

**UPOV/INF/4/6****Original:** English**Date:** October 25, 2020

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**FINANCIAL REGULATIONS AND RULES OF UPOV**

Document adopted by the Council  
on October 25, 2020  
by correspondence

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 20<sup>1</sup> 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, January 1, 2010, October 1, 2010, October 5, 2011, October 9, 2012, August 26, 2014, September 30, 2014 and October 11, 2017, 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.

The highlighted text in this document indicates the amendments to the text of the Financial Regulations and Rules of WIPO in accordance with (a) and (b) above.

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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<sup>1</sup> Article 20 of the 1961 Convention and of the 1978 Act and Article 26 of the 1991 Act.

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	Not applicable to UPOV

**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) (hereinafter referred to as "UPOV"). They are approved by the Council of UPOV (hereinafter referred to as the "Council").

**Rule 101.1**

These Financial Rules are established by the Secretary-General in accordance with the provisions of the Financial Regulations, in a manner consistent with Regulation 5.8. The Council is informed of any modification of the Financial Rules. They shall govern all the financial management activities of UPOV except as may otherwise explicitly be provided by the Council or unless specifically exempted therefrom by the Secretary-General. The Secretary-General hereby delegates authority and assigns responsibility for the implementation of the Financial Regulations and Rules to the Controller of WIPO, together with the authority to issue Office Instructions for such purpose. The Controller of WIPO may in turn delegate aspects of his/her authority to other officers unless the 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 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) "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) "Consultative Committee" means the Committee in charge of the preparation of the sessions of the Council;

(e) "Appropriation" shall mean the budgetary expenditure authorization approved by the Council for the financial period against which expenditures may be incurred for purposes specified by the Council;

(f) "Disbursement" shall mean the actual amount paid;

(g) "Employee" is a person engaged by 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 (excluding amounts prepaid at the end of each year of the financial period) and expense accruals;

(i) "Headquarters" shall mean the offices of UPOV located in Geneva;

(j) "Obligations" ("contractual commitments") 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 staff member of UPOV or, as appropriate, of WIPO, that is, an individual employed under a fixed-term, continuing, permanent, or temporary appointment;



(l) "Pre-encumbrance" ("Commitment" or "Purchase Requisition") shall mean an engagement involving an earmarking of funds against resources of UPOV;

(m)

(n) "Reserve fund" shall mean funds established by the Council in which unforeseen surplus income that exceeds the amounts required to finance the program and budget appropriation should be deposited. Reserve funds shall be used in a manner decided by the Council;

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

(p) "Trust funds" shall mean funds held by UPOV on behalf of other entities;

(q) "Working capital fund" shall mean funds established for providing advance financing of the appropriation should there be a temporary liquidity shortfall and for such other purposes as the Council, 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 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 Secretary-General.

### **Regulation 2.2**

The involvement of 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**

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

## **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 UPOV.

### **Regulation 2.4**

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

### **Regulation 2.5**

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 Council and such further annexes or statements as the 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 and nature of expenditure in a consolidated form for UPOV; 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 and income classified as miscellaneous in accordance with Regulation 3.13.

## **Review and approval**

### **Regulation 2.6**

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

### **Regulation 2.7**

The Consultative Committee shall review the program and budget proposed by the Secretary-General and transmit it to the Council with its recommendations.

### **Regulation 2.8**

The Council shall adopt the program and budget for the following financial period after consideration of the proposed program and budget and the recommendations of the Consultative Committee thereon. If the program and budget is not adopted before the beginning of the following financial period, the authorization to the Secretary-General to incur obligations and make payments would remain at the level of appropriations of the previous financial period.

## **Publication of the approved program and budget**

### **Rule 102.3**

Not applicable to UPOV

## **Supplementary and revised budget requirements**

### **Regulation 2.9**

Supplementary and revised program and budget proposals may be submitted by the Secretary-General whenever necessary.

### **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 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) Not applicable to UPOV

(iii) Not applicable to UPOV

(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) Not applicable to UPOV

(ii) revised estimates of income, including from miscellaneous income as defined in Regulation 3.13.

## **Supplementary and revised program and budget proposals: review and approval**

### **Regulation 2.11**

The 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 Consultative Committee, at least

six weeks before the relevant session. The Consultative Committee shall review the proposals and transmit them to the Council with its recommendations.

**Rule 102.4**

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

**Regulation 2.12**

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 may adopt a decision to authorize the Secretary-General to incur unforeseen and extraordinary expenses which cannot be met from the existing 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 Council decision, 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 Secretary-General to the Council, on the status of all commitments relating to unforeseen and extraordinary expenses.

**Program and financial performance reporting****Regulation 2.14**

The Secretary-General shall prepare a report on program and budgetary performance, based on the program structure, results frameworks, and indicators of achievement contained in the program and budget, in accordance with the mechanism adopted by the members of UPOV in respect of their involvement in the preparation and follow up of the program and budget of UPOV. The program and financial management report of (i) the first year of the biennium shall provide a progress report on program and budgetary performance; and of (ii) the second year of the biennium shall provide a report on the achievements of the biennium, together with financial management information as required under these Financial Regulations and Rules.

**Rule 102.6**

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

**Regulation 2.14bis**

The program and financial management report of the second year of the biennium shall include the following financial information:

- (a) A statement of budget and actual income and expenditure for the financial period reported on the same accounting basis as the adopted budget;
- (b) The status of appropriations, including:
  - (i) the original budget appropriation;
  - (ii) Not applicable to UPOV
  - (iii) Not applicable to UPOV.

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

**Rule 102.7**

(a) The Controller of WIPO shall prepare the program and financial management report in accordance with Regulation 2.14 and 2.14bis.

(b) Within eight months after the end of each financial period, the Secretary-General shall submit to the Council the program and financial management report prepared in accordance with Regulations 2.14 and 2.14bis.

**Regulation 2.15**

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

**CHAPTER 3: FUNDS****Financing of the appropriation****Regulation 3.1**

The appropriation shall be financed by contributions of **members of UPOV**, fees derived from services provided by UPOV, miscellaneous income as referred to in Regulation 3.13 and such other means as the **Council** shall decide.

**A. ASSESSED CONTRIBUTIONS****Assessed contributions****Regulation 3.2**

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**

Not applicable to UPOV

**Request for payment of assessed contributions****Regulation 3.4**

The **Secretary-General** shall communicate, each year, to the **members of UPOV** the amount of their contributions for the forthcoming year on the basis of the **applicable number of contribution units**.

**Payment of assessed contributions****Regulation 3.5**

As of **February 1** of the following calendar year, the unpaid balance of such contributions shall be considered to be one year in arrears. **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** shall be credited first to the working capital fund 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 **Secretary-General** shall submit to the **Council** at each ordinary session a report on the payment of contributions.

**Assessed contributions from new members of UPOV****Regulation 3.8**

New **members of UPOV** 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 UPOV for services rendered shall be determined by the 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 Secretary-General provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of UPOV and provided that the acceptance of such contributions that directly or indirectly involve significant additional financial liability for UPOV shall require the consent of the 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 Council, the receipt of any voluntary contribution, gift or donation to be administered by UPOV requires the acceptance of the Controller of WIPO, on behalf of the Secretary-General.
- (b) Voluntary contributions, gifts or donations which directly or indirectly involve additional financial liability for UPOV may be accepted only with the approval of the 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,
- (b) Fees derived for services provided by UPOV,
- (c) Direct refunds of expenditures made during each year of the financial period,
- (d) Advances or deposits to funds,
- (e) Interest or investment revenue,
- (f)
- (g) Income from the sale of publications,

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 annual financial statements of the year to which they relate.

#### **Reimbursements of expenditures**

##### **Rule 103.2**

- (a) Within the same year of the 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 years 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 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 UPOV. The assessed contributions paid by members of UPOV, fees derived from services provided by UPOV, miscellaneous income and any advances made from the working capital fund or reserve fund to finance general expenditure, shall be credited to this general fund.

#### **Working capital fund**

##### **Regulation 4.2**

- (1) UPOV shall have a special fund hereby named the Working Capital Fund, which shall be constituted by advances made by members of UPOV. Such advances shall be entered to the credit of the members which have made them.
- (2) The amount of the initial, or any subsequent, advance which each 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.
- (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 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) 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. Advances provided for in paragraph 3(c) shall be subject to prior approval by the Council.
- (5) Interest received on the Working Capital Fund shall be credited to the general fund of UPOV.

##### **Regulation 4.3**

Not applicable to UPOV

##### **Regulation 4.4**

Not applicable to UPOV

## 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 Secretary-General. Such funds and special accounts shall be administered in accordance with the present Regulations.

#### Rule 104.1

(a) The establishment, purpose and limits of trust funds and special accounts shall be approved on behalf of the 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 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.

(b) The Controller of WIPO may provide authorization for the utilization of voluntary contributions up to the amounts received in cash.

## Surpluses and deficits; Reserve Funds

### Regulation 4.6

The use, other than for the covering of any deficits, of the reserve fund is a matter for the decision of the Council. If after the closure of the financial period, the amount of the reserve fund exceeds 15 percent of the total income for the financial period, the Council shall decide on the use of the income in excess of the expenditure for the financial period.

### Regulation 4.7

If, after the closure of the financial period, UPOV shows a surplus of income, such surplus shall be accounted for under the reserve fund, unless otherwise decided by the Council.

### Regulation 4.8

If, after the closure of the financial period, UPOV shows a deficit, not coverable out of the reserve fund, the Council shall decide upon measures to redress the financial situation.

## B. BANKING

### Bank accounts, authority and policy

#### Regulation 4.9

The Secretary-General shall designate, after competitive bidding or any other applicable procurement procedure, the bank or banks in which the funds of 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 UPOV shall be kept, shall establish all official bank accounts required for the transaction of 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. 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)" 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 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 UPOV's 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 UPOV in the foreseeable future.

## **Remittances to External Offices**

### **Rule 104.5**

Not applicable to UPOV

## **Cash advances**

### **Rule 104.6**

- (a) Petty cash 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 Secretary-General may make short-term investments of money not needed for immediate requirements in accordance with UPOV's investment policy. Unless otherwise agreed by the Council, UPOV's investment policy shall be the same as WIPO's investment policy for "operating cash". The Secretary-General may seek the advice of the Advisory Committee on Investments of WIPO for matters relating exclusively to UPOV. The Secretary-General shall inform the Consultative Committee regularly of any investments.

#### Regulation 4.11 (deleted)

##### Rule 104.10

(a) The authority to make and prudently manage investments in accordance with Regulation 4.10, 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 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 in accordance with the investment policy referred to under Regulation 4.10.

##### 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 each calendar year of the financial period.

#### Regulation 4.13

External borrowing by UPOV shall not be allowed, unless otherwise decided by the Council.

### External borrowing

#### Rule 104.14

## CHAPTER 5: UTILIZATION OF FUNDS

### A. APPROPRIATIONS

#### Authorizations

##### Regulation 5.1

The appropriation approved by the Council shall constitute an authorization to the Secretary-General, to incur obligations and make payments for the purposes for which the appropriation was approved and up to the amount so approved.

#### Available period

##### Regulation 5.2

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

##### Regulation 5.3

Expense accruals shall remain available for twelve months following the end of each year 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 year in question shall be cancelled or, where the obligation remains a valid charge, transferred as an obligation against the current appropriation.

#### Transfers between appropriations

##### Regulation 5.5

Not applicable to UPOV

##### [Flexibility adjustments]

Not applicable to UPOV

##### Regulation 5.6

Not applicable to UPOV

#### Contractual commitments against appropriations for future financial periods

##### Regulation 5.7

The Secretary-General may enter into contractual commitments for future financial periods, provided that these:

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

##### Rule 105.1

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

#### Administration of appropriations

##### Regulation 5.8

The Secretary-General shall:

- (a) Establish, with the consensual agreement of the Consultative Committee, the financial rules of 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 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 UPOV;

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

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

#### Vice Secretary-General

#### Rule 105.5

(a) The Vice Secretary-General is responsible for planning, initiating and managing the effective and efficient utilization of resources as approved by the Council. In particular, 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 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) The Vice Secretary-General should designate an alternate[s].

## **Certifying officers**

### **Rule 105.6**

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

(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, 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 accounting records 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 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.

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

## **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 UPOV. All obligations must be supported by an appropriate obligating document.

## **Ex gratia payments**

### **Regulation 5.10**

The Secretary-General may make such *ex gratia* payments as are deemed to be necessary in the interest of UPOV, provided that a summary statement of such payments for the calendar year shall be included in the annual financial statements of UPOV. Ex gratia payment is a payment made where there is no legal liability to pay, but where the moral obligation is such as to make payment desirable. The total amount of such payments shall not exceed 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 Officer of UPOV there is no clear legal liability on the part of UPOV, the moral obligation is such as to make payment desirable, in the interest of UPOV. A summary statement of all *ex gratia* payments for the calendar year shall be included in the annual financial statements of 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 and procurement process**

#### **Regulation 5.11**

(a) 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. The following general principles shall be given due consideration:

- (i) Best value for money.
- (ii) Effective and broad competition for the award of contracts.
- (iii) Fairness, integrity and transparency of the procurement process.
- (iv) The best interests of UPOV.
- (v) Prudent procurement practices.

(b) The acquisition of goods and/or services shall be made on the basis of contract award procedures. Methods of solicitation may be formal and/or informal. Solicitations shall be invited by advertisement unless otherwise prescribed. Any procurement action shall result from:

- (i) a competitive process; or
- (ii) a cooperation with other intergovernmental organizations; or
- (iii) an alternative procedure in accordance with Rule 105.18.

### **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")), to whom he or she hereby delegates authority and assigns responsibility for the implementation of the regulatory framework governing the procurement functions of UPOV, subject to the provisions of Rules 105.6, 105.8, 105.9 and 105.10 concerning the incurrence of financial obligations.

(b) The HLOP of WIPO may in turn delegate aspects of his/her authority to the Director of WIPO in charge of procurement (Authorized Officer), unless the Director General of WIPO indicates otherwise.

(c) The HLOP 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.

(d) 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 the HLOP of WIPO decision. When the procurement contract relates exclusively to UPOV, the decision will be taken after consultation with the Vice Secretary-General.

(e) The HLOP of WIPO may, in exceptional cases, and when special guarantees and/or external expertise are required, establish an external and independent *ad hoc* Committee. The HLOP of WIPO 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 HLOP of WIPO. When the reasons to establish an *ad hoc* Committee relate exclusively to UPOV, the decision for its establishment, its composition and terms of reference will be agreed after consultation with the Vice Secretary-General.

## Cooperation

### Rule 105.13 (deleted)

## Competitive 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 UPOV and the nature of the requirement.

### Rule 105.16 (deleted)

### Rule 105.17

The HLOP of WIPO shall establish, through an Office Instruction procurement general principles and basic rules, including the thresholds for (i) direct purchase; (ii) the informal RFQ procedure; (iii) limited tenders; and (iv) open international tenders.

## Cooperation with other inter-governmental organizations

### Rule 105.17bis

UPOV may cooperate with other inter-governmental organizations with similar procurement procedures:

- (a) to carry out common procurement actions, or
- (b) in order to optimize the overall resources spent on procurement processes, and under the conditions that procurement processes, goods and services, as well as prospective vendors are of similar nature, to enter into a contract relying on a procurement decision of another inter-governmental organization, or
- (c) to request another inter-governmental organization, which has particular expertise in the procurement of specific goods or services or the necessary procurement capacity in a given location, to carry out procurement activities on its behalf, or
- (d) to procure from another inter-governmental organization which has particular expertise in the procurement of specific goods or services or has obtained favorable conditions in the procurement of certain goods and services.

## Alternative procedures

### Rule 105.18

(a) The WIPO CRC shall render written advice to the HLOP of WIPO, or to the Authorized Officer as per Rule 105.12(b), on alternative procedures proposed to be made under paragraph (b) of the present Rule, whenever the procurement action is within the scope of its terms of reference.

(b) The HLOP of WIPO may determine that a standard competitive process shall not be used for a particular procurement action when:

(i) 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.

(ii) The supplier or the product/service needs to be standardized.

(iii) 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.

(iv) Within a reasonable prior period, a formal solicitation for identical products and services has not produced satisfactory results.

(v) The proposed procurement contract is for the purchase or lease of real property and market conditions do not allow for effective competition.

(vi) There is an emergency which necessitates immediate action (a lack of time resulting from a failure to plan in advance shall not constitute an emergency).

(vii) The proposed procurement contract relates to obtaining services that cannot be evaluated objectively.

(viii) The proposed procurement action arises from an Agreement with a Governmental entity or non-profit organization (Partnering Entity) establishing a wider cooperation framework with WIPO. Inter-governmental organizations, as referred to in Rule 105.17*bis*, are expressly excluded from the scope of the present sub paragraph (viii).

(ix) The HLOP of WIPO otherwise determines that a formal or informal solicitation is not in the best interest of UPOV.

#### **Rule 105.19**

When a determination is made pursuant to Rule 105.18(b) above, the HLOP of WIPO shall record in writing the reasons and the applicable process to be used for the award of the procurement contract.

#### **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 (deleted)**

#### **Contracts**

##### **Rule 105.22**

All procurement actions shall be governed by written documentation.

##### **Rule 105.23 (deleted)**

#### **Payments**

##### **Rule 105.24**

Except where normal commercial practice or the interests of UPOV so require, no contract or other form of undertaking shall be made on behalf of 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 therefore 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 duration of the supplier selection process and until the results of that process are officially announced by the relevant officers in charge of procurement, no information about offers or the evaluation process may be divulged by any individual involved in the selection process to any other individual within or outside UPOV, not involved in the evaluation or selection process.

**Standards of conduct****Rule 105.27**

Officers of UPOV involved in a procurement process 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 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 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 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 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 Director General of WIPO shall establish, through an Office Instruction, a Property Survey Board of WIPO and the composition and terms of reference of such board, which shall include procedures for determining the cause of such loss, damage or other discrepancy, and the disposal action to be taken in accordance with Rules 105.31 and 105.32.

(b) The Property Survey Board of WIPO shall render written advice to the HLOP of WIPO in respect of loss, damage or other discrepancy regarding the property of UPOV. Where the advice of the Property Survey Board of WIPO is required by UPOV, no final action in respect of 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 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 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.



## **Physical verification of property**

### **Rule 105.33**

Officers responsible for the management of the property of UPOV shall perform periodic physical inventories of such property for the purposes of ensuring that the accounting records of fixed assets are accurate.

## **CHAPTER 6: ACCOUNTING**

### **Accounting records**

#### **Regulation 6.1**

The Secretary-General shall maintain and safeguard against damage, destruction, unauthorized access and removal, such accounting records as are necessary for management purposes.

#### **Regulation 6.2**

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

#### **Rule 106.1**

The accounting records register all financial transactions of UPOV. The purpose of these records is to enable appraisal of the current financial position and performance of UPOV. The structure of the accounting records is defined by the chart of accounts, which is established and maintained by the Controller of WIPO. The accounting records are used to establish financial reports. In accordance with Regulations 6.1 and 6.2, the accounting records of UPOV shall include detailed, comprehensive and up-to-date records of assets and liabilities for all funds. The accounting records shall consist of:

- (a) Program and budget accounts showing:
  - (i) the original appropriation;
  - (ii)
  - (iii)
  - (iv) credits (other than the appropriation made available by the 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 UPOV accounting systems and designate the officers responsible for performing accounting functions.

### **Accounting bases and standards**

#### **Rule 106.3**

The accounting records shall be maintained to support the preparation of financial reports on different accounting bases as required by UPOV. The program and budget and related reporting in the financial management report are prepared on a modified accrual basis. The annual financial statements are prepared on a full accrual basis in compliance with the accounting standards applicable to the United Nations System. Unless otherwise directed by the Controller of WIPO or by the particular terms governing the operation of a trust fund or special account, all other financial reporting shall be prepared on a full accrual basis.

### **Currency of accounting records**

#### **Regulation 6.3**

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

**Rule 106.4**

Except where authorized by the Controller of WIPO, accounting records shall be maintained in Swiss francs.

**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 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**

For the purposes of the annual financial statements prepared on a full accrual basis, the gain or loss from the de-recognition of fixed assets (equipment, buildings or intangible assets) shall be included in the surplus or deficit of the statement of financial performance.

**Accounting for contractual commitments against future financial periods****Rule 106.7**

Contractual commitments established against future financial periods, pursuant to Regulation 5.7 and Rule 105.1, shall be disclosed in the notes to the financial statements.

**Writing off losses of cash, receivables and property****Regulation 6.4**

The 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 calendar year shall be submitted to the External Auditor with the annual 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 calendar year.

(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 UPOV for the loss or losses. Such officer(s) may be required to reimburse 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 UPOV's property and adjust the accounting 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 calendar year.

(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 UPOV for the loss or losses. Such officer(s) may be required to reimburse 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

Not applicable to UPOV

## Financial reporting

### Regulation 6.5

(1) The annual financial statements for each calendar year of the financial period shall be submitted by the Secretary-General to the External Auditor no later than March 31 following the end of the calendar year to which they relate.

(2) Within eight months after the end of each calendar year the Secretary-General shall submit the annual financial statements and the audit report of the External Auditor to the Council.

(3) The Council shall examine the annual financial statements. It may identify adjustments to the share of UPOV in common expenditures<sup>2</sup>, 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.

(4) The Council shall approve the annual financial statements, 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.

### Rule 106.11

(a) Annual financial statements covering each calendar year of the financial period, as at December 31, shall be submitted to the External Auditor not later than March 31 following the end of the calendar year to which they relate. The annual financial statements shall include all business units of UPOV. Copies of the annual financial statements shall also be transmitted to the Consultative Committee. Additional financial statements may be prepared as and when the Controller of WIPO deems it necessary.

(b) The annual financial statements submitted to the External Auditor shall include:

- (i) a statement of financial position;
- (ii) a statement of financial performance;
- (iii) a statement of changes in net assets;
- (iv) a statement of cash flow;
- (v) a statement of comparison of budget and actual amounts;
- (vi) notes, comprising a summary of significant accounting policies and other explanatory notes.

Subparagraphs (i) to (v) above shall be considered to constitute the primary financial statements.

### Rule 106.11 bis

The annual financial statements of the second year of the biennium shall provide the following:

- (a) The income and expenditures of all funds;
- (b) Credits, if any, other than the appropriations approved for the biennium, together with amounts charged against these, in the form of a comprehensive table;
- (c) Within the discussion and analysis accompanying such statements, financial information for the financial period drawn from the primary financial statements prepared for each calendar year;
- (d) A report on investments, as part of the notes to the financial statements.

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<sup>2</sup> The WIPO/UPOV Agreement (document UPOV/INF/8), Article 2 (2) and (3), 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."

**Regulation 6.6 (deleted)****Rule 106.12 (deleted)****Regulation 6.7**

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

**Retention of records****Rule 106.13**

The accounting records shall be supported by financial and property records and other documents which are to be retained in appropriate files and 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.

**CHAPTER 7: INTERNAL OVERSIGHT CHARTER****Internal Oversight Charter****Regulation 7.1**

There shall be an Internal and Oversight Division (IOD) to conduct independent internal audit, inspections and investigations of UPOV in accordance with the provisions, applied *mutatis mutandis*, of the WIPO Internal Oversight 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 official 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 official 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 official 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 official 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 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 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 UPOV.

**Regulation 8.6**

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

**Regulation 8.7**

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

**Facilities****Regulation 8.8**

The 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 official 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 annual financial statements for each calendar year of 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 on the annual financial statements, together with reports from other audits, shall be transmitted to the Council, through the Consultative Committee, together with the audited annual financial statements, in accordance with any directions given by the Council. The Consultative Committee shall examine the annual financial statements and the audit reports and shall forward them to the Council with such comments and recommendations as it deems appropriate.

**CHAPTER 9: INDEPENDENT ADVISORY OVERSIGHT COMMITTEE****Regulation 9.1**

Not applicable to UPOV

**CHAPTER 10: FINAL PROVISIONS****Amendment****Regulation 10.1**

(1) Subject to the provisions of the UPOV Convention and the "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 may be amended by the Council. Such amendments shall become effective on the date of approval by the Council, unless specified otherwise.

(2) All amendments must be adopted by a majority of three-fourths of the 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.

**Rule 110.1**

The present Rules may be amended by the Secretary-General in a manner consistent with the Financial Regulations, in accordance with Regulation 5.8. Such amendments shall become effective on the date determined by the Secretary-General.

[Annexes follow]

UPOV/INF/4/6

ANNEX I

(WIPO INTERNAL OVERSIGHT 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 accounting records of UPOV, including all trust funds and special accounts, as he deems necessary in order to assure himself:
  - (a) that the annual financial statements are in accord with the books and records of UPOV;
  - (b) that the financial transactions reflected in the annual financial 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 UPOV's depositories 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 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/her 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 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/her 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 Council to any denial of information classified as privileged which in his/her opinion was required for the purpose of the audit.
4. The External Auditor shall have no power to disallow items in the accounting records but shall draw to the attention of the Secretary-General for appropriate action any transaction concerning which he/she entertains doubt as to legality or propriety. Audit objections to these or any other transactions arising during the examination of the accounting records shall be immediately communicated to the Secretary-General.
5. The External Auditor shall express and sign an opinion on the annual financial statements of UPOV. The opinion shall include the following basic elements:
  - (a) the identification of the financial statements audited;
  - (b) a reference to the responsibility of 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 annual financial statements as to whether:
    - (i) the annual financial statements present fairly the financial position as at the end of the calendar year and the results of the operations for the calendar year;
    - (ii) the annual 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 calendar year.
  - (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 annual financial statements.

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

- (a) the type and scope of his/her examination;
- (b) matters affecting the completeness or accuracy of the accounting records, including where appropriate:
  - (i) information necessary to the correct interpretation of the accounting records;
  - (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 annual financial statements;
  - (iv) expenditures not properly substantiated;
  - (v) whether proper books of accounts have been kept. Where, in the presentation of the annual financial 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 Council such as:
  - (i) cases of fraud or presumptive fraud;
  - (ii) wasteful or improper expenditure of UPOV's money or other assets (notwithstanding that the accounting for the transaction may be correct);
  - (iii) expenditure likely to commit 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 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 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 Secretary-General's financial report as he deems appropriate to the Council or the 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/she shall refer to the matter in his/her opinion and report, making clear the reasons for his/her 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/her Report without first allowing the Secretary-General an adequate opportunity of explanation on the matter under observation.



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ANNEX III

(TERMS OF REFERENCE OF THE WIPO INDEPENDENT ADVISORY OVERSIGHT COMMITTEE)

Not applicable to UPOV

[End of Annex III and of document]