

Council**C/58/14****Fifty-Eighth Ordinary Session
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APPOINTMENT OF THE EXTERNAL AUDITOR*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***EXECUTIVE SUMMARY**

1. The UPOV (International Union for the Protection of New Varieties of Plants) and WIPO (World Intellectual Property Organization) have a close relationship, with WIPO providing administrative support to UPOV. Both organizations require an External Auditor to review their financial statements and ensure compliance with regulations. To appoint the same External Auditor for both organizations ensures cost-efficiency and minimize resource use.
2. If the WIPO External Auditor is from a State member of UPOV, the Council should designate the same auditor for UPOV. If not, the Council should normally appoint an External Auditor from one of its member states. Indonesia has been appointed as External Auditor for WIPO. Indonesia is an observer to the UPOV Council.
3. This document provides for a background on the designation of the UPOV External Auditor and seeks advice from the Council on the appropriate course of action.

BACKGROUND

4. Article 29(6) of the 1991 Act and Article 25 of the 1978 Act of the UPOV Convention provide that the auditing of the accounts of UPOV shall be effected by a State member of UPOV as provided in the administrative and financial regulations, and that the State shall be designated, with its agreement, by the Council.
5. In the previous Act of 1972 and the 1961 Convention, it was specified that the Government of the Swiss Confederation shall supervise the expenditure and accounts of the Office of the Union, and that it shall submit an annual report on its supervisory function to the Council (Article 24, 1972 Act).
6. The provision that a member State of UPOV should audit the accounts was introduced in the 1978 Act. Article 25 of the 1978 Act provides that the auditing of the accounts of UPOV shall be effected by a member State of UPOV as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council. This amendment was part of a more general overhaul whereby the specific role of the Swiss Government in UPOV was not retained.
7. The External Auditor provides an opinion on UPOV's financial statements and on the compliance of transactions with the Financial Regulations and Rules. The External Auditor does not take decisions.
8. Regulations 8.1 and 8.2 of the "Financial Regulations and Rules of UPOV" (document [UPOV/INF/4/6](#)) provide as follows (changes with respect to WIPO's Financial Regulations and Rules are highlighted):

“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.”

Procedure for the appointment of the external auditor of UPOV

9. The Council, at its fifty-sixth ordinary session, held in Geneva, on October 28, 2022, noted the developments with regard to the procedure for the appointment of the External Auditor of WIPO reported in document C/56/12. In accordance with the recommendation of the Consultative Committee, at its ninety-ninth session, held in Geneva, on October 27, 2022, the Council, approved the following procedure for the appointment of the External Auditor of UPOV for a term of office of six years starting from January 2024, to December 2029, as set out in paragraph 8 of document C/56/12:

“Considering that from the five nominations received from WIPO Member States, two of them are not from UPOV members, the following steps are approved:

- (1) the Office of the Union to start consultations with UPOV members that have, in the past, audited the UPOV accounts or are members of the UN Board of Auditors;
- (2) if the General Assembly of WIPO, in 2023, appoints the Comptroller and Auditor General of a WIPO member State that
 - i. is also a UPOV member, then the Council shall designate as External Auditor, with its agreement, the WIPO External Auditor;
 - ii. is not a UPOV member, then the Office of the Union would make a proposal to the Council, to appoint with its agreement, a UPOV member that has, in the past, audited the UPOV accounts or is a member of the UN Board of Auditors.” (see document C/56/15 “Report”, paragraphs 51 and 52).

Appointment of the External Auditor of WIPO

10. The WIPO General Assembly held its Sixty-Fourth (64th ordinary) Session in Geneva from July 6 to 14, 2023, and “appointed the Audit Board of Indonesia as the WIPO External Auditor for a period of six years to begin on January 1, 2024” (see documents [A/64/13](#) “Summary Report”, paragraph 26, and [WO/GA/56/4](#) “Appointment of the External Auditor” available at <https://www.wipo.int/about-wipo/en/assemblies/2023/a-64/index.html>). Indonesia is an observer to the UPOV Council.

Consultations and appointment of the External Auditor of UPOV for the 2024 accounts

11. As Indonesia is not a UPOV member State, in accordance with the decision of the Council of 2022, the Office of the Union undertook a series of consultations with the UPOV members that have, in the past, audited the UPOV accounts (i.e. United Kingdom and Switzerland).

12. Following the consultations, the Swiss Federal Audit Office agreed to be designated by the Council, as External Auditor of UPOV, for one year, starting from January 2024 to December 2024.

13. The Council, at its fifty-seventh ordinary session, held in Geneva, on October 27, 2023, designated Switzerland, with its agreement, as External Auditor of UPOV, for one year, starting from January 2024 to

December 2024. The Council further noted that all members of the Union would be part of future consultations for a proposal for the appointment of the External Auditor for UPOV.

CONSIDERATIONS TO APPOINT THE EXTERNAL AUDITOR IN CASES WHERE THE WIPO EXTERNAL AUDITOR IS NOT A UPOV MEMBER

Some aspects on the work of the External Auditor, and the process and criteria that may be applied to designate the UPOV External Auditor

14. The general rule, as stipulated in Article 8.1 of the Financial Regulations and Rules of UPOV, is to designate the same External Auditor for UPOV as the one selected by WIPO. It is only if the WIPO External Auditor is not from a State member of UPOV, that the Council needs to appoint an External Auditor of a State member of UPOV (see paragraph 6 above).

15. One of the main reasons for designating the same External Auditor for the two organizations is that it is considered the most cost-efficient solution and addresses the important risk of not having an External Auditor willing to accept the mandate as illustrated by the consultations that have taken place in accordance with the request of the Council.

16. Public funds must be used effectively and efficiently, and in a way that maximizes public benefit. To have the same External Auditor for the two organizations limits not only the spending of UPOV's financial resources but also the UPOV and WIPO human resources needed to work with the External Auditor to audit the UPOV accounts.

17. Following the "Agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants (WIPO/UPOV Agreement)" (see document UPOV/INF/8 at http://www.upov.int/information_documents/en/), signed on November 26, 1982, WIPO provides administrative support to UPOV. This support includes, but is not limited to, providing computerized accounting systems, financial administration, administrative transactions (salaries, benefits, pensions etc.), assistance in procurement, travel arrangements. The External Auditor audits these procedures as well as other services under the WIPO/UPOV Agreement. When the External Auditor is the same for both organizations, there are obvious synergies. With different External Auditors, the verifications and auditing of UPOV transactions would need to be done separately from the work of the External Auditor of WIPO. It would also mean that WIPO staff would need to assist both the WIPO External Auditor and the UPOV External Auditor in providing data, information and explanations on the applicable procedures. UPOV would need to reimburse WIPO for this extra work.

18. Since the provision on the designation of an external auditor was adopted in the 1978 Act (confirmed in the 1991 Act), the developments on processing administrative transactions through computerized systems and relevant checks and balances incorporated in those IT systems have replaced the review of paper documents. The nature of the work of auditors have significantly evolved and additional skill sets are required.

19. The computerised systems in place at WIPO processes the same type of transactions for UPOV. To have two different External Auditors, auditing the same processes, would entail double work, which is not cost-effective. Indeed, the UPOV External Auditor would need also to audit the procedures, services and accounting systems of WIPO considering the administrative support and services that WIPO provides to UPOV under the WIPO/UPOV Agreement. During the consultations, the risk of not having an External Auditor of a UPOV member State willing to accept the mandate just for UPOV was identified.

20. The WIPO Process for Selection of External Auditor is complete and effective procedure including all WIPO member States, a Selection Panel, the WIPO Secretariat, the Oversight Division (IOD), the Independent Advisory and Oversight Committee (IAOC) and the WIPO General Assembly. It is noted that all the member States of UPOV are also WIPO member States. The selection process is put into place to safeguard that the selection of the External Auditor is fair and transparent and that the selected auditor is independent, has the adequate professional experience and follows the applicable international accounting principles and standards (i.e. IPSAS). The WIPO Process for Selection of External Auditor was established taking into account practices of other international organizations.

Considerations made when exploring an appropriate procedure that would be transparent, inclusive, cost-efficient and sustainable

21. The Council is invited to note that, during the consultations, when exploring options to appoint the UPOV External Auditor, the Office of the Union reached out to the Swiss authorities to explore if the competent auditing body in the host country of UPOV could step in as the UPOV External Auditor when the External Auditor of WIPO is from a state not member of UPOV. It was noted that such a solution would not be in accordance with the principle of rotating functions, such as the function of External Auditor, between member States of international organizations. This principle is currently reflected in the WIPO and UPOV Financial Regulations and Rules.

22. During meetings in 2024 to discuss UPOV activities, the Office of the Union consulted several UPOV members on possible cost-effective options for the appointment of the External Auditor for UPOV.

23. During the consultations, the Office of the Union explored whether a process could be adopted that would allow the interested competent auditing bodies from all member States of UPOV to take part in a selection procedure. This would be an inclusive process which might result in an External Auditor from a member State of UPOV. However, to set up and implement a UPOV Process for Selection of External Auditor, that would follow similar standards as the existing standards of the processes in WIPO and in other international organizations, would be time consuming and entail important resources, including resources from WIPO Secretariat that WIPO might need to recover from UPOV. Furthermore, the consultations on this approach illustrated a risk (see paragraph 17 above) that no competent auditing body would show an interest, in such a scenario, the process does not foresee a solution. Account should be taken to the fact that a remuneration that is reasonable for UPOV to pay for an External Auditor, might not, from an External Auditor's perspective, meet the necessary remuneration levels considering the amount of work entailed taking into consideration the procedures and accounting systems of WIPO in relation to the services rendered to UPOV. Even if an attempt is made to adopt a lighter procedure, such a procedure would need to involve the Secretariats of both UPOV and WIPO, UPOV member States, a Selection Panel, the Consultative Committee and the Council.

24. During the consultation process, the question was raised if the applicable provisions could be amended. However, the UPOV Convention does not provide for any amendment procedure of its provisions but only for a general revision process. The latter process requires the convening of a diplomatic conference that entails a lengthy procedure of many years for the adoption and the entry into force of a text that would be binding to all UPOV members. The question was also raised on the role of a governing body of an international treaty to address a governance matter for the efficient functioning of an organization, such as avoiding the risk of not having an external auditor. The guidance of the membership plays a key role in addressing those situations.

25. The Council is invited to take note of the information contained in this document and to provide guidance on the appropriate course of action.

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