

## Program and Budget Committee

### Twenty-Seventh Session Geneva, September 11 to September 15, 2017

#### REPORT BY THE EXTERNAL AUDITOR

*prepared by the External Auditor*

1. This document comprises the following items:
  - (i) The Independent Auditor's Report which contains the opinion of the External Auditor on the financial statements of the World Intellectual Property Organization (WIPO) for the year ended December 31, 2016;
  - (ii) Report of the External Auditor for the financial year 2016 to the 57<sup>th</sup> Series of Meetings of the Assemblies of the Member States of WIPO (also known as the "long form report"). This report contains the External Auditor's recommendations arising from the three audits undertaken during the year 2016/17;
  - (iii) Responses from the Secretariat of WIPO to the recommendations of the External Auditor;
  - (iv) WIPO's Statement of Internal Control, signed by the Director General.
2. The following decision paragraph is proposed.

3. *The Program and Budget Committee (PBC) recommended to the WIPO General Assembly and other Assemblies of the Member States of WIPO, to take note of the Report by the External Auditor (document WO/PBC/27/3).*



## **INDEPENDENT AUDITOR'S REPORT**

**To**  
**THE GENERAL ASSEMBLY**  
**THE WORLD INTELLECTUAL PROPERTY ORGANISATION**

### **Opinion**

We have audited the financial statements of the World Intellectual Property Organization (WIPO), which comprise the statement of financial position (statement I) as at 31 December 2016, the statement of financial performance (statement II), statement of changes in net assets (statement III), statement of cash flows (statement IV), statement of comparison of budget and actual amounts (statement V) for the year then ended, and notes to the financial statements including significant accounting policies.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of WIPO as at 31 December 2016, and its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards (IPSAS).

### **Basis for Opinion**

We conducted our audit in accordance with International Standards on Auditing (ISAs). Our responsibilities under those standards are described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are independent of WIPO in accordance with the ethical requirements that are relevant to our audit of the financial statements and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### **Information other than the Financial Statements and Auditor's Report Thereon**

Management is responsible for the other information. The other information comprises the information included in the annual financial report for the year ended 31 December 2016, but does not include the financial statements and our auditor's report thereon.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

## **Responsibilities of Management and Those Charged with Governance for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with IPSAS, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing WIPO's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate WIPO or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing WIPO's financial reporting process.

## **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatements, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISAs, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of WIPO's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty

exists related to events or conditions that may cast significant doubt on WIPO's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause WIPO to cease to continue as a going concern.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

### **Report on Other Legal and Regulatory Requirements**

Furthermore, in our opinion, the transactions of WIPO that have come to our notice or that we have tested as part of our audit have, in all significant respects, been in accordance with WIPO's Financial Regulations and Rules and its legislative authority.

In accordance with the Regulation 8.10 of WIPO's Financial Regulations and Rules, we have also issued a long-form report on our audit of WIPO.



**Shashi Kant Sharma**  
Comptroller and Auditor General of India  
External Auditor  
New Delhi, India  
19 June 2017



**OFFICE OF THE  
COMPTROLLER AND  
AUDITOR GENERAL  
OF INDIA**

Our audit aims to provide independent assurance and to add value to the Management of World Intellectual Property Organization by making constructive recommendations

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**REPORT OF THE  
EXTERNAL AUDITOR**

**TO THE 57<sup>TH</sup> SERIES OF MEETING  
OF THE GENERAL ASSEMBLY OF**

**WORLD INTELLECTUAL  
PROPERTY ORGANIZATION**

**FOR THE FINANCIAL YEAR 2016**

## EXECUTIVE SUMMARY

1. This report presents the significant findings of the Comptroller and Auditor General of India's audit of the World Intellectual Property Organisation (WIPO) for the financial year 2016. The audit included audit of the financial statements of WIPO, performance audit of the Hague System and compliance audit of the Other Contractual Services (OCS).
2. The audit of the financial statements was aimed to provide an opinion on the financial statements of WIPO for the year ended 31 December 2016. The objective of the performance audit was to assess whether the systems and processes in the Hague System were adequate to meet the objective of providing premier global IP services to its customers pertaining to the brands and design sector. The compliance audit was conducted to assess whether the procurement activities in respect of OCS were performed in compliance with WIPO's procurement policy, procedures in place and in accordance with good procurement practices.
3. On the basis of our audit, I am of the opinion that the financial statements for the financial period ended 31 December 2016 present fairly in all material respects the financial position of WIPO as on 31 December 2016 and of its financial performance during the period from 1 January 2016 to 31 December 2016. Accordingly, I have placed an unqualified audit opinion on WIPO's financial statements for the financial period ended 31 December 2016.

### Financial Management

4. Surplus for the year 2016 was 32 million Swiss francs, which has decreased by 3.8 *per cent* as compared to surplus for the year 2015. Patent Cooperation Treaty (PCT) Union contributed 114 *per cent* of the surplus of 2016 (78 *per cent* in 2015). Thus, the amount of surplus/deficit of WIPO was mainly influenced by surplus/deficit in the PCT performance.
5. Total revenue of WIPO increased by 1.5 *per cent* from 381.94 million Swiss francs in 2015 to 387.71 million Swiss francs in 2016. The largest source of revenue during 2016 was PCT Union accounting for 75.5 *per cent* of total revenue. Revenue from PCT Union increased in the year 2016 by 5.8 *per cent* in comparison to year 2015.
6. In 2016, expenses in WIPO stood at 355.71 million Swiss francs, and it increased by 2 *per cent* compared to 2015 total expenses of 348.67 million Swiss francs. Representing the nature of work performed by the Organization, the largest expense in 2016 was personnel expenditure of 224.35 million Swiss francs, having share of 63.1 *per cent* of total expenses.

Personnel expenditure in 2016 increased by 3.7 *per cent* compared to personnel expenditure in 2015.

7. As at 31 December 2016, the Organization has net assets of 311.28 million Swiss francs, with total assets of 1027.23 million Swiss francs and total liabilities of 715.95 million Swiss francs. Net assets have increased to 311.28 million Swiss francs at the end of 2016 compared to 279.06 million Swiss francs at the end of 2015 mainly as a result of the surplus of 32 million Swiss francs for 2016.

### **Financial Issues**

8. Strategic (long-term) cash, according to WIPO's policy on investments, represents funds allocated for the future financing of after-service employee benefit liabilities, including ASHI. As at 31 December 2016, the total balance of these funds was 108.6 million Swiss francs split between cash and cash equivalents (96.1 million Swiss francs) and Investments (12.5 million Swiss francs). As the strategic cash is set aside to finance ASHI liabilities and is, thus, restricted in use, the same should be depicted under restricted cash, as was done in the previous year. **We have, therefore, recommended that WIPO may classify strategic cash as restricted cash and cash equivalents.**

9. On review of outstanding Staff advances for education grants of 4.96 million Swiss francs at the end of December 2016, we observed that 112 thousand Swiss francs were outstanding for more than one year, though all Staff members were required to submit their claim for final settlement within four months following the end of the school year or completion of schooling if earlier. **We have recommended that WIPO may take suitable action to adjust/recover the outstanding Staff advances for education grant within the scheduled time.**

10. As per the significant accounting policies of WIPO, Equipment is recognized as an asset if it has a cost of 5,000 Swiss francs or more per unit. We observed that though the individual cost of 27 assets under Furniture was below the threshold limit of 5,000 Swiss francs, the same were continued to be recognized as fixed assets at gross carrying value of 48,274 Swiss francs since 2011 and with accumulated depreciation of 35,214 Swiss francs as at 31 December 2016. **We have recommended that WIPO may depreciate all such assets fully, in line with the Accounting Policy.**

11. As at 31 December 2016, WIPO had defined benefit obligation of 320.89 million Swiss francs towards ASHI. However, liability was recognized to the extent of 154.35 million Swiss

francs only, leaving unrecognized amount of 166.54 million Swiss francs. In view of the significant un-recognized liability, action needs to be taken at the earliest to formulate a policy for implementation of IPSAS 39 which is going to replace the existing IPSAS 25. **We appreciate the steps taken by WIPO for implementing new IPSAS 39 and encourage WIPO to apply this Standard for annual financial statements for the period beginning 1 January 2017.**

### **The Hague System**

12. The target for expansion of the Hague System to cover 58 Contracting Parties to the Geneva Act could be achieved only partially, covering 51 Contracting Parties by October 2016. **We have recommended that the Management may consider having a more targeted strategy for expansion of the Hague System to developing countries and least developed countries by utilizing the budget allocation for ‘Wider and better use of the Hague System’.**

13. We observed that out of seven performance indicators for the biennium 2014/15, targets set in respect of three Performance Indicators were not achieved. **We have recommended that the Management may consider setting up more realistic targets, taking into account the factors outside its control, so that they can be pursued proactively.**

14. There had been no activity for certain capacity building initiatives pertaining to the Hague System. We are of the view that a custom built capacity building programme by the Hague System would provide more value to certain categories of stakeholders. **We have, therefore, recommended that the Management may consider drawing a specific biennial capacity building action plan pertaining to the Hague System and for other stakeholders by dovetailing the same with the capacity building plan of WIPO.**

15. The Common Regulations did not provide any time-frame for completing examination of the applications. We noted that the processing of regular applications in 2015 has taken more time as compared to the previous year. **We have, therefore, recommended that the Management may consider framing a time line for examination and processing of applications, as well as realistic enforcement of provisions for abandonment of applications, to introduce more accountability and promptness in the system.**

16. The number of refusals of international registration applications increased manifold in 2016. While the issue of timely action on incoming refusal decisions has been flagged as an

area of risk in the Risk Register, the issue as a whole, with its attendant risk to the organization's reputation, if allowed to continue unchecked, has not been flagged as a risk. **We have, therefore, recommended that the Management may consider flagging the issue of refusals by the national offices as a risk in its entirety, in view of its potential impact on the goodwill of the Hague System and the organization.**

17. Even though there was significant revenue deficit over the years, fee structure has not been revised for over 20 years. **We have recommended that the Management may consider framing an actionable strategy early for making the Hague System self-sufficient and may also consider placing a proposal in the Hague Union Assembly to revisit existing fee structure periodically.**

18. We observed that the Hague System has not done any comprehensive staffing proposal elucidating the requirements at the professional grade and the general staffing positions in the last five years. **We have recommended that the Management may consider having a comprehensive plan regarding the short-term, medium-term and long term strategies for human resource management for the Hague System based on appropriate gap analysis and projection of requirements.**

19. We noted that the objectives of the IT Modernization project could not be achieved, even after eight years from start of the project. **We have recommended that the Management may consider devising a long-term IT strategy covering needed enhancements such as a higher degree of granularity and maintenance.**

#### **Other Contractual Services**

20. In case of alternative procedures of procurement, we noted that repeated exceptions may give rise to a situation where WIPO had to persist with the same vendor without reaping the benefits of competition in the market. Accordingly, the provisions of Office Instructions and Procurement Manual needed to be strengthened further by prescribing a maximum period of exceptions after which it should be mandatory to review the exceptions in its totality having regard to the market availability and conditions. **We have, therefore, recommended that WIPO may expedite amendment of the Office Instruction and Procurement Manual to incorporate the maximum time period in cases which are exceptions to competitive tendering. The necessity for further extensions needs to be based upon suitable market review.**

21. We observed that while renewing the contracts for a further period, price payable to three contractors, had been revised upwardly, which was not provided for in the Request for Proposal (RFP) and in the contracts signed with the contractors. While we appreciate the exceptional circumstances of this particular case, we feel that while undertaking amendment to contracts, earlier tender conditions including RFP need to be upheld. **We have, therefore, recommended that the amendments to the contracts entered into should be strictly in line with the RFPs and other tender conditions without giving advantage to any particular company, ensuring uniform terms and conditions especially with regard to prices.**

22. On a comparative study of WIPO General Conditions of Contracts (WIPO GCC) with those of UN and other UN Agencies, we noted that certain common provisions were not available in WIPO-GCC. **We have recommended that WIPO may review the existing General /Specific Conditions of Contract and consider incorporation of clauses on non-waiver of rights, severability, most favoured treatment, child labour, sexual exploitation, and fraud or corruption.**

23. On a review of the Procurement Plan for 2016, we observed that, the follow-up reviews were conducted for 55 out of 105 strategic suppliers and five out of the 144 cases of non-strategic and non-critical suppliers. We observed that though KPIs were specified for the contracts, the same were not used effectively at the time of renewal of contracts to assess the vendor performance evaluation. The method of evaluating the performance of supplier's through Scorecards/Contract Extension Renewal Form, though initiated, was not robust enough to capture the specific parameters of performance. **We have recommended that WIPO may negotiate and agree upon appropriate performance criteria at the time contract is entered together with a commitment to continual improvement. Vendor Performance may also be an integral part of risk assessment and contingency planning in order to ensure that problems are addressed at the initial stage.**

24. With respect to Risk Management, we observed that while the risk register covered the broad areas, the specific risks covering various phases of procurement and management of contracts were not captured through the register. There was no evidence of mapping of the different business needs of each internal division/sector, classified by priority or risk level or an action plan associated with each existing contract being built in accordingly for the next two years, on a rolling basis. **We have, therefore, recommended that risk Management needs to be strengthened by including mitigation measures of specific risks identified**

**after categorization, evaluation and prioritization of risks. These risks may be mapped to the requirements of each Program/Division in the Enterprise Risk Management.**

**25.** We noted that, in cases of multiple contracts awarded as a result of single tendering process, there is scope for further negotiations with bidders who were low on technical parameters and high on financial cost parameters. **We have recommended that in cases of multiple suppliers emerging from a single tender process, WIPO may consider leveraging negotiations by exploiting the technical/commercial parameters in order to get the benefit of more competitive prices for WIPO.**

## **Introduction**

### **Scope and Approach of Audit**

1. The audit of the World Intellectual Property Organization (WIPO) was assigned to the Comptroller and Auditor General of India for the financial years 2012 to 2017 in terms of approval of WIPO General Assembly Fortieth (20<sup>th</sup> Ordinary) Session, Geneva, held from 26 September to 5 October, 2011. The scope of the audit is in accordance with Regulation 8.10 of the Financial Regulations and the principles set out in the Annex to these regulations.
2. The audit for the financial year 2016 was conducted as per an audit plan drawn up on the basis of risk analysis of WIPO conducted by us. Our work included audit of the financial statements of WIPO, audit of the Hague System and audit of the Other Contractual Services. Professional reliance was placed, wherever necessary, on the work of the internal audit.
3. Important findings arising from these audits were discussed with the management and were thereafter conveyed to them through Management Letters. The more significant of these findings, appropriately aggregated, are presented in this report.

### **Auditing Standards**

4. The audit was conducted in accordance with the International Standards of Auditing issued by the International Federation of Accountants and adopted by the Panel of External Auditors of the United Nations, its Specialized Agencies and the International Atomic Energy Agency; Auditing Standards of the International Organization of Supreme Audit Institutions and Regulation 8.10 of the Financial Regulations of WIPO and the Additional Terms of Reference governing the audit of WIPO as set out in the Annex to the Financial Regulations.

### **Financial Management**

5. Our audit included a review of the financial statements to ensure that there were no material errors and that the requirements of International Public Sector Accounting Standards (IPSAS) had been met. WIPO adopted IPSAS in 2010 and adopted IPSAS 28, 29 and 30 relating to Financial Instruments during the year 2013.

## Audit Opinion on the 2016 Financial Statements

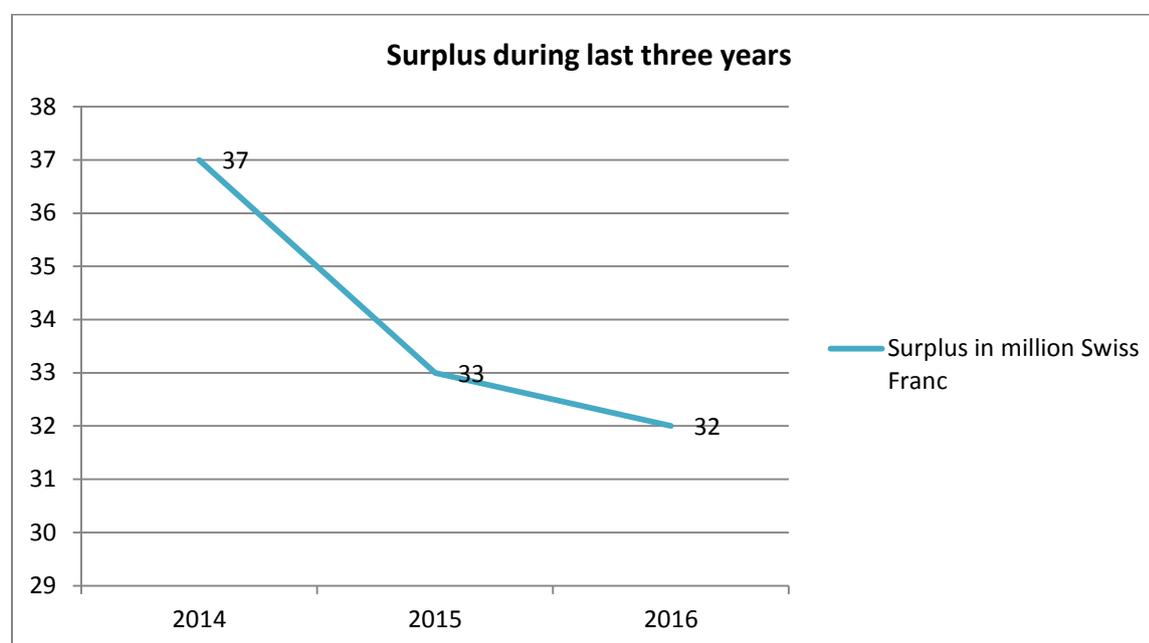
6. According to the terms of reference for the External Auditor, I am required to express an opinion on WIPO's financial statements for the financial period ended 31 December 2016. Audit of the financial statements for the financial period 2016 revealed no weaknesses or errors that I considered material to the accuracy, completeness and validity of the financial statements as a whole. Accordingly, I have placed an unqualified audit opinion on WIPO's Financial Statements for the financial period ended 31 December 2016.

## Key financial Indicators

7. The key financial indicators that merit the attention of the Member States are as below:

### Operating Surplus / Deficit

8. The surplus/deficit is the difference between the revenue and expenses of WIPO during the year. Surplus for the year 2016 was 32 million Swiss francs, which has decreased by 3.8 *per cent* as compared to surplus for the year 2015. However, as compared to surplus of 2014, it showed decrease of 13.5 *per cent*.



9. We found that the decrease in the financial performance in 2016 as compared to 2015 was mainly due to increase of 8.09 million Swiss francs in personnel expenditure. The improvement in Revenue as compared to 2015 was mainly due to activities of Patent

Cooperation Treaty (PCT) Union which constituted 75.5 per cent of total revenue of WIPO in 2016.

### Segment Analysis

10. Revenue, expenditure and surplus/deficit across different segments<sup>1</sup> are shown below:

*(Amount in thousands of Swiss francs)*

| <b>Year 2016</b> |                                    |                  |                     |                    |                     |                         |
|------------------|------------------------------------|------------------|---------------------|--------------------|---------------------|-------------------------|
| <b>Segment</b>   | <b>Contribution Financed Union</b> | <b>PCT Union</b> | <b>Madrid Union</b> | <b>Hague Union</b> | <b>Lisbon Union</b> | <b>Special Accounts</b> |
| Revenue          | 18,115                             | 292,862          | 61,187              | 5,635              | 1,073               | 8,841                   |
| Expense          | 17,574                             | 256,349          | 61,204              | 10,509             | 1,236               | 8,841                   |
| Surplus/deficit  | 541                                | 36,513           | -17                 | -4,874             | -163                | 0                       |
| <b>Year 2015</b> |                                    |                  |                     |                    |                     |                         |
| Revenue          | 18,803                             | 276,781          | 71,010              | 5,034              | 1,102               | 9,213                   |
| Expense          | 17,107                             | 250,945          | 62,811              | 7,011              | 1,586               | 9,213                   |
| Surplus/deficit  | 1,696                              | 25,836           | 8,199               | -1,977             | -484                | 0                       |
| <b>Year 2014</b> |                                    |                  |                     |                    |                     |                         |
| Revenue          | 18,817                             | 281,318          | 57,285              | 3,927              | 764                 | 8,069                   |
| Expense          | 17,560                             | 242,133          | 57,330              | 7,322              | 792                 | 8,069                   |
| Surplus/deficit  | 1,257                              | 39,185           | -45                 | -3,395             | -28                 | 0                       |
| <b>Year 2013</b> |                                    |                  |                     |                    |                     |                         |
| Revenue          | 19,277                             | 261,181          | 58,456              | 4,531              | 1,308               | 6,858                   |
| Expense          | 19,068                             | 242,349          | 59,749              | 7,603              | 852                 | 6,858                   |
| Surplus/deficit  | 209                                | 18,832           | -1,293              | -3,072             | 456                 | 0                       |
| <b>Year 2012</b> |                                    |                  |                     |                    |                     |                         |
| Revenue          | 18,631                             | 253,183          | 54,329              | 3,442              | 390                 | 7,021                   |
| Expense          | 18,414                             | 232,104          | 56,159              | 6,854              | 734                 | 7,021                   |
| Surplus/deficit  | 217                                | 21,079           | -1,830              | -3,412             | -344                | 0                       |

11. We noticed that apart from Contribution Financed Union, PCT Union was the only segment that had surplus in 2016 as compared to surplus in two segments (PCT Union and Madrid Union) in 2015. Further, deficit in Hague Union had more than doubled during 2016 compared to 2015.

12. During the last five years, the Lisbon Union had incurred deficit every year except in 2013. It had accumulated deficit of 1.17 million Swiss francs as at 31 December 2016. In 2015, WIPO General Assembly had decided that the Lisbon Union would adopt all possible measures to eliminate the projected deficit for the 2016/17 biennium. In line with the Article 11(3) (iii) of the Lisbon Agreement, WIPO

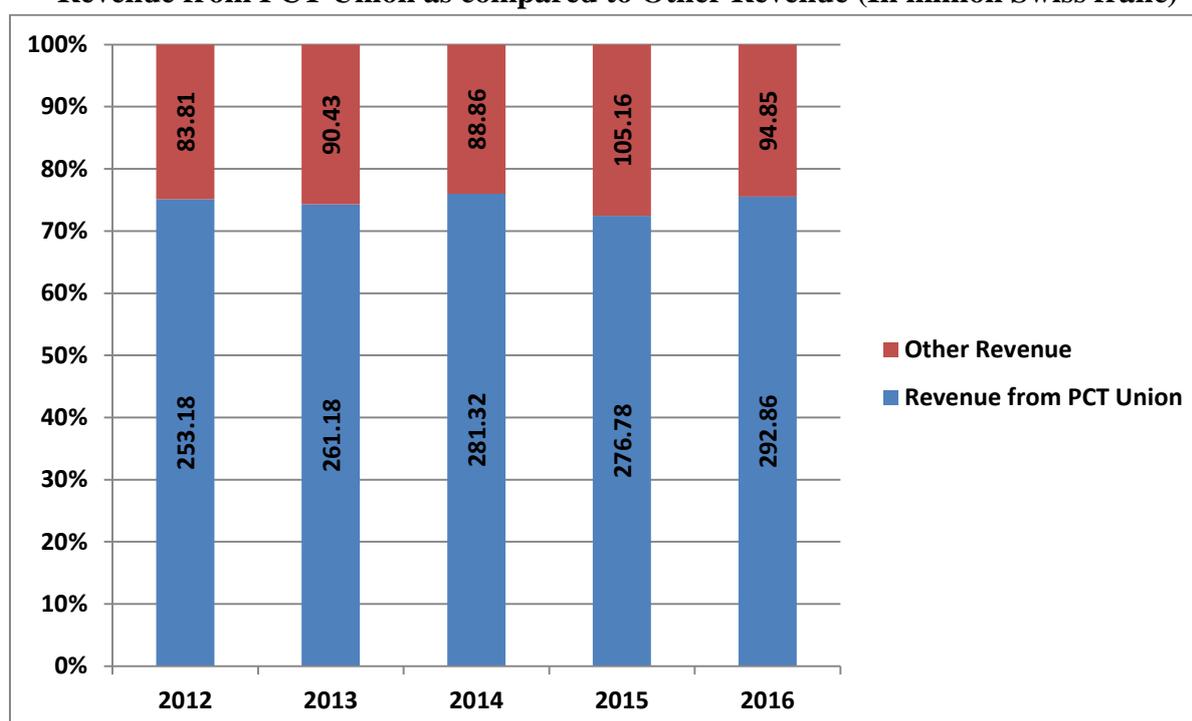
<sup>1</sup> Segment reporting is presented in a format which represents the various Unions as the segments that make up WIPO.

obtained subventions (pledges) to Lisbon union for over one million Swiss francs. Against these, a sum of 392 thousand Swiss francs has been received till 31 December 2016 and accounted as voluntary contributions.

## Revenue

13. For the year 2016, total revenue of WIPO is 387.71 million Swiss francs, which has increased by 5.77 million Swiss francs (1.5 *per cent*) compared to the 2015 total revenue of 381.94 million Swiss francs.

**Revenue from PCT Union as compared to Other Revenue (In million Swiss franc)**



14. The largest source of revenue during 2016 was PCT Union, accounting for 75.5 *per cent* of total revenue. Revenue from PCT Union increased in the year 2016 by 5.8 *per cent* in comparison to year 2015. In 2016, there were 210,454 publications compared to 200,928 in 2015.
15. Madrid Union revenue represented the second largest source of revenue for the Organization, accounting for 15.8 *per cent* of total revenue. Revenue from Madrid system decreased by 13.8 *per cent* compared to 2015. Revenue from Hague Union in 2016 increased by 11.9 *per cent* compared to the previous year.
16. Revenue from Contribution Financed Union of 18.12 million Swiss francs represented 4.7 *per cent* of total revenue, while revenue from voluntary

contributions of 8.84 million Swiss francs received under Special Accounts represented 2.3 *per cent* of total revenue.

## Expenses

17. Details of Expenses of WIPO for the last two years are given in the table:

*(in million Swiss Francs)*

| <b>Particulars</b>          | <b>2016</b>   | <b>2015</b>   |
|-----------------------------|---------------|---------------|
| Personnel expenditure       | 224.35        | 216.26        |
| Contractual services        | 74.40         | 72.09         |
| Operating expenses          | 21.95         | 21.20         |
| Travel, training and grants | 15.81         | 17.39         |
| Depreciation & Finance cost | 13.73         | 14.16         |
| Others                      | 5.47          | 7.56          |
| <b>Total</b>                | <b>355.71</b> | <b>348.66</b> |

18. In 2016, expenses in WIPO stood at 355.71 million Swiss francs, and it increased by 2 *per cent* compared to 2015 total expenses of 348.66 million Swiss francs.

19. Representing the nature of work performed by the Organization, the largest expense for the Organization in 2016 was personnel expenditure of 224.35 million Swiss francs, having share of 63.1 *per cent* of total expenses. Personnel expenditure in 2016 increased by 8.09 million Swiss francs compared to personnel expenditure in 2015.

20. Contractual services remained the second largest expense of WIPO in 2016 at 74.40 million Swiss francs, having share of 20.9 *per cent* of total expenses. Contractual services expenses have increased by 3.2 *per cent* compared to 2015.

21. Operating expenses in 2016 were 21.95 million Swiss francs, having share of 6.2 *per cent* of total expenses incurred by WIPO. Operating costs have increased by 3.5 *per cent* compared to 2015.

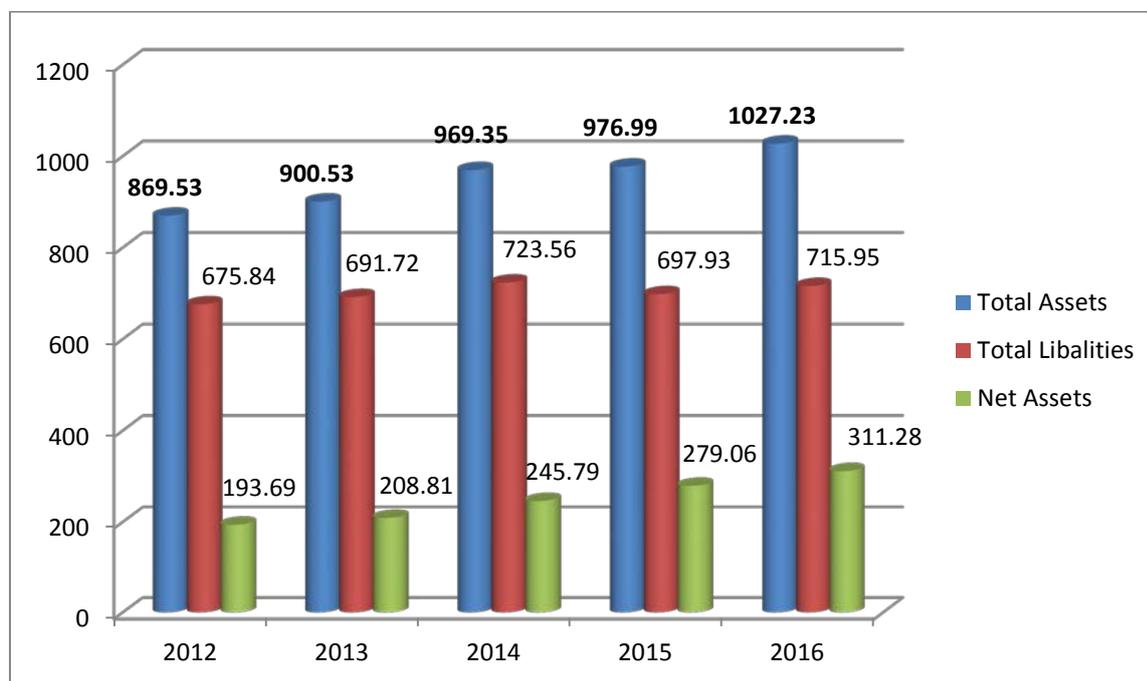
22. Expenses on travel, training and grants were 15.81 million Swiss francs for the year 2016 and having share of 4.4 *per cent* of total expenses. These expenses have decreased by 9.1 *per cent* compared to the year 2015.

## Financial Position

23. As at 31 December 2016, the Organization has net assets of 311.28 million Swiss francs, with total assets of 1027.23 million Swiss francs and total liabilities of 715.95 million Swiss francs. Net assets have increased to 311.28 million Swiss francs at the

end of 2016 compared to 279.06 million Swiss francs at the end of 2015, mainly as a result of the surplus of 32 million Swiss francs for 2016.

**Position of Assets, Liabilities and Net Assets (In million Swiss franc)**



**Budgetary Performance**

24. WIPO prepares biennium budget. The biennium budget of 707 million Swiss francs for the period 2016 - 2017 was approved by the Assemblies of the Member States of WIPO on 14 October 2015. As per 2016/2017 biennial budget prepared by WIPO in compliance with IPSAS requirements, the total budget revenue for 2016 was 373.28 million Swiss francs. The actual total revenue was 384.68 million Swiss francs which was 11.4 million Swiss francs more than the budgetary estimation. Total expenses for the year ended 31 December 2016 were 322.18 million Swiss francs which were 28.19 million Swiss francs lesser than the budgetary estimates of 350.37 million Swiss francs.

**Improvements effected in the Financial Statements for 2016 as a result of External Audit**

25. We appreciate that the management carried out changes/improvements, based on the external audit observations, in the Financial Statements for the year ended 31 December 2016. These changes are stated below:

- i. Note 2: Significant Accounting Policies were updated to indicate methodology of valuation of free publications, methodology of accounting for internally developed software and accounting of fees received for Arbitration and Mediation services.
- ii. Note 26 on Financial Instruments was amended to update the credit ratings and cross reference for currency risk management policies.

## **Audit Findings**

### **Financial Matters**

#### **Classification of cash and cash equivalents**

26. Note 3 of WIPO Financial Statements as at 31 December 2016 shows classification of Cash and Cash Equivalents in three groups namely - unrestricted cash, restricted cash and strategic cash. Strategic (long-term) cash, according to WIPO's policy on investments, represents funds allocated for the future financing of after-service employee benefit liabilities, including ASHI. As at 31 December 2016, the total balance of these funds was 108.6 million Swiss francs split between cash and cash equivalents (96.1 million Swiss francs) and Investments (12.5 million Swiss francs).
27. We noted that the strategic cash is set aside to finance ASHI liabilities and is, thus, restricted in use. Accordingly, the same should be depicted under restricted cash, as was done in the previous year.
28. WIPO stated that IPSAS 2 permits restricted cash to be included as part of cash and cash equivalent. Given the nature of the arrangements for strategic cash, including its separate classification and liquidity requirements under the Organization's investment policy, it is considered more accurate to disclose this as a separate element of cash or investments and it is not considered that strategic cash should be included as part of restricted cash. The existing approach allows WIPO to accurately classify its strategic funds based on the terms and tenor of the future investments it intends to make in accordance with its investment policy, whilst also accurately disclosing the nature and purpose of these funds.
29. We are of the view that as the funds have been allocated for the future financing of after-service employee benefit liabilities, including ASHI, these funds are 'restricted' in nature.

## **Recommendation 1**

### **WIPO may classify strategic cash as restricted cash and cash equivalents.**

30. WIPO preferred to retain its existing approach of classification of assets.

### **Staff Advance – Education Grants**

31. Note 5 of the Financial Statements 2016 states that International Staff, other than those living in their home country, are eligible to receive a grant covering *75 per cent* of the costs of education for dependent children until the fourth year of post-secondary school studies, but not beyond the end of the school year in which the child reaches the age of 25. As per Office Instruction (OI) dated 26 April 2016, Staff members shall submit their claim for final settlement within four months following the end of the school year or completion of schooling, if earlier.
32. On review of outstanding Staff advances for education grants of 4.96 million Swiss francs at the end of December 2016, we observed that 112 thousand Swiss francs were outstanding for more than one year.
33. WIPO replied that these issues were pending because HRMD was waiting for information from the staff concerned. Upon receipt of information, the amount would be recovered by deduction from the staff member's salary.

## **Recommendation 2**

### **We recommend that WIPO may take suitable action to adjust/recover the outstanding Staff advances for education grant within the scheduled time.**

34. WIPO accepted the recommendation and stated that a final deadline of 30 June 2017 has been set. Non-compliance by the staff would result in recovery of the respective education grant advance as recommended.

### **Recognition of Assets**

35. As per the significant accounting policies of WIPO, equipment (communication and IT equipment, vehicles and furniture and furnishings) is recognized as an asset if it has a cost of 5,000 Swiss francs or more per unit; and useful life of 10 years is considered for calculation of depreciation for furniture and furnishings.
36. We observed that though the individual cost of 27 assets under furniture was below the threshold limit of 5,000 Swiss francs, the same were continued to be recognized

as fixed assets at gross carrying value of 48,274 Swiss francs since 2011 and with accumulated depreciation of 35,214 Swiss francs as at 31 December 2016 .

37. The continued recognition of assets and depreciating these which are below the threshold limit of 5,000 Swiss francs without charging them off fully, is contrary to the Accounting Policy. The net carrying amount of equipment of WIPO is, thus, overstated by 13,060 Swiss francs.
38. WIPO stated that the prospective application of the new threshold commencing on 1 January 2011 was in line with IPSAS 3 requirements. Furthermore, the benefits of the required change are not justified by its costs.
39. We are of the view that the above accounting was not in line with IPSAS 3 requirements which prescribes that a change in accounting policy shall be applied retrospectively except to the extent that it is impracticable to determine either the period specific effects or the cumulative effect of the change.

### **Recommendation 3**

**We recommend that all the assets below the threshold limit of 5,000 Swiss francs, which appear in the Asset Register, may be depreciated fully in line with the Accounting Policy and IPSAS requirements.**

40. WIPO agreed to analyse these assets as part of the 2017 equipment and furniture review.

### **Asset Management**

41. We observed discrepancies on account of physical verification of assets and in the Asset Management (AM) Module as described in the ensuing paragraphs:
42. As a result of Physical verification (November 2016), and subsequent reconciliation carried out by WIPO, 36 items were found missing. We also observed that the location and name of the custodian and/or of the Property Management Focal Point (PMFP) has not yet been updated in the AM module. Also, there was no reliable Business Intelligence tool in the AM module to generate reports for tracking and monitoring assets.
43. Data provided by the Premises Infrastructure Division for equipment in use (fax machines, printers and CPU) as at 31 December 2016 did not match with those of the AM - Equipment schedule.

44. WIPO stated that:

- a thorough review would be done of all the old items, regardless of their category, so that the AM Module will no longer contain items that are not in use, by end of the 2016-17 biennium.
- if the missing items are not found before Q3 2017 and they have not been found for at least two consecutive physical verifications, they will be presented for write off, before the end of 2017 so that the books of accounts can then be adjusted accordingly.
- the updating of the names of custodians and PMFP for all assets is expected to be completed by end 2017, once a specific field to indicate the PMFPs (separate from the existing field for custodian), has been identified in the AM Module of AIMS. Furthermore, the separate entries for custodians and PMFPs will be the basis for a reliable query system for improving tracking and monitoring.

#### **Recommendation 4**

**We recommend that review of all old items and missing items may be completed and adjusted in books by end 2017. Process of updating the module for providing all the details and reliable query system may also be completed by end 2017.**

45. WIPO accepted the recommendation.

#### **ASHI Liability**

46. IPSAS-25 prescribed the accounting method of short term and post-employment benefits. In July 2016, International Public Sector Accounting Standard Board (IPSASB) has issued IPSAS-39, which would replace IPSAS-25. IPSAS-39 will eliminate the corridor method for the purpose of valuation. It has been provided by IPSASB that an entity shall apply this Standard for annual financial statements covering periods beginning on or after 1 January 2018 and earlier adoption is encouraged.

47. WIPO has a contractual obligation to provide post-employment medical benefits for its staff members in the form of insurance premiums for the collective medical insurance plan. In accordance with WIPO's Staff Regulations and Rules, a share of 65 *per cent* of the monthly medical insurance premium is paid by the Organization. The present value of the defined benefit obligations for post-employment medical benefits is determined using the projected unit credit method which includes discounting the

estimated future cash outflows using a discount rate. Under the IPSAS-25, WIPO applies the corridor method to its accounting treatment of these actuarial gains and losses, which means that these are not immediately recognized in the financial statements.

48. As at 31 December 2016, WIPO has defined benefit obligation of 320.89 million Swiss francs towards ASHI. However, liability was recognized to the extent of 154.35 million Swiss francs only, leaving unrecognized amount of 166.54 million Swiss francs with an increase of 87.69 million Swiss francs compared to the previous year.
49. In view of the significant un-recognized liability which was on increasing trend, and which would have material impact on the financial statements, action needs to be taken at the earliest to formulate a policy for implementation of IPSAS-39.
50. WIPO stated that following completion of the 2016 actuarial study, it has requested its external actuary to prepare an analysis on the accounting impacts of IPSA-39 and the removal of the corridor method in relation to ASHI. The analysis will assume an IPSAS-39 implementation date of 1 January 2017.
51. We appreciate the steps taken by WIPO for implementing IPSAS-39 and encourage WIPO to apply this Standard for annual financial statements covering period beginning on 1 January 2017.

### **Recommendation 5**

**We recommend that in view of the material impact on the financial statements of the unrecognized liability which is on increasing trend, a suitable policy on implementation of IPSAS 39 may be defined and implemented early.**

52. WIPO stated that they are in the process of analyzing the impacts of IPSAS 39 and formulating its implementation policy.

## **The Hague System**

### **Background**

53. The Hague Agreement Concerning the International Registration of Industrial Designs, also known as the Hague system, provides a mechanism for registering an industrial design in several countries by means of a single application, filed in one language, with one set of fees. The system, administered by WIPO, provides a

practical business solution for registering up to 100 designs in over 65 territories through filing a single international application.

54. The Hague Agreement is constituted by three international treaties, independent of each other - the London Act 1934, the Hague Act 1960 and the Geneva Act 1999. A State may decide to become party to only one or two, or to all three of the Acts. The Acts have evolved with a view to increasing the compatibility of the Hague System with the registration systems of many countries. The latest of them, viz., the Geneva Act 1999 has many compatibility features, such as possibility of accession of not only states but also intergovernmental organisations, deferment of publication up to 30 months, refusal period up to 12 months, duration of protection up to 15 years, *etc.* The oldest Act, viz., the London Act 1934 has been terminated in October 2016.
55. As per Program and Budget for the biennium 2016/17, WIPO aims at making the Hague System the first choice for design registrations. To achieve this, WIPO would enhance awareness of the Hague System and promote its wider and better use, while, at the same time, improve its administration in the face of rising complexity and workloads. Coordinated action would take place on three fronts: visibility, geographical scope and system development.

## Planning and Performance

### Wider and Better Use of the Hague System

56. During the biennium 2014/15, budget and actual expenditure in respect of the Hague System was as under:

*(in thousands of CHF)*

|   | <b>Final Budget after transfers</b> | <b>Expenditure</b> |
|---|-------------------------------------|--------------------|
| Wider and better use of the Hague System, including by developing countries and least developed countries | 4,903<br>(67%)                      | 4,510<br>(65%)     |
| Improved productivity and service quality of the Hague operations   | 2,400<br>(33%)                      | 2,399<br>(35%)     |
| <b>Total</b>  | <b>7,303</b>                        | <b>6,909</b>       |

*Figures in parenthesis represent percentage with respect to the total expenditure.*

57. WIPO currently has 189 Member States, against which only 65 are members of the Hague System as at the end of 2015. We observed that though 67 per cent of the budgetary resources had been earmarked for the wider and better use of the Hague

System, there was shortfall in achievement of the annual/biennial targets in terms of number of applications under the Hague System during the biennium 2014/15. Further, the Hague System is pre- dominantly used by the European members - 36 members from Europe, 15 from Africa, 11 from Asia, two from North America and one from South America. We also observed that:

- The target for expansion of the System to cover 58 Contracting Parties to the Geneva Act could be achieved only partially, covering 51 Contracting Parties to the Geneva Act by October 2016.
- Against the target of no (zero) countries bound only by the Hague (1960) Act outside the EU or Organisation Africaine de la Propriété Intellectuelle (OAPI), three Contracting Parties outside the EU and OAPI were still bound only by the 1960 Act.

58. We noted that the key challenges identified for the Hague System in the Medium Term Strategic Plan (MTSP) for 2010-15 were: (i) The Hague System had failed to enjoy global membership. The Geneva Act of 1999 was introduced to remedy this by incorporating a number of features that would accommodate the national procedures of a wider range of Contracting Parties; (ii) As the geographic scope of the Hague System broadens, a number of the features of the Geneva Act that were introduced to accommodate divergent national practices, would be implemented for the first time. The international procedure would consequently become more complex, which risked detracting from its attractiveness to users.

59. To deal with these challenges, MTSP envisaged strategies, such as, conducting regular analysis of the design statistics so as to identify countries whose possible accession would have a chance of benefiting the largest numbers of domestic and foreign potential users; focusing on prospective Contracting Parties; simplifying the Hague System; further developing the legal framework in order to ensure that the Common Regulations and Administrative Instructions remain in step with users' needs; and continuing to enhance the safeguards and embedded intelligence in the e-filing system and extending the offering of online services so as to compensate for the increasing complexity resulting from the geographical expansion.

60. According to the Matrix of Contracting Parties, prepared by the Management, 21 countries were put in Group 1 (most likely to access within one or two years) and 18 countries in Group 2 (expected within three to five years) for the year 2015. However, out of 21 countries in the Group 1 of the matrix, only one country acceded

in 2015. The Matrix also suggested that several countries' accession were pending either because legal advice was needed or legislation was in progress or drafting of appropriate legislation was required. In view of this, the target of accession of 60 Contracting Parties to the Geneva Act by the end of 2016/17 biennium looks challenging.

61. The Management stated that with the accession of the Republic of Korea, Japan and the USA, the Hague System became more attractive not only to the users outside Europe but also to new user circles in Europe to protect their designs in those countries. The Hague System focused on prospective Contracting Parties, whose accession to the Geneva Act is likely to stimulate greater use of the System or further accessions. There had been concrete legislative or diplomatic processes towards accession of Cambodia, China, Madagascar, the Russian Federation, Israel and Canada. The Management added that many changes in existing Rules, Common Regulations, Administrative Instructions and e-filing had been effected to make the system robust to attract new players, while noting that the delay in implementation of Design International Registration Information System (DIRIS - the new IT platform) had been a hindrance in expansion.
62. We appreciate that many initiatives had been taken in terms of workshops, seminars, webinars, *etc.*, as well as study visits to different parts of the world. However, the expansion of the Hague System in the developing countries / least developed countries / the un-tapped non-European countries did not show noticeable progress.

### **Recommendation 6**

**The Management may consider having a more targeted strategy for expansion of the Hague System to developing countries and least developed countries by utilizing the budget allocation for 'wider and better use of the Hague System'. The strategy may, among others, include highlighting its strengths through publicity, carrying out surveys to elicit feedback of its clients on its services on a regular basis and documenting suggestions/feedbacks from customers.**

63. The Management accepted the recommendation.

### **Performance Targets**

64. We noticed that the target for expansion of the Hague System to cover 58 Contracting Parties to the Geneva Act could be achieved only partially, covering 51 Contracting

Parties to the Geneva Act by October 2016. We further observed from the Program Performance Report 2014/15 that in respect of three performance indicators out of the total seven, results against targets also fell short, as enumerated in the following table:

| <b>Performance Indicator</b>                               | <b>Targets</b>   | <b>Performance Data (Actuals)</b>   | <b>Remarks</b>  |
|--|--|---|---|
| Hague filings and renewals                                 | 2014 Applications: 4,004   | 2014 Applications: 2,924  | Not achieved  |
|  | 2015 Applications: 4,941   | 2015 Applications: 4,111  | Not achieved  |
|  | 2014 Designs: 17,519   | 2014 Designs: 14,441  | Not achieved  |
|  | 2015 Designs: 21,636   | 2015 Designs: 16,435  | Not achieved  |
| Predominance of the Geneva (1999) Act in the Hague system  | No (zero) countries bound only by the Hague (1960) Act outside the EU or OAPI; all the remaining consents (five) to termination of the 1934 Act received | Three Contracting Parties outside the EU and OAPI still bound only by the 1960 Act.   | Target not achieved by the end of 2015. Target of termination of 1934 Act has been achieved recently. |
| Flexibility of data recorded in the International Register | Ability to record granular design information  | Progress made on the design choices, yet the implementation was scheduled for after the conversion of the main IT system, an event that did not occur during the biennium: DIRIS. | Not achieved.   |

65. We observed that the targets for number of applications and designs filed for 2014 and 2015 were not achieved. Achievement during 2015 fell short by 16.8 *per cent* and 24 *per cent* against the targeted number of applications and designs respectively.

66. The Management attributed reasons for not achieving the targets (applications and designs) to late accession of the USA, the Republic of Korea and Japan. The Management also stated that promotion of new accession needs time and resources which sometimes is beyond the control of the Hague system as this is subject to national legislation and sudden external requests that the International Bureau (IB) needs to react to. The Management also stated that advanced planning/budgeting in terms of staff is essential, as budgeting takes time and actual delivery is subject to constraints.

67. While we appreciate that the Management devoted significant efforts to allow smooth accession of some specific countries *viz.*, Republic of Korea, Japan and USA with

large filing activity to the 1999 Act, the delays in their respective processes prevented their accessions from having the snow-ball effect that was expected on other targeted countries.

### **Recommendation 7**

**The Management may consider setting up more realistic targets, taking into account the factors outside its control, so that they can be pursued proactively in view of the existing constraints in resources.**

68. The Management accepted the recommendation.

### **Capacity Building**

69. The MTSP 2010-15 in its Strategic Goal III, Facilitating the Use of IP for Development, had underscored Capacity Building as one of the areas of focus. It mentioned that: “Upon request, WIPO will continue to provide specialized capacity building, training, and technical support to a wide range of community, national and regional initiatives and projects, including for the effective implementation in national and regional legal systems of international instruments that may be adopted.”

70. In this context, WIPO Academy would play a central role in delivering human resource training and capacity building, including through tailor-made programs and new approaches and methodologies. Regular programs for government officials, stakeholders, academics and other professionals will be complemented by a wide range of programs in expanding the outreach and elevating the content of capacity building. These programs would, *inter alia*, include WIPO Summer Schools program addressing young professionals and graduates; the Global Network of IP Academies; and the re-modelled Executive Program targeted at business executives and entrepreneurs from Small and Medium-Sized Enterprises (SMEs).

71. Towards capacity building initiatives between January 2014 and October 2016, the Hague System, conducted study visits, seminars, webinars in respect of the three primary activities, *i.e.*, (i) providing assistance to improve the capacities of institutions to deliver IP services, (ii) playing a central role in delivering human resource training and capacity building and (iii) regular programs for government officials, stakeholders, academics and other professionals to be complemented by a wide range of programs in expanding the outreach and elevating the content of capacity building.

72. We observed there had been no activity for some other items *viz.*, (i) start-up IP academies as vehicles for localizing training and educational initiatives, (ii) to support SMEs and (iii) focused efforts to strengthen the capacity of SME support and financing institutions, to provide “first stop” assistance in identifying, protecting, managing, and leveraging IP assets. With regard to increasing its efforts to support nationally-adapted and local language versions of the tailored information products on IP asset management created for entrepreneurs, micro-enterprises and SMEs, assistance was provided to the Offices of Japan, the Republic of Korea and China for the development and provision of user information relating to the Hague System in their respective official languages. As regards partnerships, networks and alliances to be created, and the scope of the ICT environment to be exploited more effectively in providing support for capacity building, WIPO-MARQUES, ECTA and AIPPI<sup>2</sup> annual summits were held between 2014 and 2016.
73. We understand that many of these events were held for WIPO as a whole and were not pertaining to the Hague System *per se*. Only three events mentioned had specific reference to the Hague System.
74. With regard to annual/biennial action plan drawn up for 2014/15 biennium for the capacity building/ trainings of in-house staff, the Management replied that as the Hague Registry is the provider of expertise and information as to its specific area, capacity-building activities are more to be found in the plans of other units such as the Bureaus or the Academy, who are responsible for coordinating the responses to such requests and decide whether or not to involve the Hague Registry. Typically, these inform the Hague Registry of their foreseen activities for the following year/biennium, but an unexpected request may also happen in the course of a year.
75. We believe that a custom built capacity building programme by the Hague System would provide more value to the stakeholders.
76. The Management accepted the merit in having a Hague-specific Capacity Building action plan in the future, especially in light of the performance indicator of “Better

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<sup>2</sup> *MARQUES* –A non-profit organisation engaged to help protect and enforce IP rights; *ECTA* - European Communities Trade Mark Association and *AIPPI* – Association Internationale pour la Protection de la Propriété Intellectuelle

and Wider Use”. They added that capacity building plan, not being the core function of the Hague system, will be very long-term as the core priorities in the area of geographical expansion, process stabilization and IT development need to be attained first. Besides, exploring the capacity building plan would also need profound cultural (provision will no longer be “upon request”) and structural (the responsibilities and resources would have to move from other Programs to the Hague System) changes across the Organization.

### **Recommendation 8**

**The Management may consider drawing a specific biennial capacity building action plan pertaining to the Hague System and for other stakeholders by dovetailing the same with the capacity building plan of WIPO coinciding with the biennial budget.**

77. The Management accepted the recommendation.

### **Timeliness in processing of International Applications for Industrial Registrations**

78. The Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement have laid down the terms and conditions governing filing of an application and processing. An international application may be filed directly with the IB either through the e-filing interface or in paper. Upon receipt, an application is examined by the IB to ascertain its compliance with the legal framework of the Hague System. If the application complies with those requirements, the IB records it in the International Register. If the international application does not comply with the applicable requirements, the IB sends an “irregularity letter” to the applicant, inviting that person to make the required corrections within three months as stipulated under Rule 14(1) and 14(3) of the Common Regulations. Response of the applicant may require further analysis by the examiner when they are received. Where an irregularity, other than an irregularity referred to in Article 8(2) (b) of the 1999 Act, is not remedied within the time limit referred, the international application shall be considered abandoned and the IB shall refund any fees paid in respect of that application, after deduction of an amount corresponding to the basic fee.

79. The Common Regulations do not provide any time-frame for completing/carrying out examination of the applications. As such, processing time in examination of applications has varied in individual cases. During the last three years, the trend of time taken in processing the regular applications was as under:

| <b>Number of regular applications processed</b> |                         |                            |                            |                            |                     |              |
|---|-------------------------|----------------------------|----------------------------|----------------------------|---------------------|--------------|
| <b>Year</b>                                     | <b>Less than 1 week</b> | <b>Between 1 - 2 weeks</b> | <b>Between 2 - 3 weeks</b> | <b>Between 3 - 4 weeks</b> | <b>Over 4 weeks</b> | <b>Total</b> |
| 2013  | 488(30%)                | 719 (45%)                  | 175(11%)                   | 69(4%)                     | 156(10%)            | 1607         |
| 2014  | 778 (44%)               | 675 (38%)                  | 157(9%)                    | 73(4%)                     | 85(5%)              | 1768         |
| 2015  | 544 (25%)               | 933(43%)                   | 371(17%)                   | 140(6%)                    | 193(9%)             | 2181         |

Figures in parenthesis represent percentage with respect to the total.

80. It is evident from the above table that the share of regular applications processed within less than one week decreased to 25 *per cent* in 2015, as compared to 44 *per cent* in 2014. Further, the number of applications processed over four weeks has increased in 2015 compared to 2014. This indicated that processing of regular application in 2015 has taken more time as compared to the previous year.

81. We further noticed that in case of processing of applications having some irregularities, the processing time (reception date to recording date) was much higher than that taken for regular applications. In this context, we analyzed data and found that in a sample of 8203 irregular applications received by the IB between January 2014 and June 2016 for which the processing time (reception to recording) was greater than 120 days<sup>3</sup>, the total days attributable to the IB processing, as opposed to the applicant's response time, are broken down as follow:

| <b>Particulars</b>         | <b>Processing days attributable to the Hague System (as opposed to the applicant) in examination of a sample of irregular applications for which the reception to recording time is greater than 120 days.</b> |                |                |                |                |
|----------------------------|--|----------------|----------------|----------------|----------------|
|                            | <b>21- 120</b>   | <b>121-200</b> | <b>201-300</b> | <b>301-400</b> | <b>400-528</b> |
| <b>No. of Applications</b> | 631  | 123            | 49             | 10             | 6              |
| <b>Percentage</b>          | 77   | 15             | 6              | 1              | 1              |

82. We also analyzed a sample data relating to stage-wise time taken in processing of 39 irregular applications (from receipt to recording stage). We observed that in 23 cases, the days taken in first examination after receipt of the applications by the IB ranged between 22 and 453 days. Since examination by the IB does not involve substantive

<sup>3</sup> Cases of less than 120 days were ignored to account for the time towards examination and three months' time granted for correcting irregularity under Rule 14(3) of Common Regulations.

checking of the designs, time taken to that extent seems to be on the higher side, which may affect users' satisfaction and attractiveness of the Hague System. Thus, we feel that a well-defined time-frame for examination of international applications may bring more accountability and promptness in the processing of the applications.

83. Sample analysis also indicated that in 17 out of 39 cases, the applicants had taken 91 to 512 days in responding to the 'irregularity' notice. Thus, the IB allowed the applicants to respond to irregularity notice even beyond the stipulated time of three months. Although favorable to individual applicants, this forgiving approach poses an adverse impact on swift processing of the applications, and needs realistic enforcement of the provisions for abandonment of the applications.

84. The Management stated that when the IB proposes the required corrections, they may require further analysis by the examiner. Under the legal framework, there is no obligation to have all the irregularities compiled together in one invitation. Further, a number of frivolous applications have also been made by individuals merely playing with the electronic interface. To counter this, Rule 14 of the Common Regulations would be amended to allow the IB to first invite the applicant to make the payment of at least the amount corresponding to the basic fee for one design before completing its examination.

### **Recommendation 9**

- i. The Management may consider framing a time line for examination and processing of applications by the International Bureau to introduce more accountability and promptness in the system.**
- ii. The Management may consider realistic enforcement of the provisions for abandonment of the applications to avoid wastage of resources and time over undeserving applications.**

85. The Management accepted the recommendations.

### **Refusals for International Registrations of Industrial Designs**

86. The IB does not undertake any substantive examination (for example, for novelty of the design) and therefore, cannot reject an application based on substantive grounds.

87. The decision whether to grant protection remains the prerogative of the national or regional offices, and the rights are limited to the jurisdiction of the granting authority.

Designated offices can refuse to grant protection for an international registration where the registration is subject to opposition from a third party and when it fails to meet the necessary criteria, such as novelty, as specified in the national laws.

88. A study of the refusals received by the Hague System in the last four years (2013 to October 2016), presented the following position:

|                               | <b>2013</b> | <b>2014</b> | <b>2015</b> | <b>2016 (till 31 October)</b> |
|-------------------------------|-------------|-------------|-------------|-------------------------------|
| <b>Number of refusals</b>     | 119         | 152         | 203         | 1506                          |
| <b>Number of Applications</b> | 2990        | 2924        | 4111        | NA                            |

89. We observed that:

- i. Between 2013 and 2015, the number of refusals increased significantly, by nearly 71 *per cent* in 2015 compared to 2013 (from 119 to 203).
- ii. Between 2015 and 2016 (till 31 October), the number of refusals has shot up by 1303, *i.e.*, the increase in 10 months of 2016 was 642 *per cent* compared to the numbers for entire 2015.
- iii. During 2011 to 2013, Egypt and Syria were at the top, accounting for between 55 to 70 *per cent* of total refusals. However, with the accessions of the Republic of Korea, Japan and the USA in 2014 and 2015, these three countries now cumulatively accounted for 94 *per cent* of refusals in 2016 (till October).

90. The Management asserted that they were aware of the criticality of the problem and were also taking remedial actions as follows.

- The ICS contractor in the Legal Section was already performing a study to analyze the notifications of refusals, including comparative study on refusal grounds by United States Patent and Trademark Office (USPTO), Japan Patent Office (JPO) and Korean Intellectual Property Office (KIPO). Once any possible trends/idiosyncrasies are detected/ analyzed, ways to mitigate the risk of refusals by those Offices will be explored.
- After extensive negotiations with the representatives from JPO, KIPO, USPTO, National Office of Intellectual Property of Vietnam, Rospatent and State Intellectual Property Office of the People's Republic of China, as well as inputs from other Examining Offices under the Hague System and discussions in the fifth session of the Hague Working

Group, a Guidance<sup>4</sup> was published in August 2016 to assist the users of the Hague System to mitigate the risk of refusals by the Examining Offices under the Hague System.

91. The Management felt that on account of the above steps, they would be in a position to mitigate the spate of refusals in the future. However, the Management accepted that the IB could “help prevent, yet not counter, the possible refusals on substantive grounds by providing guidance within a very limited capacity”.
92. We noted that while the issue of timely action on incoming refusal decisions has been flagged as an area of risk in the Risk Register of the programme (Risk Reference 31.0025.006), the issue as a whole, with its attendant risk to the organization’s reputation, if allowed to continue unchecked, is raised indirectly through the risk of loss of user-friendliness tied to the System’s expansion (Risk Reference 31.0023.001, “Increasing country-specific requirements undermine the value of the Hague System”) but has not been flagged as a risk of its own.

### **Recommendation 10**

- i. The Management may consider flagging the issue of refusals of international registrations by the national offices as a risk in its entirety, in view of its potential impact on the goodwill of the Hague System as well as the organization.**
- ii. The Management may consider playing a nuanced, proactive role in the matter by engaging all stakeholders constructively, as it has limited role in refusals on substantive grounds to minimise the exponentially increasing number of refusals.**

93. The Management accepted the recommendations.

### **Financial Management**

94. The approved budget, budget after transfers and expenditure during the two biennia 2014/15 and 2016/17 in respect of the Hague System are depicted in the table below:

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<sup>4</sup> *Guidance on Preparing and Providing Reproductions in Order to Forestall Possible Refusals on the Ground of Insufficient Disclosure of an Industrial Design by Examining Offices*

*(In thousands of CHF)*

| Year                               | Component               | Approved Budget | Budget after transfers | Expenditure  |
|------------------------------------|-------------------------|-----------------|------------------------|--------------|
| 2014/15                            | Personnel Resources     | 6,242 (82%)     | 6,281 (86%)            | 6,079 (88%)  |
|                                    | Non-Personnel Resources | 1,346(18%)      | 1,022(14%)             | 831 (12%)    |
|                                    | <b>Total</b>            | <b>7,587</b>    | <b>7,302</b>           | <b>6,909</b> |
| 2016/17<br>(as of 18 October 2016) | Personnel Resources     | 6,226 (82%)     | 7,171(85%)             | 2542 (85%)   |
|                                    | Non-Personnel Resources | 1,346 (18%)     | 1,308 (15%)            | 434 (15%)    |
|                                    | <b>Total</b>            | <b>7,572</b>    | <b>8,479</b>           | <b>2,976</b> |

*Figures in parenthesis represent percentage with respect to the total expenditure of that year.*

95. During the biennium 2014/15, 88 *per cent* of the total budget resources for the Hague System had been spent on the personnel resources. Such application of budget resources towards the personnel worked out 23 *per cent* and 12 *per cent* higher as compared to the PCT and the Madrid & Lisbon System respectively. Similarly, for the first 10 months of the biennium 2016/17, 85 *per cent* of the budget resources had been spent on personnel resources, which were 26 *per cent* and 18 *per cent* higher compared to those in respect of the PCT and the Madrid & Lisbon System respectively.
96. This indicates that the budget resources allocated for the Hague System had been significantly devoted to personnel resources. The high proportion of expenditure on personnel resources may adversely impact on the allocation of budget on other important heads in pursuance of goals set forth for expansion of the System. Geographical expansion to the un- tapped areas of the rest of the world outside Europe, the USA, Japan and OAPI may be hindered if more non-personnel resources are not allocated and some of the systemic issues relating to delay in IT system upgrade are not addressed.
97. The Management replied that the low expenditure on non-personnel resources was due to delays in the development of the new IT system as projects dependent on its deployment could not be launched and due to postponing a number of promotion or information endeavors and legal studies in connection with key accessions. Also, it was stated that a number of temporary internal transfers or assignments in favour of

the Hague Registry made it redundant to revert to out-sourcing and thus further increased the personnel vs. non-personnel utilization imbalance.

98. We feel emphasis should have been given on utilization of non-personnel resources in order to achieve the targeted goals of geographical expansion of the Hague System.

### Recommendation 11

**The Management may consider addressing the resource allocation imbalance by allocating more resources to non-personnel expenditure including expenditures related to IT, Promotion and IEC (information, education and communication) and legal endeavours.**

99. The Management accepted the recommendation.

### Recurrent Deficits

100. Fees relating to International Applications are the primary source of income for financing the Hague System, which cover about 80 *per cent* of the income of the Hague System. We observed that the fees have proven insufficient to cover the expenses of the Hague Union, as is evident from the following table:

*(Amount in thousands of CHF)*

|                  |       |              | Deficit as percentage of Revenue |
|------------------|-------|--------------|----------------------------------|
| <b>Year 2011</b> |       |              |                                  |
| Revenue          |       |              | 83.46                            |
| Fees             | 2,954 | 3,260        |                                  |
| Non-fees income  | 306   |              |                                  |
| Expense          |       | 5,981        |                                  |
| <b>Deficit</b>   |       | <b>2,721</b> |                                  |
| <b>Year 2012</b> |       |              |                                  |
| Revenue          |       |              | 99.13                            |
| Fees             | 3,083 | 3,442        |                                  |
| Non-fees income  | 359   |              |                                  |
| Expense          |       | 6,854        |                                  |
| <b>Deficit</b>   |       | <b>3,412</b> |                                  |
| <b>Year 2013</b> |       |              |                                  |
| Revenue          |       |              | 67.79                            |
| Fees             | 3,215 | 4,531        |                                  |
| Non-fees income  | 1,316 |              |                                  |
| Expense          |       | 7,603        |                                  |

|                  |       |              |       |
|------------------|-------|--------------|-------|
| <b>Deficit</b>   |       | <b>3,072</b> |       |
| <b>Year 2014</b> |       |              |       |
| Revenue          |       | 3,927        | 86.45 |
| Fees             | 3,196 |              |       |
| Non-fees income  | 731   |              |       |
| Expense          |       | 7,322        |       |
| <b>Deficit</b>   |       | <b>3,395</b> |       |
| <b>Year 2015</b> |       |              |       |
| Revenue          |       | 5,034        | 39.27 |
| Fees             | 4,043 |              |       |
| Non-fees income  | 991   |              |       |
| Expense          |       | 7,011        |       |
| <b>Deficit</b>   |       | <b>1,977</b> |       |

101. We observed that during the last five years, the deficit as a percentage of revenue has not shown a consistent pattern. In 2015, the Hague Union had a deficit amounting to 39.27 *per cent* of its income, which was a marked improvement over its previous year's deficit amounting to 86.45 *per cent* of the 2014 income.
102. The IB had proposed, in the fifth session of the Working Group on the Legal Development of the Hague System, for a flat increase in the basic fee or a designation- tied basic fee. The Working Group concluded (November 2015) that on the basis of the comments and instructions of the Working Group, detailed scenarios for a sustainable fee structure would be provided by the IB to be discussed in the sixth session of the Working Group. We observed that no such sustainable fee structure was proposed by the IB in the sixth meeting of the Working Group, instead discussion was mostly on amending Rule 14 of the Common Regulations to ensure payment of at least the basic fee corresponding to one design before completing formal examination. As such, the basic fee and the renewal fee remained unrevised for the past 20 years even though the Hague System has sustained deficits consistently, and the projection by the Chief Economist did not foresee a surplus under the current fee structure even by 2019.
103. The Management replied that considering the highly speculative nature of the fee revision exercise, it was decided to halt the exercise until the System had stabilized itself. The Programme and Budget Committee foresees a deficit for the Hague Union of some CHF 3.9 million for the 2016/17 biennium. The Management feared that discussion on the revision of the basic fee would cause an unnecessary negative

publicity and scare away new users. Regarding non-revision of fee in the last 20 years, the Management stated that due to availability of the European Unregistered Design as of 2012 and then of the European Registered Design as of 2013, the Hague System lost its competitiveness as these two systems provided protection across the European Union.

104. While appreciating the complexities of the changing world, we feel that it is now imperative to formulate an actionable strategy/policy at the earliest for making the Hague System self-sufficient and for curtailing the recurrent deficits.

### **Recommendation 12**

- i. **The Management may consider framing an actionable strategy early for making the Hague System self-sufficient and overcoming the recurrent deficits.**
- ii. **The Management may consider placing in the Hague Union Assembly proposal for revisiting the existing fee structure periodically, with incremental changes for making the Hague Union self-sustaining.**

105. The Management accepted the recommendations.

### **Human Resource Management**

106. The Hague System was carved out of the Madrid-Lisbon-Hague System during the biennium 2010-11. Currently, the Hague System is served by three functional sections, namely the Legal Section, the Operations Services and the Information and Promotion Section. The number of personnel in the three Sections over the last three years may be seen in the table below:

|                                    | <b>2014</b>      |                      | <b>2015</b>      |                      | <b>2016</b>      |                      |
|------------------------------------|------------------|----------------------|------------------|----------------------|------------------|----------------------|
|                                    | <b>Permanent</b> | <b>Non-permanent</b> | <b>Permanent</b> | <b>Non-permanent</b> | <b>Permanent</b> | <b>Non-permanent</b> |
| <b>Legal</b>                       | 2                |                      | 2                | 2                    | 3                | 1                    |
| <b>Operations Services</b>         | 5                | 1                    | 5                | 3                    | 6                | 4                    |
| <b>Information &amp; Promotion</b> | 4                | 1                    | 4                | 1                    | 4                | 1                    |
| <b>The Hague System</b>            | 11               | 2                    | 11               | 6                    | 13               | 6                    |

107. The recruitment and transfers/postings of personnel in WIPO are done centrally through the Human Resource Management Department. To assess the requirements of

each functional wing, WIPO has devised a Workforce Planning Guideline wherein the processes involved in projecting the requirements for a biennium are laid down. As per the guidelines, the Hague System is expected to analyse its specific requirements, assess its existing capabilities having duly done a 'gap analysis', project further HR requirements, if any, at the time of preparation of the Program & Budget (P&B) document for the biennium. Appropriate budgetary requirements are suitably incorporated in the P&B document and also, necessary action taken for filling up the 'gap' projected, subject to overall management considerations.

108. International registration of Industrial Designs being now primarily governed by the Geneva Act, one of the predominant concerns of the organization had always been that as the membership increases and a wide cross-section of countries join the Hague System, the diversity of laws and procedures regarding registration of industrial designs in the Member States would slowly make the Geneva Act too complex and unwieldy to remain attractive to users. Hence, beyond a point, the increase in Membership, which is one of its primary goals, may make the Hague System actually stifled. In fact, the only risk in the latest Risk Register of this Program which has been considered critical deal with this issue:

'New acceding countries need to see their substantive laws taken into account. The system then loses in user-friendliness and users prefer to use the local agents to file directly'.

109. We observed that in spite of the above being flagged as a 'critical' risk, the issue was yet to be dealt with comprehensively, as well as timely. To avoid such a closed-loop scenario, it was imperative that the Hague System continue to have the necessary legal acumen to easily and quickly sort out the legal complexities, and continue to keep the System equipped to absorb more Member States within its ambit without having the legalities become a burden to the System.
110. Currently, the entire legal work of the Hague System is being looked into by the Legal Section. We observed that the number of personnel in the Legal Section has not increased over the last three years, and that there was a high proportion of personnel who were not regular employees. In fact, only the Head of the Legal Section and one permanent employee have remained the same during that period. We also observed that the post of the Legal Officer was transferred to the Legal Section in 2015. The transferee neither had any prior exposure to the Hague System, nor any working experience with the international registration systems till then. Accordingly,

the incumbent needed to further study the terminology and the complexity of the Hague System in 2016, which defeated the very requirement of the System in the immediate time-frame. Given the lack of harmonization of the national/regional industrial design laws and the increased complexity of the Hague System, as explained above, a very specific set of skills with preferably practical experience of industrial design filings and procedures either in the private sector or at a national/regional Office would be an ideal background for a candidate to have a post in the Legal Section.

111. The Information and Promotion Section of the Hague System is involved in disseminating information about the utilities and advantages of the Hague System to interested parties and resolving their queries, as well as actively promoting its usefulness among potential users. We observed that the staffing in this Section had not undergone any change in the last three years since 2014 in spite of the extensive changes coming into its working due to the recent expansion of the System.
112. We observed that the Hague System has not done any comprehensive staffing proposal elucidating the requirements at the professional grade and the general staffing positions in the last five years. Barring the addition of three Examiners from the Republic of Korea, Japan and USA in an *ad hoc* temporary recruitment and an Associate Business Analyst, in the Operations Services Section, there have not been any significant changes in the personnel associated with the Sections over the last three years. A study of the Biennial Action Plan for Staffing for 2014-15 and 2016-17 also did not give any indication of request for augmentation of human resources, except for one post each of a Legal Officer in Legal Section and an Examiner in Operations Service on ad-hoc basis. There was no documented gap analysis between the resources required and that already possessed, as required by the Workforce Planning Guidelines.
113. Regarding advance planning for augmentation of human resources in the Hague System, the Management stated that such issues had been intensively deliberated upon in an internal document, namely the 'Hague Organisational Design' in March 2016. While not sharing this document with audit, being work in progress, the Management stressed that in view of the profound changes in its working consequent upon the sudden expansion of examination jurisdiction, any plan made based on earlier data/quantum of work would have had to be re- done anyway. The

Management referred to the head count exercise and no increase of staff as requested by Member States as the reason for currently managing with non-personnel resources in the category of internship and Fellowship. The Management stated that there was no one in the Information Promotion Section with legal competencies and no one in the Legal Section with practical experience with substantive law issues. There was also lack of web savvy-ness in the Information and Promotion Section.

114. In view of the above, we feel that given the fact that the Hague System had been bifurcated out of the Madrid-Lisbon-Hague System over five years back, there was a need for a comprehensive assessment of its immediate requirement, as well as medium-term additional requirements.

### **Recommendation 13**

**The Management may consider having a comprehensive plan regarding short-term, medium-term and long term strategies for human resource management for the Hague System based on appropriate gap analysis and projection of requirements.**

115. The Management accepted the recommendation.

### **IT Support Services**

116. The IB initiated (2008) the IT Modernization Program with an objective to minimize operational risks, derive benefits of a fully functional Design International Registries Information System (DIRIS) and to enhance capacity of certain key fields to record sequenced document numbers which was due to hit its limit, imposed by the original design. The project was combined with the larger Madrid International Registries Information System (MIRIS) project<sup>5</sup>, with both being planned to be undertaken in three phases and scheduled to be completed by 2010/11 biennium.

117. A sum of CHF 13.804 million was approved for the project (CHF 10.804 million by the Assembly of the Madrid Union and CHF 3 million by the Assembly of the Hague Union). As of July, 2015, actual expenditure on the project amounted to CHF 13.527 million, *i.e.*, 98 *per cent* of the project budget.

118. Phase I of the project had been completed in June 2013. Considering problems faced in that Phase, WIPO decided to combine the original Phase II and Phase III.

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<sup>5</sup> Deployed in March 2016.

The revised date of completion of New Phase II of the Program was June, 2014. However, after completion of tendering formalities, the DIRIS project was put on hold, considering the expected upcoming accession of new Member States to the Hague Agreement. In order to minimize the operational risk, WIPO decided to address this important functional requirement with internal development resources directly within DMAPS, and to restart the technical conversion exercise at a later date.

119. The “Working Group on the Legal Development of the Hague System for the International Registration of Industrial Designs” in its fifth Session in December 2015, expected that the final testing and deployment of DIRIS would take place by August 2016. However, the DIRIS has not been implemented as of date (November 2016).
120. The Management stated that even though DIRIS, with preliminary DMAPS conversion, had been delivered to the International Bureau, the actual conversion of the DMAPS system into the new software platform was put on hold due to unavailability of internal resources to conduct user testing and acceptance. The Management added that though delays in the implementation would not result directly in cost overruns, additional modules to address new system requirements would require additional funding.
121. We noted that the objectives of the DIRIS segment of the larger IT Modernization project could not be fully achieved with regards to the requirements of the Hague System, leading to the continued dependency on existing limited DMAPS system, even after eight years from start of the project. It also suggests that the design of DIRIS might no longer meet the user requirements as they were identified eight years ago. Accordingly, there is a need to revisit the fitness of DIRIS and to devise a long-term IT strategy that would cover needed enhancements such as a higher degree of granularity and maintenance.

#### **Recommendation 14**

**The Management may consider devising a long-term IT strategy covering needed enhancements such as a higher degree of granularity and maintenance. It may be worthwhile to revisit the fitness of DIRIS, in light of the contemporary user requirements.**

122. The Management accepted the recommendation.

### **Customer Service**

123. The Customer Service Charter (CSC) of WIPO of March 2015 promises that their customers will always “receive reliable and valuable assistance in a timely and professional manner”. CSC also promises that when customers have any issue, WIPO would view the suggestions and complaints as an opportunity to improve their services, carry out regular surveys on customer satisfaction, and share the results with the customers. This is in line with WIPO’s Strategic Objective VIII, MTSP 2010-15.

124. The Hague System did not have any feedback system to invite views and comments from international community (country offices, individuals, contracting parties, *etc.*) and to take proper remedial measures if situation arose. Besides, the Hague System did not have any defined Customer Service Strategy, for better customer satisfaction till date (November 2016).

125. WIPO Inquiry Notifications System (WINS) is the application used to track the various customer enquiries, which may come in the forms of calls, e-mails or queries posted on WIPO website. As of November 2016, the Hague System was not integrated within the WINS User Group though it was being considered.

126. The Information and Promotion Section under the Hague System attends to calls and e-mails that are directed to the Hague System. The year-wise calls and e-mails received since 2013 showed an increasing trend. One ‘Agency Worker’ was in charge of receiving the phone calls for the users. To help facing this constantly increasing number of phone calls, a unique dedicated public phone number has been created and implemented in 2015. However, there was no system currently in place to track a call/e-mail and to see how soon the enquiry was settled, although measures have been taken to include the Hague System in the WINS in 2017, which will help raising the quality of services of the Information and Promotion Section.

127. The Management stated that a system was in place to attend to incoming calls. /e-mails at the Hague System. One staff member was in charge of processing incoming emails, either by answering to them, or by dispatching to other colleagues of the section or by forwarding them to other sections of WIPO for further answer. Though there was no specific Quality Feedback System to invite views and difficulties from

international community, a satisfaction survey was conducted in 2012, which revealed a high level of satisfaction.

128. We are of the view that the CSC of WIPO mostly talks about one-to-one interaction between the customer and WIPO Management; and does not provide an open platform to the community to exchange their views. Besides, the Hague System, being a distinct system within WIPO, has its own set of processes and complexity. We feel that having a dedicated customer service strategy with quality feedback system in place is expected to bring more customer satisfaction.

### **Recommendation 15**

**The Management may consider exploring possibilities of evolving a well-defined customer service strategy supported by an e-based quality feedback system to cater to the needs of the Hague System. Till the system is evolved, the Management may consider undertaking regular customer surveys, as mentioned in CSC, to continue to improve their services.**

129. The Management accepted the recommendation.

## **Other Contractual Services**

### **Background**

130. According to ISSAI 4000, compliance auditing includes both the aspects of regularity (adherence to formal criteria such as relevant laws, regulations and agreements) and/or propriety (observance of the general principles governing sound financial management and the conduct of public officials). Compliance audit of Other Contractual Services (OCS) was accordingly conducted to assess whether the procurement activities in respect of OCS were performed in compliance with WIPO's procurement policy, procedures in place and in accordance with good procurement practices. Audit findings and recommendations, thus, pertain to issues of non-compliance with WIPO's procurement policy, procedures in place and in accordance with good procurement practices.
131. Out of a total of seven sectors in OCS, we selected the following four major sectors. The expenditure incurred against each of the four sectors for the three years ended 31 December 2016 is given below:

|   | <b>Expenditure (in million Swiss francs )</b> |               |               |
|---|---|---------------|---------------|
|   | <b>2014</b>                                   | <b>2015</b>   | <b>2016</b>   |
| IT Commercial Service Providers                     | 20.86   | 22.94         | 20.31         |
| Translations Commercial Service Providers           | 24.51   | 25.52         | 26.51         |
| Other Commercial Service Providers and other UN Org | 64.47   | 51.75         | 44.97         |
| ICC Services  | 11.49   | 11.07         | 11.58         |
| <b>Total</b>  | <b>121.33</b>                                 | <b>111.28</b> | <b>103.37</b> |

132. Out of 340 procurement cases for the years 2014-16, we reviewed 209 contracts pertaining to the above four sectors of OCS.

#### **Alternative Procedure of Procurement**

133. Regulation 105.18 read with Article 34 of OI 1/2014, mentions that the High Level Official in charge of Procurement (HLOP) may determine, with the advice of the Contract Review Committee (CRC) when he or she finds such advice necessary, that using formal or informal methods of solicitation is not in the best interests of WIPO for a particular procurement action for the various conditions mentioned therein. Article 35 of the OI requires the HLOP to record reasons in writing for making an exception.

134. The said Article defines nine specific situations where alternative procurement may be used by the HLOP for a proposed procurement. The total number of such procurement was 32, 38 and 47 in the years 2014, 2015 and 2016 respectively. Though these exceptions form a very small portion of the total purchase orders, there was an increasing trend showing an increase of 46 *per cent* between 2014 and 2016. WIPO attributed the increase in number to the fact that there was one case for UN Cooperation in 2014, three in 2015 and 11 in 2016. We observed that the main situations where exception had been used related to the requirement for standardization under clause (b) of Article 34 of the OI. There were 54 such cases out of 117 cases during the period 2014-16.

135. We also noticed that in none of the 117 exception cases undertaken during the period 2014-2016, advice of CRC had been considered necessary by the HLOP.

#### **Exceptions under clause 34 (b)**

136. Article 34 (b) of OI 1/2014 provides that the HLOP may determine, with the advice of the CRC when he or she finds such advice necessary, that using formal or informal methods of solicitation is not in the best interest of WIPO for a particular procurement action when the supplier or the product/service needs to be standardized. Para 69 of WIPO Procurement Manual (WPM) mentions that the exception for the need to standardize the supplier or the requirement is used only when such standardization limits the acquisition to only one vendor. If multiple vendors can fulfill the standardized requirement, competition must be sought on a “no substitute” basis for the specified part, number and brand. While WIPO procurement rules and procedures do not foresee any limitation on the length of any exception, Procurement and Travel Division (PTD) has recommended to the HLOP to limit this kind of exception to five years. However, such authorization can be extended after having carried out due diligence and providing sound documentation.

137. We reviewed 54 cases where procurement had been effected pursuant to the exercise of exception under Article 34 (b) and our observations are contained in the ensuing paragraphs.

138. In respect of procurement of Audio Visual equipment, accessories, associated maintenance and support services, the procurement effected by the exception route, initially granted in 2010, had been extended (February 2015 and November 2016) beyond the maximum period of five years resulting in the contract being valid till 2020.

139. In respect of procurement of Management Public Key Infrastructure (MPKI) Services for PCT, the contract (2003-04) had been extended for reasons of standardization. In December 2014, the exception under Article 34 (b) was given for direct procurement from the same company until the end of January 2016, for the reasons that the PCT requirements related to service provided by the company were being incorporated in to a wider RFP which was under preparation and planned for 2015. Again in November 2015, exception under Article 34(b) was given for direct procurement from the same company until the end of January 2018.

140. WIPO stated that in respect of Audio-Visual equipment, a single system integrator was critical for integrating multiple technologies and that the market was assessed through the RFI issued in 2016. The outcomes confirmed that there were still no competitors on the Televic equipment and while in theory another supplier could have been identified for the non-Televic equipment, this option was not considered as the best value for money for WIPO. Consequently, the initial approval of standardization obtained for one year was extended to additional four years with the understanding that PTD would continue to monitor the market to identify any new players in the market.
141. In case of MPKI services, WIPO stated that the service was initially procured in 2003-2004 through a formal tender. It was standardized, and was, therefore, exempted from solicitation in 2007. In December 2014 and due to the five years limit for standardization, the HLOP granted for another year pending a planned wider tender. In November 2015, HLOP extended the authority to January 2018 due to, among others, European Patent Office requirements which was beyond WIPO's control. In early 2017, it was decided to launch a new and separate tender in the second quarter of 2017 to check what the market had to offer for services beyond January 2018.
142. WIPO added that while the duration of the contracts in most cases was five years, there were no written rules which impeded that in cases where the market had not changed, the Program could request a new exception and establish a new contract for additional five years. Due diligence process carried out by PTD was based not only on the competitive pricing but on the total cost of ownership which included the cost of changing technology for the entire Organization.
143. While we recognize the need of WIPO to standardize in certain areas, we are of the opinion that the repeated exceptions may create a monopolistic condition and give rise to a situation where WIPO had to persist with the same vendor without reaping the benefits of competition in the market.

#### **Exceptions under clause 34 (d)**

144. Clause (d) read with Para 71 of the WPM mentions that exceptions to tendering process may be made if offers for identical products and services have been obtained competitively within a reasonable period and prices and conditions offered are considered to remain competitive. Para 72 of the WPM mentions that "The said

deliverables must have been subject to a complete procurement exercise and the original contract must have been awarded less than 180 days prior to the new contract award. Generally, no more than three consecutive awards should be given to the same vendor within a six-month period using this exception. If more awards are expected, PTD should develop a framework contract for said goods and services through a competitive exercise.”

145. In the procurement of Insurance services, WIPO had entered into a contract for accident insurance with a service provider (L1) from 1 January 2015 to 31 December 2015 with a possibility of consecutive annual extensions. However, due to poor performance of the L1, the contract was terminated (September 2015) and awarded to the second ranked bidder (L2) with effect from 1 January 2016.
146. We observed that the contract to L2 was from 1 January 2016, a year after the original contract was awarded to L1 at an additional cost of 70,000 Swiss francs. The new contract was awarded after the lapse of more than 180 days from the date of award of the old contract and was, therefore, not in compliance with the stipulation of 180 days specified in the WPM.
147. WIPO stated that no changes had occurred in the market in the meantime; and PTD and HRMD believed that the tender results could be used to select a second supplier. WIPO added that it was in the best interest of the Organization to move rapidly to the second ranked supplier instead of continuing to expose the Organization to poor performance for an additional six months (time needed for this kind of tender).
148. We are of the view that the earlier procurement exercise having been completed more than 180 days prior to the award of contract to the second bidder, market should have been explored.

#### **Exceptions under clause 34 (e)**

149. Clause 34 (e) mentions that the HLOP may determine, with the advice of the CRC when he or she finds such advice necessary, that using formal or informal methods of solicitation is not in the best interests of WIPO for a particular procurement action when within a reasonable prior period, a formal solicitation for identical products and services has not produced satisfactory results. For the procurement of Software Platform for ECM (Enterprise Content Management) system, HLOP approved

(October 2015) direct procurement from a particular vendor by exercising the discretion in terms of provisions under clause 34 (b) and 34 (e). The reasons for not following the tender process were:

- Based on previous tender results, the competition would have been restricted to only two suppliers, which have been long serving contractors of WIPO for more than 10 years.
- The significant amount of investments made by WIPO on both solutions could have affected the objective comparison of the financial offers.
- The recommendation made by an external consultancy company to proceed with one of the two suppliers could have influenced the evaluation of offers received.

150. A Request for Information (RFI) was issued to both the suppliers. Based on the evaluation of results of RFI and recommendation of ICTD, contact was awarded to the supplier X. The initial cost of 1.7 million Swiss francs offered by the supplier X over a three-year period was reduced to 700 thousand Swiss francs one-time fee and an average cost of about 256 thousand Swiss francs annual maintenance as a result of negotiations. This worked out to 1.47 million Swiss francs over a three-year period, which was still substantially higher compared to the cost of 860 thousand Swiss francs offered by the other supplier.

151. We noticed that the earlier solicitation was done in 2012 which was more than six months provided for in Para 74 of the WPM for exercise of discretion under clause 34 (e). Further, on one hand the requirement for a formal tender was dispensed for the reason that a recommendation made by an external consultancy company recommending the supplier X would influence an objective analysis, on the other hand while awarding contract to the supplier X, the same recommendations had been considered. As there was a substantial difference in the price of both the suppliers, we are not convinced as to how the awarded price could be considered as substantially conforming to the requirement at an “acceptable price” in terms of Para 64 of the WPM.

152. WIPO considered the price obtained was acceptable as it was in line with market and based on the total cost of ownership analysis. WIPO stated that the previous tender issued in 2012 for this procurement did not produce satisfactory results. In 2015 the consultancy company advised to select the supplier X as the best solution for WIPO. However, PTD and ICTD decided to consult the two internal

contractors through a RFI to have a better understanding on the solutions proposed and to allow ICTD to carry out a fairer evaluation. A normal RFP would not have been possible since WIPO already had bought licences from both companies and therefore, the financial comparison would not have been on a level playing field.

153. WIPO stated that the rule according to which standardization cannot exceed five years is already in place. However, if the market justifies it, further extensions are not prohibited provided due diligence of the market is being carried out by PTD. WIPO would incorporate this rule in the WPM, and proposed to review Para 72 of the WPM as the 180 days rule is not suitable for all services or commodities.

154. Lastly, WIPO had already proposed FRR modifications to IOD, who had reviewed and forwarded them to IAOC in order to have the advice of CRC on the main exception cases.

#### **Recommendation 16**

**WIPO may expedite amendment of the Office Instruction and Procurement Manual to incorporate the maximum time period in cases which are exceptions to competitive tendering. The necessity for further extensions needs to be based upon suitable market review. WIPO may also consider seeking the recommendations of CRC before approval by HLOP.**

155. WIPO accepted the recommendation as it is in line with the modifications already proposed as per the above para 154.

#### **Contract Amendment**

156. Article 43 of the OI 1/2014 read with Para 234 of the WPM mentions that any request for amendment (modification), renewal or extension of an existing contract shall be submitted by the Program Manager to PTD for review and approval. PTD shall proceed with the advice of the CRC where requested or required.

157. During test check, we noticed in case of a contract for provision of translation services under PCT in Japanese-English combination, on conclusion of an Open International Bid, nine firms were awarded contracts. Five firms were awarded the contract for a period of five years and the remaining four firms were awarded for a probationary period of one year with an option to extend the contract under the same

terms and conditions as set forth in the contract, by one year up to a maximum contract length of five years.

158. Clause 7 of the RFP, *inter alia*, stipulated that price would remain fixed during the entire term of the contract (five years). The Contract entered into with the four Contractors also mentioned that the rates would remain fixed during the initial and the extended Term of the Contract. These contracts were reviewed at the expiry of one year period of probation ending on 31 August, 2016 and amendments to initial contracts were made on 12 September 2016 in respect of three contracts. The contract of one contractor was not renewed.

159. We noticed that while renewing the contracts for a further period of four years beyond 31 August 2016, price payable to the three contractors, had been revised upwardly for patentability reports for reasons of fluctuation of exchange rate between Yen and Swiss Franc. Such an amendment to insulate the three contractors against currency fluctuation was against the provisions of the Contract

160. WIPO stated that these three companies did not have any previous experience in working with WIPO, and they had agreed to lower their quoted prices during negotiations. After completion of the probationary period, they informed that the negotiated prices could no longer be sustained due to the appreciation of the Yen against the Swiss franc and the volume of work assigned by WIPO. PCT could simply not afford to lose these contracts without major disruption to their operations. After the negotiation, the overall financial balance of the initial contracts has not changed and the Organization is not bearing any additional cost.

161. While we appreciate the exceptional circumstances of this particular case, we feel that while undertaking amendment to contracts, earlier tender conditions including RFP need to be upheld.

### **Recommendation 17**

**The amendments to contracts need to be strictly in line with the RFPs and other tender conditions without giving advantage to any particular company, ensuring uniform terms and conditions especially with regard to prices.**

162. WIPO agreed on the principle that RFP conditions should be upheld and therefore they would seek to introduce in the tender documents, whenever appropriate, the

possibility of a price revision (in accordance with market practice) and subject to mutual agreement, to ensure fairness and transparency.

### **Extension of Contracts beyond Five years**

163. An International tender for the selection of a company to provide language training courses for WIPO staff was launched by UN Agencies Common Procurement Activities Group (CPAG) composed of ILO, WHO, ITU and WIPO. On conclusion of the tender processes, WIPO entered into a contract on 2 September 2011 with a service provider for providing language training courses to WIPO staff for a total value of 318,000 Swiss francs.
164. The contract duration was for a period of three years and could be extended for an additional two years. The initial term of the contract was extended for a period of two years from 1 June 2014 to 31 August 2016, and was further extended to 31 August 2018 on the existing terms and conditions.
165. WIPO stated that the decision to extend the contract was taken with other CPAG members after having carried out a thorough analysis of the Organizations' needs at the time and market conditions. The prices offered at the tender stage to the aggregation of volume were extremely competitive and a re-tendering, at that moment, would have likely led to a price increase. However, on the basis of observations made by the CRC in 2016, PTD developed a clear policy on the contract renewal/extension for the contracts and some languages had been added to the tender documents template, to the new contract module as well as to the WPM. The policy had obtained the necessary authorisation and was endorsed by the CRC as well.
166. A Contract relating to MAPS/D Maps IT Modernization Project, was valid initially for two years (2012) with an option to extend it every year without exceeding three renewals and subject to a maximum duration of five years. We observed that the Contract has been extended by 18 months beyond January 2017, after obtaining the CRC recommendations.
167. WIPO stated that extension beyond five years had always been considered exceptional and PTD supported the Program's proposal only after having thoroughly reviewed the Program's needs and having carried out an analysis of the market.
168. We are of the view that WIPO would lose on competitive advantage in the ever changing markets due to extension of the contract for an indefinite period. The CRC

in its meetings held in June and July 2015 had also raised its concern on extension beyond five years without following the tender process. We suggest that the Office Instructions and the Procurement Manual may be amended for prescribing a maximum period of a contract.

### **Recommendation 18**

**WIPO may amend the Office Instructions and the Procurement Manual prescribing a maximum period of a contract with necessary in-built safeguards for considering extension after review.**

169. WIPO accepted the recommendation and noted that this practice has already been put in place.

### **General Conditions of Contract**

170. WIPO has framed General Conditions of Contract (GCC) for the provision of Goods and Services which forms an integral part of the Contract signed by WIPO with any contractor.

171. On a comparative study of WIPO GCC with those of UN and other UN Agencies, we noticed that the existing General Conditions and/or the specific contracts entered by WIPO could be further strengthened by incorporating relevant clauses on the following:

- a) ***Non-Waiver of Rights:*** Failure of a Party to exercise any right should not be treated as a waiver of the right or the remedy thereon.
- b) ***Severability:*** Severability of validity and enforceability of the contract in case a particular provision not being of fundamental nature is held illegal or unenforceable.
- c) ***Most Favored Treatment:*** In piggy backing contracts or contracts based on International cooperation, where the contractor shall immediately notify WIPO of providing contractual conditions more favorable to the UN or any of its agency in Geneva.
- d) ***Child Labour:*** Represents and warrants from contractor against engagement of child Labour
- e) ***Sexual Exploitation:*** Represents and warrants against Sexual Exploitation by Contractor of anyone by its employees.

- f) ***Fraud or Corruption:*** Represents and warrants by contractor against employing corrupt, fraudulent, collusive or coercive practices in the bid process and/or during the execution of the contract.

### **Recommendation 19**

**WIPO may review the existing General / Specific Conditions of Contract and consider incorporation of clauses on non-waiver of rights, severability, most favoured treatment, child labour, sexual exploitation, and fraud or corruption.**

172. PTD agreed to review WIPO GCC or specific contract provisions, and would consider, in consultation with OLC and in consideration of WIPO risk environment, incorporating the suggested clauses into these documents.

### **Vendor Performance Management**

173. Vendor performance monitoring includes measurement of supplier's performance and monitoring in all contracts so that quality, price, delivery and service levels can be monitored to ensure contract performance and compliance. WIPO uses the concept of Vendor Performance Measurement in the following contexts as:

- an aspect of supplier appraisal when the incumbent supplier is competing for the renewal of an existing contract
- an integral part of the contract management function

174. Clause 13.1 of the WPM states that the requester has the responsibility for the implementation and control of the performance of the contract to ensure proper delivery or performance of the service and/or supply of the goods in question in accordance with the contract requirements. As much as possible the performance of the vendor must be measured through Key Performance Indicators (KPI) that have been introduced in the bidding documents as well as in the contract.

175. The requester and the procurement officer should hold regular performance reviews with the supplier. When the requester and/or the procurement officer discover significant variance between actual and expected performance, they should take corrective action if possible. They should identify with the supplier the cause of the problem and determine a solution and follow up its implementation. Para 229 states that Program or Contract Managers are encouraged to use the contractual verification

clause when this exists to ensure compliance of vendor performance with the Terms of Reference.

176. During test check of compliance with vendor performance management requirements, we observed the following:

### **Classification of suppliers for performance**

177. WIPO distinguished between Strategic, Non-Strategic, and Critical Suppliers; and adopted different mechanisms for each category of suppliers. WIPO informed that the monitoring of performance evaluation done is reported in the procurement plan. The KPIs are identified in the Terms of Reference and reported in the contracts and monitoring is carried out by measuring performance towards the KPIs identified. The performance was monitored for suppliers that are deemed “strategic”<sup>6</sup> and identified in the procurement plan. This mechanism had been put in place in 2015 as a pilot and it had been more regular in 2016.

178. We observed that though WIPO distinguished between Strategic, Non-Strategic, and Critical Suppliers, the distinction was not based on well-defined benchmarks, which may eventually impact the performance assessment as the mechanisms adopted were different for each category of suppliers.

### **Performance of Key suppliers**

179. On a review of the Procurement Plan for 2016, we observed that out of 276 suppliers, 105 were termed as Strategic, 27 as Critical and 144 were depicted as Non-strategic and Non-critical supplier. The follow-up reviews were conducted only for 55 out of 105 strategic suppliers which constituted 52 *per cent* of strategic suppliers and 20 *per cent* of the total number of suppliers. Out of the 144 cases of Non-strategic and Non-critical supplier, the performance was reviewed only in five cases. Consequently, the performance of 78 *per cent* of the total suppliers was not reviewed.

180. We noticed that PTD officials did not necessarily monitor the performance of key suppliers in terms of their growth, market share and financial standing so that the organization remained aware of the profile of important suppliers within their market sectors. Particularly in the case of key suppliers, it was significant to hold regular

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<sup>6</sup> Strategic Vendor was defined as one who played a very important role in a program operations and required review once or twice a year.

meetings at both operational and strategic levels to support the relationships and explore future market opportunities.

181. WIPO stated that this key principle was being implemented for some strategic suppliers particularly in translation, but would become a more general practice in the next 12 months. For a higher degree of maturity and adequate skills across the organization, a training plan was being put in place. They added that the financial value of the strategic contracts which have been effectively monitored represented about 50 *per cent* of the Organization total expenditure and 87 *per cent* of the strategic contracts value.

### **Key Performance Indicators**

182. During test check pertaining to extension of contracts, we observed that though KPIs were specified for the contracts detailed below, the same were not used effectively at the time of renewal of contracts to assess the vendor performance evaluation:

183. A Contract was entered (15 December 2012) for information technology consulting services for WIPO AIMS platform commencing on 1 January 2013 for a term of one year and renewable every year subject to a maximum term of five years. During renewal of the contract after one year, performance of the supplier was assessed with reference to three applicable KPIs specified in the contract. The contract manager had explicitly given following comments against two out of the three KPIs:

- i. Under the KPI - Overall quality of the work delivered, “offshore management was perceived as very poor and there was also lack of procedures with work permits and general administration”.
- ii. Under the KPI - Timeliness of the delivery of human resources, “the supplier took too much time to bring the deliverables onboard well above other competitors.”

184. Despite poor performance highlighted in the two parameters, performance of the supplier was considered as ‘satisfactory’ by giving rating of three out of five and the contract was renewed.

185. WIPO stated that this contract started in 2012 when the vendor performance process was not even formalized; the rating of three applied to only some of the KPIs,

and corresponded to “satisfactory performance”, which did not justify non-renewal of the contract. In addition, given that no rule was established on non-renewal under a certain threshold, it was not considered to be a “non-compliance” issue.

186. We are of the view that the rating of three accorded to the two KPIs did not correspond to the adverse comments of the Contract Manager. Further, as performance of the vendor against the two KPIs out of the three KPIs measured was perceived poor, adjudging ‘satisfactory performance’ to renew the contract lacked justification. Though no rule was established on non-renewal under a certain threshold, the Office Instruction No.1/2014 requires the contract manager to report any deficiencies in the performance of the contract to PTD.
187. In another case, a Contract was entered into with a company with effect from 1 August 2012 for provision of ERP HR services. The work of the contractor was assessed on the criteria of quality, cost, time and efficiency. We observed that despite repeated instances of poor performance on the part of the contractor, the contract was renewed.
188. During the assessment of the performance of the contractor for the period 1 July 2014 to 30 June 2015, despite delays being pointed during the review of KPIs, the performance was rated as satisfactory and the contract was renewed for a further period from 1 June 2014 to 31 July 2015. The rating against the KPIs of the vendor for the period 1 January 2015 to 30 June 2015 ranged from one to two against all the four parameters specified in the KPI despite which the contract was extended for a further period up to 31 July 2017. No specific reply was furnished to this issue.
189. Moreover, the KPIs in the cases of five Contracts were found to be subjective and generic. The same was agreed upon by WIPO.
190. We observed that lack of specific measurable parameters with respect to KPIs and Scorecard evaluation depicted lack of identification of strategic priorities. Due to these gaps, performance targets in contract requirements could not be identified and communicated as strategic priorities. Both parties were not fully aware of what was required of them post-award. In the event that a supplier consistently failed to meet the requirements of the contract (and did not respond to feedback or suggestions) then the remedies/ contingency plans were not set out in the contract. The measures, objectives and targets used in monitoring the supplier’s performance did not reflect

those that were agreed when the contract was let. Due to this, we could not ascertain the commitment of both parties to continuous improvement at the outset of contracts.

### **Generic Nature of Scorecards/Contract Extension Renewal Form**

191. Since 2015, for the strategic contracts, PTD implemented the use of a scorecard to record the vendor performance. In 2016 in order to have a more systematic approach for the non-strategic contracts/vendors, PTD had implemented a Contract Extension Request form which enabled the Programs/Contract Managers to provide feedback on suppliers' performance at the time of renewing/extending a contract. The scorecard was adopted as formal method of evaluation for all strategic contracts and for all other contracts; the contract renewal form was being used to evaluate vendors' performance.

192. We noticed that the method of evaluating the performance of supplier's through Scorecards/Contract Extension Renewal Form, was not robust enough to capture the specific parameters of performance. It was generic in nature and the same model was adopted for evaluating the performance of vendors which could differ depending on the nature and volume of contract. Performance information and contract oversight were not aligned to strategic priorities of the contract. Further, key performance indicators, such as mean time between failure, delivery accuracy, warranty claims, service quality (against agreed SLAs), customer service response time, on time delivery performance against agreed delivery lead times, relationship/account management, accessibility and responsiveness of account management, costs were maintained or reduced, and payment terms, were not incorporated in the performance evaluation mechanism.

### **Recommendation 20**

- i. PTD may negotiate and agree upon appropriate performance criteria at the time contract is let and these measures, together with a commitment to continual improvement should be clear to all concerned.**

193. This is agreed by WIPO as a best practice that would be put in place in the next 12 months for the strategic suppliers only, with the caveat that KPI in some instances need to be reviewed along the life of the contract. WIPO added that the following points can be addressed in the near future (12-18 months):

- Inclusion of the KPI in the contract for strategic suppliers, with a possibility of review along the life of the contract. This will be reflected in the WPM.

- Inclusion of a better definition of “strategic” vendors in the WPM.
  - Development of guidelines on contract management which should also include the concept of an early warning in case of under/poor performance.
- ii. **WIPO may ensure that Program Managers/Contract Managers and other officials involved in post award contract management have sufficient authority and training to enable them to carry out their roles effectively.**

194. WIPO agreed with the recommendation and stated that they have started an initiative to deliver a customised training to contract manager and procurement officers on vendor performance management in 2017.

- iii. **Vendor Performance may also be an integral part of risk assessment and contingency planning in order to ensure that problems are addressed at the initial stage. Furthermore, early warning of a supplier performance would provide the organization time to develop alternative supply solutions and develop contingency plans effectively.**

195. WIPO stated that this key principle would be included in the guidance given to the contract managers, and would be reviewed during the procurement plans.

### **Risk Management**

196. WPM states that the development of a Procurement Strategy should take into account the Organization’s mandate on strategic direction, its procurement portfolio as well as resources availability. Further, the purpose of analyzing the procurement portfolio is to develop a full and comprehensive picture of the program’s needs. As per WPM, the procurement profile should be “completed” with a risk analysis which identifies the key risks and management measures to be taken to mitigate those risks in securing the goods and services.

197. The outcome of this analysis should facilitate the drafting of a mapping of different business needs of each internal division/sector, classified by priority or risk level. An action plan associated with each existing contract should also be built accordingly for the next two years, on a rolling basis.

198. Each Program in WIPO is required to maintain a Risk Register as a part of WIPO’s Enterprise Risk Management (ERM) System. In this regard, we inquired whether any risk analysis was being done in terms of the WPM and whether risk

analysis along with the internal controls had been put in place to mitigate those risks at various stages of procurement.

199. In the Risk Register of PTD, extracted from the ERM, we observed that while the risk register covered the broad areas, the specific risks covering various phases of procurement and management of contracts were not captured through the register. There was no evidence of mapping of the different business needs of each internal division/sector, classified by priority or risk level or an action plan associated with each existing contract being built in accordingly for the next two years, on a rolling basis. Since mitigation measures were not specifically defined, it was not clear as to how WIPO planned to proactively manage the potential risks posed by the probability of supply failure and deal with the complexity of procurement relationship.
200. We enquired regarding the status of a sanctions regime in place for mitigating risks arising out of supply failure with respect to suppliers that were found to have engaged in specified forms of fraud and corruption in the past. We observed that the same was under progress.
201. WIPO stated that though risks were already identified, recorded in the Procurement Plan to the extent of classifying suppliers and managed in the different phases of the procurement process, the said risks are not individually recorded in the ERM. WIPO proposed to retain as an action that each program should report in its ERM any supplier risk identified in the procurement plan.
202. WIPO's response that risks were already identified and managed in the different phases of the procurement process correspond to the initial process of risk identification and may not be equated with the entire concept of risk management itself, as the mitigation measures were found amiss in the risk register.

### **Recommendation 21**

**Risk Management may be strengthened by including mitigation measures of specific risks identified after categorization, evaluation and prioritization of risks. The risks may be mapped to the requirements of each Program/Division in the ERM in compliance of para 29 and 30 of WIPO Procurement Manual.**

203. WIPO agreed with the recommendation in principle, and noted that a review of the Procurement Manual will be undertaken to ensure that the guidance therein is aligned with WIPO risk management policy and framework.

## **Best value for money**

204. One of the General Principles to be given due consideration as mentioned in Regulation 5.11 of the Financial Rules and Regulations is 'Best Value for Money'. These general principles are also mentioned in OI No. 1/2014 which came into effect from 1 September 2014.
205. Para 6 of WPM 2014 defines best value for money as selection of an offer which presents an optimum combination of factors such as appropriate quantity, quality, timeliness, total cost of ownership and other parameters such as social, environmental or other strategic needs. Best value does not necessarily mean the lowest price options but rather represents the best return on investment, taking into consideration the evaluation criteria.
206. The WPM contains provisions relating to negotiations and, *inter alia*, mentions that at the end of the evaluation process, and once a recommendation has been made by the competent authority, a negotiation may take place with the recommended suppliers, and PTD leads such negotiation along with the representatives of the Programme representative, if deemed necessary.
207. We test checked eight contracts (one IT contract and seven translation contracts) wherein WIPO had identified more than one service provider from a single competitive tender process. We observed that in four contracts, involving nine different suppliers, a technically lower ranked supplier was awarded a contract at a price higher than the technically first ranked supplier.
208. We are of the opinion that in cases where multiple suppliers were awarded contracts through a single tender process, there was a scope for further negotiations with bidders who were low on technical parameters and high on financial cost parameters.

## **Recommendation 22**

**In cases of multiple suppliers emerging from a single tender process, WIPO may consider leveraging negotiations by exploiting the technical/commercial parameters in order to get the benefit of more competitive prices for WIPO.**

209. WIPO agreed with the recommendation, considering that it is already part of the current procurement practice and stated that it would be reflected in the revised WPM.

### **Provisions for documentation**

210. As per the Financial Regulations and Rules of WIPO, all procurement actions shall be governed by written documentation. Further, as per the latest Program Risks – Action Report of WIPO, review of the Regulatory procurement framework has been accorded risk priority detailing that improvement of current documentation was required to improve clarity on accountability and delegation, including the post award contract management activity.

211. During test checks, we could not ascertain compliance with various provisions of the WPM due to lack of documentation as discussed in succeeding paras.

212. The WPM stipulates that the final contracts must be validated by the PTD legal adviser before being proposed for signature. In the absence of supporting documents, we could not ascertain whether the final contracts were validated by the PTD Legal Adviser.

213. WIPO stated this is an internal process which most of the time is documented. The WPM expects that this validation takes place but does not require it to be done in a written manner. Also this validation requirement has reduced over time as since issuance of the WPM, they had put in place standard contracts. We are of the view that WIPO should update the WPM accordingly.

214. The WPM also stipulates that an advance payment needs to be justified and requires the Controller's approval before the procurement officer can include it in a contract and if it is agreed to, all reasons therefor need to be documented. For significant big amounts, suppliers receiving advance payments must provide guarantees such as bank guarantees.

215. We observed that there were no documents to support that advance payments ranging from USD 40 thousand to 1.2 million Swiss francs in four cases were justified and the prior approval of Controller was sought.

216. WIPO stated that these contracts referred to either licences or IT maintenance, where the usual market conditions impose a payment upfront. As licences are

generally downloaded on the day of the purchase, the notion of “advance” could also be questioned. As a consequence, there was no need to seek prior Controller approval.

### **Recommendation 23**

**WIPO may in the Procurement Manual clearly define the various procurement actions that need to be documented as stipulated in FRR.**

217. Accepting suggestion for improvement, WIPO agreed with the recommendation.

### **Translation Tests**

218. In the procurement of translation services by PCT for the translation of abstracts, patentability reports and other PCT documents, passing in translation test is a required condition for assessing the technical capability of a bidder.

219. The bid documents, *inter alia*, stipulate that Bidders should nominate a single translator to take both tests, and, two translators to take a single test each. It is not necessary for all translators under contract to take the test. Further, Translation Quality is assigned considerable weightage in the assessment of the Technical bid making it an important criterion.

220. We did a test check of two contracts (entered during 2014-16 by PCT Translation). We noticed in procurement of translation services for Japanese – English combination that nine companies passed the test. They in their bids had given a list of translators including in-house translators, External translators and Revisers under their control, which varied from five to 40. We noticed that two companies which exceeded the minimum technical requirement, were not successful in their bids as they failed to secure the minimum score in the translation tests. Further, one of the successful bidders failed to demonstrate satisfactory performance at the end of probation of one year and his contract was not renewed. In other RFP relating to procurement of translation services for Chinese-English translation, no such aberration was noticed, and the number of personnel mentioned by the bidders varied from 10 to 60.

221. We feel that the tests should be broad based in order to be representative of technical capability of the bidder.

222. WIPO stated that the operational load of testing more translators would be disproportionate to the benefits. It was further stated that PCT was also not really

testing the translator themselves, but were rather testing the ability of agency to manage the translation, including checking, revision, and the selection of appropriate translator.

223. We are of the view that testing the ability of the agency to manage huge translation work by just testing the capability of a single translator in cases of agencies having considerable number of employees may not be representative of the capabilities of the agency.

#### **Recommendation 24**

**WIPO may consider making evaluation of translators more representative to capture the technical capability of bidders at the time of evaluation of bids, taking into account other factors including the operational cost of testing more translators.**

224. WIPO considered the tests eliminatory, which have proved highly effective in communicating who was not capable of performing the work. Subjecting the agencies to higher workloads is the most effective way to evaluate agencies in depth and we do this during the evaluation period. WIPO will, however, reconsider the testing approach to be more representative.

#### **Cases of Frauds and Presumptive Frauds**

225. Analysis of the information on fraud/presumptive fraud provided by the office of the Director, Internal Audit and Oversight Division (IAOD) indicated that 10 new cases relating to fraud or presumptive fraud were registered in 2016 and 14 cases were closed. As at 31 December 2016, the number of fraud or presumptive cases which were open was four.

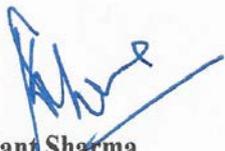
#### **Review of Management Action on Past Recommendations**

226. The status of implementation of the External Audit Recommendations (Financial Audit) by WIPO is enclosed as an **Annexure** to this Report.

#### **Disclosures by Management - Write-off of Losses of Cash, Receivables and Property**

227. The Management informed that in accordance with Financial Regulation 6.4, Financial Rule 106.8, the following losses have been recorded by the Organization during the year ended 31 December 2016:

- Accounts receivable totaling 741 Swiss francs were written off during 2016. This concerned four unpaid invoices dating from 2015, relating to Trademarks activities; and
- Other small losses incurred throughout the year, principally on payments against accounts receivable, totaled 19,584.20 Swiss francs.



**Shashi Kant Sharma**  
**Comptroller and Auditor General of India**  
**External Auditor**  
**New Delhi, India**  
**19 June 2017**

**Annexure**

**Status of implementation of the External Audit Recommendations by WIPO**

| <b>Audit</b>    | <b>Recommendation</b>  | <b>Management Response</b>   | <b>Remarks</b> |
|-----------------|--|--|----------------|
| Financial Audit | WIPO may expedite the process of reconciliation of outstanding claims with US Tax authorities.   | The 2015 claim was filed in October 2016. The outstanding balance including this claim was \$3m. A video conference was held on November 15, 2016 to discuss revisions to the TRA going forward. The US is seeking to harmonize the agreements with all UN agencies, with an intended implementation in 2017. This will standardize what is/is not reimbursed, the components of institutional income, first/last income, how these are verified, etc. | <b>Ongoing</b> |
| Financial Audit | WIPO may disclose details of heritage assets including works of art in the Notes to the Financial Statements and may take steps for strengthening the security systems to prevent further loss of such assets. | We continue to monitor the IPSASB project concerning heritage assets. In April 2017 the IPSASB issued a Consultation Paper (CP), with a deadline for comments of September 30, 2017. The CP takes the position that heritage assets could potentially be recognized in the   | <b>Ongoing</b> |

|                        |  |   |                       |
|------------------------|--|---|-----------------------|
|                        |  | <p>statement of financial position if they meet the recognition criteria for an asset. However, this would require either future economic benefits or service potential to be demonstrated. The CP does not propose any specific presentation requirements.</p>   |                       |
| <p>Financial Audit</p> | <p>The Management may consider formulating and implementing an appropriate Treasury, Cash Management and Investment policy including borrowings to improve the financial management.</p> | <p>A treasury policy comprising a suite of policies including investments but not cash management was produced by treasury consultants in spring 2014. Within days of its delivery, the relationship between WIPO and the Federal Finance Administration changed, effectively rendering the investment policy obsolete. Efforts then began to introduce a new investment policy, culminating in the approval of such a policy by Member States in autumn 2015. The counterparty risk policy contained within the treasury 'suite' was also in need of updating as</p> | <p><b>Ongoing</b></p> |

|                 |  |   |                       |
|-----------------|--|---|-----------------------|
|                 |  | <p>a result of this change in relationship. In addition, Finance wished to review other parts of the 'suite' and accepted the need to prepare a policy on cash management in order to complete the policy set. This work has been awaiting the recruitment of a treasurer.</p> <p>Following the arrival of such a person in June 2016, work has begun on the counterparty risk policy.</p>  |                       |
| Financial Audit | <p>The financial services should review and update the existing risk management framework in place to develop suitable risk registers and internal controls in those operational units where they do not exist or exist partially.</p> | <p>With the assistance of an expert, all process maps for Finance processes have been reviewed and brought into line with standard process structure and format, and all internal controls have been identified and recorded in the Organization's Enterprise Risk Management (ERM) application. The next phase of this initiative will involve ensuring that all internal controls are linked to a formally recorded risk in the same application. Processes and</p> | <p><b>Ongoing</b></p> |

|                      |   |   |                    |
|----------------------|---|---|--------------------|
|                      |   | <p>related controls will continue to be reviewed and updated on a regular basis by the Finance Division.</p> <p>Significant progress has been made in respect of the identification and recording of internal controls. A self-assessment will be performed on all Entity Level Controls in Q1 2017, as part of the closure process. Process controls will be reviewed and assessed as the next step.</p> |                    |
| Financial Audit 2015 | WIPO may devise a detailed mechanism to ensure that the revenue arising out of PCT international filing fees in any reporting year reconciles with the figure based on PCT applications published in that year. | A detailed reconciliation mechanism has now been developed.   | <b>Implemented</b> |
| Financial Audit 2015 | WIPO may formalize suitable indicators and criteria that would guide it on the necessity of performing revaluation of the property, plant, and equipment each year.   | Policy guidance has now been developed in this area, including criteria and indicators for considering whether updated fair valuations are required.  | <b>Implemented</b> |

|                                 |   |   |                           |
|---------------------------------|---|---|---------------------------|
| <p>Financial Audit<br/>2015</p> | <p>Fully depreciated assets with gross carrying amount of 10.31 million Swiss francs were in use as on December 31, 2015. Use of these assets implies that they possess economic value to the organization and that the useful lives of some assets might have been significantly underestimated. The useful lives of assets need to be reassessed to reflect fair presentation and to achieve a reasonable estimate of useful lives of assets.</p> | <p>The UN Task Force on Accounting Standards agreed an updated range of useful lives for equipment at its meeting in October 2016. During 2016, significant progress was made by WIPO in updating the status of items in the Asset Management module. During 2017, further work will be performed to update the status of the Organization's equipment. Following completion of this work, consideration will be given to appropriate useful lives of equipment, taking account of the recently updated useful life ranges agreed by the UN Task Force on Accounting Standards.</p> | <p><b>Ongoing</b></p>     |
| <p>Financial Audit<br/>2015</p> | <p>WIPO may consider devising a formal documented policy for write-off of amounts that it is unable to return to the applicants.</p>  | <p>Documented policy finalised.</p>   | <p><b>Implemented</b></p> |

## MANAGEMENT'S RESPONSES TO THE RECOMMENDATIONS MADE BY THE EXTERNAL AUDITOR

### **Recommendation no.1**

*WIPO may classify strategic cash as restricted cash and cash equivalents.*

### **Response**

Given the nature of the arrangements for strategic cash, including its separate classification and liquidity requirements under the Organization's investment policy, WIPO considered it more accurate to disclose this as a separate element of cash or investments. WIPO therefore stated that it preferred to retain its existing approach to the classification of cash and investments.

### **Recommendation no.2**

*WIPO may take suitable action to adjust/recover the outstanding Staff advances for education grant within the scheduled time.*

### **Response**

WIPO accepted the recommendation and stated that a final deadline of June 30, 2017 has been set. Non-compliance by the staff would result in recovery of the respective education grant advance as recommended.

### **Recommendation no.3**

*All the assets below the threshold limit of 5,000 Swiss francs, which appear in the Asset Register, may be depreciated fully in line with the Accounting Policy and IPSAS requirements.*

### **Response**

WIPO noted that the prospective application of the new threshold commencing on January 1, 2011 is in line with IPSAS 3 requirements and has been approved by previous audit teams. However, WIPO agreed to analyze these assets as part of the 2017 equipment and furniture review.

### **Recommendation no.4**

*The review of all old items and missing items may be completed and adjusted in books by end 2017. Process of updating the module for providing all the details and reliable query system may also be completed by end 2017.*

### **Response**

WIPO accepted the recommendation. WIPO noted that this will require AIMS Asset Management (AM) improvements and related IT support.

**Recommendation no.5**

*In view of the material impact on the financial statements of the unrecognized liability which is on increasing trend, a suitable policy on implementation of IPSAS 39 may be defined and implemented early.*

**Response**

WIPO stated that the process of analyzing the impacts of IPSAS 39 is underway, and that an implementation policy is being formulated.

**Recommendation no.6**

*The Management may consider having a more targeted strategy for expansion of the Hague System to developing countries and least developed countries by utilizing the budget allocation for 'wider and better use of the Hague System'. The strategy may, among others, include highlighting its strengths through publicity, carrying out surveys to elicit feedback of its clients on its services on a regular basis and documenting suggestions/feedbacks from customers.*

**Response**

WIPO accepted the recommendation.

**Recommendation no.7**

*The Management may consider setting up more realistic targets, taking into account the factors outside its control, so that they can be pursued proactively in view of the existing constraints in resources.*

**Response**

WIPO accepted the recommendation.

**Recommendation no.8**

*The Management may consider drawing a specific biennial capacity building action plan pertaining to the Hague System and for other stakeholders by dovetailing the same with the capacity building plan of WIPO coinciding with the biennial budget.*

**Response**

WIPO accepted the recommendation.

**Recommendation no.9**

*I. The Management may consider framing a time line for examination and processing of applications by the International Bureau to introduce more accountability and promptness in the system.*

*II. The Management may consider realistic enforcement of the provisions for abandonment of the applications to avoid wastage of resources and time over undeserving applications.*

**Response**

WIPO accepted the recommendations.

### **Recommendation no.10**

*I. The Management may consider flagging the issue of refusals of international registrations by the national offices as a risk in its entirety, in view of its potential impact on the goodwill of the Hague System as well as the organization.*

*II. The Management may consider playing a nuanced, proactive role in the matter by engaging all stakeholders constructively, as it has limited role in refusals on substantive grounds to minimise the exponentially increasing number of refusals.*

### **Response**

WIPO accepted the recommendations.

### **Recommendation no.11**

*The Management may consider addressing the resource allocation imbalance by allocating more resources to non-personnel expenditure including expenditures related to IT, Promotion and IEC (information, education and communication) and legal endeavours.*

### **Response**

WIPO accepted the recommendation.

### **Recommendation no.12**

*I. The Management may consider framing an actionable strategy early for making the Hague System self-sufficient and overcoming the recurrent deficits.*

*II. The Management may consider placing in the Hague Union Assembly proposal for revisiting the existing fee structure periodically, with incremental changes for making the Hague Union self-sustaining.*

### **Response**

WIPO accepted the recommendations.

### **Recommendation no.13**

*The Management may consider having a comprehensive plan regarding short-term, medium-term and long term strategies for human resource management for the Hague System based on appropriate gap analysis and projection of requirements.*

### **Response**

WIPO accepted the recommendation.

### **Recommendation no.14**

*The Management may consider devising a long-term IT strategy covering needed enhancements such as a higher degree of granularity and maintenance. It may be worthwhile to revisit the fitness of DIRIS, in light of the contemporary user requirements.*

## **Response**

WIPO accepted the recommendation.

## **Recommendation no.15**

*The Management may consider exploring possibilities of evolving a well-defined customer service strategy supported by an e-based quality feedback system to cater to the needs of the Hague System. Until the system is evolved, the Management may consider undertaking regular customer surveys, as mentioned in CSC, to continue to improve their services.*

## **Response**

WIPO accepted the recommendation.

## **Recommendation no.16**

*WIPO may expedite amendment of the Office Instruction and Procurement Manual to incorporate the maximum time period in cases which are exceptions to competitive tendering. The necessity for further extensions needs to be based upon suitable market review. WIPO may also consider seeking the recommendations of CRC before approval by HLOP.*

## **Response**

WIPO accepted the recommendation as it is in line with the modifications already proposed. WIPO stated that the Office Instruction and Procurement Manual shall be amended to include the relevant provisions clarifying that the maximum time period of up to 5 years would be defined depending on the specific market condition and technology trends. For further extensions, it was explained that PTD shall carry out due diligence to determine whether market conditions and technology trends justify such extensions. Following the revised FRR and the subsequent Office Instruction and Procurement Manual revision, PTD shall seek the advice of the CRC for alternative procedures exceeding CHF 150,000. These actions are to be completed by December 31, 2017.

## **Recommendation no.17**

*The amendments to contracts need to be strictly in line with the RFPs and other tender conditions without giving advantage to any particular company, ensuring uniform terms and conditions especially with regard to prices.*

## **Response**

WIPO agreed on the principle that RFP conditions should be upheld. WIPO stated therefore that, whenever appropriate, the possibility of a price revision (in accordance with market practice) subject to mutual agreement, would be introduced in the tender documents to ensure fairness and transparency. Tender templates are to be updated accordingly by September 30, 2017.

## **Recommendation no.18**

*WIPO may amend the Office Instructions and the Procurement Manual prescribing a maximum period of a contract with necessary in-built safeguards for considering extension after review.*

## Response

WIPO accepted the recommendation and noted that this practice has already been put in place. The Office Instruction and Procurement Manual revisions are to be completed by December 31, 2017.

## Recommendation no.19

*WIPO may review the existing General / Specific Conditions of Contract and consider incorporation of clauses on non-waiver of rights, severability, most favoured treatment, child labour, sexual exploitation, and fraud or corruption.*

## Response

WIPO agreed that PTD would review the WIPO General Conditions of Contract or specific contract provisions, and would consider, in consultation with OLC and in consideration of WIPO risk environment, incorporating the suggested clauses into these documents. PTD will discuss with OLC by October 31, 2017 in order to review the General Conditions of Contract as per the recommendation.

## Recommendation no.20

*I. PTD may negotiate and agree upon appropriate performance criteria at the time contract is let and these measures, together with a commitment to continual improvement should be clear to all concerned.*

*II. WIPO may ensure that Program Managers/Contract Managers and other officials involved in post award contract management have sufficient authority and training to enable them to carry out their roles effectively.*

*III. Vendor Performance may also be an integral part of risk assessment and contingency planning in order to ensure that problems are addressed at the initial stage. Furthermore, early warning of a supplier performance would provide the organization time to develop alternative supply solutions and develop contingency plans effectively.*

## Response

I. WIPO agreed to the recommendation as a best practice that would be put in place in the next 12 months for the strategic suppliers only, with the caveat that KPI in some instances need to be reviewed along the life of the contract. WIPO added that the following points can be addressed in the near future (12-18 months):

- Inclusion of the KPI in the contract for strategic suppliers, with a possibility of review along the life of the contract. This will be reflected in the WPM. The WPM revision is to be completed by December 31, 2017.
- Inclusion of a better definition of “strategic” vendors in the WPM. The WPM revision is to be completed by December 31, 2017.
- Development of guidelines on contract management which should also include the concept of an early warning in case of under/poor performance. The guidelines are to be published on the WIPO intranet by October 31, 2017.

II. WIPO agreed with the recommendation and stated that an initiative has been started to deliver a customized training to contract manager and procurement officers on vendor performance management in 2017. Training on contract management is to be completed by Q1 2018.

III. WIPO stated that this key principle would be included in the guidance given to the contract managers, and would be reviewed during the procurement plans in December 2017.

#### **Recommendation no.21**

*Risk Management may be strengthened by including mitigation measures of specific risks identified after categorization, evaluation and prioritization of risks. The risks may be mapped to the requirements of each Program/Division in the ERM in compliance of para 29 and 30 of WIPO Procurement Manual.*

#### **Response**

WIPO agreed with the recommendation in principle, and noted that a review of the Procurement Manual will be undertaken to ensure that the guidance therein is aligned with WIPO risk management policy and framework. The Procurement Manual revision is to be completed by December 31, 2017.

#### **Recommendation no.22**

*In cases of multiple suppliers emerging from a single tender process, WIPO may consider leveraging negotiations by exploiting the technical/commercial parameters in order to get the benefit of more competitive prices for WIPO.*

#### **Response**

WIPO agreed with the recommendation, considering that it is already part of the current procurement practice and stated that it would be reflected in the revised WPM. The WPM revision is to be completed by December 31, 2017.

#### **Recommendation no.23**

*WIPO may in the Procurement Manual clearly define the various procurement actions that need to be documented as stipulated in FRR.*

#### **Response**

Accepting the suggestion for improvement, WIPO agreed with the recommendation. The Procurement Manual revision is to be completed by December 31, 2017.

#### **Recommendation no.24**

*WIPO may consider making evaluation of translators more representative to capture the technical capability of bidders at the time of evaluation of bids, taking into account other factors including the operational cost of testing more translators.*

#### **Response**

WIPO stated that it considered the tests eliminatory, which have proved highly effective in communicating who was not capable of performing the work. Subjecting the agencies to higher workloads is the most effective way to evaluate agencies in depth and this is done during the evaluation period. WIPO stated that it will, however, reconsider the testing approach to be more representative (by December 2017).

## **Statement on Internal Control for 2016**

### **Scope of Responsibility**

As Director General of the World Intellectual Property Organization (WIPO), I am accountable, in accordance with the responsibility assigned to me, in particular, Regulation 5.8 (d) of the Financial Regulations and Rules, for maintaining a system of internal financial control which ensures:

- (i) the regularity of the receipt, custody and disposal of all funds and other financial resources of the Organization;
- (ii) the conformity of obligations and expenditures with appropriations or other financial provisions approved by the General Assembly or with the purposes and rules relating to specific trust funds;
- (iii) the effective, efficient and economic use of the resources of the Organization.

### **Purpose of the system of internal control**

The system of internal control is designed to reduce and manage rather than eliminate the risk of failure to achieve the Organization's aims and objectives and related policies. Therefore, it can only provide reasonable and not absolute assurance of effectiveness. It is based on an ongoing process designed to identify the principal risks, to evaluate the nature and extent of those risks and to manage them efficiently, effectively and economically.

Internal control is a process, effected by the Governing Bodies, the Director General, senior management and other personnel, and designed to provide reasonable assurance on the achievement of the following internal control objectives:

- Effectiveness and efficiency of operations and safeguarding of assets;
- Reliability of financial reporting; and
- Compliance with applicable rules and regulations.

Thus, on an operational level, WIPO's internal control system is not solely a policy or procedure that is performed at certain points in time, but rather continually operated at all levels within the Organization through internal controls processes to ensure the above objectives.

My current statement on WIPO's internal control processes, as described above, applies for the year ended December 31, 2016, and up to the date of the approval of the Organization's 2016 financial statements.

### **Risk Management and control framework**

Risk management has been fully integrated into biennial as well as annual work planning, and the Organization's risk and internal controls management framework is fully embedded in its regulatory framework. Risks are clearly identified and articulated in the Program and Budget for every Program, and the biennial Program Performance Report presented to Member States now includes a review of the evolution and impact of these risks on the delivery of Expected Results for every Program. Regular reporting is done with respect to critical program/organizational risks, the Organization's overall risk portfolio, as well as the global risk environment to WIPO's Risk Management Group (RMG), which is chaired by me.

The purpose of the RMG is to promote a culture of responsible and effective financial and risk management in WIPO and approve its risk management strategy. It reviews and monitors WIPO's financial situation and the key risks to the achievement of the Organization's expected results. The RMG proposes a suitable Organizational risk appetite for Member States' review.

Within the overall risk management framework of the Organization, WIPO also proactively manages its information security related risks through the successful maintenance of the ISO/IEC 27001 information security certification verified by independent certification bodies. The ISO 27001 certification currently covers all Global IP Systems and AMC. Additionally, in order to manage risks posed by external service providers processing WIPO information, a Service Provider Security Policy has been established, where information risks from external providers are continually assessed and managed from procurement through to termination of the service.

The RMG is also responsible for keeping under review the effectiveness of the Organization's internal financial controls and internal controls, and for reviewing and approving the content of the present Statement concerning internal controls and risk management. A self-assessment and internal validation has been performed on the entity level controls for the present reporting period and has served to underpin and strengthen the assurance provided by key WIPO officers in signing their respective Management Representation Letters.

Ongoing review and appropriate follow up to ensure that the regulatory framework of the Organization is fully up to date and addresses the needs of the Organization has resulted in revisions to the Organization's Staff Regulations and Rules (SRRs), as well as its Financial Regulations and Rules (FRRs) as needed in the course of 2016. Policies and procedures are reviewed and updated regularly for the management and control of administrative processes for financial management, contracting, travel and human resources to ensure full alignment with the SRRs and FRRs.

WIPO has in place organization-wide anti-fraud controls, in accordance with good practices and applicable international standards, based on risk assessments which include fraud risks as well. Appropriate fraud prevention, detection, response and data collection procedures and processes exist in the Organization, representing WIPO's comprehensive anti-fraud governance framework.

Implementation of the new Policy on Investments, as approved by the Assemblies in 2015, began in 2016 and remains underway. This work has been reviewed and supervised by the Advisory Committee on Investments (ACI) during the year. Independent investment advisors have been appointed and assist the ACI with its work. WIPO's cash position remained sound throughout 2016.

WIPO's regulatory framework establishes appropriate controls over procurement actions, including the requirement for the advice of the Contract Review Committee to the High Level Officer for Procurement (HLOP) on relevant cases, who, in turn, takes the final decision on procurement actions in compliance with the regulations and rules. Internal controls related to procurement are regularly reviewed and updated as necessary. In this respect, the code of conduct for staff involved in procurement actions was further strengthened in the course of 2016.

## Review of effectiveness

My review of effectiveness of the system of internal controls is mainly informed by:

- My senior managers, in particular Deputy Directors-General and Assistant Directors-General who play important roles and are accountable for expected results, performance, their Division's activities and the resources entrusted to them. The information channels mainly rely on periodic meetings held by the Senior Management Team;
- I derive assurance from Management Representation Letters signed by key WIPO officers. These letters recognize their responsibility for having and maintaining, in the programs, well-functioning systems and a mechanism for internal control aimed at presenting and/or detecting instances of fraud and major errors;
- The Risk Management Group;
- The Chief Ethics Officer who provides confidential advice and counsel to the Organization and its staff on ethics and standards of conduct and promotes ethical awareness and responsible behavior in handling referrals concerning allegations of unethical behavior including conflict of interest;
- The Internal Oversight Division (IOD), on whose reports of internal audits, evaluations and advisory services I rely, also provide their reports to the Independent Advisory Oversight Committee (IAOC). These include independent and objective information on the adequacy and effectiveness of the Organization's system of internal controls, and the related functions of oversight;
- The Committee oversees audit performance by monitoring of timely, effective and appropriate responses from management with regard to audit recommendations and implementation of the same. As a result of such oversight the IAOC elucidates to Member States the implications of audit recommendations and observations, if any, and also highlights, where it considers necessary, particular matters. Finally, the IAOC keeps Member States informed of its work on a regular basis and reports annually to the Program and Budget Committee (PBC) and to the General Assembly;
- The Joint Inspection Unit (JIU) of the United Nations System;
- The External Auditor, whose comments are submitted to the PBC and the Assemblies; and
- The Governing Bodies' observations.

## Conclusion

Effective internal control, no matter how well designed, has inherent limitations – including the possibility of circumvention – and therefore can provide only reasonable assurance.

Furthermore, because of changes of conditions, the effectiveness of internal control may vary over time.

As Director General, I ensure that the “tone at the top” is a clear message that rigorous internal control is critical to the Organization and I am committed to addressing any weaknesses in internal controls noted during the year and to ensure that continuous improvement of the system of internal controls is in place.

Based on the above, I conclude that, to the best of my knowledge and information, there are no material weaknesses which would prevent the External Auditor from providing an unqualified opinion on the Organization’s financial statements, nor are there significant matters arising which would need to be raised in the present document for the year ended December 31, 2016.



Francis Gurry  
Director General