

## **Internal Audit and Oversight Division**

### **Investigation Policy**

FIRST EDITION

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## 1. INTRODUCTION AND PURPOSE

1. The WIPO Investigation Policy (hereinafter the Policy) provides the framework and establishes governing principles for the investigation function within the World Intellectual Property Organization (WIPO).
2. The Policy is established in consultation with Member States, pursuant to the WIPO Internal Oversight Charter.<sup>1</sup>
3. The Policy is consistent with WIPO regulations, rules, and related administrative issuances, and has been prepared in accordance with generally accepted investigation standards, taking account of the Uniform Guidelines for Investigations<sup>2</sup> and good practices of organizations of the United Nations system.<sup>3</sup>
4. The Policy aims to:
  - (a) protect the rights and reaffirm the duties of WIPO staff members involved in investigative activities, including subjects of investigations, in accordance with relevant WIPO regulations and rules, and principles of fairness;
  - (b) enhance the ability of the Director, Internal Audit and Oversight Division (IAOD) to carry out effectively and independently the oversight function of investigation entrusted to him/her by the Member States, and thereby protect the interests of WIPO; and
  - (c) promote accountability, a culture of ethics and integrity, and good governance within WIPO.
5. To implement this Policy, ensure the objectivity, impartiality, and quality of IAOD investigative activities, and guide WIPO staff in understanding the investigation function within WIPO, the Director, IAOD may establish written procedures and guidelines, including the WIPO Investigation Procedures Manual.<sup>4</sup>

## 2. SCOPE AND AUTHORITY

6. Investigation is a formal fact-finding inquiry to examine allegations of misconduct and other wrongdoing in order to determine whether they have occurred and if so, the person or persons responsible.<sup>5</sup>
7. The Director, IAOD has overall authority and responsibility for investigating possible instances of misconduct, wrongdoing or malfeasance within WIPO falling within his/her mandate.<sup>6</sup>
8. This Policy applies to all WIPO staff members as defined in the Staff Regulations and Rules.

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<sup>1</sup> See Internal Oversight Charter, paragraph 13(b). The last version of the Internal Oversight Charter was approved by the WIPO General Assembly at its Forty-First Session in October 2012 (WO/GA/41/10 Rev. and WO/GA/41/18). The Investigation Policy was submitted to the Member States for consultations from August 19 to October 18, 2013.

<sup>2</sup> As endorsed by the 10<sup>th</sup> Conference of International Investigators, 2009.

<sup>3</sup> See Internal Oversight Charter, paragraph 2(a) and paragraph 5.

<sup>4</sup> *Ibid.*, paragraph 13(c).

<sup>5</sup> *Ibid.*, paragraph 2(c).

<sup>6</sup> *Ibid.*, paragraphs 12 and 14(h).

9. The Policy normally does not extend to those areas for which separate provision has been made for review, including:

- (a) Workplace-related conflicts and grievances;<sup>7</sup>
- (b) Personnel grievances arising from administrative decisions affecting a staff member's terms of appointment;<sup>8</sup> and
- (c) Performance issues and performance-related disagreements.<sup>9</sup>

10. Formal complaints of discrimination and/or harassment should be submitted to the Director of the Human Resources Management Department (HRMD).<sup>10</sup> Complaints of retaliation for reporting possible misconduct or cooperating with an oversight activity should be addressed to the Ethics Office.<sup>11</sup> However, the Director, HRMD or the Ethics Office may later refer the matter to IAOD for investigation in accordance with their respective terms of reference.

11. An investigation is administrative in nature. It is a fact-finding exercise, not a punitive undertaking. The investigation function is part of WIPO's internal justice system, which is based on the Organization's internal regulations and rules, not on national laws. Disciplinary proceedings are initiated by way of a charge letter sent by the Director, HRMD pursuant to Rule 10.1.2 of the Staff Regulations and Rules. The separation of functions between investigation and disciplinary action provides necessary checks and balances for the proper administration of justice.

### **3. REPORTING MISCONDUCT**

12. WIPO staff members have a duty to report possible misconduct.<sup>12</sup>

13. In accordance with Staff Regulation 1.7, staff members shall address reports of possible misconduct to:

- (a) a hierarchical supervisor,
- (b) the Office of the Director General, or
- (c) the Chair of the Coordination Committee,

any of whom upon receiving such report shall inform the Director, IAOD.<sup>13</sup>

14. The Director, IAOD shall also be available to receive directly from individual staff members reports of possible misconduct, including complaints or information concerning the possible existence of fraud, waste, abuse of authority, non-compliance with regulations and

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<sup>7</sup> See Staff Regulations and Rules, Chapter XI, "Conflict Resolution", in particular Staff Regulation 11.4 and Staff Rule 11.4.1, "Administrative resolution of workplace-related conflicts and grievances"; see Staff Regulation 11.3 and related Staff Rules, and Office Instruction on "The Office of the Ombudsperson" (as may be amended from time to time).

<sup>8</sup> See Staff Regulations and Rules, Chapter XI, "Conflict Resolution", in particular Staff Regulation 11.4 and Staff Rule 11.4.3, "Administrative resolution of requests for review of other administrative decisions".

<sup>9</sup> See Staff Regulations and Rules, Chapter XI, "Conflict Resolution", in particular Staff Regulation 11.4 and Staff Rule 11.4.2, "Administrative resolution of rebuttal of performance appraisals".

<sup>10</sup> See Staff Regulation 11.4 and Staff Rule 11.4.1.

<sup>11</sup> See Office Instruction on the "Policy to protect against retaliation for cooperating in an oversight activity or reporting misconduct or other wrongdoing ("Whistleblower Protection Policy")" (as may be amended from time to time).

<sup>12</sup> See Standards of Conduct for the International Civil Service (2013), paragraph 20. See also Whistleblower Protection Policy, and Uniform Guidelines for Investigations, paragraph 14 (as may be amended from time to time).

<sup>13</sup> See also Whistleblower Protection Policy.

rules of WIPO in administrative, personnel and other matters or other irregular activities relevant to the mandate of the Director, IAOD.<sup>14</sup>

15. Reports of possible misconduct shall be received on a confidential basis and may also be submitted anonymously.

16. The Director, IAOD shall acknowledge receipt in writing of those reports made by identifiable sources.

17. Where allegations of misconduct concern the staff of IAOD, the Director, IAOD will inform the Independent Advisory Oversight Committee (IAOC), who will make the appropriate recommendations. Allegations of misconduct concerning the Director, IAOD shall be reported to the Director General, who will immediately inform the Chairs of the Coordination Committee and IAOC and may refer the matter to an alternative external investigative authority.

#### **4. INITIATING INVESTIGATIONS**

18. Upon receipt of a report of possible misconduct, IAOD will carry out a preliminary evaluation of the information available, the purpose of which is to determine whether:

- (a) the alleged behavior, if established, would constitute misconduct;
- (b) the matter is not appropriate for a full investigation because of a lack of credibility, materiality and/or verifiability; and/or
- (c) a more appropriate or less formal remedy is available, or the matter falls within the purview of another body.<sup>15</sup>

19. IAOD will endeavor to complete the preliminary evaluation within 60 working days. Based on the outcome of the preliminary evaluation, the Director, IAOD may decide to initiate a full investigation or to close the matter. The Director, IAOD shall document the reason(s) for his or her decision whether or not to initiate a full investigation.

#### **5. GOVERNING PRINCIPLES**

20. IAOD investigative activities include all fact-finding inquiries conducted both during the preliminary evaluation and the full investigation. They aim at gathering and reviewing the evidence available, both inculpatory and exculpatory, that is, evidence that either substantiates or disproves an allegation. Investigative findings and conclusions are determined through an impartial, objective, and independent process of information gathering and analysis, which may include reasonable inferences, and are only based on substantiated facts and evidence.

21. The Director, IAOD and the investigators he/she may designate shall have unrestricted, unlimited, direct and prompt access to all WIPO records, property, officials or staff, and to all the premises of WIPO.<sup>16</sup>

22. WIPO staff members have a duty to cooperate unreservedly with investigative activities conducted by IAOD and to respond promptly and fully to IAOD requests for information.<sup>17</sup>

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<sup>14</sup> See Internal Oversight Charter, paragraph 8.

<sup>15</sup> See Uniform Guidelines, paragraphs 29-31.

<sup>16</sup> See Internal Oversight Charter, paragraph 7.

<sup>17</sup> *Ibid.* See also Whistleblower Protection Policy, and Uniform Guidelines for Investigations, paragraph 15.

23. No one shall interfere with an ongoing investigation or otherwise attempt to influence or stop such investigation.
24. The right of WIPO staff members to communicate confidentially with, and provide information to, the Director, IAOD, without fear of reprisal, is guaranteed by the Director General.<sup>18</sup>
25. Notwithstanding the foregoing, making allegations or providing information that are known to be false or misleading or that recklessly disregard the accuracy of the information constitutes serious misconduct<sup>19</sup> and may result in disciplinary or other appropriate administrative action.
26. Investigative activities must preserve confidentiality, respect the individual rights and obligations of WIPO staff members and be conducted with strict regard for fairness, impartiality and the presumption of innocence.
27. Confidentiality must be maintained with respect to all investigative matters by the Director, IAOD, designated investigators, and all others involved.<sup>20</sup> IAOD shall keep confidential the identity of the source of the initial report of possible misconduct and disclose it on a need to know basis only where required by the legitimate needs of the investigation and/or any subsequent proceedings. IAOD will protect from unauthorized disclosure the information gathered in the course of its investigative activities. WIPO staff members shall not release publicly the details or the fact itself of an investigation. Breach of confidentiality in relation to IAOD investigative activities may amount to misconduct.
28. In the performance of their investigative functions, the Director, IAOD and designated investigators will consider the impact on staff members who might be negatively affected by the appearance of being investigated, and take reasonable steps to protect the reputation of such staff members.
29. Once the preliminary evaluation has been completed and if the Director, IAOD determines that a full investigation is warranted, the Director, IAOD shall notify a staff member whose conduct is under examination for possible misconduct (hereinafter the subject) that he/she is under investigation. The notification will take place as soon as this is feasible without jeopardizing the effectiveness or integrity of the investigative process and will provide information on the general nature of the allegations under investigation and on the subject's rights and obligations.
30. The subject of an investigation shall be given a fair and reasonable opportunity to explain or justify the conduct being examined and present evidence on his/her behalf prior to the issuance of an adverse finding against him/her. The subject will normally be provided such an opportunity at two different stages before the completion of the investigation. First, during the interview, the subject will be provided details of the allegations and of the evidence in support thereof and he/she will be afforded the opportunity to respond and to provide countervailing evidence. Subsequently, the subject will normally be given an opportunity to review and comment on relevant excerpts of the draft investigation report.
31. The subject of an investigation 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 an observer shall not relieve the subject of the obligation to respond personally in the matter under investigation.

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<sup>18</sup> See Internal Oversight Charter, paragraph 9; Staff Regulation 1.7; and Whistleblower Protection Policy.

<sup>19</sup> See Staff Regulation 1.7(d).

<sup>20</sup> See Internal Oversight Charter, paragraphs 10, 13(b) and 21.

## 6. REPORTS

32. Investigation reports, including findings, conclusions and recommendations, are fully confidential, unless disclosure is authorized by the Director, IAOD or the Director General.<sup>21</sup>

33. The Director, IAOD shall submit final investigation reports to the Director General.<sup>22</sup> The Director, IAOD will endeavor to submit such reports within four months of the date of initiating the full investigation, unless circumstances warrant a longer period.

34. For final investigation reports involving WIPO staff at the Deputy Director General and Assistant Director General levels, the Director, IAOD may also send a copy to the Chair of the General Assembly, to the Chair of the IAOC and to the External Auditors. Should the investigation concern the Director General, the final report shall be submitted by the Director, IAOD, to the Chair of the General Assembly, for any action deemed appropriate, and copied to the Chairs of the Coordination Committee and the IAOC and to the External Auditors.<sup>23</sup>

35. The foregoing is without prejudice to the specific provisions that may be applicable with respect to final investigation reports issued further to a referral from the Director, HRMD pursuant to Staff Rule 11.4.1.

36. Should the Director, IAOD consider it appropriate, he/she will make recommendations that are derived from investigation findings.

## 7. REVIEW OF THE POLICY

37. The Policy will be reviewed on a regular basis, preferably at least every three years from the date of its issuance.

[Annex I follows]

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<sup>21</sup> See Internal Oversight Charter, paragraphs 19 and 21.

<sup>22</sup> *Ibid.*, paragraph 22.

<sup>23</sup> *Ibid.*, paragraph 22.

## REFERENCE DOCUMENTS

1. WIPO Internal Oversight Charter (Annex I to the Financial Regulations and Rules)
2. Uniform Guidelines for Investigations (2<sup>nd</sup> edition, 2009)
3. IAOD Investigation Procedures Manual (2<sup>nd</sup> edition, 2013)
4. Chapter X, “Disciplinary Measures”, of the Staff Regulations and Rules
5. Chapter XI, “Conflict Resolution”, of the Staff Regulations and Rules
6. Office Instruction on the “Policy to protect against retaliation for cooperating in an oversight activity or reporting misconduct or other wrongdoing (‘Whistleblower Protection Policy’)” (as may be amended from time to time)
7. Office Instruction on “The Office of the Ombudsperson (as may be amended from time to time)

[End of Annex I and of document]