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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

COUNCIL

Thirty-Second Extraordinary Session Geneva, March 27, 2015

ADOPTION OF DOCUMENTS

Document prepared by the Office of the Union

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1. The purpose of this document is to provide information concerning the following documents that the Council will be invited to adopt at its thirty-second extraordinary session, to be held in Geneva on March 27, 2013.

UPOV/INF/4/4	Financial Regulations and Rules of UPOV (Revision) (document C(Extr.)/32/4)
UPOV/INF/15/3	Guidance for members of UPOV on ongoing obligations and related notifications and on the provision of information to facilitate cooperation (Revision) (document UPOV/INF/15/3 Draft 2)
UPOV/INF-EXN/7	List of UPOV/INF-EXN Documents and Latest Issue Dates (document UPOV/INF-EXN/7 Draft 1)

UPOV/INF/4/4: Financial Regulations and Rules of UPOV (Revision) (document C(Extr.)/32/4, Annex)

2. On October 21, 2010, the Council adopted the “Financial Regulations and Rules of UPOV” (document UPOV/INF/4/1), which were subsequently revised on March 30, 2012 (document UPOV/INF/4/2) and on March 22, 2013 (document UPOV/INF/4/3). Document UPOV/INF/4/3, paragraph 2, states that:

“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, and October 9, 2012, 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. As a result of amendments to the Financial Regulations and Rules of the World Intellectual Property Organization (WIPO) (http://www.wipo.int/about-wipo/en/pdf/wipo_financial_regulations.pdf) adopted in Geneva, on September 30, 2014, the Council is invited to consider the proposed amendments for the revision of document UPOV/INF/4/3 "Financial Regulations and Rules of UPOV" (document UPOV/INF/4/4), as set out in the Annex to this document.

4. A report on the conclusions of the Consultative Committee, at its eighty-ninth session, to be held in Geneva on March 27, 2015, concerning the proposals to revise document UPOV/INF/4/3, will be made to the Council at its thirty-second extraordinary session (see document C(Extr.)/32/5 "Report by the President on the work of the eighty-ninth session of the Consultative Committee; adoption of recommendations, if any, prepared by that Committee").

5. The Council is invited to adopt the revision of document UPOV/INF/4 "Financial Regulations and Rules of UPOV" (document UPOV/INF/4/4), on the basis of the amendments to document UPOV/INF/4/3, as presented in the Annex to this document.

UPOV/INF/15/3: Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation (Revision) (document UPOV/INF/15/3 Draft 2)

6. The Administrative and Legal Committee (CAJ), at its seventieth session, held in Geneva on October 13, 2014, agreed the proposals to revise the text of document UPOV/INF/15/2 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications" and that a revised version of that document (document UPOV/INF/15/3 Draft 2) should be put forward for adoption by the Council at its thirty-second extraordinary session.

7. The Council is invited to adopt the revision of document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation" (document UPOV/INF/15/3), on the basis of document UPOV/INF/15/3 Draft 2.

UPOV/INF-EXN/7: List of INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/7 Draft 1)

8. In conjunction with the information documents that the Council will be invited to adopt at its thirty-second extraordinary session, and in accordance with the approach for updating documents previously adopted by the Council, it is proposed to adopt document UPOV/INF-EXN/7 "List of UPOV/INF-EXN Documents and Latest Issue Dates" on the basis of document UPOV/INF-EXN/7 Draft 1.

9. The Council is invited to adopt the revision of document UPOV/INF-EXN "List of INF-EXN Documents and Latest Issue Dates" (document UPOV/INF-EXN/7) on the basis of document UPOV/INF-EXN/7 Draft 1.

[Annex follows]

The Consultative Committee, at its eighty-first session, endorsed the following approach, if appropriate, for updating documents previously adopted by the Council (see document C(Extr.)/28/4 "Report", paragraph 11):

"(i) to present a Council document proposing specific amendments to the document being updated without presenting a complete revised draft document to the Council. The Council would be invited to adopt the revised version of the document on the basis of the specific amendments and the Office of the Union would prepare and publish the revised document on that basis;

"(ii) to present to the Council for adoption, in conjunction with the Council document containing the specific amendments to the document being updated, an information document, similar to document "List of TGP Documents and Latest Issue Dates" (document TGP/0/3) containing the latest references and dates of information documents (for instance, INF and EXN series of documents)."

ANNEX

PROPOSED AMENDMENTS TO
DOCUMENT UPOV/INF/4/3: FINANCIAL REGULATIONS AND RULES OF UPOV

Note

The highlighted text in this document indicates the amendments to the text of the Financial Regulations and Rules of WIPO (see paragraph 2 of the main document).

Strikethrough indicates deletion from the text of document UPOV/INF/4/3.

Underlining indicates addition to the text of document UPOV/INF/4/3.

Footnotes will be retained in the published document.

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

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, ~~and~~ October 9, 2012, August 26, 2014 and September 30, 2014, 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.

CHAPTER 1: GENERAL PROVISIONS

Definitions

Rule 101.3

For the purpose of these Rules:

[...]

(k) “Officer” is a ~~person employed by staff member of UPOV or, as appropriate, by of WIPO, on that is, an individual employed under a fixed-term, continuing, permanent, or temporary appointment and whose relationship with UPOV or, as appropriate, with WIPO, is governed by the Staff Regulations and Staff Rules;~~

[...]

CHAPTER 2: THE PROGRAM AND BUDGET RULE 105.1

Review and approval

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.

CHAPTER 4: CUSTODY OF FUNDS

A. INTERNAL ACCOUNTS

Trust funds and special accounts

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.

Cash advances

Rule 104.6

(a) Petty cash advances ~~and Cashier's Fund advances~~ may be made only by and to officers designated for this purpose by the Controller of WIPO.

(b) The relevant accounts shall be maintained on an imprest system and the amount and purpose of each advance shall be defined by the Controller of WIPO.

(c) The Controller of WIPO may approve other cash advances as may be permitted by the Financial Regulations and Rules and Financial Instructions issued by the Controller of WIPO and as may otherwise be authorized in writing by him or her.

C. INVESTMENTS

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.

CHAPTER 5: UTILIZATION OF FUNDS

B. COMMITMENTS, OBLIGATIONS AND EXPENDITURES

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.¹

C. PROCUREMENT

General principles

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. ~~For the purposes of the present Regulations, procurement shall not be deemed to refer to the acquisition of services provided under employment contracts and to services provided~~

~~under external non-commercial consultancy contracts.~~ The following general principles shall be given due consideration:

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

(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. Contract award procedures and methods of solicitation shall be defined in an Office Instruction issued by the Director General of WIPO.

Cooperation

Rule 105.13

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

Procurement process

Rule 105.16

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

(b) For contracts without a fixed term or subject to renewal, the value of the obligation shall be determined on the basis of ~~a deemed contract duration of three years~~ an assumed contract duration of one year, measured from the date performance is to begin.

Rule 105.17

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

Rule 105.18

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

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

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

(c) The proposed procurement contract is the result of arises from a cooperation with WIPO or other intergovernmental organizations of the United Nations system, pursuant to Rule 105.13 above that have similar procurement procedures.

(d) Offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered are considered to remain competitive.

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

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

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

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

(i) The HLOP of WIPO otherwise determines that a formal or informal solicitation will not give satisfactory results.

Rule 105.21

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

Contracts

Rule 105.22

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

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

D. PROPERTY MANAGEMENT

Property Survey Board

Rule 105.30

(a) The HLOP Director General of WIPO shall establish, through an Office Instruction, a Property Survey Board of WIPO ~~to render written advice to him or her in respect of loss, damage or other discrepancy regarding the property of UPOV. The HLOP of WIPO shall establish 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 ~~and the degree of responsibility, if any, attaching to any employee of UPOV or other party for such loss, damage or other discrepancy.~~

(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.

CHAPTER 6: ACCOUNTING

Financial reporting

Rule 106.12

(a) The Controller of WIPO shall prepare the financial management report in accordance with Regulation ~~6-3~~ 6.6.

(b) Within eight months after the end of each financial period, the Secretary-General shall submit to the Council the financial management report prepared in accordance with Regulation ~~6-3~~ 6.6.

CHAPTER 8: EXTERNAL AUDITOR

Appointment of the External Auditor

Regulation 8.1

The WIPO External Auditor, who shall be the Auditor General (or ~~officer~~ 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 ~~officer~~ 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 ~~officer~~ 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 ~~officer~~ official holding the equivalent title) of a State member of UPOV.

Special examination

Regulation 8.9

For the purpose of making a local or special examination or of effecting economies in the audit cost, the External Auditor may engage the services of any national Auditor-General (or ~~officer~~ 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.

[End of Annex and of document]

ⁱ WIPO Financial Regulation 5.10 provides for a limit of 50,000 Swiss Francs. No change is proposed to the current limit of 5,000 Swiss Francs in the UPOV Financial Regulations and Rules.