerned,~~ for unforeseen and extraordinary expenses shall be issued by the Controller of WIPO.

(b) The Controller ~~of WIPO~~ shall prepare a report for presentation by the ~~Director General Secretary-General~~ to the ~~General Assembly Council, and the Assemblies of the Unions, each as far as it is concerned,~~ on the status of all commitments relating to unforeseen and extraordinary expenses.

Program and budget performance and evaluation

Regulation 2.14

The ~~Director General Secretary-General~~ shall prepare a report on program performance, based on the program structure, results frameworks, benchmarks and indicators of achievement contained in the program and budget, in accordance with the mechanism adopted by the ~~Member States members of UPOV~~ in respect of their involvement in the preparation and follow up of the program and budget of ~~the Organization UPOV~~.

Rule 102.6

~~Program Managers~~The ~~Vice Secretary-General~~ shall submit to the ~~Director General Secretary-General~~ such information and at such time as he or she shall prescribe for inclusion in the report on program performance.

Regulation 2.15

The ~~Director General Secretary-General~~ shall establish a system for planning, conducting and using evaluative information for decision making.

CHAPTER 3: FUNDS

Financing of ~~appropriations the appropriation~~

Regulation 3.1

The ~~appropriations appropriation~~ shall be financed by contributions of ~~members of UPOV Member States assessed under Regulations 3.2 and 3.3,~~ fees derived from services provided by ~~the Organization UPOV under the PCT, Madrid, Hague and Lisbon systems,~~ miscellaneous income as referred to in Regulation 3.13 and such other means as the ~~General Assembly Council~~ shall decide.

A. ASSESSED CONTRIBUTIONS

Assessed contributions

Regulation 3.2

~~Contributions are assessed under a “class and unit” system by each State member of WIPO and/or of any of the contribution-financed Unions, according to the class to which the State belongs for the purpose of contributions. The amount of the contribution of each member of UPOV shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that member of UPOV, in accordance with the UPOV Convention.~~

Amount of assessed contribution

Regulation 3.3

~~The amount of the annual contribution of each State is the same whether the State is a member only of WIPO, or only of one or more Unions, or of both WIPO and one or more Unions. The amount of the annual contribution payable by each State in each class is calculated by multiplying the number of units of that class by the value, in Swiss francs, of one contribution unit. That value is fixed by the General Assembly meeting in joint session with the Assemblies of the contribution-financed Unions.~~

Request for payment of assessed contributions

Regulation 3.4

~~The Director-General Secretary-General shall communicate, each year, to the States members of WIPO UPOV and/or of the contribution-financed Unions the amount of their contributions for the forthcoming year on the basis of the class to which they belong applicable number of contribution units.~~

Payment of assessed contributions

Regulation 3.5

~~Contributions shall be considered as due and payable in full on the first day of the calendar year to which they relate. As of January 1 February 1 of the following calendar year, the unpaid balance of such contributions shall be considered to be one year in arrears.~~

~~^e 3.5.UPOV(1) Contributions fixed for a year shall be paid during the month of January of the respective year.~~

Order of payment of assessed contributions

Regulation 3.6

Payments made by a member of UPOV ~~Member State~~ shall be credited first to the working capital funds and then to the contributions due in the order of the years for which they are due.

Status of payment of assessed contributions

Regulation 3.7

The ~~Director-General Secretary-General~~ shall submit to the General Assembly Council at each ordinary session a report on the payment of contributions.

Assessed contributions from new ~~members of UPOV~~ Member States

Regulation 3.8

New ~~members of UPOV~~ Member States shall be required to pay their contributions in the month of January from the year following that in which they became members.

Currency of assessed contributions

Regulation 3.9

Contributions shall be paid in Swiss francs.

B. FEES

Regulation 3.10

The level of the fees payable to ~~the Organization UPOV~~ UPOV for services rendered ~~under the PCT, Madrid, Hague and Lisbon systems is~~ shall be determined by the ~~Assembly of the corresponding Union~~ Council on the basis of proposals submitted by the Secretary-General.

C. VOLUNTARY CONTRIBUTIONS, GIFTS AND DONATIONS

Acceptance and purpose

Regulation 3.11

Voluntary contributions, gifts and donations, whether or not in cash, may be accepted by the ~~Director General~~ Secretary-General provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of ~~the Organization UPOV~~ UPOV and provided that the acceptance of such contributions that directly or indirectly involve significant additional financial liability for ~~the Organization UPOV~~ UPOV shall require the consent of the ~~General Assembly~~ Council.

Regulation 3.12

Monies accepted for purposes specified by the donor shall be accounted for in special accounts.

Authority and liability

Rule 103.1

(a) In cases other than those approved by the ~~General Assembly Council~~, the receipt of any voluntary contribution, gift or donation to be administered by ~~the Organization UPOV~~ UPOV requires the acceptance of the Controller of WIPO, on behalf of the ~~Director General~~ Secretary-General.

(b) Voluntary contributions, gifts or donations which directly or indirectly involve additional financial liability for ~~the Organization UPOV~~ UPOV may be accepted only with the approval of the ~~General Assembly~~ Council.

(c) Gifts or donations are to be defined and administered as voluntary contributions.

D. MISCELLANEOUS INCOME

Regulation 3.13

All income except:

(a) Assessed contributions by ~~members of UPOV~~ Member States,

(b) Fees derived for services provided by ~~the Organization UPOV under the PCT, Madrid, Hague and Lisbon systems,~~

(c) Direct refunds of expenditures made during the financial period,

(d) Advances or deposits to funds,

shall be classed as miscellaneous income.

Regulation 3.14

Monies accepted in respect of which no purpose is specified shall be treated as miscellaneous income and reported in the financial management report of the financial period.

Reimbursements of expenditures

Rule 103.2

(a) Within the same financial period, reimbursements of actual expenditures incurred may be credited to the accounts against which they were originally charged; reimbursements of actual expenditures incurred in prior financial periods shall be credited as miscellaneous income.

(b) Adjustments that arise subsequent to the closing of a special account shall be debited or credited against miscellaneous income in the regular budget.

E. RECEIPT OF FUNDS

Receipt and deposit

Rule 103.3

(a) An official receipt shall be issued within two business days of receipt of all cash and negotiable instruments received.

(b) Only officers designated by the Controller of WIPO shall be authorized to issue official receipts. If other officers receive money intended for ~~the Organization UPOV,~~ they must immediately convey this money to an officer authorized to issue an official receipt.

(c) All monies received shall be deposited in an official bank account within two business days of receipt.

CHAPTER 4: CUSTODY OF FUNDS

A. INTERNAL ACCOUNTS

General Fund

Regulation 4.1

There shall be established a general fund for the purpose of accounting for the expenditures of ~~the Organization UPOV.~~ The assessed contributions paid by members of UPOV Member States, fees derived from services provided by ~~the Organization UPOV under the PCT, Madrid, Hague and Lisbon systems,~~ miscellaneous income and any advances made from the working capital funds or reserve funds to finance general expenditure, shall be credited to this general fund.

Working capital funds

Regulation 4.2

~~The working capital funds of the Organization and of the Paris, Berne, Madrid, Hague, IPC, Nice, PCT, Lisbon, Locarno and Vienna Unions shall be established in amounts to be determined by the Assemblies of the Member States and of the Unions, each as far as it is concerned.~~

4.2 UPOV (1) UPOV shall have a special fund hereby named the Working Capital Fund, which shall be constituted by advances made by members of UPOV member States. Such advances shall be entered to the credit of the members which have made them.

4.2 UPOV (2) The amount of the initial, or any subsequent, advance which each of the member States member of UPOV is called upon to make to the Working Capital Fund, and the procedure according to which such advances are to be made shall be fixed by the Council on the basis of proposals submitted by the Secretary[-]General.

4.2 UPOV (3) The purposes for which the Working Capital Fund shall be utilized shall be:

(a) to meet budgeted expenditure pending the receipt of the contributions of member States members of UPOV;

(b) to meet unavoidable unforeseen expenses arising from the execution of the approved program;

(c) to meet such other expenses as may be determined by the Council.

4.2 UPOV (4) Advances made from the Fund under paragraph (3)(a) shall be reimbursed as soon as, and to the extent that, income is available for that purpose. The amounts required for the reimbursement of advances provided for in paragraphs (3)(b) and (3)(c) shall be covered by additional budgets or by the budget for the following period year. Advances provided for in paragraph 3(c) shall be subject to prior approval by the Council.

4.2 UPOV (5) Interest received on the Working Capital Fund shall be credited to the general funds of UPOV.

Regulation 4.3

~~The working capital funds shall be used, to the extent possible, as advances to finance budgetary appropriations that are not yet covered by available liquidity and for such other purposes as may be determined by the Assemblies of the Member States and of the Unions, each as far as it is concerned.~~

Regulation 4.4

~~Advances made from the working capital funds to finance budgetary appropriations shall be reimbursed to the working capital funds as soon as and to the extent that income is available for that purpose.~~

Trust funds and special accounts

Regulation 4.5

The purpose and limits of each trust fund and special account shall be clearly defined by the ~~Director General~~ Secretary-General. Such funds and special accounts shall be administered in accordance with the present Regulations.

Rule 104.1

The establishment, purpose and limits of trust funds and special accounts shall be approved on behalf of the ~~Director-General~~ ~~Secretary-General~~ by the Controller of WIPO. The Controller of WIPO, is authorized to levy a charge on trust funds and special accounts. This charge shall be used to reimburse all, or part of, the indirect costs incurred by ~~the Organization~~ UPOV in respect of the generation and administration of trust funds and special accounts. All direct costs of the implementation of programs that are financed by trust funds and special accounts shall be charged against the relevant trust fund and special account.

Surpluses and deficits; Reserve Funds**Regulation 4.6**

The use, other than for the covering of any deficits, of any of the reserve funds is a matter for the decision of the Council ~~General Assembly of WIPO or the Assembly of the Union concerned, as the case may be.~~ If after the closure of the financial period, the amount of the reserve fund exceeds [10 percent] / [15 percent] of the total income for the financial period, the amount in excess shall be reimbursed to the members of UPOV, unless otherwise decided by the Council. Any member of UPOV may request that the reimbursement attributed to it be deposited in a special account or trust fund specified by it.

Regulation 4.7

If, after the closure of the financial period, ~~any Union~~ UPOV shows a surplus of income, such surplus shall be accounted for under the reserve funds, unless otherwise decided by the ~~General Assembly or the Assembly of the Union concerned~~ Council.

~~^g If, after the approval of the final accounts, these accounts show a surplus of income, such surplus shall be paid into the Reserve Fund.~~

Regulation 4.8

If, after the closure of the financial period, ~~any Union~~ UPOV shows a deficit, not coverable out of reserve funds, the ~~General Assembly of WIPO or the Assemblies of the interested Unions, as the case may be,~~ Council shall decide upon measures to redress the financial situation.

~~^g If, after the approval of the final accounts, these accounts show a deficit which cannot be covered by the Reserve Fund, the Council shall decide on the measures to be taken to remedy the situation.~~

B. BANKING**Bank accounts, authority and policy****Regulation 4.9**

The ~~Director-General~~ ~~Secretary-General~~ shall designate, after competitive bidding or any other applicable procurement procedure, the bank or banks in which the funds of ~~the Organization~~ UPOV shall be kept. The Secretary-General may decide to keep the accounts of UPOV in the same bank or banks as selected by WIPO, provided that WIPO has followed the above mentioned procedure.

Rule 104.2

The Controller of WIPO shall designate the banks in which the funds of the Organization UPOV shall be kept, shall establish all official bank accounts required for the transaction of the Organization UPOV's business and shall designate those officers to whom signatory authority is delegated for the operation of those accounts. The Controller of WIPO shall also authorize all bank account closures. the Organization UPOV's bank accounts shall be operated in accordance with the following guidelines:

(a) Bank accounts shall be designated "official accounts of the International Union for the Protection of New Varieties of Plants (UPOV) the World Intellectual Property Organization (WIPO)" and the relevant authority shall be notified that those accounts are exempt from all taxation.

(b) Banks shall be required to provide promptly monthly statements.

(c) Two signatures, or the electronic equivalent, shall be required on all checks and other withdrawal instructions, including electronic modes of payment.

(d) All banks shall be required to recognize that the Controller of WIPO is authorized to receive, upon request or as promptly as practicable, all information pertaining to official bank accounts of the Organization UPOV.

Bank signatories**Rule 104.3**

Bank signatory authority and responsibility is assigned on a personal basis and cannot be delegated. Bank signatories cannot exercise the approving functions assigned in accordance with Rule 105.7. Designated bank signatories must:

(a) Ensure that there are sufficient funds in the bank account when checks and other payment instructions are presented for payment.

(b) Verify that all checks and other payment instructions are dated and drawn to the order of the named payee approved by an approving officer (designated in accordance with Rule 105.7).

(c) Ensure that checks and other banking instruments are properly safeguarded and that when they are obsolete they are destroyed in accordance with Rule 106.13.

Exchange of currencies**Rule 104.4**

Officers responsible for the operation of the Organization UPOV's WIPO bank accounts shall proceed to exchange all payments received in currencies other than the Swiss franc into Swiss francs except when the other currencies are necessary for the transaction of official business of the Organization UPOV in the foreseeable future. Policies and procedures for exchange of currencies shall be established in detail through appropriate Office Instructions.

Remittances to liaison offices**Rule 104.5**

The liaison offices of the Organization shall obtain their funds through remittances from Headquarters. In the absence of a special authorization from the Controller, those remittances shall not exceed the amount required to bring cash balances up to the levels necessary to meet the recipient liaison office's estimated cash requirements for the next two and a half months.

Cash advances

Rule 104.6

- (a) Petty cash advances and Cashier's Fund advances may be made only by and to officers designated for this purpose by the Controller of WIPO.
- (b) The relevant accounts shall be maintained on an imprest system and the amount and purpose of each advance shall be defined by the Controller of WIPO.
- (c) The Controller of WIPO may approve other cash advances as may be permitted by the Financial Regulations and Rules and Financial Instructions issued by the Controller of WIPO and as may otherwise be authorized in writing by him or her.

Rule 104.7

Officers to whom cash advances are issued shall be held personally accountable and financially liable for the proper management and safekeeping of cash so advanced and must be in a position to account for these advances at all times. They shall submit monthly accounts unless otherwise directed by the Controller of WIPO.

Payments

Rule 104.8

- (a) All payments shall be made by check, by wire transfer or by electronic funds transfer except to the extent that cash payments, or their equivalent, are authorized by the Controller of WIPO.
- (b) Payments shall be recorded in the accounts as at the date on which they are made, that is, when the check is issued, transfer is effected or cash, or its equivalent, is paid out.
- (c) Except where a paid check is returned by the bank or a debit advice is received from the bank, a payee's written receipt shall be obtained for all payments.

Reconciliation of bank accounts

Rule 104.9

Every month all financial transactions, including bank charges and commissions, must be reconciled with the information submitted by banks in accordance with Rule 104.2. This reconciliation must be performed or validated by an officer playing no actual part in the receipt or payment of funds.

C. INVESTMENTS

Authority, responsibility and policy

Regulation 4.10

The ~~Director-General~~ Secretary-General may make short-term investments of money not needed for immediate requirements in accordance with ~~the Organization~~ UPOV's investment policy, as approved by the ~~Member States~~ Council, and shall inform the ~~Program and Budget Committee~~ Consultative Committee regularly of any such investments. Unless otherwise agreed by the Council, UPOV's investment policy shall be the same as WIPO's investment policy.

Regulation 4.11

The ~~Director General~~ Secretary-General may make long-term investments of monies standing to the credit of ~~the Organization~~ UPOV in accordance with ~~the Organization~~ UPOV's investment policy, as approved by the ~~Member States~~ Council, and shall inform the ~~Program and Budget Committee~~ Consultative Committee regularly of any such investments. ~~In this regard, the Director General may seek the advice of an Advisory Committee on Investments composed of members appointed by the Director General including from persons outside the Organization having substantial experience in the financial sector. Unless otherwise agreed by the Council, UPOV's investment policy shall be the same as WIPO's investment policy.~~

Rule 104.10

(a) The authority to make and prudently manage investments in accordance with the investment policy approved by the ~~Member States~~ Council under Regulations 4.10 and 4.11, is delegated to the Controller of WIPO.

(b) The Controller of WIPO shall ensure, including by establishing appropriate guidelines, that funds are held in such currencies and invested in such a way as to place primary emphasis on minimizing the risk to principal funds while ensuring the liquidity necessary to meet ~~the Organization~~ UPOV's cash-flow requirements. In addition to these criteria, investments as well as the currencies in which they are denominated shall be selected by the Controller of WIPO on the basis of the investment policy approved by the ~~Member States~~ Council under Regulations 4.10 and 4.11.

Rule 104.11

Investments shall be recorded in a ledger which shall show all the relevant details for each investment, including, for example, face value, cost, date of maturity, place of deposit, proceeds of sale and income earned.

Rule 104.12

(a) All investments shall be made through and maintained by recognized financial institutions designated by the Controller of WIPO.

(b) All investment transactions, including the withdrawal of invested resources, require the authorization and signature of two officers designated for that purpose by the Controller of WIPO.

Income**Regulation 4.12**

Income derived from short-term or long-term investments shall be accounted for, as required under the applicable accounting standards.

Losses**Rule 104.13**

Any investment losses must be reported at once to the Controller of WIPO. The Controller of WIPO, may authorize the writing-off of investment losses. A summary statement of investment losses, if any, shall be provided to the External Auditor within three months following the end of the financial period.

Regulation 4.13

~~Any proposal for external borrowing shall be submitted by the Director General, through the Program and Budget Committee, to the General Assembly for approval. External borrowing by UPOV shall not be allowed, unless otherwise decided by the Council.~~

External borrowing**Rule 104.14**

~~The Controller shall prepare all proposals for external borrowing which shall be submitted by the Director General, through the Program and Budget Committee, to the General Assembly, for its approval.~~

CHAPTER 5: UTILIZATION OF FUNDS**A. APPROPRIATIONS****Authorizations****Regulation 5.1**

~~The appropriations appropriation approved by the Council Assemblies of the Member States and of the Unions, each as far as it is concerned, shall constitute an authorization to the Director General Secretary-General, to incur obligations and make payments for the purposes for which the appropriations were appropriation was approved and up to the amounts so approved, except as provided for in Regulations 5.5 and 5.6.~~

Available period**Regulation 5.2**

~~Appropriations~~ The appropriation shall be available for obligation during the financial period to which ~~they it~~ it relates.

Regulation 5.3

Expense accruals shall remain available for twelve months following the end of the financial period to which they relate, to the extent that they are required to cover payments in respect of goods supplied and services rendered in the financial period.

Regulation 5.4

At the end of the twelve-month period provided for in Regulation 5.3 above, any expense accruals of the financial period in question shall be cancelled or, where the obligation remains a valid charge, transferred as an obligation against the current appropriations appropriation.

Transfers between appropriations**Regulation 5.5**

~~The Director General may make transfers from one program of the program and budget to another for any given financial period, up to the limit of five per cent of the amount corresponding to the biennial appropriation of the receiving program, or to one per cent of the total budget, whichever is higher, when such transfers are necessary to ensure the proper functioning of the services. All transfers arising in the first year of the financial period shall be reflected in the revised budget proposals. Those arising in the second year shall be reported to the next sessions of the Program and Budget Committee and the General Assembly.~~

Not applicable to UPOV

[Flexibility adjustments]

Not applicable to UPOV

Regulation 5.6

~~Reserved~~

~~Not applicable to UPOV~~

~~(a) In the implementation of the program and budget, the Director General shall have the flexibility to make upward or downward adjustments to the resources appropriated for the operations of the PCT, Madrid and Hague systems, and for WIPO programs providing administrative support to these operations.~~

~~(b) These adjustments shall be made in accordance with the methodology and formula(e) approved by the respective assemblies of the PCT, Madrid and Hague Unions, and presented in the proposed program and budget for the relevant financial period.~~

Commitments against appropriations for future financial periods

Regulation 5.7

The ~~Director General~~ Secretary-General may enter into commitments for future financial periods, provided that such commitments:

- (a) are for activities which have been approved by the ~~General Assembly~~ Council and are expected to continue beyond the end of the current financial period; or
- (b) are authorized by specific decisions of the ~~General Assembly~~ Council.

Rule 105.1

In accordance with Regulation 5.7 above, the authority to approve commitments against future financial periods is delegated to the Controller of WIPO. The Controller of WIPO shall maintain a record in the accounts of all such commitments (Rule 106.7), which shall constitute the first charges against relevant appropriations once they are approved by the ~~General Assembly~~ Council.

Administration of appropriations

Regulation 5.8

The ~~Director General~~ Secretary-General shall:

(a) Establish, with the ~~advice of the Program and Budget~~ consensual agreement of the Consultative Committee, the financial rules of ~~the Organization~~ UPOV in order to ensure effective and efficient financial management and the exercise of economy. If no consensual agreement is reached with the Consultative Committee, the decision by the Council shall require three fourths of the votes cast.

(b) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods to be paid for have been received and that payments have not previously been made.

(c) Designate the officers who may receive monies, incur obligations and make payments on behalf of ~~the Organization~~ UPOV.

(d) Maintain an internal financial control which shall provide for an effective current examination and/or review of financial transactions in order to ensure:

- (i) the regularity of the receipt, custody and disposal of all funds and other financial resources of ~~the Organization~~ UPOV;

(ii) the conformity of obligations and expenditures with the ~~appropriations appropriation~~ or other financial provisions approved by the ~~General Assembly Council~~ or with the purposes and rules relating to specific trust funds;

(iii) the effective, efficient and economic use of the resources of ~~the Organization UPOV~~.

B. COMMITMENTS, OBLIGATIONS AND EXPENDITURES

Authority and responsibility

Regulation 5.9

Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allocations or other appropriate authorizations have been made in writing under the authority of the ~~Director General~~ Secretary-General.

Rule 105.2

The utilization of all funds requires the prior authorization of the Controller ~~of WIPO~~. The Controller ~~of WIPO~~ may determine the maximum amount of the ~~appropriations appropriation~~ that it would be prudent to make available for allocation taking into account the prospects of payment of assessed contributions, the likely level of income from fees, or any other relevant factors.

Rule 105.3

Authorizations from the Controller may take the form of:

(a) An allocation of funds or other authorization issued to ~~a Program Manager~~ the Vice Secretary-General to plan activities and to initiate action to commit, obligate and expend specified funds for specified purposes during a specified period.

(b) A staffing table authorization issued jointly to ~~a Program Manager~~ the Vice Secretary-General and the Director of the Human Resources Management Department (HRMD) to enable the Director of HRMD to fill authorized posts based on requests initiated by the ~~Program Manager~~ Vice Secretary-General.

Checks and balances

Rule 105.4

Notwithstanding bank signatory functions assigned in accordance with Rule 104.3, all commitments, obligations and expenditures require at least two approvals, in either conventional or electronic form, as detailed in Rules 105.5 and 105.6 below.

~~Program Managers~~ Vice Secretary-General

Rule 105.5

(a) ~~Program Managers are~~ The Vice Secretary-General is responsible for planning, initiating and managing the effective and efficient utilization of resources as approved by the Council ~~Member States and within the amount allocated by the Controller for the purposes covered by the approval of the Member States for the relevant program~~. In particular, ~~they are~~ the Vice Secretary-General is accountable for the delivery of expected results indicated in the approved program and budget or, in the case of extrabudgetary resources, the relevant approval. However, pre-encumbrances, obligations and expenditures initiated by ~~Program Managers~~ the Vice Secretary-General shall be reviewed for compliance with relevant policies and procedures, by appropriate

officers designated by the Controller of WIPO (“certifying officers”) as per Rule 105.6 below.

(b) ~~Program Managers are designated by the Director General on a personal basis. However, a Program Manager~~ The Vice Secretary-General should designate an alternate[s].

^h ~~(iii) by the Secretary General of UPOV or a staff member designated by him when the disbursement concerns UPOV alone.~~

ⁱ ~~When the expenditure concerns UPOV alone, the commitment to incur an obligation shall be signed by the Secretary General of UPOV or a staff member designated by him and the Controller.~~

Certifying officers

Rule 105.6

(a) Certifying officers are responsible for ensuring that the utilization of resources proposed by ~~the Vice Secretary-General Program Managers~~, including posts, is in compliance with the Financial Regulations and Rules, the Staff Regulations and Rules of ~~the Organization UPOV~~ and the Office Instructions ~~issued by the Director General~~.

(b) Certifying officers are designated by the Controller of WIPO. Certifying authority and responsibility is assigned on a personal basis and cannot be delegated. A certifying officer cannot exercise the approving functions assigned in accordance with Rule 105.7.

Approving officers

Rule 105.7

(a) Approving officers are responsible for approving the making of payments once they have ensured that they are properly due, confirming that the necessary services, supplies or equipment have been received in accordance with the contract, agreement, purchase order or other form of undertaking by which they were ordered. Approving officers must maintain detailed records and must be prepared to submit any supporting documents, explanations and justifications requested by the Controller of WIPO.

(b) Approving officers are designated by the Controller of WIPO.

(c) Approving authority and responsibility is assigned on a personal basis and cannot be delegated. An approving officer cannot exercise the certifying functions assigned in accordance with Rule 105.6 or the bank signatory functions assigned in accordance with Rule 104.3.

Establishment and amendment of obligations

Rule 105.8

(a) Apart from the employment of staff against an authorized staffing, as set out in the program and budget, table and consequential commitments under the Staff Regulations and Rules, no undertaking, including by contract, agreement or purchase order shall be entered into until the appropriate credit(s) has (have) been reserved in the accounts (“pre-encumbrance”). This shall be done through the recording of commitments against which obligations shall be recorded. Relevant payments or disbursements against duly recorded obligations shall be recorded as expenditure. An

obligation shall be recorded in the accounts as accrued during the period set forth in Regulation 5.3 if the goods have been received or services rendered, until such point as it is liquidated or cancelled in accordance with Regulation 5.4.

(b) The Controller of WIPO may establish a threshold below which pre-encumbrance shall not be required.

(c) The Controller of WIPO shall establish appropriate procedures to be followed in cases where the cost of relevant goods or services has, for whatever reason, increased in the time that elapses between the establishment of an obligation and the processing of final payment.

Review, reobligation and cancellation of obligations

Rule 105.9

(a) Outstanding obligations must be reviewed periodically by the responsible Program Manager Vice Secretary-General. If an obligation is determined to be valid but cannot be liquidated during the period set forth in Regulation 5.3, the provisions of Regulation 5.4 shall, as appropriate, be applied. Obligations that are no longer valid shall be reduced or cancelled from the accounts accordingly.

(b) When any obligation previously recorded in the accounts is, for any reason, reduced (other than by payment) or cancelled, the certifying officer shall accordingly ensure that appropriate adjustments are recorded in the accounts.

Obligating documents

Rule 105.10

An obligation must be based on a formal contract, agreement, purchase order or other form of undertaking, or on a liability recognized by the Organization UPOV. All obligations must be supported by an appropriate obligating document.

***Ex gratia* payments**

Regulation 5.10

The Director General Secretary-General may make such *ex gratia* payments as are deemed to be necessary in the interest of the Organization UPOV, provided that a summary statement of such payments shall be included in the financial statements of the Organization UPOV. The total amount of such payments shall not exceed 20,000 5,000 Swiss francs in any given financial period.

Rule 105.11

Ex gratia payments may be made in cases where, although in the opinion of the Legal Counsel Officer of UPOV there is no clear legal liability on the part of the Organization UPOV, the moral obligation is such as to make payment desirable, in the interest of the Organization UPOV. A summary statement of all *ex gratia* payments shall be included in the financial statements of the Organization UPOV. The approval of the Controller of WIPO, after consultation with the Vice Secretary-General, is required for all *ex gratia* payments.

C. PROCUREMENT

General principles

Regulation 5.11

Procurement functions include all actions necessary for the acquisition, by purchase, lease, or any other appropriate means, of property, including products and real property, and for the acquisition of services, including building works. For the purposes of the present Regulations, procurement shall not be deemed to refer to the acquisition of services provided under employment contracts and to services provided under external non-commercial consultancy contracts. The following general principles shall be given due consideration:

- (a) Best value for money.
- (b) Effective and broad competition for the award of contracts.
- (c) Fairness, integrity and transparency of the procurement process.
- (d) The best interests of ~~the Organization~~ UPOV.
- (e) Prudent commercial practices.
- (f) Acquisitions of goods and/or services shall be made on the basis of a formal contract award procedure. Methods of solicitation may be formal and/or informal.
- (g) Solicitations shall be invited by advertisement unless otherwise prescribed.

Authority and responsibility

Rule 105.12

(a) The Director General shall designate a High Level Official of WIPO (hereinafter referred to as “the High Level Official in charge of Procurement” (“HLOP of WIPO”)) responsible for the procurement functions of ~~the Organization~~ UPOV, subject to the provisions of Rules 105.6, 105.8, 105.9 and 105.10 concerning the incurrence of financial obligations.

(b) The Director General of WIPO shall establish the composition and terms of reference of a WIPO Contracts Review Committee (hereinafter referred to as the “WIPO CRC”). The WIPO CRC shall render written advice to the HLOP of WIPO on the procurement actions leading to the award, modification or renewal of procurement contracts. The terms of reference of the WIPO CRC shall include the definition of the types and monetary values of the procurement actions that shall be subject to its review.

(c) Where the advice of the WIPO CRC is required, no final action leading to the award, modification or renewal of a procurement contract may be taken before such advice is received. In cases where the HLOP of WIPO decides not to accept the advice of the WIPO CRC, he or she shall record in writing the reasons for this decision.

(d) The ~~Director General~~ Secretary-General may, in exceptional cases, and when special guarantees and/or external expertise are required, establish an external and independent *ad hoc* Committee. The ~~Director General~~ Secretary-General shall establish the composition and terms of reference of such *ad hoc* Committee and decide whether it may adopt recommendations and/or decisions. Where the recommendation and/or decision of such an *ad hoc* Committee is required, no final action leading to the award, modification or renewal of a procurement contract may be taken before such recommendation/decision is received by the ~~competent authority within the Organization~~ Vice Secretary-General.

Cooperation**Rule 105.13**

~~The Organization UPOV~~ may cooperate with WIPO and other organizations of the United Nations system to meet its procurement requirements by entering into agreements for such purposes as appropriate. Such cooperation may include the carrying out of common procurement actions, or ~~the Organization UPOV~~ entering into a contract relying on a procurement decision of WIPO or another specialized agency of the United Nations, or ~~the Organization UPOV~~ requesting WIPO or another specialized agency of the United Nations to carry out procurement activities on its behalf.

Procurement process**Rule 105.14**

Procurement contracts shall be awarded to eligible suppliers on the basis of the general principles described in Regulation 5.11 above. The competitive process, when applicable, shall include:

- (a) Identification of potential eligible suppliers.
- (b) Formal methods of solicitation, by means of invitations to bid or requests for proposals on the basis of advertisement or direct solicitation of invited suppliers, or informal methods of solicitation such as requests for quotations (RFQ).
- (c) Objective and transparent pre-established criteria for the evaluation of tenders.

Rule 105.15

Applicable procedures shall be determined on the basis of the estimated amount of the financial obligation for ~~the Organization UPOV~~ and the nature of the requirement.

Rule 105.16

(a) An obligation can result from a single requisition, or a series of related requisitions received and processed during the contract term or the calendar year, and includes all contracts and/or purchase orders for the acquisition of goods or services. The HLOP of WIPO, or the officers to whom he or she will delegate the related authority, shall identify whether requisitions are related and shall take the appropriate procurement action.

(b) For contracts without a fixed term or subject to renewal, the value of the obligation shall be determined on the basis of a deemed contract duration of three years.

Rule 105.17

The HLOP of WIPO shall establish, through administrative instruction, the thresholds for (i) direct purchase; (ii) the informal RFQ procedure; (iii) limited tenders; and (iv) open international tenders. He or she shall also establish the threshold above which the advice of the WIPO CRC must be sought.

Rule 105.18

The HLOP of WIPO, with the advice of the WIPO CRC, where necessary, may determine that using formal or informal methods of solicitation is not in the best interests of ~~the Organization UPOV~~ for a particular procurement action when:

- (a) There is no competitive marketplace for the requirement, such as where a monopoly exists; prices are fixed by legislation or government principle; or the requirement involves a proprietary product or service.

- (b) The requirement needs to be standardized.
- (c) The proposed procurement contract is the result of cooperation with WIPO or other organizations of the United Nations system, pursuant to Rule 105.13 above.
- (d) Offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered are considered to remain competitive.
- (e) Within a reasonable prior period, a formal solicitation for identical products and services has not produced satisfactory results.
- (f) The proposed procurement contract is for the purchase or lease of real property and market conditions do not allow for effective competition.
- (g) There is an emergency which necessitates immediate action.
- (h) The proposed procurement contract relates to obtaining services that cannot be evaluated objectively.
- (i) The HLOP of WIPO otherwise determines that a formal or informal solicitation will not give satisfactory results.

Rule 105.19

When a determination is made pursuant to Rule 105.18 above, the HLOP of WIPO shall record the reasons in writing and may then award a procurement contract, on the basis of a directly negotiated contract, to a qualified vendor whose offer substantially conforms with the requirement at an acceptable price.

Evaluation

Rule 105.20

All offers shall be evaluated on the basis of objective selection criteria in accordance with the present Financial Rules and the general principles and framework enunciated in Regulation 5.11 above.

Rule 105.21

The HLOP of WIPO shall establish, through administrative instruction, principles and detailed procedures for the award of procurement contracts and/or purchase orders in respect of each form of tender procedure. For the open international tender procedure, the HLOP of WIPO shall establish an Evaluation Team.

Contracts

Rule 105.22

All procurement actions shall be governed by written documentation. When written contracts are used, they shall specify at least the following information (where applicable):

- (a) Nature of the products or services being procured;
- (b) Quantity being procured;
- (c) Contract or unit price;
- (d) Duration of the contract;
- (e) Conditions to be fulfilled by the supplier including general conditions for procurement contracts, appropriate sanctions, remedies and guarantee clauses;
- (f) Terms of delivery and means of payment;

- (g) Name and address of the supplier;
- (h) Bank details for payment.

Rule 105.23

The requirement for the written form of procurement contracts, when applicable, shall not be interpreted to restrict the use of electronic means by parties to meet their respective contractual obligations. Before any electronic means is used by either party, the HLOP of WIPO shall ensure that the electronic means to be used meet recognized industry standards, in particular in terms of authentication, safety and confidentiality.

Payments**Rule 105.24**

Except where normal commercial practice or the interests of ~~the Organization~~ UPOV so require, no contract or other form of undertaking shall be made on behalf of ~~the Organization~~ UPOV which requires a payment or payments on account, in advance of the delivery of products or the performance of services. Whenever an advance payment is agreed to, the reasons therefor shall be recorded.

Rule 105.25

The HLOP of WIPO shall also require that whenever it is possible and/or appropriate, sufficient guarantees be sought and obtained prior to any advance and progress payment being made.

Confidentiality**Rule 105.26**

Throughout the tender process and until the results of that process are announced, no information about offers or the evaluation process may be divulged to any individual other than those directly involved in the evaluation process, such as responsible members of ~~the Organization~~ UPOV's staff and employees or authorized external consultants.

Standards of conduct**Rule 105.27**

Officers of ~~the Organization~~ UPOV involved in a procurement action shall disclose, in advance, any possible conflict of interest that may arise in the course of carrying out their duties. Failure to do so may result in appropriate disciplinary action or other appropriate civil and/or criminal action.

Rule 105.28

All officers of ~~the Organization~~ UPOV who are involved in a procurement action must observe the terms of the Staff Regulations and Staff Rules and the Standards of Conduct applicable to International Civil Servants, in particular the ~~WIPO~~ Staff Regulations and Rules on confidentiality, without prejudice to employees' obligation to report waste, fraud or abuse.

D. PROPERTY MANAGEMENT**Authority and responsibility****Rule 105.29**

- (a) The HLOP of WIPO shall designate the officers responsible for the management of the property of ~~the Organization~~ UPOV, and for all systems governing its receipt, recording, utilization, safekeeping, maintenance and disposal, including by sale.
- (b) A summary statement of non-expendable property of ~~the Organization~~ UPOV shall be provided to the External Auditor not later than three months following the end of each year of the financial period.

Property Survey Board**Rule 105.30**

- (a) The HLOP of WIPO shall establish a Property Survey Board of WIPO to render written advice to him or her in respect of loss, damage or other discrepancy regarding the property of ~~the Organization~~ UPOV. The HLOP of WIPO shall establish the composition and terms of reference of such board, which shall include procedures for determining the cause of such loss, damage or other discrepancy, the disposal action to be taken in accordance with Rules 105.31 and 105.32 and the degree of responsibility, if any, attaching to any employee of ~~the Organization~~ UPOV or other party for such loss, damage or other discrepancy.
- (b) Where the advice of the Property Survey Board of WIPO is required by UPOV, no final action in respect of ~~WIPO's~~ UPOV's property loss, damage or other discrepancy may be taken before such advice is received. In cases where the HLOP of WIPO decides not to accept the advice of the Board, he or she shall record in writing the reasons for that decision.

Sale/disposal of property**Rule 105.31**

Sales of supplies, equipment or other property declared surplus or unserviceable shall be based on competitive bidding, unless the Property Survey Board of WIPO:

- (a) Estimates that the sales value is less than an amount to be specified by the Controller of WIPO.
- (b) Considers that the exchange of property in partial or full payment for replacement equipment or supplies is in the best interest of ~~the Organization~~ UPOV.
- (c) Determines that the destruction of the surplus or unserviceable material will be more economical or is required by law or by the nature of the property.
- (d) Determines that the interests of ~~the Organization~~ UPOV will be served through the disposal of the property by gift or by sale at a nominal price to an intergovernmental organization, a Government or governmental agency or some other non-profit organization.

Rule 105.32

Except as provided for in Rule 105.31, property shall be sold on the basis of payments made on or before delivery.

CHAPTER 6: ACCOUNTING

Principal accounts

Regulation 6.1

The ~~Director General~~ Secretary-General shall maintain and safeguard against damage, destruction, unauthorized access and removal, such accounting records as are necessary for management purposes. The ~~Director General~~ Secretary-General shall prepare financial statements for both years of the financial period, which shall show:

- (a) The income and expenditures of all funds.
- (b) The status of the appropriations appropriation, including:
 - (i) the original budget appropriation;
 - ~~(ii) the appropriation as modified by any transfers made by the Director General under Regulation 5.5;~~
 - ~~(iii) increases or decreases arising from the flexibility adjustments under Regulation 5.6;~~
 - (iv) credits, if any, other than the appropriations appropriation approved by the General Assembly Council;
 - (v) the amounts charged against ~~these appropriations~~ the appropriation and/or other credits.
- (c) The assets and liabilities of the Organization UPOV.

The ~~Director General~~ Secretary-General shall also give such other information as may be appropriate to indicate the current financial position of the Organization UPOV.

Regulation 6.2

Appropriate separate accounts shall be maintained for all trust and reserve funds and special accounts.

Rule 106.1

In accordance with Regulations 6.1 and 6.2, the principal accounts of the Organization UPOV shall include detailed, comprehensive and up-to-date records of assets and liabilities for all funds. The principal accounts shall consist of:

- (a) Program and budget accounts showing:
 - (i) the original appropriations appropriation;
 - ~~(ii) appropriations as modified by transfers;~~
 - ~~(iii) increases or decreases arising from the flexibility adjustments under Regulation 5.6;~~
 - (iv) credits (other than the appropriations appropriation made available by the General Assembly Council);
 - (v) expenditures, including disbursements and expense accruals;
 - (vi) balances of allocations and appropriations.
- (b) General ledger accounts showing all cash at banks, investments, receivables and other assets, payables and other liabilities.
- (c) Reserve funds, working capital funds and all trust funds and other special accounts.

Authority and responsibility

Rule 106.2

The Controller of WIPO shall be responsible for the organization and proper working of all WIPO UPOV accounting systems and designate the officers responsible for performing accounting functions.

Accounting standards

Rule 106.3

Unless otherwise directed by the Controller of WIPO or by the particular terms governing the operation of a trust fund or special account, all financial transactions shall be recorded in the accounts on an accrual basis in compliance with the accounting standards applicable to the United Nations System.

Currency of accounting records

Regulation 6.3

The financial statements and the financial management report of ~~the Organization~~ UPOV shall be presented in Swiss francs. Accounting records may, however, be kept in such currency or currencies as the ~~Director General~~ Secretary-General may deem necessary.

Rule 106.4

Except where authorized by the Controller of WIPO, accounts shall be maintained in Swiss francs. ~~At Liaison Offices, accounts may be maintained in the currency of the country in which they are situated, provided that all amounts are recorded both in local currency and the Swiss franc equivalent.~~

Accounting for exchange rate fluctuations

Rule 106.5

(a) The Controller of WIPO shall establish the operational rates of exchange between the Swiss franc and other currencies which shall be derived from the operational rates of exchange of the United Nations. The said operational rates of exchange shall be used for recording all WIPO-UPOV transactions.

(b) Payments in currencies other than the Swiss franc will be determined in Swiss francs on the basis of the operational rate of exchange prevailing at the time of payment. Any difference between the actual amount received on exchange and the amount that would have been obtained at the operational rate of exchange shall be accounted for as loss or gain on exchange.

Accounting for proceeds from the sale of property

Rule 106.6

The proceeds from the sale of property shall be credited as miscellaneous income except:

(a) Where a Property Survey Board of WIPO has recommended the application of these proceeds directly against the purchase price of replacement equipment or supplies (any balance shall be taken into account as miscellaneous income).

(b) When the trade-in of property is not considered to be a sale and the allowance shall be applied against the cost of the replacement property.

(c) Where normal practice is to secure and use certain material or equipment in connection with a contract and to salvage and sell such material or equipment at a later stage.

(d) When the proceeds from the sale of surplus project equipment shall be credited to the accounts of that project, provided that the project has not been closed.

Accounting for commitments against future financial periods

Rule 106.7

Obligations established prior to the financial period to which they pertain, pursuant to Regulation 5.7 and Rule 105.1, shall be disclosed in the financial statements.

Writing off losses of cash, receivables and property

Regulation 6.4

The ~~Director-General~~ Secretary-General may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off for the financial period shall be submitted to the External Auditor with the financial statements.

Rule 106.8

(a) The Controller of WIPO may, after full investigation, recommend to the Secretary-General to authorize the writing-off of losses of cash and the book value of accounts and notes receivable deemed to be irrecoverable. A summary statement of losses of cash and receivables shall be provided to the External Auditor not later than three months following the end of the financial period.

(b) The investigation shall in each case make a recommendation to the Secretary-General to fix the responsibility, if any, attaching to any officer(s) of ~~the Organization UPOV~~ UPOV for the loss or losses. Such officer(s) may be required to reimburse ~~the Organization UPOV~~ UPOV either partially or in full. Final determination as to all surcharges to be made against such officer(s) as the result of losses will be made by the Secretary-General after consultation with the Controller of WIPO.

Rule 106.9

(a) The Controller of WIPO may, after full investigation, recommend to the Secretary-General to authorize the writing-off of losses of ~~WIPO~~ UPOV's property and adjust the records in order to bring the balance shown into conformity with actual physical property. A summary statement of losses of non-expendable property shall likewise be provided to the External Auditor not later than three months following the end of the financial period.

(b) The investigation shall in each case make a recommendation to the Secretary-General to fix the responsibility, if any, attaching to any officer(s) of ~~the Organization UPOV~~ UPOV for the loss or losses. Such officer(s) may be required to reimburse ~~the Organization UPOV~~ UPOV either partially or in full. The final determination as to all surcharges to be made against such officer(s) as the result of losses will be made by the Secretary-General after consultation with the Controller of WIPO.

Direct and indirect expenses

Rule 106.10

(a) ~~Any expenditure which is incurred in the exclusive interest of a given Union shall be considered as a "direct expense" of that Union.~~

~~(b) Any other expenditure which is incurred to implement the program and budget approved by the Assemblies of the Member States shall be considered as an "indirect" expense."~~

~~(c) The financial management report of the Organization shall provide a clear distinction between direct and indirect expenses.~~

Financial statements

Regulation 6.5

The financial statements for both years of the financial period shall be submitted by the ~~Director General~~ Secretary-General to the External Auditor ~~and the Audit Committee~~ no later than March 31 following the end of each year of the financial period. Final financial statements covering both years of the financial period shall be submitted to the External Auditor ~~and the Audit Committee~~ not later than March 31 following the end of the financial period.

Rule 106.11

(a) For all accounts of ~~the Organization~~ UPOV, financial statements covering each year of the financial period, as at December 31, shall be submitted to the External Auditor ~~and the Audit Committee~~ not later than March 31 of the following year. For the same accounts, final financial statements covering both years of the financial period, likewise as at December 31, shall be submitted to the External Auditor ~~and the Audit Committee~~ not later than April 30 following the end of the financial period. Copies of financial statements shall also be transmitted to the ~~Program and Budget Committee~~ Consultative Committee. Additional financial statements may be prepared as and when the Controller of WIPO deems it necessary.

(b) Financial statements submitted to the External Auditor ~~and the Audit Committee~~ for all accounts shall include:

- (i) a statement of income, expenditures and changes in reserves and fund balances;
- (ii) a statement of assets, liabilities, reserves and fund balances;
- (iii) a statement of cash flows;
- (iv) such other schedules as may be required;
- (v) notes to the financial statements.

Regulation 6.6

Within ~~five~~ six months after the end of each financial period, the ~~Director General~~ Secretary-General shall prepare the financial management report for that financial period. That report shall include the financial statements covering the financial period, statement of budget and actual income and expenditure for the financial period reported on the same basis as the adopted budget in accordance with Regulation 6.1, a report on investments and a statement on the status of contributions of the ~~Member States~~ members of UPOV.

^j 6.6 UPOV (1) ~~Within six months after the end of each financial period, the Secretary General shall submit the UPOV final accounts to the Government of the Swiss Confederation in its capacity as Supervisory Authority. Within eight months after the end of each financial period the Secretary General shall submit the final accounts and the audit report of the Government of the Swiss Confederation External Auditor to the Council of UPOV.~~

6.6 UPOV (2) The Council shall examine the accounts. It may propose to identify adjustments to the share of UPOV in common expenditures² expenses, if it finds that this share has not been correctly estimated and assessed by the Secretary[-] General. In such a case, after having consulted the Coordination Committee of WIPO, the Council shall establish the final allocation. The Government of the Swiss Confederation, in its capacity as Supervisory Authority, shall establish the final allocation, after having consulted the Coordination Committee of WIPO on the proposals made by the Council of UPOV.

6.6 UPOV (3) The Council shall approve the final accounts, after they have been audited in accordance with Article 24 of the 1961 Convention, Article 25 of the 1978 Act and Article 29 (6) of the 1991 Act of the Convention.

Rule 106.12

The Controller of WIPO shall prepare the financial management report in accordance with Regulation 6.3.

^k106.12 UPOV (1) Within eight months after the end of each financial period, the Secretary[-]General shall submit to the Council, -of UPOV and to the Government of the Swiss Confederation in its capacity as Supervisory Authority, a management report (rapport de gestion) dealing with its management and the activities and financial position of UPOV. the financial management report prepared in accordance with Regulation 6.3.

Regulation 6.7

After audit and examination by the Council, the annual financial statements, financial management report and the report of the External Auditor shall be transmitted to all the interested States members of UPOV.

^h(b) The Secretary[-]General shall transmit the management report to all the member States of the Union after it has been examined by the Council.

Rule 106.13

Accounting records, other financial and property records and all supporting documents shall be retained for such periods as may be agreed with the External Auditor, after which, on the authority of the Controller of WIPO, they may be destroyed.

² The WIPO/UPOV Agreement (document UPOV/INF/8), Article 2 (2), states that: “(2) Where any service rendered by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as “common services”), or where any expenditure incurred by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as “common expenditures”), the amounts of the indemnification owed by UPOV to WIPO shall be established in proportion to the interest of UPOV in the said service or expenditure.” (3) The value of any service rendered exclusively to UPOV by WIPO and the evaluation of the interest of UPOV in common services and common expenditures shall be established by the Council of UPOV and the Director General of WIPO.”

CHAPTER 7: INTERNAL AUDIT CHARTER

Internal Audit Charter

Regulation 7.1

~~There shall be an~~ The Internal Audit and Oversight Division (IAOD) ~~of WIPO will~~ ~~to~~ conduct independent internal audit, inspections and investigations ~~of UPOV~~ in accordance with the provisions, applied *mutatis mutandis*, of the WIPO Internal Audit Charter appended to the present Financial Regulations (Annex I).

CHAPTER 8: EXTERNAL AUDITOR

Appointment of the External Auditor

Regulation 8.1

The WIPO External Auditor, who shall be the Auditor General (or officer holding the equivalent title) of a Member State of WIPO, shall be appointed by the General Assembly of WIPO, in the manner decided by the WIPO Assembly. Where the WIPO External Auditor is the Auditor General (or officer holding the equivalent title) of a State member of UPOV, the Council shall designate as External Auditor, with its agreement, the WIPO External Auditor. Where the WIPO External Auditor is the Auditor General (or officer holding the equivalent title) of a Member State of WIPO that is not a State member of UPOV, the Council shall designate as External Auditor, with its agreement, the Auditor General (or officer holding the equivalent title) of a State member of UPOV.

Tenure of office of the External Auditor

Regulation 8.2

The External Auditor shall be appointed for a term of office of six years non renewable consecutively.

Regulation 8.3

If the External Auditor ceases to hold office as Auditor-General (or equivalent title) in his or her own country, his or her tenure of office shall thereupon be terminated and he or she shall be succeeded as External Auditor by his or her successor as Auditor-General. The External Auditor may not otherwise be removed during his or her tenure of office except by the General Assembly Council.

Audit standards, scope and operations

Regulation 8.4

The audit shall be conducted in conformity with generally accepted common international auditing standards and, subject to any special directions of the General Assembly Council, in accordance with the terms of reference set out in the annex to the present Regulations (Annex II).

Regulation 8.5

The External Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Organization UPOV.

Regulation 8.6

The External Auditor shall be completely independent and solely responsible for the conduct of the audit.

Regulation 8.7

The ~~General Assembly Council~~ may request the External Auditor to perform certain specific examinations and issue separate reports on the results.

Facilities**Regulation 8.8**

The ~~Director General Secretary-General~~ shall provide the External Auditor with the facilities they may require in the performance of the audit.

Special examination**Regulation 8.9**

For the purpose of making a local or special examination or of effecting economies in the audit cost, the External Auditor may engage the services of any national Auditor-General (or officer holding the equivalent title) or commercial public auditors of known repute or any other person or firm which, in the opinion of the External Auditor, is technically qualified.

Reporting**Regulation 8.10**

The External Auditor shall issue an opinion on the financial statements for each year of the financial period, and a report on the audit of the financial statements for the financial period, which shall include such information as the External Auditor deems necessary with regard to matters referred to in Regulation 8.5 and in the annex to the present Regulations referred to in Regulation 8.4.

Regulation 8.11

The reports of the External Auditor shall be transmitted to the ~~General Assembly Council~~, through the ~~Program and Budget Committee Consultative Committee~~, together with the audited financial statements, in accordance with any directions given by the ~~General Assembly Council~~. The ~~Program and Budget Committee Consultative Committee~~ shall examine the financial statements and the audit reports and shall forward them to the ~~General Assembly Council~~ with such comments and recommendations as it deems appropriate.

CHAPTER 9: AUDIT COMMITTEE**Regulation 9.1**

~~There shall be an Audit Committee to assist Member States in their role of oversight and for better exercise of their governance responsibilities with respect to the various operations of WIPO. The Audit Committee shall operate as an independent, expert advisory and external oversight body. The General Assembly shall approve the WIPO Audit Committee's terms of reference upon recommendation by the Program and Budget Committee. These terms of reference shall be appended to the present Financial Regulations (Annex III).~~

Not applicable to UPOV

CHAPTER 10: FINAL PROVISIONS

Amendment

Regulation 10.1

~~The Director General may propose amendments to these Regulations. Any such amendment to these Regulations must be approved by the General Assembly.~~

¹~~10.1 UPOV (1) Subject to the provisions of the UPOV Convention for the Protection of New Varieties of Plants, signed at Paris on December 2, 1961, and the Regulations Concerning the Procedure for Technical and Administrative Cooperation Between UPOV and the Unions Administered by BIRPI, approved by the Swiss Federal Council on October 21, 1969, “Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants (WIPO/UPOV Agreement)” of November 26, 1982, the present Regulations – including any changes resulting from the amendment of the Regulations and Rules (see Article 1)– may be amended by the Council.~~

~~10.1 UPOV (2) All amendments must be adopted by a majority of three-fourths of the States members of UPOV in accordance with the provisions of Article 22 of the 1961 Convention and the 1978 Act and Article 26 (7) of the 1991 Act after the opinion of the Swiss Confederation have been heard.~~

Rule 110.1

The present Rules may be amended by the ~~Director General~~ Secretary-General in a manner consistent with the Financial Regulations, in accordance with Regulation 5.8.

[Endnotes follow]

-
- ^a Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 2”).
 - ^b Replaced by Regulation 2.6
 - ^c Replaced by Regulation 2.8
 - ^d Replaced by “appropriation” (see Rule 101.3)
 - ^e Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 6”).
 - ^f Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 8”).
 - ^g Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 5”).
 - ^h Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 10(1)”).
 - ⁱ Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 9”).
 - ^j Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 4”).
 - ^k Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 3”).
 - ^l Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15 “Article 12”).

Specific UPOV provisions in current Financial Regulations of UPOV (document UPOV/C/VI/15) not transferred to these draft Financial Regulations and Rules of UPOV

Article 1

Adoption of the Financial Regulations of WIPO

The Financial Regulations of the International Union for the Protection of New Varieties of Plants (UPOV) (hereinafter referred to as “the present Regulations”) shall consist, mutatis mutandis and subject to the provisions of the following articles, of the Financial Regulations applied by the World Intellectual Property Organization (WIPO) and the Rules implementing the said Regulations (hereinafter referred to as “the Regulations” and “the Rules” respectively), including all subsequent amendments to such Regulations and such Rules.

[Article 1 has been replaced by Article 8(1) of the WIPO/UPOV Agreement]

Article 7

Financial Control

[...]

2. The last two sentences of Article 10.2 of the Regulations are replaced by the following provision:

In such case, the Controller shall attach a report to his authorization and shall immediately communicate the said report to the President of the Council of UPOV, who shall bring the matter to the attention of the Council.

Article 10

Disbursements

[...]

2. When the disbursement concerns UPOV alone, the reference to the Director at the end of the first sentence of paragraph (b) of Rule 3 shall be understood to be a reference to the Secretary General of UPOV.

[Endnote continued on next page]

[Endnotes continuation]

Article 11

Receiving Moneys

Paragraph (c) of Rule 4 is replaced by the following:

Cheques made out by the Office of UPOV to its own order, as well as any other order addressed by the Office of UPOV to a bank, postal cheques office or to any other person, for the payment of cash, must be signed by two staff members, one of whom must be the Secretary General of UPOV or a staff member designated by him, and the other the Controller or, if the Controller is not available, the Head of the Finance Services.

[Annexes follow]

ANNEX I

(WIPO INTERNAL AUDIT CHARTER)

see document UPOV/INF/10/1 “Internal Audit”

[Annex II follows]

ANNEX II

TERMS OF REFERENCE
GOVERNING EXTERNAL AUDIT

1. The External Auditor shall perform such audit of the accounts of ~~WIPO and of the Unions administered by WIPO~~ UPOV, including all trust funds and special accounts, as he deems necessary in order to assure himself:

(a) that the financial statements are in accord with the books and records of ~~WIPO~~ UPOV;

(b) that the financial transactions reflected in the statements have been in accordance with the rules and regulations, the budgetary provisions and other applicable directives;

(c) that the securities and monies on deposit and on hand have been verified by certificate received direct from ~~WIPO~~ UPOV's depositaries or by actual count;

(d) that the internal controls are adequate in the light of the extent of reliance placed thereon;

(e) that procedures satisfactory to him have been applied to the recording of all assets, liabilities, surpluses and deficits.

2. The External Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the ~~Director General~~ Secretary-General and may proceed to such detailed examination and verification as he chooses of all financial records including those relating to supplies and equipment.

3. The External Auditor and his staff have free access at all convenient times to all books, records and other documentation which are, in the opinions of the External Auditor, necessary for the performance of the audit. Information classified as privileged and which the ~~Director General~~ Secretary-General (or his designated senior official) agrees is necessary for the purposes of the audit and information classified confidential shall be made available on application. The External Auditor and his staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The External Auditor may draw the attention of the ~~Governing Bodies concerned of WIPO and all interested Unions~~ Council to any denial of information classified as privileged which in his opinion was required for the purpose of the audit.

4. The External Auditor shall have no power to disallow items in the accounts but shall draw to the attention of the ~~Director General~~ Secretary-General for appropriate action any transaction concerning which he entertains doubt as to legality or propriety. Audit objections to these or any other transactions arising during the examination of the accounts shall be immediately communicated to the ~~Director General~~ Secretary-General.

5. The External Auditor shall express and sign an opinion on the financial statements of ~~WIPO~~ UPOV. The opinion shall include the following basic elements:

- (a) the identification of the financial statements audited;
- (b) a reference to the responsibility of ~~WIPO~~ UPOV's management and the responsibility of the External Auditor;
- (c) a reference to the audit standards followed;
- (d) a description of the work performed;
- (e) an expression of opinion on the financial statements as to whether:
 - (i) the financial statements present fairly the financial position as at the end of the period and the results of the operations for the period;
 - (ii) the financial statements were prepared in accordance with the stated accounting policies; and
 - (iii) the accounting policies were applied on a basis consistent with that of the preceding financial period.
- (f) an expression of opinion on the compliance of transactions with the Financial Regulations and legislative authority;
- (g) the date of the opinion;
- (h) the External Auditor's name and position; and
- (i) should it be necessary, a reference to the report of the External Auditor on the financial statements.

6. The Report of the External Auditor on the financial operations of the period should mention:

- (a) the type and scope of his examination;
- (b) matters affecting the completeness or accuracy of the accounts, including where appropriate:
 - (i) information necessary to the correct interpretation of the accounts;
 - (ii) any amounts which ought to have been received but which have not been brought to account;
 - (iii) any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;
 - (iv) expenditures not properly substantiated;
 - (v) whether proper books of accounts have been kept. Where, in the presentation of statements, there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;
- (c) other matters which should be brought to the notice of the ~~Governing Bodies concerned of WIPO and all interested Unions~~ Council such as:
 - (i) cases of fraud or presumptive fraud;

- (ii) wasteful or improper expenditure of ~~WIPO UPOV~~'s money or other assets (notwithstanding that the accounting for the transaction may be correct);
 - (iii) expenditure likely to commit ~~WIPO UPOV~~ to further outlay on a large scale;
 - (iv) any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;
 - (v) expenditure not in accordance with the intention of the ~~Governing Bodies concerned of WIPO and all interested Unions~~ Council after making allowance for duly authorized transfers within the budget;
 - (vi) expenditure in excess of appropriations as amended by duly authorized transfers within the budget;
 - (vii) expenditure not in conformity with the authority which governs it;
- (d) the accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the records.

In addition, the reports may contain reference to:

(e) transactions accounted for in a previous year concerning which further information has been obtained or transactions in a later year concerning which it seems desirable that the ~~Governing Bodies concerned of WIPO and all interested Unions~~ Council should have early knowledge.

7. The External Auditor may make such observations with respect to his findings resulting from the audit and such comments on the ~~Director-General Secretary-General~~'s financial report as he deems appropriate to the ~~Governing Bodies concerned of WIPO and all interested Unions~~ Council or the ~~Director-General Secretary-General~~.

8. Whenever the scope of audit of the External Auditor is restricted, or whenever the External Auditor is unable to obtain sufficient evidence, he shall refer to the matter in his opinion and report, making clear the reasons for his comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the External Auditor include criticism in his Report without first allowing the ~~Director-General Secretary-General~~ an adequate opportunity of explanation on the matter under observation.

[Annex III follows]

ANNEX III

(TERMS OF REFERENCE OF THE WIPO AUDIT COMMITTEE)

Not applicable to UPOV

[End of Annex III and of document]