

Internal Audit and Oversight Division

Investigation Procedures Manual

SECOND EDITION

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LIST OF ACRONYMS

HRMD	Human Resources Management Department
IAOC	Independent Advisory Oversight Committee
IAOD	Internal Audit and Oversight Division
ICT	Information and Communication Technology
ICTD	Information and Communication Technology Department
ISS	Information Security Section
WIPO	World Intellectual Property Organization □

1. INTRODUCTION

1. The second edition of the Investigation Procedures Manual has been prepared by the Internal Audit and Oversight Division (IAOD) of the World Intellectual Property Organization (WIPO) pursuant to the WIPO Internal Oversight Charter.¹

2. The Manual is intended as a practical guide for the conduct of investigations by all members of IAOD who are responsible for conducting investigations, including external parties hired by IAOD to assist in its investigations. It is also intended to be a prime source of information for WIPO staff and Member States to understand the oversight function of investigation.

3. The Manual has been prepared in accordance with generally accepted investigation standards, taking account of the Uniform Guidelines for Investigations and good practices of organizations of the United Nations system. It is consistent with WIPO regulations and rules applicable at the time of issuance of the Manual, including the Investigation Policy, Financial Regulations and Rules, Staff Regulations and Rules, and relevant Office Instructions. In case of inconsistency between the Manual and WIPO regulations and rules, the regulations and rules shall prevail.

4. Normally, investigation does not extend to those areas for which separate provision has been made for review, including: workplace-related conflicts and grievances; personnel grievances arising from administrative decisions affecting the terms of appointment of a staff member; performance issues and performance-related disagreements.

5. The first edition of the Investigation Procedures Manual, issued in July 2010, is hereby superseded.

¹ Internal Oversight Charter, paragraph 13(c). The last version of the Internal Oversight Charter was approved by WIPO General Assembly at its Forty-First Session in October 2012 (WO/GA/41/10 Rev. and WO/GA/41/18)

2. DEFINITIONS

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

ALLEGATION OF MISCONDUCT

7. The reasonable belief based on factual information that misconduct has or may have occurred.

COMPLAINANT

8. An individual who makes a good faith communication to IAOD that discloses or demonstrates an intention to disclose information that misconduct may have occurred and who is the victim of the alleged misconduct (see also definition of source).

DISCIPLINARY ACTION OR 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 a fact material to the case (i.e., a fact that can substantiate or disprove an allegation). 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 enquiry to examine allegations of misconduct and other wrongdoing in order to determine whether they have occurred and if so, the person or persons responsible.² The investigative process, in its broad meaning, usually comprises two phases, i.e., a preliminary evaluation followed, where pertinent, by a full investigation (see Section 6, "Investigation Process").

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.

INVESTIGATOR

13. A member of IAOD or a person designated by the Director, IAOD to conduct an investigation into allegations of misconduct and other wrongdoing. An investigator may also be a person designated directly by the Director General to conduct an investigation into allegations of misconduct or other wrongdoing involving the Director, IAOD.

MISCONDUCT

14. The failure by a staff member to observe the rules of conduct or the standards of behavior prescribed by the WIPO Staff Regulations and Rules, Financial Regulations and Rules, Office

² Internal Oversight Charter, paragraph 2(c)

Instructions, Standards of Conduct for the International Civil Service,³ and other relevant administrative issuances, as they may be amended from time to time. Such a failure could be deliberate (intentional, or willful act), or result from an extreme or aggravated failure to exercise the standard of care that a reasonable person would have exercised with respect to a reasonably foreseeable risk (gross negligence) or from a complete disregard of a risk which is likely to cause harm (recklessness).

PRELIMINARY EVALUATION

15. The first phase of the investigative process. It consists of an analysis of the allegation(s) of misconduct, which may include collecting, preserving and securing basic evidence and the evaluation of this evidence, to determine whether a full investigation is warranted (for more details, see Section 6, "Investigation Process").

RETALIATION

16. As defined by WIPO's "Whistleblower Protection Policy".⁴

SOURCE

17. An individual who makes a good faith communication to IAOD that discloses or demonstrates an intention to disclose information that misconduct may have occurred, but is not necessarily the victim of the alleged misconduct (see also definition of complainant).

SUBJECT

18. A staff member who is the focus of an investigation either by virtue of an allegation made, or evidence gathered during the investigative process.

WITNESS

19. One who is aware, sees, knows or vouches for something in conjunction with an alleged misconduct or other wrongdoing.

³ Staff Regulation 1.5(c) provides that the Standards of Conduct of the International Civil Service (2013), promulgated by the International Civil Service Commission (ICSC), shall apply to all staff members."

⁴ 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)

3. INVESTIGATION STANDARDS

STANDARDS FOR INVESTIGATORS

20. The Director, IAOD 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 integrity.⁵

21. In particular, the Director, IAOD 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.⁶

22. The Director, IAOD 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, IAOD 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, IAOD shall take appropriate action to remedy the conflict. Significant and material conflicts of interest are required to be reported to the Independent Advisory Oversight Committee (IAOC) who shall recommend such actions that may be needed to mitigate and reduce the undesirable effects of any conflicts of interest.⁷

23. Investigations must preserve confidentiality, respect the individual rights and obligations of WIPO staff, and be conducted with strict regard for the presumption of innocence.

CONFIDENTIALITY

24. The confidentiality of an internal investigation is established by WIPO's Internal Oversight Charter.⁸

25. There is an obligation of confidentiality relating to information and evidence obtained during the course of an investigation.

26. The confidentiality of an investigation shall be observed by the Director, IAOD, designated investigators and anyone else involved in the investigation, including the complainant or source of the report of possible misconduct, the subject, witnesses, observers, interpreters, and all other individuals required to assist IAOD in its investigative activities.

27. 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 representative, if any. Except where instructed otherwise by IAOD, they may also communicate with the Ombudsman⁹ or the Chief Ethics Officer.¹⁰ A person may inform his/her supervisor that

⁵ Uniform Guidelines for Investigations, paragraph 3

⁶ *Ibid.*

⁷ Internal Oversight Charter, paragraph 5

⁸ *Ibid.*, paragraphs 10, 13(b), and 21

⁹ Office Instruction on "The Office of the Ombudsperson" (as may be amended from time to time)

¹⁰ Office Instruction on "WIPO Ethics Office" (as may be amended from time to time)

s/he will be interviewed by IAOD 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.

28. Investigators will remind all participants in its investigative activities that they are bound by confidentiality.

29. The Director, IAOD and designated investigators will protect the information gathered in the course of an investigation from unauthorized disclosure.¹¹ However, IAOD is entitled to use such information insofar as is required for the legitimate needs of the investigation or the Organization. In particular, IAOD 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, IAOD to a relevant party or Program Manager with a need to know, for example if this is necessary for administrative, disciplinary or judicial proceedings.¹²

30. 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 by subsequent proceedings.¹³

31. In order to protect the reputation of a person against whom allegations of misconduct 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 IAOD 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.

33. Any exceptions to the duty to observe confidentiality must be expressly authorized by the Director, IAOD.

34. This obligation of confidentiality shall not cease upon separation from WIPO.

35. 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

36. The right of WIPO staff to communicate confidentially with, and provide information to, the Director, IAOD, without reprisal, is guaranteed by the Director General under the Internal Oversight Charter approved by Member States,¹⁴ as well as Staff Regulation 1.7 and relevant Office Instructions.¹⁵

37. Retaliation against staff members for reporting alleged misconduct or wrongdoing or cooperating in an investigation constitutes misconduct and may result in disciplinary or other appropriate action against the person responsible.

¹¹ Investigation Policy, paragraph 27

¹² Internal Oversight Charter, paragraphs 10 and 21

¹³ Staff Regulation 1.7(c)

¹⁴ Internal Oversight Charter, paragraph 9

¹⁵ 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)

FALSE OR MALICIOUS CLAIMS

38. The confidentiality provisions and protections against retaliation detailed above only apply to individuals acting in good faith and providing information which they reasonably believe is true.

39. When an individual makes allegations or provides information that are known to be false or with malicious intent, the identity of that person as a source 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 or other appropriate administrative action.¹⁶

¹⁶ Staff Regulation 1.7

4. INVESTIGATIVE MANDATE AND AUTHORITY

NATURE OF INVESTIGATION ACTIVITY

40. IAOD 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. Investigative findings and conclusions are determined through an impartial, objective, and independent process of information gathering and analysis, which may include reasonable inferences,¹⁷ and are only based on substantiated facts and evidence.

41. 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, not on national laws.

42. An investigation is not a punitive undertaking. Disciplinary proceedings are initiated by way of a letter sent by the Director of the Human Resources Management Department (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.

AUTHORITY TO INVESTIGATE

43. Within WIPO, the Director, IAOD has overall authority and responsibility for investigating possible instances of misconduct, wrongdoing or malfeasance falling within his/her mandate.¹⁸

44. The Director, IAOD will independently determine whether any alleged misconduct should be investigated.

45. The Director, IAOD directs investigative activities in keeping with his/her operational independence and 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.¹⁹ He/she is responsible for the management of all investigations and investigators employed by IAOD.

46. The Director, IAOD may investigate allegations against all WIPO staff members.

47. To carry out investigations, the Director, IAOD and designated investigators shall have unrestricted, unlimited, direct and prompt access to all WIPO staff members, records, property and premises.²⁰

48. WIPO staff members have a duty to cooperate unreservedly with any investigation conducted by IAOD and to respond promptly and fully to IAOD requests for information.²¹

¹⁷ Investigation Policy, paragraph 20, and Uniform Guidelines for Investigations, paragraph 8

¹⁸ Internal Oversight Charter, paragraph 14(h)

¹⁹ *Ibid.*, paragraph 4

²⁰ *Ibid.*, paragraph 7

SPECIFIC PROVISIONS FOR INFORMATION SECURITY INCIDENTS

49. The Information Security Section (ISS) 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, IAOD.

50. 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, IAOD.²² If the Director, IAOD determines that an investigation of alleged misconduct is necessary, he/she will inform the Head of ISS and the Director, Information and Communication Technology Department (ICTD) in writing that IAOD is assuming responsibility for the investigation.

AREAS EXCLUDED FROM THE SCOPE OF INVESTIGATIONS

51. Normally, investigation does not extend to those matters for which alternative mechanisms exist, such as:

- (a) Workplace-related conflicts and grievances, which may be addressed informally or through a specifically designed formal procedure;²³
- (b) Personnel grievances arising from administrative decisions affecting a staff member's terms of appointment, which should be addressed by the concerned staff member through the appeal process described under Chapter XI, "Conflict Resolution", of the Staff Regulations and Rules;²⁴ and
- (c) Performance issues and performance-related disagreements.²⁵

[Footnote continued from previous page]

²¹ Investigation Policy, paragraph 22; paragraph 6 of the current Whistleblower Protection Policy; and Uniform Guidelines for Investigations, paragraph 15

²² WIPO Information Security Incident Management Policy V3.0 (2013), section 6

²³ 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"; 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)

²⁴ In particular Staff Regulation 11.4 and Staff Rule 11.4.3, "Administrative resolution of requests for review of other administrative decisions"

²⁵ 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"

5. ALLEGED MISCONDUCT

DUTY TO REPORT

52. WIPO staff members have a duty to report possible misconduct.²⁶

INTERNAL REPORTING MECHANISMS

53. 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.²⁷

54. The Director, IAOD shall also be available to receive directly from anyone, including 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 rules of WIPO in administrative, personnel and other matters or other irregular activities relevant to the mandate of the Director, IAOD.²⁸

55. Reports, complaints or information on possible misconduct may be brought to the attention of the Director, IAOD:

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

RECEIPT OF INFORMATION

56. IAOD will record any complaint or information on alleged misconduct from any source such as:

- (a) victims or witnesses of alleged misconduct, including staff members and external sources;
- (b) anonymous information received by the Director or investigators of IAOD;

²⁶ Investigation Policy, paragraph 12, and Standards of Conduct for the International Civil Service (2013), paragraph 20. See also Whistleblower Protection Policy, paragraph 5, and Uniform Guidelines for Investigations, paragraph 14

²⁷ See also paragraph 13 of the current Whistleblower Protection Policy

²⁸ Internal Oversight Charter, paragraph 8. See also Staff Regulation 1.7

- (c) line managers or program managers;
- (d) referral by the Director, HRMD (discrimination and/or harassment) ²⁹ or the Ethics Office (retaliation);³⁰
- (e) discovery or detection by IAOD during the course of oversight activity.

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

CONFIDENTIALITY OF REPORT AND OF IDENTITY OF SOURCE

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

59. 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.³¹

60. Diligent efforts should be made, by all means available, to reassure an anonymous source of WIPO's commitment to confidentiality and protection from retaliation. The anonymous source 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 a report of possible misconduct at the discretion of the Director, IAOD.

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 staff.

ACKNOWLEDGEMENT RECEIPT

63. Unless the initial information was received anonymously, an acknowledgement of receipt will be sent in writing to the source of a report of possible misconduct.

SPECIFIC PROVISIONS FOR REPORTING ALLEGATIONS OF HARASSMENT, DISCRIMINATION AND RETALIATION

64. Formal complaints of discrimination and/or harassment should be submitted to the Director, HRMD.³²

65. Complaints of retaliation for reporting possible misconduct or cooperating with an oversight activity should be addressed to the Ethics Office.³³

²⁹ Staff Regulation 11.4, "Formal conflict resolution" and Staff Rule 11.4.1, "Administrative resolution of workplace-related conflicts and grievances"

³⁰ Whistleblower Protection Policy

³¹ Staff Regulation 1.7 and Investigation Policy, paragraph 27

³² Staff Regulation 11.4, "Formal conflict resolution" and Staff Rule 11.4.1, "Administrative resolution of workplace-related conflicts and grievances"

REPORTING ALLEGATIONS AGAINST IAOD

66. Where allegations of misconduct concern the staff of IAOD, the Director, IAOD will inform the IAOC, who will make the appropriate recommendations.³⁴

67. Allegations of misconduct concerning the Director of 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.³⁵

[Footnote continued from previous page]

³³ Whistleblower Protection Policy

³⁴ Investigation Policy, paragraph 17

³⁵ *Ibid.*

6. INVESTIGATION PROCESS

68. Once a matter has been received and registered, the investigation process usually comprises two phases: first, IAOD conducts a preliminary evaluation of the information received; second, IAOD may decide, where pertinent, to launch a full investigation.³⁶ All along, proper planning must be ensured.³⁷

69. The Director, IAOD will nominate an investigator to conduct investigative activities in a specific case.

INVESTIGATION PLANNING

70. It is always advisable to develop an investigation plan, which will help establish the relevant facts, gather the necessary evidence, and ensure that the investigation is conducted efficiently and expeditiously.

PRELIMINARY EVALUATION

71. IAOD will always conduct a preliminary evaluation of the information received before launching a full investigation.

72. The purpose of the preliminary evaluation is to determine whether:

- (a) Prima facie, the alleged behavior, if established, would amount to misconduct;
- (b) The matter falls within the purview of IAOD/Investigation or another body, or 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;
- (c) The allegation is material. Factors to consider include the gravity of the alleged misconduct and potential implications for WIPO. Normally, very minor or trivial complaints would not warrant an investigation;
- (d) The allegation is verifiable. Factors to consider are the time elapsed between the alleged events and the report of misconduct, the availability of information, and the specificity, sufficiency and reliability of the report of misconduct;
- (e) There is credible information indicating that the alleged misconduct has occurred.

73. In general, the preliminary evaluation will include the following steps:

- (a) Determination of the legal standards applicable to the allegation(s) and matter being examined;
- (b) Establishment of the basic facts and preservation of evidence, including through interviews where relevant;

³⁶ Investigation Policy, paragraphs 18-19

³⁷ Uniform Guidelines for Investigations, paragraphs 29-32

- (c) Identification of any inconsistencies or outstanding questions;
- (d) Analysis of the evidence to determine whether a full investigation is justified.

74. If the alleged misconduct is the subject of an ongoing investigation by the national authorities, the Director, IAOD will consider the implication for WIPO of parallel inquiries into the same facts.

OUTCOME OF PRELIMINARY EVALUATION

75. Upon completion of the preliminary evaluation, the investigator will normally submit a written, preliminary evaluation report recommending action for the consideration of the Director, IAOD.

76. Based on the outcome of the preliminary evaluation, the Director, IAOD may decide to:

- (a) take no further action;
- (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.

77. The Director, IAOD's decision will always be in writing and recorded in the investigation case file. The Director, IAOD must document the reason(s) for his or her decision whether or not to initiate a full investigation.³⁸

FULL INVESTIGATION

78. The purpose of the full investigation is to determine whether there is evidence to substantiate or refute an allegation of misconduct against a subject.

Notification to Subject

79. If the Director, IAOD decides to launch a full investigation, the subject will be notified in writing of the fact that he/she is under investigation, of the general nature of the allegations under investigation, and of his/her rights and obligations.³⁹

80. This notification will take place as soon as this is feasible without jeopardizing the effectiveness or integrity of the investigative process. It should normally be at least 24 hours before the subject is interviewed, except under exceptional circumstances where there is considered to be a reasonable risk that the investigation could otherwise be jeopardized.

³⁸ Investigation Policy, paragraph 19

³⁹ *Ibid.*, paragraph 29

INTERIM MEASURES

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

82. This may include recommending that the subject of the investigation be suspended from duty in accordance with the Staff Regulations and Rules. The Director, IAOD 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 staff members, 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

83. The Director, IAOD will endeavor to complete all investigative activities in a timely manner. Preliminary evaluations should normally be completed within 60 working days of the date of receipt of the initial report of misconduct and full investigations (including final investigation reports) within four months of the date of initiating the full investigation.⁴⁰

84. Circumstances, such as the complexity of the case, IAOD 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.

⁴⁰ Investigation Policy, paragraphs 19 and 33

7. EVIDENCE

85. Evidence is any type of proof which tends to establish a fact material to the case (i.e., a fact that can substantiate or disprove an allegation). It includes documents and records (documentary evidence, electronic evidence), verbal statements (testimonial evidence), tangible items (physical evidence) or the physical condition of those items (forensic evidence).

86. The minimum standard of proof required to determine whether an allegation of misconduct is substantiated for the purposes of an investigation is the preponderance of evidence as defined in the Uniform Guidelines for Investigations, that is, information that as a whole shows that something is more probable than not.⁴¹

GATHERING EVIDENCE

87. Investigators are authorized to have full, complete and direct access to all WIPO staff members; property, including information and communication technology hardware and software assigned by the Organization to WIPO staff 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 elsewhere.⁴²

88. 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.

89. IAOD 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

90. 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

91. All seized records may become important evidence and exhibits in subsequent disciplinary proceedings, and exceptionally, in national criminal or civil proceedings.

⁴¹ Uniform Guidelines for Investigations, paragraph 12

⁴² Internal Oversight Charter, paragraph 7

Accordingly, accountability in respect of the seizure, handling and storage of this evidence is a crucial element of an investigation.

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

93. 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 the dates and the times when it was obtained. The investigator should record the following information to maintain the proper chain of custody:

- (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).

94. Original documents, records or other items of property which may have to undergo forensic examination should be secured in suitable containers which are normally purpose-made plastic bags sealed with a unique number. The name of the investigator(s) responsible for the seizure and subsequent handling must be recorded.

95. All seized property must be stored securely within IAOD 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.

96. 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

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

98. If a copy is seized the investigator must ensure that it is a perfect 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

99. Electronic evidence comprises information and communication technology (ICT) resources and data, such as e-mail, data on hard drives or other electronic storage devices, cell phones, SIM cards, PDAs, photographs, videos, logs, etc.

100. Policies applicable in the area of ICT systems include, but are not limited to, the WIPO Information Security Policies as amended in 2013 and as may be further amended from time to time.⁴³

101. These policies stipulate 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.

102. Pursuant to the Internal Oversight Charter and in line with the above-mentioned policies, IAOD has the authority to access all ICT resources and data remotely, without first informing the authorized user. However, should the Director, IAOD decide to launch a full investigation, the subject will be informed of such access and of the evidence thus obtained.

103. The gathering of electronic evidence will normally be conducted by IAOD with the assistance of ISS.

104. ISS will provide technical advice and assistance to IAOD, 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.

105. Forensic analysis of hard drives and electronic data will normally be conducted by ISS unless the task is too complex technically. In these exceptional circumstances, with the approval of the Director, IAOD, ISS may use an external specialized company to undertake the task.

106. 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

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

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

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

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

⁴³ Office Instruction on "Information Security Policies". See in particular the WIPO Information Security Policy, the ICTD Acceptable Use Policy, the E-mail Policy, and the Information Security Incident Management Policy

8. INTERVIEWS

111. 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.

112. All staff members are required to cooperate unreservedly with an investigation and to respond completely and truthfully to requests for information. A refusal to cooperate with IAOD 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.

FAIRNESS REQUIREMENTS DURING INTERVIEWS

113. 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 IAOD to conduct investigations and the duty of WIPO staff to cooperate;
- (c) Whether the interview is conducted in the context of a preliminary evaluation or full investigation;
- (d) The requirement of confidentiality of both IAOD 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.

114. 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.

115. 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.⁴⁴ 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 all persons so named and to discover and secure the identified records, if the testimonies and records may be relevant and central to the allegations.

116. 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.

117. While interviewees have no right to review the evidence gathered, the investigator(s) will ensure that relevant documents are available for production at the interview. Any records

⁴⁴ Investigation Policy, paragraph 30

produced by the interviewee will be retained, noted in the interview record, and stored securely with other evidence.

118. There may be circumstances which preclude a personal interview of a witness. In these circumstances an interview can be conducted by telephone or video link and an interview record will be prepared for review and signature as described below.

119. Witnesses will not be paid for information; however, IAOD will consider reimbursement of reasonable travel expenses.⁴⁵

SEQUENCE OF INTERVIEWS

120. Whether the initial information is received from a complainant, a witness, or a third party without direct knowledge of the alleged misconduct, the investigator will conduct an interview with that person at the earliest opportunity to accurately record the relevant facts.

121. 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 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.

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

123. 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.

124. 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

125. Interview participants are: the interviewee (a source, complainant, witness or subject), the interviewer, and where relevant, an observer and/or an interpreter.

Interviewers

126. Interviews of investigation subjects should be conducted by two investigators or one investigator assisted by another IAOD staff member.

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

⁴⁵ Uniform Guidelines for Investigations, paragraph 39

Observer

128. Investigation subjects are allowed to be accompanied to their 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.⁴⁶

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

130. The observer shall agree to respect the confidentiality of the investigation and, except where the observer is a lawyer authorized to practice law in a national jurisdiction, he/she shall sign a confidentiality agreement. If the observer refuses to sign the confidentiality agreement, he/she will not be permitted to observe the interview.

131. IAOD 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.

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

133. 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, IAOD provided the conditions specified above are met.

134. While staff members interviewed by IAOD investigators may obtain the assistance of a legal representative throughout the investigation (see paragraph 27 above), this does not relieve them of the obligation to respond personally in the matter under investigation. Further, investigators are not obliged to interact with the legal representative and to correspond with the staff member through the legal representative.

Interpreters

135. Interviews will normally be conducted in the working languages of WIPO, that is, either English or French, depending on the preference of the interviewee. If the latter requests to speak in an official language in which the investigator is not fluent, an interpreter designated by the investigator will be provided by WIPO.⁴⁷

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

⁴⁶ Investigation Policy, paragraph 31

⁴⁷ Uniform Guidelines for Investigations, paragraph 38

INTERVIEW RECORDS

137. Except where the interview is audio-recorded, the investigator(s) will make contemporaneous notes of the critical elements of the questions and answers sufficient to subsequently prepare an interview record on a standard IAOD template.

138. The interview record will be headed "Confidential" and include details of the interviewee's name, job title, and as relevant a brief summary of their career within WIPO.

139. The interviewee will be invited to review the interview record before signing 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 IAOD and the interviewee offered a personal copy which must be kept confidential and protected from unauthorized disclosure.

140. 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.

141. 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

142. All subject interviews will be audio-recorded. Normally other interviews will not be audio or video-recorded. However, the investigator may exercise his/her discretion to do so.

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

144. 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.

145. 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

146. The outcome of a preliminary evaluation will normally be recorded in a preliminary evaluation report (see Section 6, “Investigation Process”).

147. Preliminary evaluation reports are IAOD internal confidential documents and are not provided to anyone.

148. Notwithstanding the foregoing, the Director, IAOD’s decision not to initiate a full investigation as notified to the complainant or source (see paragraph 164 below) may be made available upon request in related proceedings.

INVESTIGATION REPORT

149. The outcome of a full investigation will be recorded in an investigation report.

Confidentiality

150. Investigation reports are fully confidential, unless disclosure is authorized by the Director, IAOD or the Director General.⁴⁸

Structure of investigation reports

151. 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 allegations of misconduct appear to be substantiated;
- (e) recommendations as appropriate, including for disciplinary action, financial recovery and/or referral to national authorities; and
- (f) annexes, including copies of documentary evidence, interview records, and other relevant information.

⁴⁸ Internal Oversight Charter, paragraph 21

Submission of draft investigation report for comments

152. Before finalizing and issuing an investigation report containing adverse findings against the subject, the Director, IAOD will normally give him/her an opportunity to review and comment on relevant excerpts of the draft investigation report.⁴⁹

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

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

155. 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.

156. The subject (or complainant as the case may be) will be provided ten (10) working days to submit any comments.

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

Final Investigation Report

158. 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.

159. The Director, IAOD submits final investigation reports to the Director General.⁵⁰

160. For final investigation reports involving WIPO staff members 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.⁵¹

161. 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.

MANAGEMENT IMPLICATION REPORT OR MEMORANDUM

162. In some instances, the Director, IAOD may consider that a management implication report or memorandum is warranted.

⁴⁹ Investigation Policy, paragraph 30

⁵⁰ Internal Oversight Charter, paragraph 22

⁵¹ *Ibid.*

163. A management implication report or memorandum is prepared by IAOD to convey to the Director General and/or relevant managers issues identified in the course of an investigation 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).

NOTIFICATION OF CONCLUSION TO INVESTIGATION PARTICIPANTS

164. Should the Director, IAOD decide not to initiate a full investigation based on the outcome of the preliminary evaluation, the complainant or source of the initial report of possible misconduct will be notified in writing and informed in general terms of the reasons for the Director, IAOD's decision.

165. If a full investigation has been launched, the complainant or source of the initial report 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.

166. When a final investigation report is issued, the subject will be notified in writing by the Director, IAOD and informed of the recommendation(s) made.

167. 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.

168. Other investigation participants, including witnesses, have no right to be informed of the outcome of a preliminary evaluation or full investigation. However, if allegations of misconduct are determined to be without merit or unsubstantiated, the Director, IAOD will notify everyone interviewed in the case or otherwise informed of the allegations.

10. NATIONAL AUTHORITIES

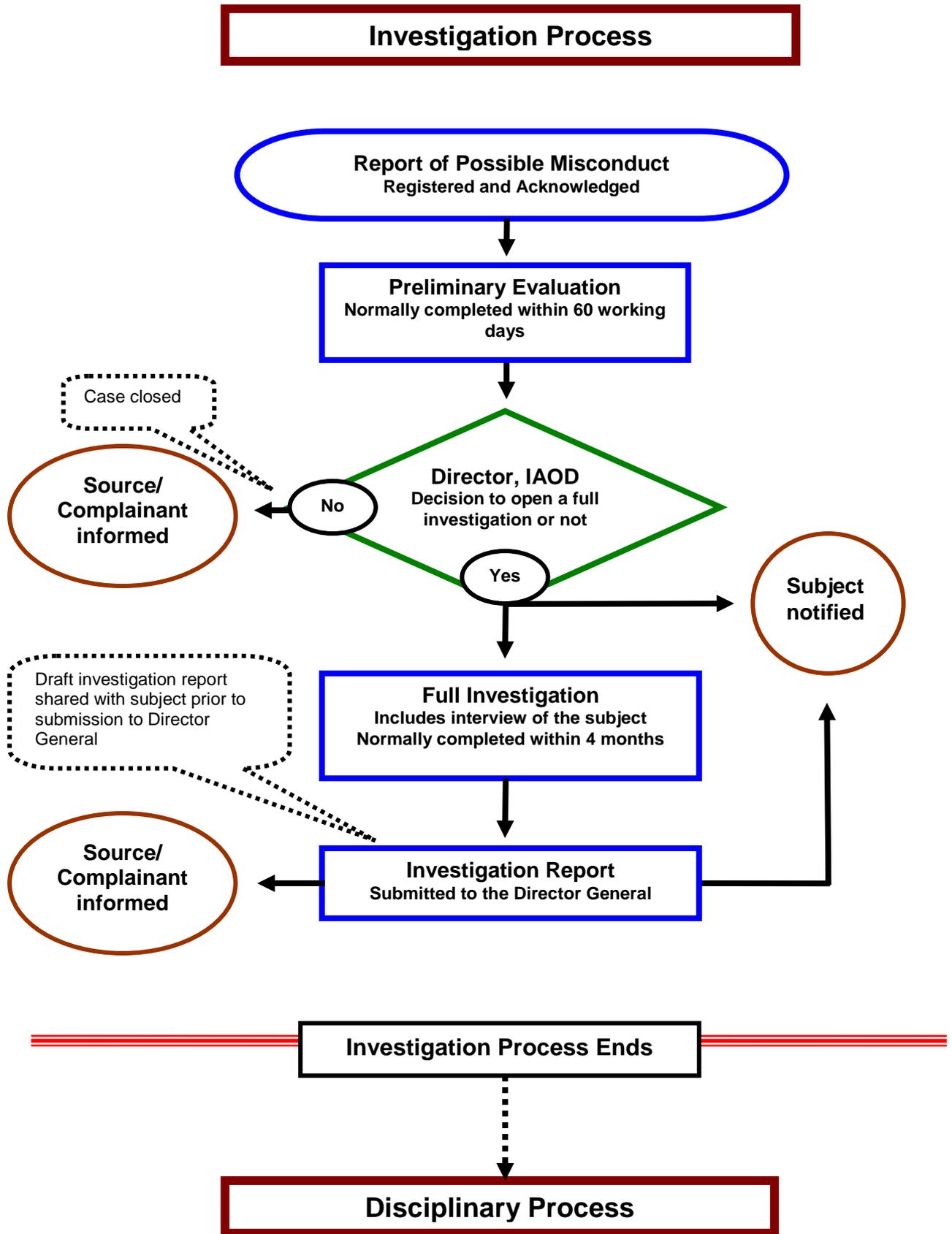
169. Pursuant to the Headquarters Agreement concluded with the Swiss Federal Council on December 9, 1970, WIPO is required to cooperate at all times with the Swiss authorities to facilitate the satisfactory administration of justice, ensure the observance of police regulations and prevent any abuse of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

11. REVISION

170. This manual will be reviewed and revised periodically.

[Annex I follows]

INVESTIGATION PROCESS FLOWCHART



[Annex II follows]

REFERENCE DOCUMENTS

1. Uniform Guidelines for Investigations (2nd edition, 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 on “Personal Accountability and Financial Liability Office”
7. Office Instruction on “WIPO Ethics Office”
8. Office Instruction on the “Policy to protect against retaliation for cooperating in an oversight activity or reporting misconduct or other wrongdoing (‘whistleblower protection policy’)”
9. Office Instruction on “The Office of the Ombudsperson
10. Office Instruction on “WIPO Code of Ethics”
11. Office Instruction No. 2/2013, “Honors and Gifts”
12. Office Instruction No. 13/2013, “Policy on preventing an deterring corruption, fraud, collusion, collusion, money laundering and the financing of terrorism
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. WIPO Information Security Policy (2013)
16. ICTD Acceptable Use Policy (2013)
17. E-mail Policy (2013)
18. Information Security Incident Management Policy (2013)

[End of Annex II and of document]