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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
 Geneva

COUNCIL

Thirtieth Extraordinary Session
Geneva, March 22, 2013

ADOPTION OF DOCUMENTS

Document prepared by the Office of the Union

1. The purpose of this document is to provide information concerning the following documents that the Council will be invited to adopt at its thirtieth extraordinary session, to be held in Geneva on March 22, 2013.

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| UPOV/INF/4/3 | Financial Regulations and Rules of UPOV (Revision)
(document C(Extr.)/30/2, Annex) |
| UPOV/INF/15/2 | Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation (Revision)
(document UPOV/INF/15/2 Draft 2) |
| UPOV/INF-EXN/4 | List of UPOV/INF-EXN Documents and Latest Issue Dates (Revision)
(document UPOV/INF-EXN/4 Draft 1) |

UPOV/INF/4/3 Financial Regulations and Rules of UPOV (Revision) (document C(Extr.)/30/2, 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). Document UPOV/INF/4/2, 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 and January 1, 2010, and amended, herein, according to:

- “(a) the changes in accordance with the principle of “*mutatis mutandis*”; and
- “(b) the exceptions and additions agreed by the Council of UPOV with the Director General of WIPO.”

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 October 9, 2012, the Council will be invited to consider the proposed amendments for the revision of document UPOV/INF/4/2 “Financial Regulations and Rules of UPOV”, as set out in the Annex to this document.

4. A report on the conclusions of the Consultative Committee, at its eighty-fifth session, to be held in Geneva on March 22, 2013, concerning the proposals to revise document UPOV/INF/4, will be made to the Council at its thirtieth extraordinary session (see document C(Extr.)/30/4).

5. The Council is invited to adopt the revision of document UPOV/INF/4 "Financial Regulations and Rules of UPOV" (document UPOV/INF/4/3), on the basis of the amendments to document UPOV/INF/4/2, as presented in the Annex to this document.

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

6. The Administrative and Legal Committee (CAJ), at its sixty-sixth session, held in Geneva on October 29, 2012, agreed the proposals to revise the text of document UPOV/INF/15/1 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications" and that a revised version of that document (document UPOV/INF/15/2 Draft 2) should be put forward for adoption by the Council at its thirtieth extraordinary session.

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

UPOV/INF-EXN/4: List of INF-EXN Documents and Latest Issue Dates (Revision) (document UPOV/INF-EXN/4 Draft 1)

8. In conjunction with the information documents that the Council will be invited to adopt at its thirtieth extraordinary session, and in accordance with the approach for updating documents previously adopted by the Council,¹ it is proposed to adopt document UPOV/INF-EXN/4 "List of UPOV/INF-EXN Documents and Latest Issue Dates" on the basis of document UPOV/INF-EXN/4 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/4) on the basis of document UPOV/INF-EXN/4 Draft 1.

[Annex follows]

¹ 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)."

DOCUMENT UPOV/INF/4/3: FINANCIAL REGULATIONS AND RULES OF UPOV (REVISION)

PROPOSED AMENDMENTS
(presented in revision mode)

Footnotes will be retained in the published document.

Endnotes are background information when considering these amendments and will not appear in the 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, and 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.

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 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.

Commitments against appropriations for future financial periods

Rule 105.1

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

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

- (b) The Controller of WIPO may establish a threshold below which pre-encumbrance shall not be required.
- (c) The Controller of WIPO shall establish appropriate procedures to be followed in cases where the cost of relevant goods or services has, for whatever reason, increased in the time that elapses between the establishment of an obligation and the processing of final payment.

Review, reobligation and cancellation of obligations

Rule 105.9

- (a) Outstanding obligations must be reviewed periodically by the Vice Secretary-General. If an obligation is determined to be valid but cannot be liquidated during the period set forth in Regulation 5.3, the provisions of Regulation 5.4 shall, as appropriate, be applied. Obligations that are no longer valid shall be reduced or cancelled from the accounting records ~~accounts~~ accordingly.
- (b) When any obligation previously recorded in the accounting records ~~accounts~~ is, for any reason, reduced (other than by payment) or cancelled, the certifying officer shall accordingly ensure that appropriate adjustments are recorded in the accounting records ~~accounts~~.

***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. 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.

Physical verification of property

Rule 105.33

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

~~Principal accounts~~ 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. ~~The Secretary-General shall prepare financial statements for both years of the financial period, which shall show:~~

- ~~(a) The income and expenditures of all funds.~~

- (b) ~~The status of the appropriation, including:~~
- ~~(i) the original budget appropriation;~~
 - ~~(ii)~~
 - ~~(iii)~~
 - ~~(iv) credits, if any, other than the appropriation approved by the Council;~~
 - ~~(v) the amounts charged against the appropriation and/or other credits.~~
- (c) ~~The assets and liabilities of UPOV.~~

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

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 principal accounts of UPOV shall include detailed, comprehensive and up-to-date records of assets and liabilities for all funds. The accounting records principal accounts 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.

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 transactions shall be prepared recorded in the accounts on a full an a full accrual basis in compliance with the accounting standards applicable to the United Nations System.

Currency of accounting records

Regulation 6.3

The annual financial statements and the financial management report 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 ~~accounts~~ shall be maintained in Swiss francs.

Accounting for proceeds from the sale of property

Rule 106.6

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

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

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

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

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

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 commitments against future financial periods

Rule 106.7

Commitments Obligations established prior to the financial period to which they pertain, pursuant to Regulation 5.7 and Rule 105.1, shall be disclosed in the financial management report financial statements. For the purposes of the annual financial statements, contractual capital commitments for the acquisition of fixed assets and contractual commitments under lease arrangements which fall due in future calendar years 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 financial period 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 financial period.

(b) The investigation shall in each case make a recommendation to the Secretary-General to fix the responsibility, if any, attaching to any officer(s) of 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 financial period.

(b) The investigation shall in each case make a recommendation to the Secretary-General to fix the responsibility, if any, attaching to any officer(s) of 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.

Financial statements reporting

Regulation 6.5¹

(1) The annual financial statements for each calendar year ~~both years~~ 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 each year to which they relate of the financial period. ~~Final financial statements covering both years of the financial period shall be submitted to the External Auditor not later than April 30 following the end of the financial period.~~

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

(3) The Council shall examine the ~~accounts~~ annual financial statements. It may identify adjustments to the share of UPOV in common expenditures², 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 ~~final accounts~~ 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) ~~For all accounts of UPOV, 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 ~~of the following the end of the calendar year to which they relate~~. The annual financial statements shall include all business units of UPOV. ~~For the same accounts, final financial statements covering both years of the financial period, likewise as at December 31, shall be submitted to the External Auditor not later than April 30 following the end of the financial period. 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 ~~for all accounts~~ shall include:

(i) a statement of financial position; ~~a statement of income, expenditures and changes in reserves and fund balances~~;

(ii) a statement of financial performance; ~~a statement of assets, liabilities, reserves and fund balances~~;

(iii) a statement of changes in net assets; ~~a statement of cash flows~~;

(iv) a statement of cash flow; ~~such other schedules as may be required~~;

(v) a statement of comparison of budget and actual amounts; ~~notes to the financial statements~~.

(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.

Regulation 6.6

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

² 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."

- (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 income and expenditures of all funds;
- (c) The status of appropriations, including:
 - (i) the original budget appropriation;
 - (ii)
 - (iii)
 - (iv) credits, if any, other than the appropriations approved by the Council;
 - (v) the amounts charged against those appropriations and/or other credits;
- (d) Primary financial statements for the financial period prepared on the same accounting basis as the annual financial statements;
- (e) A report on investments;
- (f) A statement on the status of contributions of the members of UPOV.

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

Regulation 6.7

After the annual audit and examination by the Council, the annual financial statements, financial management report and the report of the External Auditor shall be transmitted to all the interested members of UPOV. Every two years following the end of the biennium, the financial management report shall also be transmitted to all the interested members of UPOV.

Retention of records

Rule 106.13

The accounting records shall be supported by other financial and property records and other all supporting documents which are to be retained in appropriate files and shall be retained for such periods as may be agreed with the External Auditor, after which, on the authority of the Controller of WIPO, they may be destroyed.

Reporting

Regulation 8.10

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

Regulation 8.11

The reports of the External Auditor 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.

[End of document]

ⁱ Regulation 6.6 relates to the financial management report and Regulation 6.5 relates to the annual financial statements. For coherence, provisions in paragraphs (2), (3) and (4) of Regulation 6.6 of document UPOV/INF/4/2 have been moved to Regulation 6.5.