

Internal Oversight Division

Investigation Manual

2019 EDITION

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LIST OF ACRONYMS

HRMD	Human Resources Management Department
IAOC	Independent Advisory Oversight Committee
ICSC	International Civil Service Commission
ICT	Information and Communication Technology
ICTD	Information and Communication Technology Department
IOD	Internal Oversight Division
MIR	Management Implication Report
SIAD	Security and Information Assurance Division
WIPO	World Intellectual Property Organization

1. INTRODUCTION

1. Pursuant to the World Intellectual Property Organization (WIPO) Internal Oversight Charter, this Investigation Manual has been prepared by the Director of the Internal Oversight Division (IOD) of WIPO and issued following a review by the Independent Advisory Oversight Committee (IAOC)¹. Prior to finalizing the Manual, feedback from Management and from the Staff Council was also sought and considered.

2. The Manual describes the Terms of Reference and the applicable procedures of the investigation function and is primarily intended as a practical guide for the conduct of investigations by all members of IOD who are responsible for conducting investigative activities, as well as external investigators. It may also serve as a source of information for WIPO personnel, Member States and other stakeholders to understand the oversight function of investigation.

3. The Manual has been prepared in accordance with generally accepted investigation standards as well as good practices of organizations of the United Nations system, as reflected in the Uniform Principles and Guidelines for Investigations. It is consistent with WIPO regulations, rules and policies applicable at the time of issuance of the Manual, including the Internal Oversight Charter, the Investigation Policy and the Staff Regulations and Rules. In case of inconsistency between the Manual and WIPO regulations, rules and policies, the latter shall prevail.

4. This Manual normally does not extend to those areas for which separate provisions have been made for review, notably those covered by the conflict resolution mechanisms available to staff under Staff Regulation 11.4 and the related Staff Rules. In particular:

(a) A staff member who wishes to submit a formal complaint of discrimination and/or workplace harassment against another staff member should normally submit it to the Director General in accordance with Staff Rule 11.4.1.

(b) Complaints of retaliation for reporting possible misconduct or cooperating with an oversight activity should be addressed to the Ethics Office².

5. However, the Director General or the Ethics Office may later refer the matter to IOD for investigation, in which case IOD will conduct investigative activities in accordance with this Manual.

2. DEFINITIONS

6. For the purposes of this Manual the following definitions apply:

ALLEGATION

7. A reasonable belief, based on factual information, that misconduct or other wrongdoing has or may have occurred.

COMPLAINANT

¹ Internal Oversight Charter, paragraph 28(c). The last version of the Internal Oversight Charter was approved by the General Assembly at its 50th session with effect from October 2, 2018.

² Office Instruction No. 33/2017 entitled "Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations".

8. An individual reporting, in good faith, information that misconduct or other wrongdoing has or may have occurred, and who may or may not be the victim of the alleged conduct.

DISCIPLINARY PROCEEDINGS

9. The procedure initiated against a staff member pursuant to Chapter X of the Staff Regulations and Rules.

EVIDENCE

10. Any type of proof which tends to establish or disprove a fact material to the case. It includes, but is not limited to, oral testimony of witnesses, including experts on technical matters, documents, electronic, audio, video records and photographs.

INVESTIGATION

11. A formal fact-finding inquiry to examine allegations of or information concerning misconduct or other wrongdoing involving WIPO personnel in order to determine whether they have occurred and if so, the person or persons responsible. Investigations may also examine alleged wrongdoing by other persons, parties or entities, deemed to be detrimental to WIPO³.

12. Unless specified otherwise or clear from the context, the term “investigation” is used in this Manual in its broad meaning, i.e., to designate all investigative activities carried out either during the preliminary evaluation or the full investigation (see Section 6, “Investigation Process”).

INVESTIGATOR

13. A member of IOD or a person designated by the Director, IOD to conduct an investigation into allegations. An investigator may also be a person designated directly by the Director General and the Chair of the Coordination Committee to conduct an investigation into allegations involving the Director, IOD⁴.

MISCONDUCT

14. The failure by a staff member to observe the rules of conduct or the standards of behavior prescribed by WIPO, in particular the obligations under the Standards of Conduct for the International Civil Service⁵, the Staff Regulations and Rules, the Financial Regulations and Rules and other administrative issuances.

³ Internal Oversight Charter, paragraph 7.

⁴ Internal Oversight Charter, paragraph 22.

⁵ Staff Regulation 1.5(c) provides that “the Standards of Conduct of the International Civil Service, promulgated by the International Civil Service Commission (ICSC), shall apply to all staff members.”

PRELIMINARY EVALUATION

15. The first phase of the investigative process, i.e. the process of collecting and analyzing information and evidence to determine whether or not⁶:

- (a) The alleged behavior, if established, would constitute misconduct or other wrongdoing;
- (b) The allegations are credible, material, and verifiable; and/or
- (c) A more appropriate or less formal remedy is available, or the matter falls within the purview of another body.

RETALIATION

16. Any direct or indirect detrimental action, or failure to act, that adversely affects the employment or working conditions of an individual, where such action, or failure to act, has been recommended, threatened or taken in whole or in part because an individual has cooperated with an oversight activity or made a report of misconduct. Retaliation may include direct actions, such as by way of adverse administrative action or verbal harassment, or more indirect patterns of retaliation resulting in discriminatory treatment⁷.

SUBJECT

17. An individual whose conduct is being investigated either by virtue of an allegation made, or evidence gathered during an investigative process.

WITNESS

18. An individual who is aware, sees, knows or vouches for something in conjunction with an alleged misconduct or other wrongdoing.

WIPO PERSONNEL

19. Personnel may mean for the purposes of this Manual an individual appointed as a staff member under the Staff Regulations and Rules or engaged by WIPO under any other contractual arrangement (e.g. individual contractor; agency worker; intern; fellow).

WRONGDOING

20. An action or behavior that may violate applicable laws, rules or regulations, and deemed to be detrimental to WIPO.

⁶ See Investigation Policy paragraph 21.

⁷ As per definitions in Office Instruction No. 33/2017 entitled "Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations".

3. INVESTIGATION STANDARDS

STANDARDS FOR INVESTIGATORS

21. The Director, IOD and the individuals he/she designates to conduct investigations (investigators) shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct their activities competently and with the highest levels of integrity⁸.
22. In particular, the Director, IOD and designated investigators shall perform their duties independently from those responsible for or involved in operational activities and from staff members liable to be the subject of investigations, and shall also be free from improper influence or fear of retaliation.
23. The Director, IOD and designated investigators shall avoid conflicts of interest and take appropriate action to avoid any perception of a conflict of interest. Designated investigators shall disclose to the Director, IOD in a timely fashion any actual or potential conflicts of interest they may have in an investigation in which they are participating, and the Director, IOD shall take appropriate action to remedy the conflict. The Director, IOD shall report any significant impairment to independence and objectivity, including conflicts of interest, for due consideration by the IAOC who will provide advice to the Director, IOD on how to proceed⁹.
24. Investigative activities must preserve confidentiality, respect the individual rights and obligations of WIPO staff members and others concerned and must be conducted with strict regard for fairness, impartiality and the presumption of innocence.

CONFIDENTIALITY

25. The confidentiality of an internal investigation is established by WIPO's Internal Oversight Charter¹⁰.
26. There is an obligation of confidentiality relating to information and evidence obtained during the course of an investigation.
27. The confidentiality of an investigation shall be observed by the Director, IOD, designated investigators and anyone else involved in the investigation, including the complainant, the subject, witnesses, observers, interpreters, and all other individuals required to assist IOD in its investigative activities.
28. All persons so involved shall not communicate to any person information or evidence in connection with an investigation, including the fact itself of an investigation, except to their legal counsel, if any. They may also communicate with the Ombudsman¹¹ or the Chief Ethics Officer¹². A person may inform his/her supervisor that he/she will be interviewed by IOD so as to obtain permission for an absence related to an investigation, but may not give any information related to the investigation to his/her supervisor.

⁸ Uniform Principles and Guidelines for Investigations, paragraph 3.

⁹ Internal Oversight Charter, paragraph 20.

¹⁰ Internal Oversight Charter, paragraphs 18 and 43.

¹¹ Office Instruction on "The Office of the Ombudsperson" (as may be amended from time to time).

¹² Office Instruction on "WIPO Ethics Office" (as may be amended from time to time).

29. Investigators will remind all participants in their investigative activities that they are bound by confidentiality.
30. The Director, IOD and designated investigators will protect the information gathered in the course of an investigation from unauthorized disclosure¹³. However, IOD is entitled to use such information insofar as it is required for the legitimate needs of the investigation or the Organization. In particular, IOD may disclose information to specific individuals if this is necessary to proceed with the investigation. Likewise, such information may also be transmitted by the Director, IOD to a relevant party or Program Manager with a need to know, for example if this is necessary for administrative, disciplinary or judicial proceedings¹⁴.
31. In order to protect the reputation of a person against whom allegations have been made, the disclosure of the identity of that person is restricted to a need-to-know basis, that is, it may only be disclosed if this is necessary for IOD to proceed with its investigative activities or to protect the interests of the Organization.
32. Each investigator is responsible for the confidentiality and security of their respective investigation case files and evidence collected and retained. This obligation of confidentiality shall not cease upon separation from WIPO.
33. Any exception to the duty to observe confidentiality must be expressly authorized by the Director General or the Director, IOD.
34. Breach of confidentiality in the context of an investigation may constitute misconduct liable to disciplinary proceedings under the Staff Regulations and Rules.

PROTECTION AGAINST RETALIATION

35. The right of WIPO personnel to communicate confidentially with, and provide information to IOD, without reprisal, shall be guaranteed by the Director General under the Internal Oversight Charter approved by Member States¹⁵, as well as Staff Regulation 1.7 and relevant Office Instructions¹⁶.
36. Retaliation against staff members for reporting alleged misconduct or other wrongdoing or for cooperating in an investigation constitutes misconduct and may result in disciplinary or other appropriate action against the person responsible.

FALSE OR MALICIOUS CLAIMS

37. The confidentiality provisions and protections against retaliation detailed above only apply to individuals who, in good faith, provide information, which they reasonably believe to be true.
38. When an individual intentionally and knowingly makes allegations or provides information that are false or misleading, the identity of that person as a complainant is not protected. Making allegations or providing information that are known to be false or misleading or that recklessly disregard the accuracy of the information amounts to serious misconduct and may result in disciplinary proceedings or other appropriate administrative action¹⁷.

¹³ Investigation Policy, paragraph 28.

¹⁴ Internal Oversight Charter, paragraph 18.

¹⁵ Internal Oversight Charter, paragraph 17.

¹⁶ See Office Instruction No. 33/2017 on "Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations".

¹⁷ Staff Regulation 1.7.

4. INVESTIGATIVE MANDATE AND AUTHORITY

NATURE OF INVESTIGATION ACTIVITY

39. IOD investigative activities include all fact-finding inquiries, both during the preliminary evaluation and the full investigation (see Section 6, “Investigation Process”). They aim at gathering and reviewing the evidence available, both inculpatory and exculpatory, that is, evidence that either substantiates or disproves an allegation, and/or contributes to identifying perpetrators and/or establishing relevant surrounding circumstances. Investigative findings and conclusions are determined through an impartial, objective, and independent process of information gathering and analysis, which may include reasonable inferences¹⁸, and are only based on substantiated facts and evidence.

40. An investigation in WIPO is administrative in nature as opposed to criminal investigations and other judicial actions. The investigation function is part of WIPO internal justice system, which is based on the Organization’s internal rules rather than on national laws.

41. An investigation is not a punitive undertaking. Where the subject of the investigation is a staff member, the Director, Human Resources Management Department (HRMD) may, on the basis of the investigative findings, initiate disciplinary proceedings by way of a charge letter pursuant to Staff Rule 10.1.2. The segregation of functions between investigation and the disciplinary proceedings provides necessary checks and balances for the proper administration of justice¹⁹.

AUTHORITY TO INVESTIGATE

42. The Director, IOD has overall authority and responsibility for investigating alleged misconduct and other wrongdoing falling within his/her mandate²⁰. He/she is responsible for the management of all investigations and investigators engaged by IOD.

43. The Director, IOD will independently determine whether any allegation should be investigated. He/she has the authority to initiate, carry out any action, and report on any issue or conduct which he/she deems necessary to fulfill his/her mandate and function as set out in the Internal Oversight Charter.

44. The Director, IOD enjoys functional and operational independence from Management²¹. Consequently, decisions and determinations made by the Director, IOD in the fulfilment of his/her mandate may not be subjected to any internal review.

45. To carry out investigations, the Director, IOD and designated investigators shall have unrestricted, unlimited, direct and prompt access to all WIPO personnel, records, property and premises.

46. WIPO personnel have a duty to cooperate unreservedly with investigative activities conducted by IOD and to respond promptly and fully to IOD requests for information²².

¹⁸ Investigation Policy, paragraph 21.

¹⁹ Investigation Policy, paragraph 11.

²⁰ Internal Oversight Charter, paragraphs 10 and 16.

²¹ Internal Oversight Charter, paragraph 11.

²² Internal Oversight Charter, paragraph 15 and Investigation Policy, paragraph 25.

SPECIFIC PROVISIONS FOR INFORMATION SECURITY INCIDENTS

47. The Security and Information Assurance Division (SIAD) is primarily tasked to identify, evaluate, record and rectify information security incidents. Exceptionally in the case of alleged misconduct, they may be tasked directly by the Director, IOD.

48. If it is suspected that an information security incident has been caused by misconduct rather than technical failure or an external event, the facts will be reported immediately to the Director, IOD²³. If the Director, IOD determines that an investigation of alleged misconduct is necessary, he/she will inform the Director, SIAD and the Director, Information and Communication Technology Department (ICTD) in writing that IOD is assuming responsibility for the investigation.

5. ALLEGATIONS OF MISCONDUCT AND OTHER WRONGDOING

DUTY TO REPORT

49. WIPO staff members, contractors and other personnel have a duty to report potential wrongdoing in WIPO²⁴, provided there is a reasonable cause to suspect that wrongdoing occurred.

INTERNAL REPORTING MECHANISMS

50. The Director, IOD shall be available to receive directly, from anyone, allegations of misconduct and other wrongdoing including, but not limited to, fraud and corruption, waste, abuse of privileges and immunities, abuse of authority, violation of WIPO regulations and rules or any other failure to observe the standards of conduct expected of international civil servants. Allegations of misconduct and other wrongdoing shall be received on a confidential basis and may also be submitted anonymously²⁵.

51. The Director, IOD may also decide to proactively initiate investigations into potential misconduct or other wrongdoing, based on risks identified in the course of risk assessment and other oversight activities²⁶.

52. In accordance with Staff Regulation 1.7, Staff members shall report suspected wrongdoing to the Director, IOD, or a hierarchical supervisor, who shall immediately inform the Director, IOD.

53. Allegations may be brought to the attention of the Director, IOD:

- (a) Using the Online Wrongdoing Reporting Form (<https://www3.wipo.int/about-wipo/en/oversight/iaod/wrongdoing/index.jsp>);
- (b) In writing, including by email (hotline.investigation@wipo.int);
- (c) In person; or
- (d) By telephone (+41 (0)22 338 8001).

²³ WIPO Information Security Incident Management Policy (October 2013), section 6.

²⁴ Internal Oversight Charter, paragraph 15 and Investigation Policy, paragraph 12.

²⁵ Internal Oversight Charter, paragraph 15 and Investigation Policy, paragraph 13.

²⁶ Internal Oversight Charter, paragraph 31 and Investigation Policy, paragraph 14.

INFORMATION TO PROVIDE

54. Complainants reporting allegations to IOD should provide as much detail as possible, such as:

- (a) Name of the potential subject;
- (b) Date(s), location(s) and description of the alleged misconduct or wrongdoing;
- (c) Names of witnesses, if any;
- (d) Any other relevant information, including documentary evidence, if available.

55. Providing sufficient information concerning the basis of an allegation is particularly important if the complainant chooses to report on an anonymous basis. Otherwise, IOD may not be in a position to pursue the matter further.

RECEIPT OF INFORMATION

56. IOD will record allegations from any source such as:

- (a) Victims or witnesses of alleged misconduct or other wrongdoing, whether staff members or external parties;
- (b) Anonymous information received by IOD;
- (c) Referral by the Director General (discrimination and/or harassment)²⁷ or the Chief Ethics Officer (retaliation)²⁸;
- (d) Information received by one of the persons listed in Staff Regulation 1.7;
- (e) Discovery or detection by IOD through proactive risk assessment and other oversight activities.

57. The Director, IOD will ensure that allegations are evaluated and processed in a consistent, accountable and confidential way, through a secure system.

CONFIDENTIALITY OF REPORT AND OF IDENTITY OF COMPLAINANT

58. Allegations shall be received on a confidential basis and may also be submitted anonymously.

59. Without prejudice to the provisions of this Manual on false and malicious claims²⁹, IOD shall keep confidential the identity of the complainant and disclose it on a need to know basis only where required by the legitimate needs of the investigation and/or any subsequent proceedings³⁰.

²⁷ Staff Regulation 11.4, "Formal conflict resolution" and Staff Rule 11.4.1, "Administrative Resolution of Workplace-Related Conflicts and Grievances."

²⁸ Office Instruction No. 33/2017 on "Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations".

²⁹ Paragraphs 37 and 38.

³⁰ Staff Regulation 1.7 and Investigation Policy, paragraph 28.

60. Diligent efforts should be made, by all means available, to reassure an anonymous complainant of WIPO's commitment to confidentiality and protection from retaliation. The anonymous complainant should be encouraged by an investigator to disclose his/her identity to ensure a full assessment of the facts within his/her knowledge to justify a full internal investigation.

61. Bearing in mind the need for confidentiality of the investigative process, the Director General and other Program Managers with a need to know may be informed of the existence of allegations of misconduct or other wrongdoing at the discretion of the Director, IOD.

62. No other person is entitled to be informed of the allegations at this early stage, unless there is an imminent threat to WIPO's operations or to the safety of WIPO personnel.

ACKNOWLEDGEMENT OF RECEIPT

63. Unless a complaint is received anonymously, an acknowledgement will be sent in writing to the complainant within seven calendar days of receipt³¹.

SPECIAL CASES

64. Allegations concerning IOD personnel, WIPO personnel at the DDG and ADG levels or the Director General shall be handled in accordance with paragraphs 21-25 of the Internal Oversight Charter.

6. INVESTIGATION PROCESS

65. Once a matter has been received and registered, the investigation process usually comprises two phases: first, IOD conducts a preliminary evaluation of the information received; second, IOD may decide, where pertinent, to launch a full investigation³². All along, proper planning must be ensured³³.

66. The Director, IOD will designate an investigator to conduct investigative activities in a specific case.

PRELIMINARY EVALUATION

67. IOD shall conduct a preliminary evaluation of the information received before launching a full investigation.

68. The purpose of a preliminary evaluation is to determine whether or not:

- (a) The alleged behavior, if substantiated, would constitute misconduct or other wrongdoing;
- (b) The allegation is material. Factors to consider include the gravity of the alleged misconduct or other wrongdoing and potential implications for WIPO. Normally, very minor or trivial complaints would not warrant an investigation;

³¹ Investigation Policy, paragraph 16.

³² Investigation Policy, paragraphs 18-19.

³³ Uniform Principles and Guidelines for Investigations, paragraphs 29-32.

- (c) The allegation is verifiable. Factors to consider include the time elapsed since the misconduct or other wrongdoing allegedly occurred, and the availability of reliable relevant information;
- (d) There is credible information indicating that the alleged misconduct or other wrongdoing has possibly occurred; and/or
- (e) More appropriate or less formal means of intervention are available, for example by line management or HRMD or within the framework of the internal justice system.

69. In general, the preliminary evaluation will include the following activities:

- (a) Determination of the legal standards applicable to the allegation(s);
- (b) Examination of the evidence provided to IOD by the complainant, and any relevant documents, records or data;
- (c) Communication with and/or interview of the complainant in order to obtain further information or evidence; and
- (d) Analysis of the case to determine whether a full investigation is justified.

70. Where allegations of inappropriate behavior affecting another individual (e.g. sexual harassment) are submitted to IOD by a person other than the victim of the alleged conduct, the Director, IOD will consider the views and situation of the victim of the alleged conduct before deciding on whether to proceed with an investigation.

71. When allegations are the subject of an ongoing investigation by the national authorities, the Director, IOD will consider the implication for WIPO of parallel inquiries into the same facts.

OUTCOME OF PRELIMINARY EVALUATION

72. Upon completion of the preliminary evaluation, the investigator will normally submit a preliminary evaluation report recommending action for the consideration of the Director, IOD.

73. Based on the outcome of the preliminary evaluation, the Director, IOD may decide to:

- (a) Take no further action and close the case;
- (b) Refer the information for resolution elsewhere within WIPO as described above;
- (c) Defer further investigation for a specific time period pending further clarification of key facts;
- (d) Direct that a full investigation be conducted.

74. The Director, IOD's reasoned decision shall be documented³⁴.

75. The decision to open an investigation or to close a case is taken by the Director, IOD, exercising his functional independence and is therefore not subject to any internal review.

³⁴ Investigation Policy, paragraph 19.

INVESTIGATION PLANNING

76. If and as necessary, the designated investigator will prepare an investigation plan, which will help establish the relevant facts, gather the necessary evidence, and ensure that the investigation is conducted efficiently and expeditiously.

77. Investigation plans and schedules, strategies or terms of reference relating to an investigation must not be shared or distributed with anyone outside of IOD³⁵.

FULL INVESTIGATION

78. The purpose of an investigation is to ascertain all relevant facts in order to allow the competent authority to determine whether there is sufficient evidence to initiate a disciplinary procedure. Accordingly, investigative action by IOD will be aimed at establishing facts and collecting evidence to substantiate or refute the allegations made, identify perpetrators, and establish relevant surrounding circumstances.

Notification to Subject

79. Once the preliminary evaluation has been completed and if the Director, IOD determines that a full investigation is warranted, the Director, IOD shall notify the individual whose conduct is under examination for alleged misconduct (hereinafter the subject) that he/she is under investigation. The notification will take place in writing, as soon as this is feasible without jeopardizing the effectiveness or integrity of the investigative process, and in any event before the subject is interviewed. It will provide information on the general nature of the allegations under investigation and on the subject's rights and obligations.

INTERIM MEASURES

80. At any stage during the investigative process, the Director, IOD may recommend to the Director General interim measures or remedial action to protect WIPO personnel and/or the Organization's interests.

81. This may include recommending that the subject of the investigation be suspended from duty in accordance with the Staff Regulations and Rules. The Director, IOD may make such a recommendation in specific circumstances, including where:

- (a) There is a risk that the subject could destroy, conceal, or otherwise tamper with evidence, or interfere in any way with the investigation;
- (b) There is a possible threat to the security and/or safety of other members of WIPO personnel, and/or to WIPO;
- (c) The subject is unable to continue performing his/her functions effectively in view of the on-going investigation and the nature of those functions.

TIMELINESS OF INVESTIGATIVE PROCESS

82. The Director, IOD will endeavor to complete all investigative activities in a timely manner. All efforts will be made so that preliminary evaluations are completed within 30 calendar days from the receipt of allegations of misconduct or other wrongdoing (or the date where IOD

³⁵ Investigation Policy, paragraph 28.

becomes aware of the alleged misconduct or other wrongdoing) and full investigations (including final investigation reports) within six months of the date of initiating the full investigation³⁶.

83. Circumstances, such as the complexity of the case, IOD workload and priorities, and/or other compelling reasons, may justify a longer period for the completion of a preliminary evaluation and/or full investigation. Such circumstances will be documented for the record.

7. EVIDENCE

84. In an investigation, the standard of proof required to determine whether an allegation is substantiated, is clear and convincing evidence³⁷.

GATHERING EVIDENCE

85. Investigators are authorized to have full, complete and direct access to all WIPO personnel and property, including information and communication technology hardware and software assigned by the Organization to WIPO personnel for use in conducting WIPO business, records in all media and format regardless of their location and manner of storage, and to all the premises of the Organization, whether at headquarters or elsewhere³⁸.

86. In some cases, it may be necessary to perform searches of the offices, workspaces or other WIPO assets that are in the custody of a subject or witness. If evidence is located in the immediate vicinity of the individual, e.g. desk or computer, the presence of the individual is required while the search or seizure is conducted, whenever possible. Any search or seizure of evidence located in the immediate vicinity of the individual should be performed by two investigators, or one investigator and a witness or observer, whenever possible.

87. IOD may also be given access by the individual concerned to external records containing personal information (other than public records, in which case authorization is not required).

RELEVANCE AND TESTING OF EVIDENCE

88. Facts established during the course of an investigation may or may not be relevant at the time of information-gathering. It is essential for an investigator to accurately record all new information within the case file, evaluate its relevance as it occurs, and routinely subject that judgment to review as further information is discovered.

EVIDENCE HANDLING AND SECURE STORAGE

89. All seized records may become important evidence and exhibits in subsequent disciplinary proceedings, and exceptionally, in national criminal or civil proceedings. Accordingly, accountability in respect of the seizure, handling and storage of this evidence is a crucial element of an investigation.

³⁶ Investigation Policy, paragraph 19 and 33.

³⁷ Staff Rule 10.1.2. (d).

³⁸ Internal Oversight Charter, paragraph 13.

90. Any record or data received or gathered during an investigation must be referenced within the case file and kept secure.

91. When handling the original version of documentary or physical evidence, a clear chain of custody record must be maintained. From the moment the investigator takes control of the evidence, a record of its receipt and subsequent handling must be kept, including, as appropriate:

- (a) Name of the individual or entity providing the evidence;
- (b) Source and/or physical location from which the evidence was obtained;
- (c) Date and time the evidence was obtained;
- (d) Name, identifying number, date of document, if applicable and brief description of the evidence; and
- (e) Overall condition of the evidence (e.g. number of pages, missing parts, sections or pages).

92. Original documents, records or other items of property which may have to undergo forensic examination should be secured in suitable files or containers to prevent degradation and tampering.

93. All seized property must be stored securely by the investigator at all times throughout the investigation process, unless in transit or undergoing specialist examination, or in subsequent legal proceedings whether inside or outside WIPO.

94. If the item is subjected to forensic analysis, the date, location and name of the analyst who takes custody of the item must be recorded, and a similar entry made when it is returned.

Original or copy documents

95. Normally relevant original documents should be seized to provide the best evidence if required for forensic examination or production in subsequent proceedings.

96. If a copy is seized the investigator must ensure that it is an exact reproduction of the original, and store it in secure conditions as if it were the original document, preserving the chain of custody. Investigators must consider the risk that an original document could be altered, damaged, lost or destroyed and be able to justify why it was not seized when available.

ELECTRONIC EVIDENCE

97. Electronic evidence comprises Information and Communication Technology (ICT) resources and data, such as e-mails, data on hard drives or other electronic storage devices, cell phones and other portable devices, SIM cards, photographs, videos, logs, etc.

98. WIPO Information Security Policies provide that all information created, stored and/or processed using WIPO ICT systems is the property of WIPO, that certain staff members within their designated official responsibilities may be given access to any WIPO ICT systems and information resources, including for investigation purposes, and that, therefore, users should have no expectation of privacy when using WIPO ICT systems and information resources for personal purposes.

99. Pursuant to the Internal Oversight Charter and in line with the above-mentioned policies, IOD has the authority to access all ICT resources and data remotely, without first informing the

authorized user. However, should the Director, IOD decide to launch a full investigation, the subject will be informed of such access and of the evidence thus obtained.

100. SIAD will provide technical advice and assistance to IOD, if so requested during the investigative process, including access to e-mails, seizure of hard drives, forensic examination of the data contained therein, and any other technical input that may be required by the legitimate needs of the investigation.

101. Forensic analysis of hard drives and electronic data will normally be conducted by SIAD unless the task is too complex technically. In these exceptional circumstances, with the approval of the Director, IOD, SIAD may use an external service provider to undertake the task.

102. Strict handling is required for all electronic evidence seizures to avoid compromising the chain of custody of potential evidence. The designated investigator is responsible for keeping a detailed record of how the electronic evidence was collected, handled and secured.

FORENSIC EVIDENCE

103. Generally, fingerprints and DNA evidence are not sought during an internal investigation; however, the alleged misconduct or other wrongdoing may be so serious as to justify forensic analysis, especially if it could lead to a criminal investigation by national authorities.

104. In these exceptional circumstances, the Director, IOD may seek the authorization of the Director General to request the national authorities to provide technical assistance to an internal investigation.

105. The Director General may lift a staff member's functional or diplomatic immunity, if required, to allow the national authorities to take forensic samples and/or conduct a forensic analysis.

106. In the context of its investigative activities, IOD may take fingerprints and/or DNA samples from WIPO personnel with their express consent. Samples will be taken by a qualified person for comparison with marks found on incriminating evidence.

8. INTERVIEWS

107. Interviews are aimed at obtaining testimonial evidence, that is, the recollection of individuals who actually saw an event or have direct or indirect knowledge of anything relevant to the investigation.

108. All WIPO personnel are required to cooperate unreservedly with an investigation and to respond completely and truthfully to requests for information³⁹. A refusal to cooperate with IOD in the context of its investigative activities, including a refusal to take part in an interview, as well as any display of hostility during an interview will be noted at the time and recorded. Non-cooperation or refusal to take part in an interview may amount to misconduct.

109. In the event a staff member, whose cooperation with an investigation is required, invokes inability on medical grounds, IOD may request the Director General to have the staff member's medical condition verified by a medical adviser designated by WIPO.

³⁹ Internal Oversight Charter, paragraph 13 and Investigation Policy, paragraph 23.

110. Exceptionally, the Director, IOD may relieve a staff member from the duty to participate in an interview and require him/her to instead provide written answers to written questions. This may be the case, in particular, when the staff member concerned is medically unfit to attend the interview.

FAIRNESS REQUIREMENTS DURING INTERVIEWS

111. Before starting an interview, the investigator will identify him/herself and explain in general terms:

- (a) The investigative process and possible consequences of an investigation;
- (b) The authority of IOD to conduct investigations and the duty of WIPO personnel to cooperate;
- (c) Whether the interviewee is interviewed as a complainant, witness or subject;
- (d) Whether the interview is conducted in the context of a preliminary evaluation or full investigation;
- (e) The requirement of confidentiality of both IOD and the interviewee, including the fact that the interview record will be protected from unauthorized disclosure but may be used and disclosed in full or in part to specific individuals if this is necessary to proceed with the investigation or for subsequent administrative, disciplinary or judicial proceedings.

112. Bearing in mind the need for confidentiality of the investigative process, witnesses called for an interview will be informed, when contacted, of the general nature of the matter on which they are requested to provide information, in a manner which does not compromise their impartiality. A written record of all information provided to the witness will be kept.

113. During the interview, the subject will be provided details of the allegations and shown the evidence in support thereof, in anonymized form where warranted; he/she will be offered the opportunity to respond and to provide countervailing evidence, during the interview and at any time thereafter⁴⁰. The subject may identify witnesses, indicate where further records can be found, and submit any information or document. The investigator(s) must note full details of any additional potential, exculpatory information and if necessary, seek the assistance of the subject to ensure reasonable access. The investigator(s) will subsequently take appropriate action to interview the persons so named and to discover and secure the identified records, to the extent deemed relevant to the allegations.

114. The interview should be flexibly adapted in response to the behavior of the interviewee and the information provided. If the interview is lengthy, reasonable comfort breaks will be offered and their acceptance or rejection noted.

115. The investigator(s) will ensure that relevant documents are available for production during the interview. Any records produced by the interviewee will be retained, noted in the interview record, and stored securely with other evidence.

116. There may be exceptional circumstances which preclude a personal interview of a complainant, subject or witness. In these circumstances an interview can be conducted by telephone or video link and an interview record or transcript will be prepared as described below.

⁴⁰ Investigation Policy, paragraph 31 (a).

117. Witnesses will not be paid for information; however, IOD will consider reimbursement of reasonable travel expenses⁴¹.

SEQUENCE OF INTERVIEWS

118. The investigator will conduct an interview with the complainant at the earliest opportunity to accurately record the relevant facts.

119. Other witnesses identified should be prioritized for interview having regard for the potential significance of the information they possess, their availability and any logistical needs. Individuals who would have general knowledge about the matter being examined but are most likely not involved in the alleged misconduct or other wrongdoing should be interviewed first. Individuals who would have direct knowledge of the matter, and who might also be involved in the wrongdoing should be interviewed last.

120. Due diligence must be taken to research all potential witnesses to identify any reasonable suspicion of complicity in misconduct or other wrongdoing before an interview is actually undertaken.

121. Normally interviews with a subject will take place after all available witnesses have been interviewed, to enable the subject to provide exculpatory or mitigating information on the evidence gathered.

122. The investigator(s) may re-interview any witness or subject to clarify significant facts or obtain additional facts as further information is established.

INTERVIEW PARTICIPANTS

123. Interview participants are: the interviewee (a complainant, witness or subject), one or two interviewers, and where relevant, an observer and/or an interpreter.

Interviewers

124. Interviews of investigation subjects will be conducted by two investigators or by one investigator assisted by another person designated by the Director, IOD.

125. With respect to other interviewees, the number of interviewers will depend on the nature and circumstances of the case.

Observer

126. During the investigative process, the subject of an investigation is not entitled to a legal representative to act on his/her behalf. However, he/she may be accompanied to his/her interview by a suitable third party, who will act as an observer, provided the third party undertakes to respect the confidentiality of the investigation, is reasonably available, and is not connected to the matter under investigation. The presence of such observer shall not relieve the subject of the obligation to respond personally in the matter under investigation.

127. Before contacting anyone to act as an observer, the subject shall communicate to IOD the identity of the person by whom he/she would like to be accompanied, so as to allow IOD to determine whether there is any serious reason to refuse the participation of that person.

⁴¹ Uniform Principles and Guidelines for Investigations, paragraph 39.

128. The observer shall agree to respect the confidentiality of the investigation and shall sign a confidentiality agreement. If the observer refuses to sign the confidentiality agreement, he/she will not be permitted to observe the interview.

129. IOD will not allow the lack of availability of the observer to unduly delay scheduling an interview. The presence of an observer will not relieve the subject of the obligation to respond personally in the matter under investigation. If during the interview the investigators consider the presence of the observer disruptive, he/she may be asked to leave and the interviewee will be obliged to continue with the interview in accordance with the requirement to cooperate with an investigation.

130. The observer has no right to respond on behalf of the interviewee or otherwise intervene in the interview process in any manner.

131. Exceptionally, if an interviewee other than the investigation subject justifies a need for the presence of an observer, it may be authorized at the discretion of the Director, IOD provided the conditions specified above are met.

Interpreters

132. Interviews will normally be conducted in any WIPO working language⁴², depending on the preference of the interviewee. If the investigator is not fluent in the preferred working language, an interpreter designated by the investigator will be provided by WIPO⁴³.

133. The interpreter shall respect the confidentiality of the investigation and sign a confidentiality agreement.

INTERVIEW RECORDS

134. Except where the interview is audio-recorded, the investigator(s) will prepare a written interview record on a standard IOD template. This interview record will be headed "Highly Confidential" and include details of the interviewee's name and job title.

135. Immediately after the interview, the interviewee will be invited to review the interview record and to sign it to confirm that it is a true reflection of what was said during the interview. The interview record will also be signed by the investigator(s). The original document will be retained by IOD and the interviewee offered a personal copy which must be kept confidential and protected from unauthorized disclosure.

136. If an interviewee refuses to review or sign the interview record, the investigator(s) will document the efforts made to achieve compliance and the reasons for the refusal.

137. If a pre-prepared statement is submitted at the outset or during an interview, this should be accepted by the investigator(s) and the fact noted in addition to requesting the interviewee to comply with the procedure described above.

AUDIO AND VIDEO-RECORDING

138. All subject interviews will be audio-recorded. Other interviews may be audio-recorded at the option of the investigator(s).

⁴² WIPO working languages are English and French.

⁴³ Uniform Principles and Guidelines for Investigations, paragraph 38.

139. The recording will be conducted openly with the knowledge of the interviewee.

140. Where interviews are audio-recorded, a copy of the recording will always be provided to the interviewee. The interviewee is not entitled to use personal recording equipment during the interview unless specifically authorized by the investigator(s).

141. The product of a recorded interview will be transcribed verbatim and if necessary translated. The transcript must be provided to the interviewee, who will be given an opportunity to review it and correct any transcription errors.

9. REPORTING INVESTIGATION FINDINGS

PRELIMINARY EVALUATION REPORT

142. The outcome of a preliminary evaluation will be recorded in a preliminary evaluation report (see Section 6, "Investigation Process").

143. Preliminary evaluation reports are IOD internal documents and are strictly confidential. They are not provided to anyone.

144. Notwithstanding the foregoing, the Director, IOD's written decision not to open a full investigation as notified to the complainant (see below paragraph 162) may be made available upon request in related proceedings.

INVESTIGATION REPORT

145. The outcome of a full investigation will be recorded in an investigation report, which will be issued to the relevant competent authority⁴⁴ for any action deemed appropriate including, but not limited to, initiation of disciplinary proceedings.

Confidentiality

146. Investigation reports are strictly confidential, unless disclosure is authorized by the Director, IOD or the Director General⁴⁵.

Structure of investigation reports

147. An investigation report should be an objective account of the facts examined, fully supported by available evidence. It will normally contain:

- (a) An executive summary;
- (b) Background information;
- (c) Findings, which detail what evidence was obtained, how, and what it shows;
- (d) Conclusions as to whether the allegations are substantiated, unsubstantiated or unfounded;
- (e) Recommendations as appropriate, including for disciplinary proceedings, financial recovery and/or referral to national law enforcement authorities; and

⁴⁴ As specified in paragraphs 154-157 of this Manual.

⁴⁵ Internal Oversight Charter, paragraph 43.

- (f) Exhibits, including copies of documentary evidence, interview records, and other relevant information and evidence.

Provision of draft investigation report for comments

148. Before finalizing and issuing an investigation report containing adverse findings against the subject, the Director, IOD will normally give him/her an opportunity to review and comment on relevant excerpts of the draft investigation report⁴⁶.

149. In those cases referred to IOD for investigation by the Director General (discrimination and/or harassment) or the Chief Ethics Officer (retaliation), should the investigation conclude that the complainant's allegations are unsubstantiated or unfounded, the Director, IOD may also give the complainant an opportunity to review and comment on relevant excerpts of the draft investigation report.

150. Relevant excerpts will normally include the background information and investigation findings and conclusions. The annexes, in particular the interview records, will not be provided.

151. In exceptional circumstances, it may be considered that for serious reasons, including the safety of witnesses or risks to the Organization, excerpts of the draft investigation report should not be shared.

152. The subject (or complainant as the case may be) will be provided 15 calendar days to submit any comments. Any extension of this time limit should be expressly authorized by the Director, IOD.

153. If the subject (or complainant as the case may be) fails to respond within the time limit set by the Director, IOD, he/she will nevertheless proceed to finalize and issue the investigation report.

Final Investigation Report

154. The comments provided by the subject (or complainant as the case may be) will be reflected, as appropriate, in the final investigation report and attached thereto as an annex.

155. Unless otherwise stipulated in this Manual, the Director, IOD shall submit final investigation reports to the Director General with a copy to the Director, HRMD; the External Auditor and the IAOC shall have access to investigation reports upon request⁴⁷.

Investigation Reports Involving External Vendors or Bidders

156. Where the case involves wrongdoing by an external vendor or bidder, excerpts of the final investigation report relating to such vendor or bidder shall be provided to the Director, Procurement and Travel Division.

Special Cases

157. Final investigation reports concerning the Director of IOD, WIPO personnel at the DDG and ADG levels or the Director General shall be handled in accordance with paragraphs 38-42 of the Internal Oversight Charter.

⁴⁶ Investigation Policy, paragraph 31 (b).

⁴⁷ Internal Oversight Charter, paragraph 37.

Comments or Clarification Requests from Competent Authority

158. Subsequent to the issuance of a final investigation report to the relevant competent authority, such authority may, if and as deemed necessary, submit comments or request clarifications regarding the investigative findings and/or conclusions, for consideration by the Director IOD. Any such comments or requests shall be made in writing.⁴⁸

159. In response, the Director, IOD may, at his/her discretion, provide additional information and/or documentation to the competent authority. The Director, IOD may also decide to conduct, if deemed necessary, additional investigative activity, in which case an addendum to the final investigation report may be issued to the relevant competent authority. Should the additional investigative activity result in any new adverse findings, the relevant excerpts of the addendum containing these findings will be shared with the subject for review and comments⁴⁹ as per paragraphs 148-153 of this Manual.

MANAGEMENT IMPLICATION REPORT

160. The Director, IOD may issue a Management Implication Report (MIR) at any time in relation to an investigation process.

161. A MIR serves to convey to the Director General and/or relevant managers issues identified in the course of investigative activities and requiring management attention and/or recommendations derived from investigation findings, including to improve existing systems, policies, and procedures, strengthen internal controls, or otherwise prevent similar incidents from recurring (lessons learned from the investigation). MIRs shall not contain information that would allow the subject of the investigation to be identified.

NOTIFICATION OF CONCLUSION TO INVESTIGATION PARTICIPANTS

162. Should the Director, IOD decide not to open a full investigation based on the outcome of the preliminary evaluation, the complainant will be so notified in writing, and, if the complainant is also a victim of the alleged misconduct or other wrongdoing, he/she will be informed in general terms of the reasons for the closure of the matter.

163. If a full investigation has been launched, the complainant will be informed of its completion and, if this is possible without breaching the subject's due process rights, he/she will be given a brief outline of the conclusion of the investigation.

164. If the case is not completed within six months of receipt of the complaint, the Director, IOD shall notify the complainant in writing of the status of the matter. In the absence of such notification, the complainant may inform the Director General or the Chair of the Coordination Committee⁵⁰.

165. Upon completion of a full investigation, the Director, IOD shall notify the subject that an investigation report has been issued, and inform the subject of its conclusion.

166. Upon completion of a full investigation where IOD concluded that allegations of misconduct against a staff member were intentionally false or misleading, the said staff member shall be informed of those allegations and conclusion.

⁴⁸ Investigation Policy, paragraph 38.

⁴⁹ Investigation Policy, paragraph 39.

⁵⁰ Staff Regulation 1.7(c).

167. Without prejudice to paragraph 146 of this Manual:

- (a) The subject of an investigation does not have the right to access or receive a copy of the final investigation report unless subsequently charged with misconduct in accordance with Chapter X of the Staff Regulations and Rules.
- (b) Other investigation participants, including witnesses, have no right to be informed of the outcome of a preliminary evaluation or of a full investigation. However, if allegations of misconduct are determined to be unfounded or unsubstantiated, the Director, IOD will notify everyone interviewed in the case accordingly.

10. REFERRAL TO NATIONAL AUTHORITIES

168. Pursuant to the Headquarters Agreement concluded with the Swiss Federal Council on December 9, 1970, WIPO is required to cooperate at all times with the Swiss authorities to facilitate the satisfactory administration of justice, ensure the observance of police regulations and prevent any abuse of the privileges, immunities and facilities provided for in the Agreement.

169. According to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations and Article 20 of the Headquarters Agreement between WIPO and the Swiss Federal Council, privileges and immunities are granted to officials in the interest of the specialized agencies only. Each specialized agency shall have the right and the duty to waive the immunity of any official in any case, where, in its opinion, the immunity would impede the course of justice.

170. In cases where the investigation substantiates actions which may constitute crimes of a serious nature, the Director, IOD may recommend to the Director General to refer the matter to the competent law enforcement authorities.

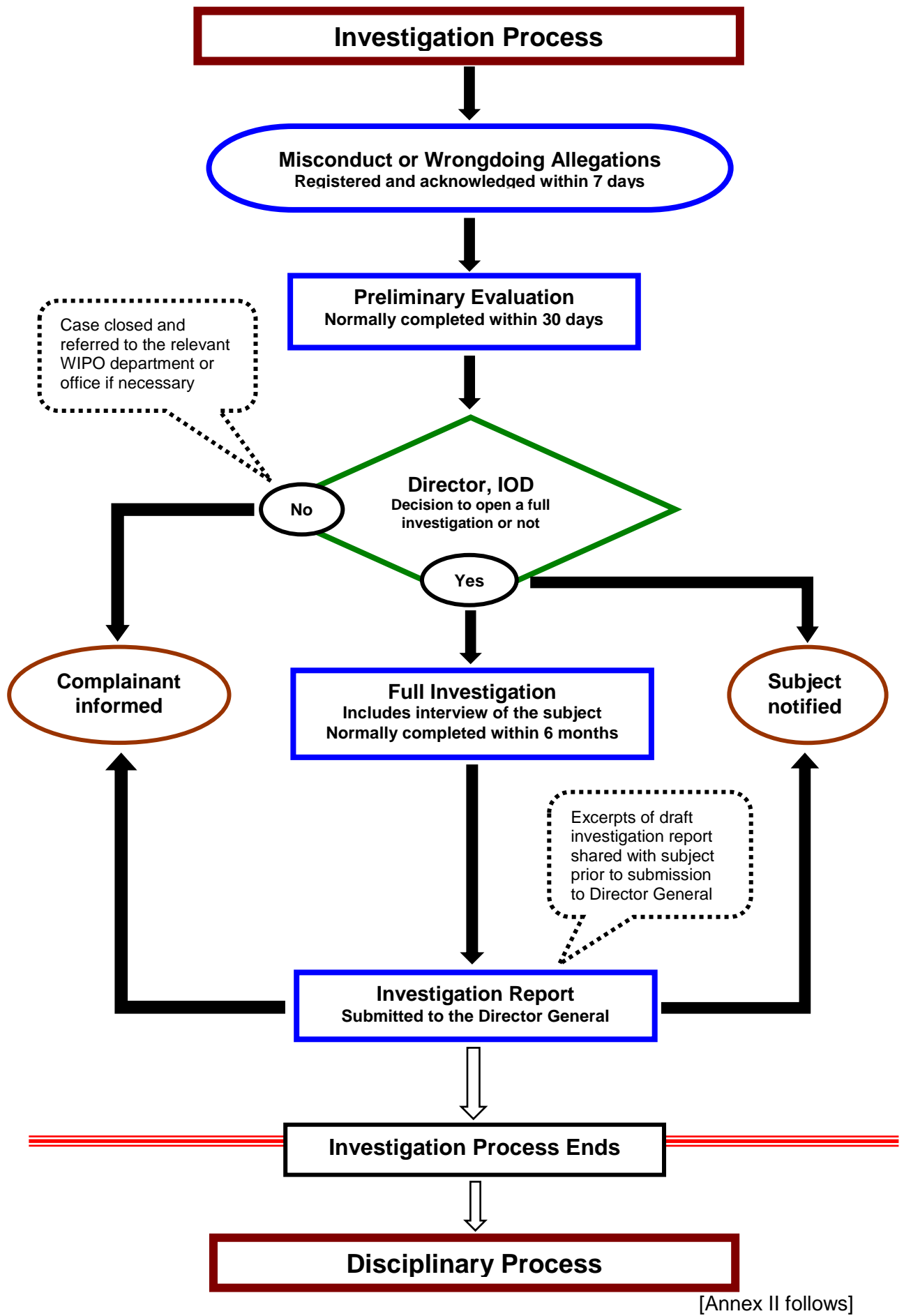
11. COOPERATION WITH HRMD AND THE OFFICE OF THE LEGAL COUNSEL

171. IOD will meet with HRMD and the Office of the Legal Counsel on a regular basis, to share feedback and exchange views on the lessons learned based on the outcome of investigative work and related internal justice system actions, including quality and legal aspects.

12. EFFECTIVE DATE AND REVIEW

172. This Manual will come into effect on September 23, 2019, superseding any previous version. It shall be reviewed at least every three years and revised as necessary.

[Annex I follows]



REFERENCE DOCUMENTS

1. Uniform Procedures and Guidelines for Investigations (2009)
2. Staff Regulations and Rules
3. WIPO Internal Oversight Charter (Annex I to the Financial Regulations and Rules)
4. WIPO Investigation Policy
5. Standards of Conduct for the International Civil Service (2013)
6. Office Instruction No. 13/2008 on “Personal Accountability and Financial Liability Office”
7. Office Instruction No. 25/2010 on “WIPO Ethics Office”
8. Office Instruction No. 33/2017 on “Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations”
9. Office Instruction No. 37/2014 on “The Office of the Ombudsperson”
10. Office Instruction No. 84/2012 on “WIPO Code of Ethics”
11. Office Instruction No. 2/2013, “Honors and Gifts”
12. Office Instruction No. 10/2019, “WIPO Policy on Preventing and Detecting Fraud and Other Prohibited Acts”
13. Terms of reference of the WIPO Independent Advisory Oversight Committee (Annex III to the Financial Regulations and Rules)
14. Office Instruction No. 40/2013, “Information Security Policies”
15. Office Instruction No. 50/2016, “Procedure governing the application of disciplinary measures”
16. WIPO Information Security Policy (2013)
17. ICTD Acceptable Use Policy (2013)
18. E-mail Policy (2013)
19. Information Security Incident Management Policy (2013)

[End of Annex II and of document]