

## **Preparatory Committee of the Diplomatic Conference to Conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources**

**Geneva, September 11 to 13, 2023**

**DRAFT ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES FOR THE INSTRUMENT TO BE CONSIDERED BY THE DIPLOMATIC CONFERENCE**

*Prepared by the Secretariat*

### **PRESENTATION OF THE DRAFT PROVISIONS**

1. The WIPO General Assembly, at its Fifty-Fifth Session held from July 14 to 22, 2022, decided to convene a Diplomatic Conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources. The WIPO General Assembly further decided “to convene a Preparatory Committee in the second half of 2023, to establish the necessary modalities of the Diplomatic Conference” [...] and to “approve the Basic Proposal for the administrative and final provisions of the Treaty” (see document WO/GA/55/12, paragraph 309).
2. The proposed administrative provisions and final clauses, as contained in the present document, are modeled on the corresponding provisions of recent WIPO-administered treaties, as the most relevant expression of the will and practice of WIPO Member States with respect to such provisions in international legal instruments. They also take into account the relevant provisions, namely Articles 10 to 20, contained in the Annex to document WIPO/GRTKF/IC/43/5.

3. *The Preparatory Committee is invited to consider and approve the administrative provisions and final clauses as set forth in document GRATK/PM/2 for further consideration by the Diplomatic Conference.*

Draft Administrative Provisions and Final Clauses for an International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources

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## **ARTICLE 10 GENERAL PRINCIPLES ON IMPLEMENTATION**

10.1 Contracting Parties undertake to adopt the measures necessary to ensure the application of this Instrument.

10.2 Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Instrument within their own legal systems and practices.

## **ARTICLE 11 ASSEMBLY**

11.1 The Contracting Parties shall have an Assembly:

- (a) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.
- (b) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the International Bureau of WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries or that are countries in transition to a market economy.

11.2 The Assembly:

- (a) Shall deal with all matters concerning the maintenance and development of this Instrument as well as its application and operation;
- (b) Shall perform the function allocated to it under Article [13.2] in respect of the admission of certain intergovernmental organizations to become party to this Instrument;
- (c) Shall conduct the review referred to in Article [9];
- (d) Shall decide the convocation of a Diplomatic Conference for the revision of this Instrument as referred to in Article [15], including as a result of the review referred to in Article [9], and shall give the necessary instructions to the Director General of WIPO for the preparation of any such Diplomatic Conference;
- (e) May establish technical working groups as it deems appropriate to advise it on the matters referred to in Articles [7] and [9], and on any other matter;
- (f) May adopt amendments to the present Article and Article [12]; and
- (g) Shall perform such other functions as are appropriate to implementing the provisions of this Instrument.

11.3 The Assembly shall endeavor to take its decisions by consensus. Where a decision cannot be reached by consensus, the matter at issue shall be decided by vote. In such a case:

- (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name; and

- (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States that are party to this Instrument. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*.

11.4 The Assembly shall meet upon convocation by the Director General of WIPO and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

11.5 The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Instrument, the required majority for various kinds of decisions.

## **ARTICLE 12 INTERNATIONAL BUREAU**

12.1 The International Bureau of WIPO shall perform the administrative tasks concerning this Instrument. In particular, the International Bureau shall prepare the meetings and provide the secretariat for the Assembly and for such technical working groups as may be established by the Assembly.

12.2 The Director General of WIPO and any staff member designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly and any such technical working groups established by the Assembly. The Director General, or a staff member designated by the Director General, shall be *ex officio* Secretary of such a body.

12.3 The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any Diplomatic Conferences. The Director General of WIPO and persons designated by the Director General shall take part, without the right to vote, in the discussions at such Conferences.

## **ARTICLE 13 ELIGIBILITY TO BECOME A PARTY**

13.1 Any Member State of WIPO may become party to this Instrument.

13.2 The Assembly may decide to admit any intergovernmental organization to become party to this Instrument which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Instrument and that it has been duly authorized, in accordance with its internal procedures, to become party to this Instrument.

## **ARTICLE 14 RATIFICATION AND ACCESSION**

14.1 Any State or intergovernmental organization referred to in Article [13] may deposit with the Director General of WIPO:

- (a) an instrument of ratification if it has signed this Instrument; or
- (b) an instrument of accession, if it has not signed this Instrument.

14.2 The effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited.

#### **ARTICLE 15 REVISION**

This Instrument may only be revised by a Diplomatic Conference. The convocation of any Diplomatic Conference shall be decided by the Assembly.

#### **ARTICLE 16 AMENDMENT OF ARTICLES [11] AND [12]**

16.1 Articles [11] and [12] of this Instrument may be amended by the Assembly.

16.2 Proposals for the amendment of the Articles referred to in Article [16.1] may be initiated by any of the Contracting Parties or by the Director General of WIPO. Such proposals shall be communicated by the Director General of WIPO to the Contracting Parties at least six months in advance of their consideration by the Assembly.

16.3 Adoption of any amendment to the Articles referred to in Article [16.1] shall require three-fourths of the votes cast.

16.4 Any such amendment shall enter into force one month after written notifications of acceptance by the Contracting Parties, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties at the time the Assembly adopted the amendment. Any amendment thus accepted shall bind all of the Contracting Parties at the time the amendment enters into force, or which become Contracting Parties thereof at a subsequent date.

#### **ARTICLE 17 SIGNATURE**

This Instrument shall be open for signature at the Diplomatic Conference in..... and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

#### **ARTICLE 18 ENTRY INTO FORCE**

This Instrument shall enter into force three months after 15 eligible parties referred to in Article [13] have deposited their instruments of ratification or accession.

#### **ARTICLE 19 EFFECTIVE DATE TO BECOME A PARTY**

This Instrument shall bind:

- (a) The 15 eligible parties referred to in Article [18], from the date on which this Instrument entered into force; and

- (b) Each other eligible party referred to in Article [13], from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

## **ARTICLE 20 DENUNCIATION**

This Instrument may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification. It shall not affect the application of this Instrument to any patent application pending and any international registration in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

## **ARTICLE 21 RESERVATIONS**

No reservations to this Instrument shall be permitted.

## **ARTICLE 22 LANGUAGES**

22.1 This Instrument shall be signed in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

22.2 An official text in any language other than those referred to in Article [22.1] shall be established by the Director General of WIPO, after consultation with all the interested parties, in such other languages as the Assembly may designate. For the purposes of this paragraph, "interested party" means any Contracting Party whose official language, or one of whose official languages, is concerned.

## **ARTICLE 23 DEPOSITARY**

The Director General of WIPO is the depositary of this Instrument.

Done at .....

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