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## **Internal Oversight Division**

### **Investigation Policy**

2017 EDITION

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## 1. LIST OF ACRONYMS

HRMD	Human Resources Management Department
IAOC	Independent Advisory Oversight Committee
IOD	Internal Oversight Division
MIR	Management Implication Report
PTD	Procurement and Travel Division
WIPO	World Intellectual Property Organization

## **2. INTRODUCTION AND PURPOSE**

1. The WIPO Investigation Policy (hereinafter the Policy) establishes the framework and provides governing principles for the investigation function within the World Intellectual Property Organization (WIPO).
2. As mandated by the Internal Oversight Charter, the Policy is established by the Director, Internal Oversight Division (IOD) in consultation with Member States<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 and good practices of organizations of the United Nations system<sup>2</sup> as reflected in the Uniform Principles and Guidelines for Investigations<sup>3</sup>.
4. The Policy aims to:
  - (a) Protect the rights and reaffirm the duties of WIPO staff members, contractors and other personnel involved in investigative activities, including subjects of investigations, in accordance with relevant WIPO regulations and rules, and the principle of fairness;
  - (b) Enhance the ability of the Director, IOD to carry out effectively and independently the function of investigation entrusted to him/her, 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 IOD investigative activities, and guide WIPO staff members, contractors and other personnel in understanding the investigation function within WIPO, the Director, IOD may establish written procedures and guidelines, including the WIPO Investigation Manual<sup>4</sup>.

## **3. SCOPE AND AUTHORITY**

6. An investigation is 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 WIPO.
7. The Director, IOD has overall authority and responsibility for investigating allegations of or information concerning misconduct and other wrongdoing falling within his/her mandate.
8. This Policy applies to all WIPO staff members, contractors and other personnel.

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<sup>1</sup> Internal Oversight Charter, paragraph 26(b). The last version of the Internal Oversight Charter was approved by the General Assembly at its 48<sup>th</sup> Session in October 11, 2016. The Investigation Policy was submitted to the Member States for consultation from June 30 to August 8, 2016.

<sup>2</sup> Internal Oversight Charter, paragraphs 4, 6, 8 and 12.

<sup>3</sup> As endorsed by the 10<sup>th</sup> Conference of International Investigators, 2009.

<sup>4</sup> Internal Oversight Charter, paragraph 26(c).

9. This Policy normally does not extend to those areas for which separate provisions have been made for review, including:

- (a) Workplace-related conflicts and grievances<sup>5</sup>;
- (b) Personnel grievances arising from administrative decisions affecting a staff member's terms of appointment<sup>6</sup>; and
- (c) Performance issues and performance-related disagreements<sup>7</sup>.

10. Formal complaints of discrimination and/or workplace harassment should normally be submitted to the Director General<sup>8</sup>. Complaints of retaliation for reporting possible misconduct or cooperating with an oversight activity should be addressed to the Ethics Office<sup>9</sup>. 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 Policy.

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. Having considered the investigation results, the Director, Human Resources Management Department (HRMD) may initiate disciplinary proceedings by way of a charge letter pursuant to Rule 10.1.2 of the Staff Regulations and Rules. The segregation of functions between investigation and disciplinary action provides necessary checks and balances for the proper administration of justice.

#### **4. REPORTING MISCONDUCT AND WRONGDOING**

12. WIPO staff members, contractors and other personnel have a duty to report misconduct and other wrongdoing<sup>10</sup>.

13. 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<sup>11</sup>.

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<sup>5</sup> Staff Regulations and Rules, Chapter XI, "Conflict Resolution", in particular 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>6</sup> 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>7</sup> 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>8</sup> Staff Regulation 11.4 and Staff Rule 11.4.1.

<sup>9</sup> 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>10</sup> 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>11</sup> Internal Oversight Charter, paragraph 14.

14. In accordance with Staff Regulation 1.7, staff members may also address allegations of misconduct and other wrongdoing 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, IOD<sup>12</sup>.

15. Allegations of misconduct and other wrongdoing shall be received on a confidential basis and may also be submitted anonymously.

16. The Director, IOD shall acknowledge receipt within five working days in writing of those allegations made by identifiable sources.

17. Where allegations of misconduct concern the staff of IOD, the Director, IOD shall inform the Independent Advisory Oversight Committee (IAOC), and seek their advice on how to proceed<sup>13</sup>.

18. Allegations of misconduct against the Director, IOD shall be reported to the Director General, who shall, at the earliest opportunity, but no later than one month, inform the Chair of the Coordination Committee and seek the advice of the IAOC on how to proceed. The IAOC shall conduct or arrange for a preliminary evaluation. Based on its results, the IAOC shall provide a recommendation to the Director General and the Chair of the Coordination Committee on whether to close the case or refer the matter for investigation to an independent external investigative entity. If the Director General and the Chair of the Coordination Committee decide to refer the case to an independent investigative entity, the IAOC shall provide advice on the Terms of Reference of the investigation and on a suitable investigative entity<sup>14</sup>.

19. Allegations of misconduct against WIPO personnel at the Deputy Director General and Assistant Director General levels shall be reported to the Director, IOD, who shall, at the earliest opportunity, but no later than one month, inform the Director General and the Chair of the Coordination Committee<sup>15</sup>.

20. Allegations of misconduct against the Director General shall be reported to the Director, IOD, who shall immediately inform the Chairs of the General Assembly and of the Coordination Committee and seek the advice of the IAOC on how to proceed. The IAOC shall advise the Director, IOD on whether to conduct a preliminary evaluation or arrange for a preliminary evaluation by an independent external investigative entity. Based on the results of the preliminary evaluation, the IAOC shall provide a recommendation to the Chairs of the General Assembly and of the Coordination Committee on whether to request the Director, IOD to close the case or to refer the matter for investigation to an independent external investigative entity. In the event the Chairs cannot reach an agreement or propose to deviate from the IAOC recommendation, the Vice-Chairs of the General Assembly and of the Coordination Committee shall be involved in the decision. In case of referral, the IAOC shall also provide advice to the Chairs on the Terms of Reference of the investigation and on a suitable investigative entity<sup>16</sup>.

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<sup>12</sup> Whistleblower Protection Policy.

<sup>13</sup> Internal Oversight Charter, paragraph 19.

<sup>14</sup> Internal Oversight Charter, paragraph 20.

<sup>15</sup> Internal Oversight Charter, paragraph 21.

<sup>16</sup> Internal Oversight Charter, paragraph 22.

21. Where the advice of the IAOC is required, such advice shall be provided within one month, unless the complexity of the matter requires more time<sup>17</sup>.

## 5. INITIATING INVESTIGATIONS

22. Upon receipt of allegations of or information concerning misconduct or other wrongdoing, IOD will conduct a preliminary evaluation of the information available, the purpose of which is to determine whether or not:

- (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 a less formal remedy is appropriate and available, or the matter falls within the purview of another body<sup>18</sup>.

23. IOD will endeavor to complete the preliminary evaluation within 30 working days from the receipt of the allegations. Based on the outcome of the preliminary evaluation, the Director, IOD shall decide whether to close the matter or to initiate a full investigation. The preliminary evaluation and reasoned decision of the Director, IOD shall be documented.

## 6. PRINCIPLES GOVERNING THE INVESTIGATIVE PROCESS

24. IOD 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, 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 inferences, and are only based on substantiated facts and evidence.

25. The Director, IOD and the investigators he/she may designate shall have unrestricted, unlimited, direct and prompt access to all WIPO records, property, staff members, contractors and other personnel, and to all the premises of WIPO<sup>19</sup>.

26. WIPO staff members, contractors and other personnel have a duty to cooperate unreservedly with investigative activities conducted by IOD and to respond promptly and fully to IOD requests for information<sup>20</sup>.

27. No one shall interfere with an ongoing investigation or otherwise attempt to influence or stop such investigation.

28. The right of WIPO staff members, contractors and other personnel to communicate confidentially with, and provide information to, the Director, IOD, without fear of reprisal, is guaranteed by the Director General<sup>21</sup>.

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<sup>17</sup> Internal Oversight Charter, paragraph 23.

<sup>18</sup> Uniform Guidelines, paragraphs 29-31.

<sup>19</sup> Internal Oversight Charter, paragraph 13.

<sup>20</sup> Whistleblower Protection Policy, and Uniform Guidelines for Investigations, paragraph 15.

<sup>21</sup> Internal Oversight Charter, paragraph 15; Staff Regulation 1.7; and Whistleblower Protection Policy.

29. Notwithstanding the foregoing, intentionally and knowingly making allegations or providing information that is false or misleading or that recklessly disregard the accuracy of the information constitutes serious misconduct and may result in disciplinary or other appropriate action.

30. 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.

31. Confidentiality shall be maintained with respect to all investigative matters by the Director, IOD, designated investigators, and all others involved<sup>22</sup>. IOD shall keep confidential the identity of the source of the initial allegations of misconduct or other wrongdoing and disclose it on a need to know basis only where required by the legitimate needs of the investigation and/or any subsequent proceedings. Breach of confidentiality in relation to IOD investigative activities may amount to misconduct.

32. In the performance of their investigative functions, the Director, IOD and designated investigators will consider the impact on staff members and others concerned who might be negatively affected by the appearance of being investigated, and take reasonable steps to protect their reputation.

33. 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 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.

34. 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. Specifically:

(a) The subject will normally be given an opportunity to attend an interview with IOD where he/she will be provided details of the allegations and of the evidence in support thereof; he/she will be offered the opportunity to respond and to provide countervailing evidence during the interview and at any time thereafter; and

(b) Subsequently, the subject will normally be given an opportunity to review and comment on relevant excerpts of the draft investigation report.

35. During the investigative process, the subject of an investigation is not entitled to a legal representative. 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 an observer shall not relieve the subject of the obligation to respond personally in the matter under investigation.

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<sup>22</sup> Internal Oversight Charter, paragraphs 16 and 40.



## 7. REPORTS

36. Upon completion of the investigation, the Director, IOD shall issue a final investigation report, concluding whether the investigation found sufficient evidence to substantiate the allegations of misconduct or other wrongdoing or not. The Director, IOD will endeavor to submit such report within six (6) months of the date of initiating the full investigation, unless circumstances warrant a longer period.

37. Unless otherwise stipulated in this Policy, 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 request<sup>23</sup>.

38. 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 (PTD).

39. The Director, IOD shall submit final investigation reports involving WIPO personnel at the Deputy Director General and Assistant Director General levels, to the Director General with copies to the Chairs of the General Assembly and of the Coordination Committee, the IAOC and the External Auditor. The Director General shall, at the earliest opportunity, inform the Chairs of the General Assembly and of the Coordination Committee as well as the IAOC and the External Auditor of the final disposition of the case and the reasons thereof. However, in case of termination of appointment, prior consultation of the Coordination Committee is required. In cases where allegations are substantiated, and upon request, Member States shall be provided confidential access to the reports<sup>24</sup>.

40. Final investigation reports concerning the Director, IOD shall be submitted to the Director General, with copies to the Chairs of the General Assembly and of the Coordination Committee, the IAOC, and the External Auditor. The Director General shall, at the earliest opportunity, inform the Chairs of the General Assembly and of the Coordination Committee as well as the IAOC and the External Auditor, of the final disposition of the case and the reasons thereof<sup>25</sup>.

41. Final investigation reports concerning the Director General shall be submitted to the Chairs of the General Assembly and Coordination Committee, with copies to the IAOC, the External Auditor and the Director, IOD<sup>26</sup>.

42. If the investigation referred to in paragraph 41 does not substantiate the allegations made, the Chairs of the General Assembly and of the Coordination Committee shall, after consultation with the IAOC, request the Director, IOD to close the case. If the Director General so requests, the Chair of the General Assembly shall inform Member States of the disposition of the case<sup>27</sup>.

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<sup>23</sup> Internal Oversight Charter, paragraph 34.

<sup>24</sup> Internal Oversight Charter, paragraph 35.

<sup>25</sup> Internal Oversight Charter, paragraph 36.

<sup>26</sup> Internal Oversight Charter, paragraph 37.

<sup>27</sup> Internal Oversight Charter, paragraph 38.

43. If the investigation referred to in paragraph 41 substantiates some or all of the allegations of misconduct, the IAOC shall, at the earliest opportunity, inform Member States, through the Regional Group Coordinators, that such findings, conclusions and/or recommendations have been made. The Chairs of the General Assembly and of the Coordination Committee shall:

(a) Provide Member States with a redacted summary of the report's findings, conclusions, and recommendations, prepared preferably by the investigative entity;

(b) Upon request by a Member State, provide that Member State with a full version of the final investigation report, redacted, preferably by the investigative entity;

(c) Authorize access for Member States under condition of confidentiality to the unredacted final investigation report and the Terms of Reference;

(d) Submit to the Coordination Committee, taking account of written advice provided by the IAOC, a recommendation with detailed reasoning to close the case or to initiate a disciplinary procedure; and

(e) Convene the Coordination Committee within two (2) months of the recommendation to decide whether to close the case or initiate and conduct a disciplinary procedure<sup>28</sup>.

44. Final investigation reports, drafts, materials, findings, conclusions and recommendations, are fully confidential, unless disclosure is authorized by the Director, IOD or the Director General<sup>29</sup>.

45. The foregoing is without prejudice to the specific provisions applicable to investigation reports concerning allegations of harassment or discrimination referred to IOD pursuant to Staff Rule 11.4.1, and complaints of retaliation referred to IOD by the Ethics Office in line with the latter's mandate.

46. Should the Director, IOD consider it appropriate, he/she will issue a Management Implication Report (MIR) containing systemic recommendations that are derived from the investigation results.

## **8. REVIEW OF THE POLICY**

47. The Policy, which supersedes the Investigation Policy issued on January 22, 2014, incorporates the amendments to the Internal Oversight Charter approved by the General Assembly at its 48<sup>th</sup> session and takes effect on February 28, 2017. It shall be reviewed as needed, preferably at least every three (3) years from the date of its issuance.

[Annex I follows]

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<sup>28</sup> Internal Oversight Charter, paragraph 39.

<sup>29</sup> Internal Oversight Charter, paragraph 40.

## REFERENCE DOCUMENTS

1. WIPO Internal Oversight Charter (Annex I to the Financial Regulations and Rules)
2. Uniform Principles and Guidelines for Investigations (2009)
3. Chapter X, “Disciplinary Measures”, of the Staff Regulations and Rules
4. Chapter XI, “Conflict Resolution”, of the Staff Regulations and Rules
5. Office Instruction No. 50/2016 on the “Procedure governing the application of disciplinary measures”
6. Office Instruction No. 58/2012 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 No. 37/2014 on “The Office of the Ombudsperson (as may be amended from time to time)

[End of Annex I and of document]