

WIPO Coordination Committee

Seventy-Fourth (48th Ordinary) Session Geneva, October 2 to 11, 2017

AMENDMENTS TO STAFF REGULATIONS PROPOSED BY THE INDEPENDENT ADVISORY OVERSIGHT COMMITTEE (IAOC)

prepared by the Independent Advisory Oversight Committee

1. At its 48th session (October 2016) the WIPO General Assembly decided to:

“(j) request the Independent Advisory and Oversight Committee, to prepare, with technical assistance from the Secretariat and after consultation with Member States, for consideration and adoption by the Coordination Committee at its next session, appropriate modalities and procedures (including any necessary proposed amendments to the Staff regulations) pursuant to the revision of the Internal Oversight Charter, including those applicable to processes undertaken by the Coordination Committee.” (A/56/16 paragraph 22(ii))
2. In accordance with the above decision, the present document contains the amendments to the Staff Regulations proposed by the Independent Advisory Oversight Committee (IAOC).
3. At its 44th session in March 2017 and 45th session in July 2017, the IAOC considered the matter in order to identify appropriate or necessary modalities and procedures resulting from the revised Internal Oversight Charter adopted by the WIPO General Assembly.
4. Paragraph 39 of the revised Internal Oversight Charter stipulates, *inter alia*, that in cases of final investigation reports concerning the Director General that substantiate some or all of the allegations of misconduct, the WIPO Coordination Committee shall “*decide whether to close the case or initiate and conduct a disciplinary procedure*”. While disciplinary measures and related procedures are regulated in Staff Regulation 10.1 and Staff Rules 10.1.1 to 10.1.6, these provisions do not cover disciplinary measures and related procedures concerning the Director General. It is therefore necessary to close this gap by clarifying that the WIPO Coordination

Committee is the competent authority to conduct such a procedure, and to recommend a disciplinary measure, if any, to the WIPO General Assembly.

5. Accordingly, the IAOC recommends that a new Staff Regulation be introduced at the end of Chapter X to deal with the specific scenario when allegations of misconduct are made against the Director General. It is proposed that new Staff Regulation 10.2 would read as follows:

Provision	Current Text	Proposed New Text	Purpose/Description of amendment
<p>New Staff Regulation 10.2</p>		<p><u>“Where an investigation substantiates allegations of misconduct against the Director General, the Coordination Committee is the competent authority to institute disciplinary proceedings by issuing a charge letter, to receive the response to the charge letter, and to recommend a disciplinary measure, if any, for application by the General Assembly. The Coordination Committee has the authority to decide on the timeframe for the submission of the response to the charge letter and for the issuance of its recommendation to the General Assembly. The Coordination Committee is also the competent authority to decide on a temporary suspension from duty, if any. In all other respects, the general principles for the disciplinary process in WIPO shall apply, mutatis mutandis, to the Director General, as appropriate.”</u></p>	<p>New Staff Regulation 10.2 is being proposed to deal with the specific scenario when allegations of misconduct against the Director General have been substantiated by an investigation.</p>

6. The termination of appointments is regulated in Staff Regulation 9.2. Paragraph (a) thereof applies to the termination of the appointment of a staff member. Paragraph (d) thereof contains a special provision for terminating the appointment of the Director General:

“On the advice of the Coordination Committee, the General Assembly may terminate the appointment of the Director General if for reasons of health he or she is no longer able to perform his or her duties, if his performance or conduct proves unsatisfactory, or for such other reason as may be specified in his or her letter of appointment.”

7. The current wording of Staff Regulation 9.2(a)(3) and (d) does not explicitly refer to termination for misconduct, but speaks of “unsatisfactory conduct”, a term which is not used in Staff Regulation 10.1 on Disciplinary Measures and is not used in the WIPO Oversight Charter or related documents. The IAOC wishes to point out that the United Nations Staff (UN) Rules and Staff Regulations (ST/SGB/2017/1) make a clear distinction between termination for “unsatisfactory services” and termination for “disciplinary reasons” and believes that a similar clarification in the WIPO Staff Regulations is desirable. The IAOC therefore recommends amending Staff Regulation 9.2(d). A similar clarification is recommended for Staff Regulation 9.2(a)(3).

Provision	Current Text	Proposed New Text	Purpose/Description of amendment
Staff Regulation 9.2(a)(3)	(3) if the staff member's performance or conduct proves unsatisfactory;	(3) if the staff member's performance or conduct proves unsatisfactory <u>or if the staff member has been found to have committed misconduct;</u>	This is intended to make a clear distinction between termination for "unsatisfactory services" and termination for "disciplinary reasons" and to ensure consistent use of terminology.
Staff Regulation 9.2(d)	(d) On the advice of the Coordination Committee, the General Assembly may terminate the appointment of the Director General if for reasons of health he or she is no longer able to perform his or her duties, if his performance or conduct prove unsatisfactory, or for such other reason as may be specified in his or her letter of appointment.	(d) On the advice of the Coordination Committee, the General Assembly may terminate the appointment of the Director General if for reasons of health he or she is no longer able to perform his or her duties, if his <u>or her</u> performance or conduct proves unsatisfactory, <u>if he or she has been found to have committed misconduct,</u> or for such other reason as may be specified in his or her letter of appointment.	

8. The IAOC noted that in a limited number of cases, disciplinary proceedings were instituted, and disciplinary measures were applied, without a preceding investigation.

9. In that regard, Staff Rule 10.1.2(a) stipulates that "...when the Director of HRMD decides to institute disciplinary proceedings, he or she shall send a letter to the staff member concerned (the 'respondent') setting out in detail the alleged misconduct, providing the evidentiary basis for the alleged misconduct, including any investigation report, and inviting him or her to submit a detailed response..."

10. The WIPO Secretariat holds the view that an investigation is not required when the facts are already established and not contested by the staff member, and that due process is ensured by giving the staff member concerned the opportunity to provide a response to the charge letter. The IAOC is convinced that the segregation between the investigative and the disciplinary functions is an important element of due process and wishes to highlight that the objective of an investigation is to establish the facts, by gathering and reviewing the evidence available, both inculpatory and exculpatory evidence.

11. The IAOC wishes to point out that the UN Staff Rules are much clearer in that regard and consider an investigation as a prerequisite for instituting disciplinary proceedings: "The Secretary-General may initiate the disciplinary process where the findings of an investigation indicate that misconduct may have occurred." (UN Staff Rule 10.3).

12. The IAOC therefore believes that it is desirable to clarify this aspect in the WIPO Staff Rules. As according to Staff Regulation 12.2 any amendment to the Staff Rules is the prerogative of the Director General, the IAOC has recommended to the Director General to consider amending Staff Rule 10.1.2(a) as follows:

*"... when the Director of HRMD decides to institute disciplinary proceedings, he or she shall send a letter to the staff member concerned setting out in detail the alleged misconduct, providing the evidentiary basis for the alleged misconduct, **including in particular the investigation report**, and inviting him or her to submit a detailed response within 30 calendar days from the date of receipt of the letter."*

13. In paragraph 16 of its report WO/GA/48/16, the IAOC pointed out that Staff Regulation 1.7(c) lists the Director of the Internal Oversight Division (IOD) only as one of many channels for reporting allegations of wrongdoing (“a hierarchical supervisor, the Office of the Director General, the Director of the Internal Oversight Division or the Chair of the Coordination Committee”). In line with best practices in other international organizations forming part of the UN common system, the IAOC recommended that the Director, IOD should be designated as the primary and preferred channel of reporting alleged wrongdoing. This would ensure the timely receipt of all complaints by him or her, having been entrusted with WIPO’s investigation function and mandated, by the Internal Oversight Charter, to “maintain facilities for the submission of complaints ... concerning alleged misconduct, wrongdoing or irregularities”.

14. The IAOC therefore recommends amending Staff Regulation 1.7(b) and (c) as follows:

Provision	Current Text	Proposed New Text	Purpose/Description of amendment
Staff Regulation 1.7(b)	(b) A staff member who in good faith reports information concerning the possible existence of wrongdoing in the International Bureau regarding administrative, personnel and other similar matters shall be able to do so anonymously. The International Bureau shall enact provisions for protection from retaliatory action such as by way of adverse administrative decision or verbal harassment.	(b) A staff member who in good faith reports information concerning the possible existence of wrongdoing in the International Bureau regarding administrative, personnel and other similar matters shall be able to do so anonymously. Staff members have the duty to report suspected wrongdoing in WIPO and to cooperate with any duly authorized investigation. The International Bureau shall enact provisions for protection from retaliatory action such as by way of adverse administrative decision or verbal harassment retaliation for complying with such duties.	Amendment is proposed to clearly establish duty to report wrongdoing, in line with best practice in the United Nations system.
Staff Regulation 1.7(c)	(c) Such a report shall be made through any of the following established channels: to a hierarchical supervisor, the Office of the Director General, the Director of the Internal Oversight Division or the chair of the Coordination Committee, who shall preserve the anonymity of the reporting staff member. Provisions for the reporting of wrongdoing shall be enacted by the International Bureau.	(c) Such a report shall be made through any of the following established channels: to a hierarchical supervisor, the Office of the Director General, the Director of the Internal Oversight Division or the chair of the Coordination Committee, who shall preserve the anonymity of the reporting staff member. Provisions for the reporting of wrongdoing shall be enacted by the International Bureau. <u>Staff members shall report suspected wrongdoing to the Director of the Internal Oversight Division, or a hierarchical supervisor, who shall immediately inform the Director of the Internal Oversight Division. Reports to the Director of the Internal Oversight Division shall be received on a confidential basis and may also be made anonymously. Allegations of wrongdoing against the Director of the Internal Oversight Division shall be</u>	Amendment is proposed to strengthen reporting of wrongdoing by asserting the role of the Internal Oversight Division as the primary and preferred channel of reporting.

		<p><u>reported to the Director General. In cases where the Director of the Internal Oversight Division has not taken action within six months, staff members may also inform the Director General or the Chair of the Coordination Committee.</u></p>	
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15. The WIPO Secretariat has expressed reservations regarding the proposed new text under Staff Regulation 1.7(c), last sentence, which reads: “In cases where the Director of the Internal Oversight Division has not taken action within six months, staff members may also inform the Director General or the Chair of the Coordination Committee”. The Secretariat expressed the view, as indicated in its comments to the IAOC, that the provision is inconsistent with both the Internal Oversight Charter and the Investigation Policy, in so far as the confidentiality of investigative matters is concerned, as the proposed provision is based on the premise that the staff member has to be informed at some stage of the action taken by IOD on a report of misconduct, whereas for confidentiality reasons, the Director of IOD may not be in a position to provide the staff member with such information. The Secretariat also holds the view that there is some further inconsistency between this provision and the Internal Oversight Charter, to the extent that the Charter never provides for direct access by the staff to the Chair of the Coordination Committee, even where the allegations of misconduct concern the Director of IOD or the Director General.

16. The proposed amendments have been prepared with technical assistance from the WIPO Secretariat. Comments received have been considered and most of the suggestions have been incorporated in this final report. The IAOC wishes to acknowledge the legal advice and assistance received. A draft of this report has been shared with the Regional Group Coordinators for consultation with Member States. Comments have been received from two Member States and have been taken into account in finalizing this report.

17. The proposed amendments are submitted for consideration and adoption by the WIPO Coordination Committee.

18. The WIPO Coordination Committee is invited to consider and adopt the revisions to the Staff Regulations proposed by the IAOC in the present document.

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