

## **Assemblies of the Member States of WIPO**

**Fifty-Fourth Series of Meetings**  
**Geneva, September 22 to 30, 2014**

REPORT BY THE EXTERNAL AUDITOR

*prepared by the Secretariat*

1. The present document contains the Report by the External Auditor (document WO/PBC/22/3), which is being submitted to the WIPO Program and Budget Committee (PBC) at its twenty-second session (September 1 to 5, 2014).
2. Any decisions of the PBC in respect of that document will appear in the List of Decisions Taken by the Program and Budget Committee at its Twenty-Second Session (September 1 to 5, 2014) (document A/54/5).

[Document WO/PBC/22/3 follows]



## Program and Budget Committee

**Twenty-Second Session**  
**Geneva, September 1 to 5, 2014**

### REPORT BY THE EXTERNAL AUDITOR

*prepared by the Secretariat*

1. This document comprises the following items:
  - (i) The Independent Auditor's report which contains the opinion of the External Auditor on the financial statements of the World Intellectual Property Organization (WIPO) for the year ended 31 December 2013;
  - (ii) Report of the External Auditor for the financial year 2013 to the 54<sup>th</sup> Series of Meetings of the Assemblies of the Member States of WIPO (also known as the "long form report"). This report contains the External Auditor's recommendations arising from the three audits undertaken during the year 2013/14;
  - (iii) Responses from the Secretariat of WIPO to the recommendations of the External Auditor;
  - (iv) WIPO's Statement of Internal Control, signed by the Director General.
2. The following decision paragraph is proposed.
  3. *The Program and Budget Committee recommended to the General Assembly and other Assemblies of the Member States of WIPO, to take note of the Report by the External Auditor (document WO/PBC/22/3).*

[Report of the External Auditor and the response of the Secretariat follow]



## **INDEPENDENT AUDITOR'S REPORT**

**To**

**THE GENERAL ASSEMBLY**

**THE WORLD INTELLECTUAL PROPERTY ORGANISATION**

### **Report on the Financial Statements**

We have audited the accompanying financial statements of the World Intellectual Property Organisation (WIPO), which comprise the statement of financial position as at 31<sup>st</sup> December 2013, the statement of financial performance for the year ended 2013, statement of changes in equity, statement of cash flows, statement of comparison of budget and actual amounts, statement of financial performance and budget comparison, notes to the financial statements, for the financial period ended 31<sup>st</sup> December 2013, and other explanatory notes.

### **Management's Responsibility for the Financial Statements**

As stated in the Notes to the Financial Statements, these financial statements and accompanying schedules and notes are prepared on the accrual basis of accounting, in accordance with International Public Sector Accounting Standards (IPSAS). Management is responsible for the preparation and fair presentation of these financial statements. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with the International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, these financial statements present fairly, in all material respects, the financial position of the World Intellectual Property Organisation as at 31<sup>st</sup> December 2013, and its financial performance and of its cash flows for the period 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013.

### **Report on Other Legal and Regulatory Requirements**

Further, in our opinion, the transactions of the World Intellectual Property Organisation that have come to our notice or which we have tested as part of

our audit have, in all significant respects, been in accordance with the WIPO Financial Regulations and Rules.

In accordance with the Regulation 8.10 of the Financial Regulations and Rules, we have also issued a long-form Report on our audit of the World Intellectual Property Organisation.

**Shashi Kant Sharma**  
**Comptroller and Auditor General of India**  
**External Auditor**  
**New Delhi, India**  
**August 2014**





**REPORT OF THE EXTERNAL AUDITOR  
TO THE 54<sup>TH</sup> SERIES OF MEETING OF THE GENERAL ASSEMBLY OF  
WORLD INTELLECTUAL PROPERTY ORGANIZATION  
FOR THE FINANCIAL YEAR 2013**

**Office of the Comptroller and Auditor General of India**

## **EXECUTIVE SUMMARY**

This report presents the significant findings of the Comptroller and Auditor General of India's audit of the World Intellectual Property Organisation (WIPO) for the financial year 2013. The audit included audit of the financial statements of WIPO; audit of the WIPO Program 9 'Africa, Arab, Asia and the Pacific, Latin America and the Caribbean Countries, Least Development Countries'; and audit of the 'Construction of the New Conference Hall Project'.

On the basis of our audit, I am of the opinion that the financial statements for the financial period ended 31 December 2013 present fairly in all material respects the financial position of WIPO as on 31 December 2013 and of its financial performance during the period from 1 January 2013 to 31 December 2013. Accordingly, we have placed an unqualified audit opinion on the WIPO's financial statements for the financial period ended 31 December 2013.

### **Financial Management**

For the preparation of the 2013 financial statements, the accounting policy relating to the recognition of revenue from international patent applications was changed. The effect of this change in accounting policy was recognized retrospectively and financial numbers of 2012 were restated. As a result, the 2012 surplus increased from 15.7 million Swiss francs to 19.5 million Swiss francs. Surplus for the year 2013 was 15.1 million Swiss francs which had decreased by 22.56 *per cent* as compared to surplus of year 2012.

For the year 2013 total revenue of WIPO was 351.6 million Swiss francs, which increased by 3.1 *per cent* compared to the restated 2012 total revenue of 341.0 million Swiss francs. The largest source of revenue during 2013 was PCT system fees, accounting for 73.2 *per cent* of total revenue. Revenue from PCT system fees increased in the year 2013 by 2.2 *per cent* in comparison to year 2012.

In 2013, expenses in WIPO stood at 336.5 million Swiss francs, increased by 4.7 *per cent* compared to 2012 total expenses of 321.5 million Swiss francs. Representing the nature of work performed by the organization, the largest expense for the Organization is personnel expenditure of 214.4 million Swiss francs, having share of 63.7 *per cent* of total expenses.

Personnel expenditure had shown an increase of 0.8 *per cent* compared to 2012. As at 31<sup>st</sup> December 2013, the Organization had net assets of 208.8 million Swiss francs compared to restated balance of 193.7 million Swiss francs at the end of 2012. WIPO prepares biennium budget. The biennium budget of 647.4 million Swiss francs was approved by the Assemblies of the Member States of WIPO on September 29, 2011. In 2012-13, total revenue for the biennium of WIPO was 680.73 million Swiss francs which was 33.3 million Swiss francs more than budgetary estimation. Total expenses for the biennium were 611.81 million Swiss francs which were 36.6 million Swiss francs lesser than the budgetary estimates.

### **Financial Issues**

In our report for the financial year 2012, we had recommended that *WIPO may consider the creation of a separate reserve for the purpose of financing projects*. However, the financial statements of WIPO for the year 2013 did not disclose any separate reserve for the purpose of financing projects.

The amounts lying in Other Liabilities - PCT Current Accounts representing the fees received to be allocated for already filed applications had not been adjusted from PCT Debtors.

The unrealized gains and losses resulting from the translation of PCT Debtors denominated in currencies other than WIPO's functional currency were not being recognized in the statement of financial performance which was not in conformity with the requirements of IPSAS 4 as well as stated accounting policy of the Organization.

The demographic profile of the members is one of the critical factors in the valuation of the post-employment benefits liability of an Organization particularly in case of After Service Health Insurance (ASHI) where the age profile of a retiring member significantly impacts the extent and period of medical insurance premium liability accruing to the Organisation. It was observed that the demographic assumptions relating to the retirements and staff turnover being considered for working out the actuarial valuation of the liabilities and benefits for Repatriation Grants and Travel and ASHI were not based on the current data on demographic trends of retirement/staff turnover.

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**Program 9- Africa, Arab, Asia and the Pacific, Latin America and the Caribbean Countries, Least Development Countries**

As per Program and Budget (P&B) document, the budget provisions for program 09 had a declining trend since 2008. Non Personnel Resource provision decreased by 52.11 per cent in this period, which was the main source of funding implementation of development activities and covered staff missions, third-party travel, conferences, experts' honoraria, publishing and operating expenses.

Development Agenda (DA) Recommendations are broader, dynamic and principal objectives that would remain a guiding principle for implementing technical assistance activities to LDC and developing countries. However, as per proposed P&B document 2014-15, only five DA recommendations were included to guide Program 9 as against inclusion of 22 and 27 DA recommendations in 2010-11 and 2012-13, respectively.

The country plan is a jointly agreed document between the country and WIPO, which provides a tailored and comprehensive framework for planning and delivering WIPO's technical assistance to a country within a biennium. Despite the paramount importance of this document, we found that in only 60 countries, plans were prepared against 138 countries.

Annual Work Plan is planning and implementing tool that indicates the activities that are to be carried out in achieving the expected results mentioned in WIPO Program & Budget Document. We observed that there was no formal mechanism to inform about the approved work plan to member countries and development activities indicated in the annual work plan were not mapped against Program and Budget performance indicators.

No definition of 'development expenditure' was available which could describe its scope and constituents. Most importantly, current definition of development expenditure was silent about the nature of development activities covered and their intended impact on the development of countries through IP tools. While assessing development share under substantive programs, we found that regular expenses like Travelling Allowance and Daily Substance allowance were also shown as development share.

As per Regulation 2.1 of the WIPO Staff Regulations and Rules, each post shall have an accurate and up-to-date job description. However, we found that there were no job descriptions in 25 per cent of approved posts for Program 9.

Risk Management Framework (RMF) is a good initiative by WIPO to enhance the internal control mechanism. But, the risk register of Program 09 was not updated and no risks were identified by LDC Division and Special Projects Division.

WIPO Performance Program Report (PPR) is an important management tool ensuring that lessons from past performance were learned and duly incorporated into the future implementation of WIPO's activities. We noticed that the main component of the P&B document, i.e., targets set for achievement was not being captured in the PPR document. Due to non-availability of this information in PPR, reader/stakeholder could not compare the achievement against target and had to invariably refer to the P&B document each time to ascertain the progress of performance.

We noted that the 'Technical Assistance Database' did not provide any information about IP Domain technical issues which were covered or discussed during the event, content of presentation and various issues raised by participants along with minutes of discussion.

The report submitted by Consultant on event was being submitted to DDG, Development Sector only through RB's Director but it was not being uploaded on IP-TAD, which deprives the member countries of benefit from development activity or events held at other countries.

### **The 'Construction of the New Conference Hall Project (NCHP)'**

Detailed proposal for Phase Two of the NCHP placed for approval indicated that the project proposal did not provide the Member States with essential information to facilitate an informed decision by them.

Despite the fact that the Secretariat was aware of the difficulties being caused by the General Contractor in the New Construction Project (NCP), the contract was awarded to M/s Implenia. Also, the Internal Audit vide its report (IAOD/02/2011 issued in May 2011) recommended that the contract for NCH project should not be signed with

GC (M/s Implenia) before the NCP had been received in good order and the GC settles compensation for late delivery as per contractual terms of the NCP.

We noted that the construction work for the NCHP commenced in August 2011 and was to be completed by April 2013. However, due to delay in work and quality issues the project work was terminated in July 2012 by WIPO through an amicable and jointly agreed separation with the General Contractor. We noted that no specific project milestones were prescribed in the 'fixed price contract' for monthly payments and payments were made without ascertaining the progress of work made by the General Contractor. This led to excess payment of 13.48 million Swiss francs to contractor on the date of termination of contract. Further, no reasons were recorded for not imposing penalty of 1.2 million Swiss francs on the GC. Similarly in New Construction Project also, the penalty for delay in construction was reduced to 2.225 million Swiss francs from applicable penalty of 5.8 million Swiss francs in contravention of contract provisions. The final recoverable amount of 3.32 million Swiss francs calculated by WIPO had not been agreed to by the former GC as there was no jointly signed document from both sides even after 20 months of termination of contract.

On termination of contract with the General Contractor on 23 July 2012, an Addendum 37 to the contract with architect was made in March 2013, enhancing the role of architect as work site manager. We noted that for calculation of additional fee to architect for additional services, the work completed by the former GC was taken as 10.632 million Swiss francs instead of 14.22 million Swiss francs on which WIPO had paid honoraria to the former GC. Further, Addendum 37 did not include a penalty clause in case of delay in execution of work by the architect.

Though the quality specifications were specified in the contract, the Inspection and Test Plan did not form part of the contracts to ensure compliance with contract conditions.

A budget of 4.5 million Swiss francs was transferred from the savings of NCP as approved by the Assembly in their 49th series of meeting held from 26 September to 5 October 2011. As the construction on NCP was then incomplete i.e. the work related to the tunnel between the AB building and the New Building and the vegetation cover on

the roof of the new building was continuing, the saving of 4.5 million Swiss francs was hypothetical.

We noted that the entire project expenditure of 69.12 million Swiss francs (31 December 2013) was met out of the 'reserves of the organization' despite the fact that commitment charges of 0.17 million Swiss francs has been paid on the undrawn amount of loan of 40 million Swiss francs.

We noted that an amount of 69.12 million Swiss francs had been spent as on 31 December 2013 against the approved budget of 68.2 million Swiss francs. This indicated that there was a cost overrun by about 1 million Swiss francs as on 31 December 2013. In addition, costs (0.87 million Swiss francs) which were integral part of the construction for making of the New Conference Hall Project were financed from the regular budget. Considering this, the total cost overrun as on 31 December 2013 was 1.79 million Swiss francs. We also noted that the time overrun was of about 14 months with the revised completion schedule of June 2014.

## **SUMMARY OF RECOMMENDATIONS**

### **Financial Issues**

#### **Recommendation no. 1**

*WIPO may ensure the creation of a separate reserve for the purpose of financing projects and reflect the same separately in the financial statements to provide a better understanding of the transactions related to the utilization of accumulated surplus/reserves.*

#### **Recommendation no. 2**

*We recommend that WIPO may review the status of unpaid applications of the receiving offices and adjust the fees for already filed applications lying in PCT Current Accounts from PCT Debtors to reflect the actual amounts outstanding against PCT applications.*

#### **Recommendation no.3**

*We recommend that WIPO may consider maintenance of the accounting data relating to fee received and receivable in respect of PCT applications in the related currencies for every application / receiving office.*

#### **Recommendation no. 4**

*We recommend that WIPO may consider reviewing and updating the demographic assumptions relating to retirements/staff turnover adopted in the actuarial valuation of post employment benefits.*

### **Program 9- Africa, Arab, Asia and the Pacific, Latin America and the Caribbean Countries, Least Development Countries**

#### **Recommendation no. 5**

*WIPO Secretariat may ensure that all relevant Development Agenda recommendations are considered while formulating the technical assistance activities.*



**Recommendation no. 6**

*WIPO Secretariat may develop a standard operating procedure for formulation of country plans. The formulation of country plan may also be considered as one of the performance indicators for monitoring and performance evaluation of the Regional Bureaus under this program.*

**Recommendation no. 7**

*WIPO may clearly define development expenditure and formulate a method for determining the 'development share' under each program and activity so that effectiveness of the mainstreaming exercise can be assessed objectively.*

**Recommendation no. 8**

*WIPO may continue implementation of a robust tracking system to ensure availability of data on actual development expenditure against the estimates.*

**Recommendation no. 9**

*The job descriptions pertaining to Program 9 may be updated.*

**Recommendation no. 10**

*We recommend that quality of the risk registers may be monitored on regular basis by DDG, Development Sector.*

**Recommendation no. 11**

*WIPO may consider indicating the set targets in Program Performance Report.*

**Recommendation no. 12**

*WIPO may ensure developing a monitoring mechanism at RBs Director level to validate the information about development activities which are being entered in the e-work and IP-TAD database. To ensure data integrity, new validation **checks** may also be introduced in WIPO IP-TAD database.*

**The 'Construction of the New Conference Hall Project (NCHP)'**

**Recommendation no. 13**

*We recommend that all future proposals for construction projects may contain cost benefit analysis of the proposed investment based on the cost of construction and operation & maintenance in present value terms.*

**Recommendation no. 14**

*We recommend that past performance of a contractor, particularly in respect of projects implemented for WIPO, may be accorded due weightage in the criteria for selection.*

**Recommendation no. 15**

*We recommend that payments to the contractors should be linked with construction milestones.*

**Recommendation no. 16**

*We recommend that payments of honoraria to the architect should be based on the value of actual work performed by him.*

**Recommendation no. 17**

*We recommend that remuneration and penalties of the architect should be commensurate with his role and responsibility.*

**Recommendation no. 18**

*We recommend that quality control measures should be explicitly incorporated in the contracts relating to capital projects.*

**Recommendation no. 19**

*We recommend that the WIPO secretariat may obtain a revised budgetary approval from the Member States for NCHP as the cost has exceeded the budget of 68.2 million Swiss francs.*

**Recommendation No. 20**

*The management should continuously monitor time and cost overruns and take appropriate remedial measures, whenever required.*

## **INTRODUCTION**

### **Scope and approach of Audit**

1. The audit of the World Intellectual Property Organization (WIPO) was assigned to the Comptroller and Auditor General of India for the financial years 2012 to 2017 in terms of approval of the WIPO General Assembly Fortieth (20<sup>th</sup> Ordinary) Session, Geneva, held from 26 September to 5 October, 2011. The scope of the audit is in accordance with Regulation 8.10 of the Financial Regulations and the principles set out in the Annex to these regulations.
2. The audit for the financial year 2013 was conducted as per an audit plan drawn up on the basis of risk analysis of WIPO conducted by us in June/July 2012. The audit included audit of the financial statements of WIPO; performance audit of the WIPO program 9 'Africa, Arab, Asia and the Pacific, Latin America and the Caribbean Countries, Least Development Countries'; and compliance audit of 'Construction of the New Conference Hall Project'. Professional reliance was placed, wherever necessary, on the work of the internal audit.
3. Important findings arising from these audits were discussed with the management and were thereafter conveyed to them through Management Letters. The more significant of these findings, appropriately aggregated, are presented in this report.

### **Auditing Standards**

4. The audit was conducted in accordance with the International Standards of Auditing issued by the International Federation of Accountants (IFAC) and adopted by the Panel of External Auditors of the United Nations, its Specialized Agencies and the International Atomic Energy Agency; Auditing Standards of the International Organization of Supreme Audit Institutions (INTOSAI); and Regulation 8.10 of the Financial Regulations of the WIPO and the Additional Terms of Reference governing the audit of WIPO as set out in the Annex to the Financial Regulations.

### **Financial management**

5. Our audit included a review of the financial statements to ensure that there were no material errors and that the requirements of International Public Sector Accounting Standards (IPSAS) had been met. WIPO adopted IPSAS in 2010 and adopted IPSAS 28, 29 and 30 relating to Financial Instruments during the year 2013. The surplus for the year ended 31 December 2013 was 15.1 million Swiss francs.

### **Audit Opinion on the 2013 Financial Statements**

6. According to the terms of reference for the External Auditor, I am required to express an opinion on WIPO's financial statements for the financial period ended 31 December 2013. Audit of the financial statements for the financial period 2013 revealed no weaknesses or errors that I considered material to the accuracy, completeness and validity of the financial statements as a whole. Accordingly, I have placed an unqualified audit opinion on WIPO's Financial Statements for the financial period ended 31 December 2013.

### **Key financial Indicators**

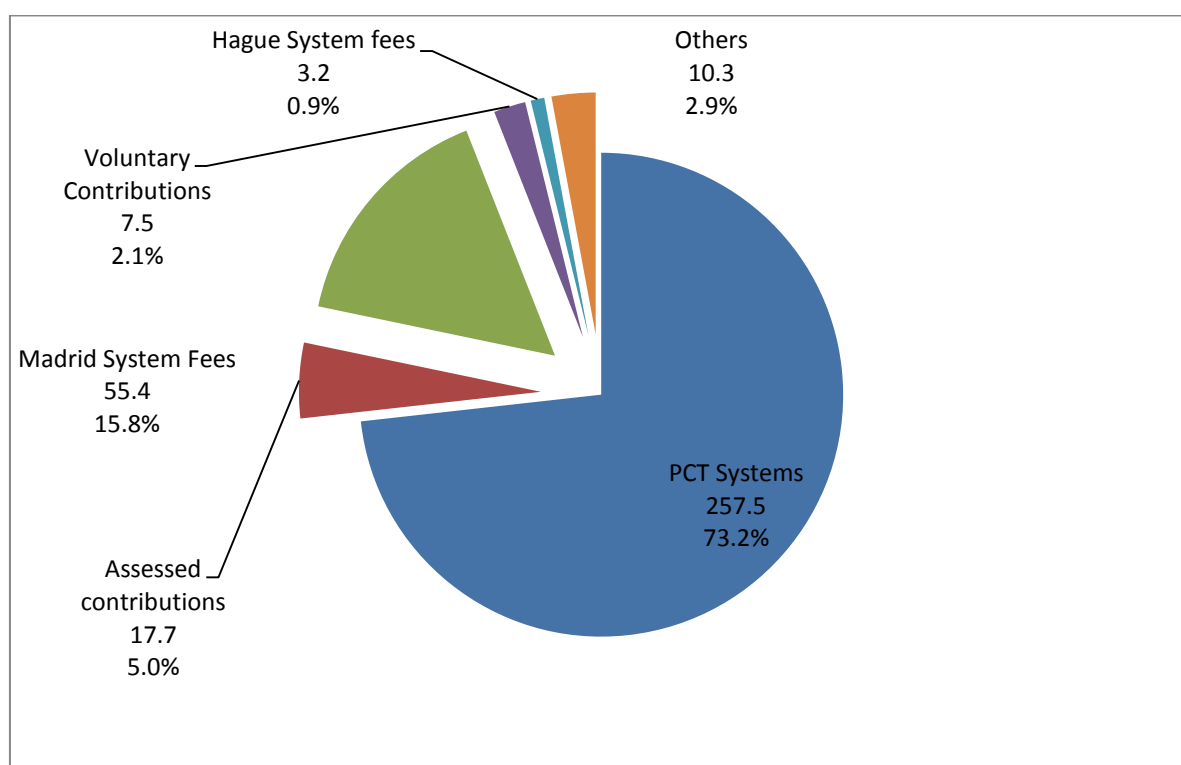
7. The key financial indicators that merit attention of the Member States are as below:

#### **Operating surplus/deficit**

8. The surplus/deficit is the difference between the revenue and expenses of WIPO during the year. For the preparation of the 2013 financial statements, the accounting policy relating to the recognition of revenue from international patent applications was changed. The effect of this change in accounting policy was recognized retrospectively. As a result, the 2012 surplus increased from 15.7 million Swiss francs to 19.5 million Swiss francs. Surplus for the year 2013 was 15.1 million Swiss francs which had decreased by 22.56 per cent as compared to surplus of year 2012.

**Revenue**

9. For the year 2013 total revenue of WIPO was 351.6 million Swiss francs, which increased by 3.1 *per cent* compared to the restated 2012 revenue of 341.0 million Swiss francs. Sources of revenue are given below:



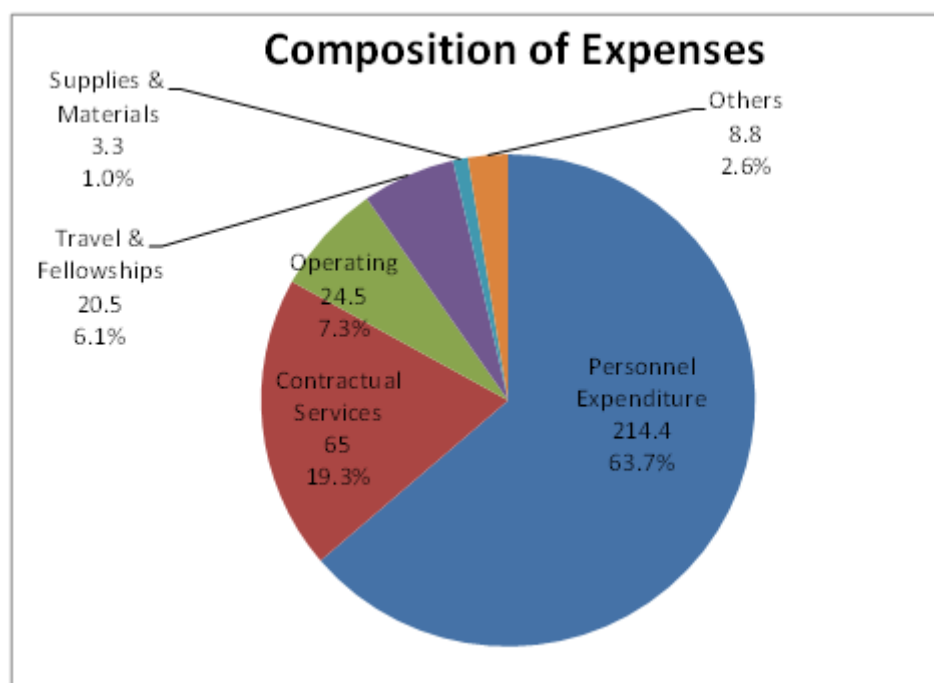
*Amounts in million Swiss francs; Percentage is with respect to total revenue of 351.6 million Swiss francs*

10. As shown above, the largest source of revenue during 2013 was PCT system fees, accounting for 73.2 per cent of total revenue. Revenue from PCT system fees increased in the year 2013 by 2.2 per cent in comparison to year 2012. PCT activity continued to increase, and the number of applications filed in 2013 totalled an estimated 204,700 compared to 194,400 in 2012 and 182,379 in 2011.
11. Madrid system fees represented the second largest source of revenue for the Organization, accounting for 15.8 *per cent* of total revenue. Revenue from Madrid system increased by 8 per cent compared to 2012. The year 2013 saw an increase in the number of registrations and renewals, which totalled 67,428 compared to 63,813 in 2012. Hague system fees remained relatively stable compared to the prior year, increasing by 0.2 million Swiss francs.

12. Revenue from assessed contributions of 17.7 million Swiss francs represented 5.0 per cent of total revenue, while revenue from voluntary contributions of 7.5 million Swiss francs received under Special Accounts was 2.1 per cent of total revenue.

### Expenses

13. In 2013 expenses in WIPO, which stood at 336.5 million Swiss francs, increased by 4.7 per cent compared to 2012 total expenses of 321.5 million Swiss francs.



14. The largest expense for the Organization was personnel expenditure of 214.4 million Swiss francs, which had shown an increase of 0.8 per cent compared to 2012.
15. Contractual services remained as the second largest expense of the WIPO in 2013 at 65.0 million Swiss francs. These have shown an increase of 18.2 per cent compared to 2012, mainly due to increase in expense incurred for commercial translation services and in services provided by the International Computing Centre.
16. Operating expenses in 2013 were 24.5 million Swiss francs, which had fallen slightly by 0.8 per cent compared to 2012.

17. Travel and fellowships expenses were 20.5 million Swiss francs for the year 2013, an increase of 16.5 per cent compared to the year 2012.
18. Expenses for supplies and materials were 3.3 million Swiss francs for the year 2013. It increased by 22.2 per cent compared to year 2012. This increase mainly consisted of supplies purchased for projects financed from reserves.

### Financial Position

19. As at 31st December 2013, the Organization had net assets of 208.8 million Swiss francs, with total assets of 900.5 million Swiss francs and total liabilities of 691.7 million Swiss francs. Net assets increased to 208.8 million Swiss francs at the end of 2013 compared to restated balance of 193.7 million at the end of 2012.



### Budgetary Performance

20. WIPO prepares biennium budget. The biennium budget of 647.4 million Swiss francs was approved by the Assemblies of the Member States of WIPO on September 29, 2011. In 2012-13, total revenue for the biennium of WIPO was 680.73 million Swiss francs which were 33.3 million Swiss francs more than budgetary estimation. Total expenses for the biennium were 611.81 million Swiss francs which were 36.6 million Swiss francs lesser than the budgetary estimates.

## AUDIT FINDINGS

### FINANCIAL ISSUES

#### **Creation of separate reserve to finance projects**

21. A reference is invited to recommendation no.1 of previous year External Audit report in which it was recommended that WIPO may consider creation of a separate reserve for the purpose of financing projects.
22. However, the financial statements of WIPO for the year 2013 did not disclose separate reserve for the purpose of financing projects. Note 21 forming part of the financial statements of WIPO for the year 2013 only disclosed the remaining balance (24.80 million Swiss francs) on projects underway as at 31 December 2013, amount (11.20 million Swiss francs) approved for new projects starting in 2014 and the remaining balance (23.30 million Swiss francs) on building construction projects as at 31 December 2013. However, the Note did not disclose the amount of reserves utilised on construction projects which were being partly/fully financed from reserves on the ground that expenditure incurred thereon did not affect the level of reserves as the same was capitalized.
23. The management stated that they were in the process of addressing the issue of creating a separate reserve for these projects.

#### ***Recommendation no. 1***

***WIPO may ensure the creation of a separate reserve for the purpose of financing projects and reflect the same separately in the financial statements to provide a better understanding of the transactions related to the utilization of accumulated surplus/reserves.***



### **Accounts Receivable**

24. Accounts Receivable included "PCT Debtors" amounting to 62.40 million Swiss francs as on 31 December 2013. They represented the total amount of filing fees not received by International Bureau up to the reporting date in respect of PCT applications received by various receiving offices. The applications remaining unpaid at the reporting date were recognized as PCT Debtors after deducting therefrom the lump sum of the amounts received by WIPO but pending allocation against individual applications by PCT Division owing to complications in the accompanying data received from receiving offices.
25. It was observed that Other Liabilities - PCT Current Accounts included an amount of 6.60 million Swiss francs representing the application fees received from receiving offices of Italy and Japan against the applications filed. This was largely in the nature of unallocated fees lying with WIPO, which was to be deducted from the consolidated figure of PCT Debtors. The non adjustment of the amount lying in PCT Current Accounts resulted in overstatement of Accounts Receivable as well as Other Liabilities by an amount which related to the filing fees of received applications.
26. The management stated that amounts deposited in the PCT Current Accounts for Italy and Japan represented a number of different elements, including fees for applications expected to be filed in the future, fees which may be allocated to applications already filed, handling fees and search fees. It is only on notification from the receiving office that WIPO would be able to identify amounts from the PCT Current Accounts that could be allocated against individual applications already filed.

#### **Recommendation no. 2**

***We recommend that WIPO may review the status of unpaid applications of the receiving offices and adjust the fees for already filed applications lying in PCT Current Accounts from PCT Debtors to reflect the actual amounts outstanding against PCT applications.***

### **Exchange Gain and Loss**

- 27.** As per the significant accounting policy relating to Foreign Currency Transactions – “All transactions occurring in currencies other than Swiss francs are translated into Swiss francs using the UN exchange rates prevailing at the date of the transactions. Both realized and unrealized gains and losses resulting from the settlement of such transactions and from the translation at the reporting date of assets and liabilities denominated in currencies other than WIPO’s functional currency are recognized in the Statement of Financial Performance.”
- 28.** As per Rule 15.2 (d) of the PCT Regulations relating to International Filing Fees – “Where the prescribed currency is a currency other than the Swiss franc and that currency is freely convertible into Swiss francs, the Director General shall establish, for each receiving Office which prescribes such a currency for the payment of the international filing fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the receiving Office to the International Bureau”.
- 29.** It was observed that the accounting data / details of amount receivable from various receiving offices in respect of PCT application filing fees was not maintained in the Finance Division and the consolidated amount for the PCT debtors was worked out at the reporting date based on the data relating to number of applications filed/ received/ paid/ un-paid/ published/ un-published during an year and the total amounts received there-against from the receiving offices during the relevant year.
- 30.** As a result, the translation of amount outstanding as PCT Debtors in to WIPO’s functional currency was not being done owing to which the unrealized gains and losses could not be recognized in the Statement of Financial Performance which was not in conformity with the requirements of IPSAS 4 as well as the stated accounting policy of WIPO.

31. The management stated that as a PCT debtor was not directly recorded in Administrative Integrated Management System at the date of filing, the system did not generate unrealized foreign exchange gains and losses when debtors were revalued at year end. Management would examine how these amounts can be calculated from available PCT data, using details of application filing dates.

***Recommendation no.3***

***We recommend that WIPO may consider maintenance of the accounting data relating to fee received and receivable in respect of PCT applications in the related currencies for every application / receiving office.***

**Employee Benefits**

32. On the basis of an actuarial valuation carried out in December 2013 by an independent office, the liability on account of Repatriation Grants and Travel (RGT) and After Service Health Insurance (ASHI) was valued at 12.2 million Swiss francs and 119.6 million Swiss francs, respectively, as at 31 December 2013.
33. The demographic profile of the members is one of the critical factors in the valuation of the post-employment benefits liability of an Organization particularly in case of ASHI where the age profile of a retiring member significantly impacts the extent and period of medical insurance premium liability accruing to the Organisation. It was, however, observed that the demographic assumptions relating to the retirements and staff turnover being considered for working out the actuarial valuation of the liabilities and benefits for RGT and ASHI were not based on the current data on demographic trends of retirement/ staff turnover, but were based on the data for the period 2002 to 2009.
34. The management stated that complete and up-to-date data concerning retirements and staff turnover was provided to the external actuary for the calculation of the Organization's post-employment benefit liabilities as at December 31, 2013. Based on all the data provided, it was considered appropriate by the actuary to maintain the turnover and retirement rates as applied in the previous year's calculation.

Management accepted that demographic assumptions should be reviewed and updated.

**Recommendation no. 4**

***We recommend that WIPO may consider reviewing and updating the demographic assumptions relating to retirements/staff turnover adopted in the actuarial valuation of post employment benefits.***

**PROGRAM 9- AFRICA, ARAB, ASIA AND THE PACIFIC, LATIN AMERICA AND THE CARIBBEAN COUNTRIES, LEAST DEVELOPMENT COUNTRIES**

**Introduction**

35. Strategic Goal III, Facilitating the Use of IP for Development, drives WIPO's multiple technical assistance and capacity building activities and serves as the high level framework for Program 09. The objective of program 09 is to strengthen sustainable IP capacities, national IP strategies and policies, legislative and regulatory frameworks, institutional and technical infrastructure and human resource capacity building in developing countries and least developed countries (LDCs) enabling effective use of IP for development besides enhancing domestic innovation and creativity in their respective countries. The Program aims to ensure that technical assistance and capacity building provided to developing countries and LDCs is targeted at the specific needs of countries in different regions and different stages of development and is tailored to meet those needs. Implementation of this program takes place through country plans, a blueprint to guide the development of IP over a short- to medium-term period. WIPO desires to achieve this objective through project based approach which is aimed at strengthening the ability to measure the impact of the development related work and to learn lessons from that to improve program implementation.

**Financial management**

36. Our examination of P&B documents for 2010-11, 2012-13 and 2014-15 biennia showed a declining trend for the budget provision for *Program 9*.

*(in thousands of Swiss francs)*

<b>Year</b>	<b>Approved Budget</b>	<b>Budget after transfers</b>
2008-09	48,060	44,493
2010-11	42,178	36,584
2012-13	35,102	33,126
2013-14 (Proposed)	32,325	

37. Further, since 2008, Non Personnel Resource provision was reduced by 52.11 per cent, which was the main component of implementation of development activities and covered staff missions, third-party travel, conferences, experts' honoraria, publishing and operating expenses as can be seen from the following table:

*(in thousands of Swiss francs)*

<b>Year</b>	<b>2008/09 Budget after transfers</b>	<b>2010/11 Budget after transfers</b>	<b>2012/13 Budget after transfers</b>	<b>2014-15 Proposed Budget</b>
Personnel Resources	26,195	21,236	22,263	23,563
Non Personnel Resources	18,298	15,348	10,863	8,762

38. The management in P&B document for biennium 2012-13 stated that the proposed reductions under the non-personnel resources for Program 9 were primarily due to the mainstreaming of activities to other programs.

#### **Development agenda recommendations**

39. The adoption of the Development Agenda (DA) is an important milestone for WIPO. It was formally established by WIPO's member states in 2007, in a decision which included the adoption of 45 Development Agenda Recommendations and the establishment of a Committee on Development and Intellectual Property. We consider that DA recommendations are not static one time specific directions, but

are dynamic, constantly and concurrently relevant to organization's activities and objectives.

40. As per Program & Budget (P&B) document 2010-11 and 2012-13, 22 and 27 DA recommendations were guiding the technical assistance activities of the Program 09, respectively. The inclusion of five additional DA recommendations indicated the increasing reliance of WIPO on program 09 in implementation of DA recommendations. However, as per proposed P&B document 2014-15, we noticed that only five DA recommendations were included to guide Program 09.
41. The management agreed that these DA recommendations could be retained as guiding principles for Program 9, since the recommendations went beyond the creation of a technical assistance database.

**Recommendation no. 5**

***WIPO Secretariat may ensure that all relevant Development Agenda recommendations are considered while formulating the technical assistance activities.***

**Country Plan**

42. The country plan is a jointly agreed document between the country and WIPO, which provides a tailored and comprehensive framework for planning and delivering WIPO's technical assistance to a country within a biennium. It is mainly based on country needs, interests and priority development goals identified through consultations with the beneficiary countries. The preparation and use of country plan in annual working plan is crucial to achieve the WIPO Development goal.
43. Despite the paramount importance of this document, we found that in only 60 countries, plans were prepared against 138 countries [15 country plans against 38 countries in Regional Bureau for Asia and the Pacific, 9 country plans against 45 countries in Regional Bureau for Africa, 19 country plans against 22 countries in Regional Bureau for Arab and 17 country plans against 33 countries in Regional Bureau for Latin America and the Caribbean].

44. Though, there was a specific provision to record in the country plan, the details of consultation process between bureaus and country, consultation in WIPO and finally validation of consultation process by RB and country, we noted **that** in all five country plans (Chile, Costa Rica, Mexico, Paraguay, Uruguay) test checked in audit for the year 2012-13, no information was shown regarding the consultation process.
45. We observed that no internal targets were fixed for RBs and LDC division for preparation of country plans. It was merely based on country specific requests. There was no formal and uniform system in RBs for collecting request from developing and LDC countries. No RB could provide data regarding number of requests received from member countries. Further, preparation of country plan was not considered as a performance indicator for program 9 in P&B document.

#### **Annual Work Plan**

46. Annual Work Plan is a planning and an implementing tool that indicates the activities that are to be carried out in achieving the expected results mentioned in WIPO P&B document. While there was some improvement in preparation of annual working plans in 2012-13, we observed that there was no formal mechanism to inform member countries about the approved annual work plan and RBs followed different methods of informing the focal points of country members.
47. Further, while the development activities indicated in the annual work plan were mapped against the P&B expected results, they were not mapped against the P&B performance indicators against which they were to be measured. In absence of this mapping mechanism, the effectiveness of program delivery in each annual work plan could not be determined.
48. The management stated that the collection of requests was carried out by using various mechanisms, in a dynamic process. In addition, the Regional Bureaus/Division organized regular sub-regional and regional meetings with high level government officials, with the objectives of discussing activities and setting out criteria for the cooperation agenda between WIPO and members states.

The results of these consultations allowed WIPO to prepare work-plans, which were approved by Deputy Director General and Director General.

**Recommendation no. 6**

**WIPO Secretariat may develop a standard operating procedure for formulation of country plans. The formulation of country plan may also be considered as one of the performance indicators for monitoring and performance evaluation of the Regional Bureaus under this program.**

**Mainstreaming of development activity**

49. As brought out in para 37 & 38 above, the management in P&B document for biennium 2012-13 stated that the reductions under the non-personnel resources for Program 9 were primarily due to the mainstreaming of activities to other programs. The concept of mainstreaming was based on the principle that RBs and LDCs divisions would be the 'custodians' of planning and programming at the national level, in close cooperation with all countries concerned and also responsible for the overall coordination of activities at the country level. Under this concept, resources from Program 9 were devoted to other programs through mainstreaming of development activities. We assessed the effectiveness of mainstreaming exercise on financial aspects.
50. The financial aspects of mainstreaming entail methodology adopted for distribution of budget resources between RBs and other substantive programs, capturing of development share expenditure and generating financial reports. In this regard, we noticed that allocation of budget resources between the Regional Bureaus and other substantive program sectors was not very clear and precise. For instance, document provided by WIPO Program Management and Performance Section only indicated the development share in percentage for each development activity and for the program as a whole, but did not provide the methodology used to arrive at the 'Development Percentage Share' for each activity.



51. We noted that no definition of 'development expenditure' was available which could describe its scope and constituents. Most importantly, current definition of development expenditure was silent about the nature of development activities covered and their intended impact on the development of countries through IP tools.
52. While assessing development share under substantive programs, we found that regular expenses like Travelling Allowance and Daily Substance allowance were also shown as development share. We were told that this was not irregular because as per the current definition of development expenditure, these expenses were not made on developed countries and were therefore, booked under development share. We are of the opinion that regular expenses for providing services to LDC and developing countries should be shown separately under development expenditure.
53. The management stated that the estimation of development was based on the definition of development expenditure. As such there was no "calculation formula". They added that all activities of Program 9 were development oriented and therefore the development share by activity, and aggregated at the program level, was 100 per cent.

***Recommendation no. 7***

***WIPO may clearly define development expenditure and formulate a method for determining the 'development share' under each program and activity so that effectiveness of the mainstreaming exercise can be assessed objectively***

**Tracking of development expenditure**

54. Tracking of financial resources and reporting thereon to stakeholders is a basic requirement of prudent and transparent financial management. In this regard, the P&B document 2012-13 mentioned that 'the Organization in 2012/13 would focus on ensuring a more robust tracking of actual development expenditure by

expanding the data dimensions in the financial systems, which would result in an improved ability to report to Member States on the actual expenditure against the estimates for 2012/13. In the long term, with the full implementation of the ERP system, both planning, tracking and reporting on the development dimension of WIPO's activities would become fully integrated into the financial and management systems of the Organization'.

55. We observed that there was no budget code allocated for capturing development expenditure share in substantive programs and in the absence of this link, the actual expenditure on development could not be tracked.
56. The management agreed that in 2012/13, the actuals from the AIMS financial system were available in the planning system on quarterly basis only and the development share could not be pulled from the system on a more frequent basis. This had been addressed in 2014/2015 by aligning program activities in the planning system (EPM) and the financial system (AIMS) and actuals were being provided from AIMS in the planning system on a daily basis.

***Recommendation no. 8***

***WIPO may continue implementation of a robust tracking system to ensure availability of data on actual development expenditure against the estimates.***

**Human resource management**

57. As per Regulation 2.1 of the WIPO Staff Regulations and Rules, each post shall have an accurate and up-to-date job description. However, we found that there were no job descriptions in 25 per cent of approved posts for Program 9. The management took note of the delay in finalizing job descriptions.

***Recommendation no. 9***

***The job descriptions pertaining to Program 9 may be updated.***

### **Adequacy and effectiveness of Internal Control**

58. Risk Management Framework (RMF) is a good initiative by WIPO to enhance the internal control mechanism. We observed that the risk register of Program 09 was not updated and no risks were identified by LDC Division and Special Projects Division. We also analyzed the validation of the risk registers process which was got done from external consultants and found that during validation, the risk register data had been identified to be partial and insufficient besides the need for reviewing most of the risks identified.
59. The management accepted the audit observation.

#### ***Recommendation no. 10***

***We recommend that quality of the risk registers may be monitored on regular basis by DDG, Development Sector.***

### **Performance Reporting**

60. WIPO Program Performance Report (PPR) is an important management tool ensuring that lessons from past performance are learned and duly incorporated into the future implementation of WIPO's activities.
61. We noticed that the main component of the P&B document, i.e., targets set for achievement, was not being captured in the PPR Document. As a result, reader/stakeholders could not compare the achievement against target and had to invariably refer to the P&B Document each time to ascertain the fact that the progress of performance was actually on track or not.

#### ***Recommendation no. 11***

***WIPO may consider indicating the set targets in Program Performance Report.***

### **Intellectual Property Technical Assistance Database (IP-TAD)**

62. To ensure monitoring and evaluation of development activities of development sector at country level, Intellectual Property Technical Assistance Database (IP-TAD) was developed. This database was developed in response to Development Agenda Recommendation No.5<sup>o</sup> within the framework of the Committee on Development and Intellectual Property (CDIP). The WIPO IP-TAD contained information on technical assistance activities undertaken by the Organization where one or more of the beneficiary country was either developing or a least developed country or a country in transition.
63. WIPO also used another database e-work which captured the financial requirement of every event/activity. After approval of any event/activity such as meetings and conferences, the event was created in 'e-Work' and approved by the relevant budget holder(s). The creation of requisitions, purchase orders and expenditure records followed a defined approval path. For example, Staff non-mission travel was requested through e-Work as a travel authorization (eTA) and after the eTA was approved by the Program Manager (budget holder), e-Work passed the information to AIMS (Administrative Integrated Management System) to create a requisition.
64. We noted that the field 'EE\_id' was a link between e-work and AIMS, which captured the actual expenditure for monitoring the approved budget expenditure of various sectors of WIPO. Further, e-works event-id (EE\_id) was also a link between e-work and Technical Assistance Database. Being a relationship link between Technical Assistance Database and e-work this field cannot be left blank. However, during checking of IP-TAD database for last four years through IDEA software, we found that there were good numbers of activities for which there was no EE\_id. The year wise detail of e-works-Event-Id having NULL values is as follows:

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<sup>o</sup> *WIPO shall display general information on all technical assistance activities on its website, and shall provide, on request from Member States, details of specific activities, with the consent of the Member State(s) and other recipients concerned, for which the activity was implemented.*

<b>Year</b>	<b>Total numbers of event</b>	<b>No. of NULL value of e-works_Event_Id</b>	<b>Per cent of Null Value</b>
2010	307	300	97.71
2011	377	62	16.44
2012	413	52	12.59
2013(till September)	215	1	0.46

65. In absence of this information (link between Technical Assistance Database), we could not ascertain the actual expenditure and economy and efficiency of various development activities according to region , country and IP Subject Area.
66. During analysis of the data of IP-TAD, we observed some instances of incorrect data. To cite a few instances, ‘Sub-regional seminar on IP and Sport’ (Activity id 3644) held at Costa Rica during July 2012 and ‘Expert mission on a project for development and implementation of local IP and branding strategy for specific products to Costa Rica’ (activity id 5112) held during May 2013 were shown in IP TAD as activities implemented by Asia and the Pacific (ASPAC) Regional Bureau’ but these two activities were actually implemented by the ‘Latin America and the Caribbean (LAC) Regional Bureau. Similarly, in another instance, ‘participation of Government officials of Uruguay in training course on database’ (activity id 3074) held at Uruguay was shown as the activity of Asia and Pacific Bureau but was actually implemented by the LAC Bureau. Director, ASPAC also confirmed that these activities were not implemented by ASPAC regional bureau.
67. IP-TAD did not provide any information about IP Domain technical issues which were covered or discussed during the event, content of presentation, various issues raised by participants along with minutes of discussion.
68. There was no mechanism of feedback of participants regarding performance evaluation of activity, which might be used by RBs for lesson learnt and most importantly the follow-up activity, if any.

69. Further, the report submitted by Consultant on an event was being submitted to DDG, Development Sector only through RB's Director but it was not being uploaded on IP-TAD, which deprived the member countries of benefit from development activity or an event held at other countries.
70. The management accepted the audit observations as valuable inputs.

**Recommendation no. 12**

*WIPO may ensure developing a monitoring mechanism at RBs Director level to validate the information about development activities which are being entered in the e-work and IP-TAD database. To ensure data integrity, new validation **checks** may also be introduced in WIPO IP-TAD database.*

**THE 'CONSTRUCTION OF THE NEW CONFERENCE HALL PROJECT (NCHP)'**

**Background**

71. Assemblies of Member States of WIPO in its 47<sup>th</sup> series of meeting held from 22 September 2009 to 1 October 2009, approved the construction of the New Conference Hall Project (NCHP) project with the total budget of 68.20 million Swiss francs. Selection Committee, formed for selection of a contractor, called as General Contractor (GC), for the project, selected (February 2011) M/s Implenia as GC through an international tender. Agreement was signed with M/s Implenia in May 2011 as a fixed price contract of 53.24 million Swiss francs including honoraria, fees and risk and rewards but excluding contract for access centre which was separately awarded in March 2012 to the GC for 3.47 million Swiss francs. The work started in August 2011 and was scheduled to be completed by April 2013. However, due to slow progress of work by the GC and dispute on certain executed work, the contract was terminated through 'an amicable and jointly agreed separation' in July 2012. WIPO Secretariat took over the direct responsibility for executing the project by enhancing the role of architect, pilot and specialized engineers. The work was expected to be completed by June 2014.

## **Planning for the New Conference Hall Project**

72. Examination of the detailed proposal document and other related papers/documents indicated that the project proposal did not provide the Member States with essential information about proposed NCHP. Following key factors were not considered in the proposal for the project.

- As a best practice, the 'whole-life value' generated should be presented before the decision makers and not simply the initial capital costs. Overall impact of new construction on service delivery can be gauged only if building's costs are broken down into construction cost and cost of running the facility. In response, WIPO informed that the estimated cost of utilities and building maintenance for the NCHP would be 0.39 million Swiss francs per annum, though it was not included in the proposal document. We are of the opinion that the proposal should have contained cost benefit analysis of the proposed investment in construction of the NCHP based on the cost of construction and operation & maintenance in present value terms.
- The fact that cost of hiring of space for conferences was 0.4 million Swiss francs during the last five years as against the construction cost of 68.20 million Swiss francs and estimated annual maintenance cost of 0.39 million Swiss francs.

73. As per the proposal document, WIPO Secretariat was to explore the possibility of synergies with the United Nations Office at Geneva and the Host country through the Permanent Mission in Switzerland to the United Nations and the Foundation for Buildings for International Organisations which manages the Center International de conference de Geneve, in order to integrate the NCHP and additional meeting rooms in the scope of options available for conference through them. However, we found that no effort had been made to assess the anticipated utilization and revenue generation in eventuality of construction of NCHP by WIPO.

74. The management stated that the principle of a new conference hall had been presented to Member States in 1998 and approved by them in September 2002, as part of the then new construction project. The presentation in 2008 of a new proposal for a new conference hall, taking into account the updated needs of WIPO in terms of conference and meeting facilities, as well as the new requirements such as those on United Nations Headquarters Minimum Operating Security Standards (UN H-MOSS) peripheral security, was made within that historical context.

**Recommendation no. 13**

***We recommend that all future proposals for construction projects may contain cost benefit analysis of the proposed investment based on the cost of construction, operation & maintenance in present value terms.***

75. The organization accepted the audit recommendation for implementation in future construction projects, as well as major projects included in the Capital Master Plan.

**Selection of the General Contractor**

76. We observed that the contract was awarded to M/s Implenia, as GC in May 2011, despite the fact that the WIPO management was aware of the difficulties being caused by the GC in the New Construction Project (NCP), viz., delays in finishing and repair work (mainly facades, atria glass roof tops and parquet floor and, change in key member of the General Contractor management team. The Selection Board had also been briefed by the WIPO Evaluation Team and the pilot on the delays and difficulties as they stood in December 2010 and early February 2011.
77. Further, Internal Audit had recommended (May 2011) that the contract for NCH project should not be signed with M/s Implenia before the New Building had been received in good order and compensation for late delivery was settled as per contractual terms of the NCP. However, WIPO Secretariat decided not to implement the recommendation in the best interest of WIPO and provided its own reasons (to safeguard the project budget, to avoid delays, to preserve the validity of the contracts and not to keep the worksite on hold indefinitely).



Also, the Secretariat did not bring IAOD's recommendation and its response to the notice of the Selection Board.

78. The management stated that while it was known that there were defects in the facades and on the atria glass tops in the late 2010, it was expected, as in any construction project, that these defects would be corrected by the GC in the course of time; nothing indicated that this would in any case not have been undertaken in the winter and spring of 2010 for obvious reasons relating to the weather conditions. The two recommendations of IAOD as mentioned above were indeed attended to by the date on which the NCHP contract was signed.

***Recommendation no. 14***

***We recommend that past performance of a contractor, particularly in respect of projects implemented for WIPO, may be accorded due weightage in the criteria for selection.***

79. The organization accepted the audit recommendation, noting that it was already in the course of being implemented by the WIPO secretariat in relation to contract tendering in general.

**Management of Contract with the General Contractor**

80. The construction work for the NCHP commenced in August 2011 and was to be completed by April 2013. However, due to delay in work and quality issues, the project work was terminated in July 2012 by WIPO through an amicable and jointly agreed separation.
81. At the time of termination (24 July 2012), 24.11 million Swiss francs were paid to M/s Implenia. As per statement provided by M/s Implenia on 3 August 2012, the amount of work done against the contract was 10.63 million Swiss francs. This led to excess payment of 13.48 million Swiss francs on the date of termination of contract. We were informed that WIPO had accepted 14.22 million Swiss francs as the amount of work done.

**82.** Following was observed with regard to management of contract with the GC:

- As per para 6.6 of the payment plan of the original contract with GC, payments under the Plan's payment were to be made within 45 days provided that GC had transmitted its monthly progress report. However, no specific project milestones were prescribed in the 'fixed price contract' for monthly payments.
- Payments were made without ascertaining the progress of work made by the GC.
- The Secretariat sought legal advice from the law firm to better understand the extent of delays on the NCHP (through a study carried out by international construction planning experts). According to the study, as at mid-July 2012, the actual delay was in the order of four months, and not two months as had been announced by the GC in early June 2012. In this regard, reason for not imposing penalty of 1.2 million Swiss francs on the GC was not on record.
- WIPO opted for amicable settlement of contract reportedly based on legal advice. However, there was no written advice available on record from the law firm to amicably settle the contract with GC. Also, reasons for not claiming damages as per arbitral procedure under the Regulations of United Nations Commission on International Trade Law were not available on record.
- The final recoverable amount calculated by WIPO had not been agreed to by former GC as there was no jointly signed document from both sides even after 20 months of termination of contract and the excess amount paid was yet to be fully recovered, consequently resulting into loss of interest on WIPO's funds.
- As the termination agreement was linked with NCP, we noted that in NCP also, the penalty for delay in construction was reduced to 2.225 million Swiss francs from applicable penalty of 5.8 million Swiss francs. Given the penalty

amount of 25,000 Swiss francs per day, the amount of 2.225 million Swiss francs covered delay of only 89 days. Reasons for reporting to the Member States that this amount covered period of delay from October 2010 to May 2011 were not on record. Further, no detailed justification was recorded for reduction of penalty, which was in contravention of contractual provisions.

- 83.** The management stated that the best interests of WIPO were preserved by having secured an amicable and jointly agreed termination agreement and by having prevented a paralysis of the worksite for an indefinite period of time. All payments made by WIPO until March 2012 were made according to the contractual payment plan annexed to the basic contract with the former General Contractor. This payment plan was for a monthly fixed amount that was not linked to specific project milestones. The contractual framework with the monthly fixed price was the option under Swiss Society of Engineers and Architects (SIA) General Contractor model. This model was retained in order to facilitate work progress by the GC and to enable evened-out monthly payments. It was recalled that under Article 7.7 of the basic contract on NCP, the maximum contractual amount that could have been claimed by WIPO was 5.80 million Swiss francs, if the new building had not been delivered at all and not been receipted at all. The Secretariat decided to plan for a series of phased deliveries. As a consequence, the calculation down from the theoretical amount of 5.80 million Swiss francs was made pro-rata on the basis of the actual receipt of areas, handover of such areas, and utilization by WIPO of the various areas and floors.
- 84.** We are of the opinion that payments should be linked to construction milestones. WIPO Financial Regulations and Rules also required that 'no contract or other form of undertaking shall be made on behalf of the organization which requires a payment or payments on account, in advance of the delivery of the performance of services. Whenever an advance payment is agreed to, the reasons therefor shall be recorded.' Further, we were of the view that full penalty of 5.80 million Swiss

francs was recoverable as the complete building was not handed over on the date stipulated in the contract. Similarly, full penalty of 1.2 million Swiss francs was recoverable in case of NCHP instead of 0.30 million Swiss francs, which was obtained by WIPO under the termination agreement as compensation against possible future claims.

***Recommendation no. 15***

***We recommend that payments to the contractors should be linked with construction milestones.***

85. The Organization accepted the audit recommendation subject to the provisions of Swiss regulatory or other legal frameworks, in particular the code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions. These may require the Secretariat putting in place a parallel payment management process to ensure payments are linked with construction milestones.

**Contract with the Architect**

86. WIPO had entrusted M/s Behnisch Architekten, vide addendum no. 26 to the contract no. PCS/2K/BBP-12 of 17 April 2001, the mandate related to the NCHP, the adaptations in the main building, existing AB, the access center and the security perimeter. Addenda up to 36 were issued revising the scope of work and enhancement of fees/honoraria to the architect.

87. On termination of contract with the General Contractor on 23 July 2012, an Addendum 37 to the contract with the architect was made in March 2013, enhancing the role of the architect by including the additional services to be provided in place of former GC for an additional amount of 2.57 million Swiss francs.

88. With regard to the Addendum 37, we observed that for the calculation of additional fee to architect for additional services, the work completed by former GC was taken as 10.632 million Swiss francs as against 14.22 million Swiss francs accepted by WIPO. WIPO had also paid honoraria to the former GC for work of 14.22 million Swiss francs.
89. Further, Addendum 37 did not include the clause of penalty in case of delay in execution of work by the architect with regard to his additional responsibilities. On the other hand, there was a clause of additional fees, if the work extended beyond August 2014 (clause 4b).
90. The management stated that WIPO chose to remain within the original framework since the 2001 initial contract with the architect which included a different type of guarantee for WIPO in the form of a 10 per cent retainer applied to all honoraria invoices from the architect. If WIPO had chosen to change that framework to introduce such penalty clause, WIPO would have had to negotiate with the architect, for that Addendum, a new balance between his honoraria and the calculating mechanism for a penalty for delay, which would have meant a potential risk of higher honoraria throughout the remaining duration of the contract.
91. As the role of architect was enhanced as work-site manager, penalty clause was required to ensure completion of work in time.

***Recommendation no. 16***

***We recommend that payments of honoraria to the architect should be based on the value of actual work performed by him.***

92. The Organization accepted the audit recommendation for formal implementation in respect of future projects, subject to the Swiss regulatory or other legal frameworks, in particular the code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions, as well as the scope and estimated cost of the particular project at hand. The project management have proceeded this way in practice since the beginning of 2014 in withholding invoices from the architect and approving the payment of honoraria to be made at a later date corresponding to the progress of construction work.

**Recommendation no. 17**

***We recommend that remuneration and penalties of the architect should be commensurate with his role and responsibility.***

93. The Organization accepted the audit recommendation for implementation in respect of future major projects, subject to the Swiss regulatory or other legal frameworks, in particular the Code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions.

**Quality control in construction**

94. Our review of contract documents of the selected contracts for the NCHP disclosed that though quality specifications were specified in the contract, the Inspection and Test Plan did not form part of the contracts to ensure compliance with quality requirements. As an illustration; the key features of an Inspection and Test Plan are:

- the item that will be checked/inspected/tested (e.g. concrete strength);
- the document that requires this item to be checked (usually it is the contract or similar document-specification);
- the document that according to, this item will be inspected/tested (usually a standard or a statutory requirement);
- the kind of inspection that needs to be performed (visual inspection, document approval etc);
- the frequency that this inspection needs to be performed;
- the objective criteria/tolerance parameters that will determine if the inspection/test for that item has passed or not;
- the kind of document that will be prepared and saved as a record of pass or failure (usually a signed-off form, a testing machine print-out, a photo etc);
- if this record needs to be a deliverable, meaning that it needs to be kept and handed over to the Client at the end of the Project and ;

- the responsibilities of every entity (Contractor, Quality Control Engineer, Client's Representative etc).
95. The management stated that the verification of works carried out by the construction companies was the responsibility of the architect and/or engineers in conformity with the respective individual contract that each had with the client, and with respect to each technical area of competence, as per the SIA norms. In addition, it was possible for the client to decide to make additional verifications and quality controls.
96. While we acknowledged that the management relied on SIA norms for ensuring quality, we also noted that WIPO had incorporated contractual provisions (retainers on payments, bank guarantee on advance etc.) in addition to SIA norms to protect the interest of the organization.

***Recommendation no. 18***

***We recommend that quality control measures should be explicitly incorporated in the contracts relating to capital projects.***

97. The Organization accepted the audit recommendation subject to the Swiss regulatory or other legal frameworks, in particular the Code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions.

**Time and cost overrun**

98. We noted that an amount of 69.12 million Swiss francs has been spent as on 31 December 2013 against the approved budget of 68.2 million Swiss francs. In addition, 0.87 million Swiss francs (commitment charges on bank loan and salary of project manager), which were integral part of the construction for making of the NCHP, were financed from the regular budgets. Considering this, the total cost overrun as on 31 December 2013 was 1.79 million Swiss francs.
99. The table below indicated a time overrun of about 14 months, if the project was completed by the revised time schedule of June 2014.

Description	Time schedule planned	Revised time schedule
Contract with GC (May 2011)	April 2013	Contract terminated in July 2012
After WIPO had taken over	February 2014	June 2014

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**100.** The management stated that the approved budget provisions for the NCHP included the amount of 4.5 million Swiss francs approved by Member States in 2011 in addition to the 2008 and 2009 approved budget provisions of 68.2 million Swiss francs. The resulting overall budget provisions approved for the NCHP amounted to 72.70 million Swiss francs as at October 2011. The amount of commitment of 69.12 million Swiss francs was comparable to the total amount of the approved budget provisions of 72.70 million Swiss francs, not to 68.20 million Swiss francs. The cost of the in-house project manager, IPMT, had been charged to the regular budget (program 29), as approved by Member States for the NCHP in the context of the biennial programs and budgets.

**101.** With regard to the inclusion of savings of 4.5 million Swiss francs from the cost of NCP, we observed that against the approved budget of 161.74 million Swiss francs for NCP, the project budget utilization as on 30 June 2011 was 159.47 million Swiss francs, indicating a saving of about 2.27 million Swiss francs. As the construction on NCP was then incomplete, the saving of 4.5 million Swiss francs was not real. Accordingly, we have compared the cost overrun to the original approved cost of 68.20 million Swiss francs for the NCHP. Further, the salary of project manager and commitment charges on Bank loan should also be brought under total construction cost of the project.

**Recommendation no. 19**

***We recommend that the WIPO secretariat may obtain a revised budgetary approval from the Member States for NCHP as the cost had exceeded the budget of 68.2 million Swiss francs.***

**102.** The organization accepted the audit recommendation.



**Recommendation No. 20**

***The management should continuously monitor time and cost overruns and take appropriate remedial measures, whenever required.***

**103.** The management stated that all project costs, no matter how initially funded, were included within the project concerned either when initially incurred or through IPSAS adjustment.

**CASES OF FRAUDS, PRESUMPTIVE FRAUDS AND WRITE-OFFS**

**104.** Analysis of the information on fraud/presumptive fraud provided by the office of the Director, Internal Audit and Oversight Division indicated that 19 new cases of fraud/presumptive fraud were registered in 2013 out of which 17 were closed after preliminary investigation for following reasons -

- 11 cases were found unsubstantiated;
- 2 cases were inconclusive due to lack of information;
- 3 cases were found sustainable and concerned department was informed;
- One case was referred to United Nations Office of Internal Oversight Services and it concluded that it did not warrant any further action.

**105.** All the investigations were not related to fraud or presumptive fraud but included cases of misconduct as well.

**REVIEW OF MANAGEMENT ACTION ON PAST RECOMMENDATIONS**

**106.** The status of implementation of the External Audit Recommendations by WIPO is enclosed as an **Annex to this report**.

**DISCLOSURES BY MANAGEMENT- WRITE-OFF OF LOSSES OF CASH,  
RECEIVABLES AND PROPERTY**

**107.** The Management informed that in accordance with Financial Regulation 6.4, Financial Rule 106.8, the following losses have been recorded by the Organization during the year ended 31st December 2013 –

- Accounts receivable totaling 2,441.00 Swiss francs were written off during 2013. This concerned nine unpaid invoices dating from 2012, relating to Trademarks, Industrial Designs and Publications activities;
- Other small losses incurred throughout the year, principally on payments against accounts receivable, totaled 23,569.27 Swiss francs;
- Cash losses totaling 877.26 Brazilian Reals (equivalent to 330.97 Swiss francs at the UN rate valid on January 1, 2014) were recorded during 2013. These losses concern the petty cash balance of the Organization's office in Rio de Janeiro;
- Amounts charged to the Organization concerning the operation of Special Accounts for voluntary contributions totaled 107,812.19 Swiss francs during 2013.

**Shashi Kant Sharma**  
**Comptroller and Auditor General of India**  
**External Auditor**  
**August 2014**

Annexure

Status of implementation of the External Audit  
Recommendations by WIPO

Audit	Recommendation	Management Response	Remarks
<b>Financial Audit</b>	WIPO may consider the creation of a separate reserve for the purpose of financing projects as stated in Note 21 and 24 of the financial statements.	The Management stated that they were in the process of addressing the issue of creating a separate reserve for these projects. This would need to be discussed by Member States, and would therefore be a subject of consultation with the Program and Budget Committee in September 2014.	Updated position has been included in the current year report.
<b>Financial Audit</b>	The Management may consider formulating and implementing an appropriate Treasury and Cash Management policy including borrowings to improve the financial management.	The Management stated that appropriate delegation levels from the Controller would be established for the opening of bank accounts. It further stated that there exists a system of independent reconciliation; and Finance Department would review the process of independent verification. The Management would examine the proposal to adopt a treasury and cash management policy including policy on borrowings, with focus on how this could achieve better control and governance over liquidity management and investment. This would be done as part of the independent treasury study which is envisaged.	It was informed that a treasury policy including a policy on borrowings has now been prepared by an external firm of treasury consultants and a draft of this policy has recently been submitted to WIPO management. Its formulation and implementation will be seen during next year audit. <b>Ongoing.</b>

<b>Financial Audit</b>	WIPO may consider conducting annual stock verification of high value assets.	The Management informed that Internal Physical verification of assets of items of a value greater than 5,000 Swiss francs has been completed and was submitted to Finance Division. Under the new periodic starting in 2014, the physical verification of assets of items of value greater than 1000 CHF, as well as works of art and attractive items regardless of their value will be carried out by an external firm, following a tender process which is being concluded in June 2014. The work is expected to take place in the course of July 2014, with the report expected to take place in the course of August 2014.	<i>In view of action taken, the recommendation is closed.</i>
<b>Financial Audit</b>	WIPO may focus on further strengthening the internal controls to avoid recurrence of such fraud cases.	Management has not informed any progress.	The latest position of fraud / failure of internal control has been updated in the current year Report.

<p><b>Financial Audit</b></p>	<p>To ensure conformity with the declared accounting policy and IPSAS requirements, the Management should identify the sources of the differences in deferral and recognition.</p>	<p>The Management informed that they have performed a detailed review of the data maintained in AIMS and BIBADMIN, including analysis of the reconciliation performed between the two systems. As part of this work, Management have also redesigned the model used to calculate the PCT debtor and deferred revenue balances for the purposes of preparing IPSAS compliant financial statements. All data in the new model was taken directly from extractions from BIBADMIN. The calculations for PCT debtor and deferred revenue balances can therefore be fully reconciled to BIBADMIN. The change in this model represented a change in the treatment and measurement of these balances under the accrual basis of accounting, and would result in reliable and more relevant information in the financial statements. As such the change in the model constituted a change in accounting policy in accordance with IPSAS 3.</p>	<p><b>The recommendation may be considered as 'implemented'.</b></p>
<p><b>Financial Audit</b></p>	<p>WIPO should develop and put in place a materiality framework as per IPSAS 1 to meet the requirement of IPSAS 3.</p>	<p>The Management has developed and put in place a materiality framework as per the recommendation. The application of the framework was limited to the annual financial statements prepared in accordance with IPSAS.</p>	<p>The Management has developed a materiality framework as per the recommendation.</p> <p><b>The recommendation may be considered as 'implemented'.</b></p>

<p><b>Financial Audit</b></p>	<p>The financial services should review and update the existing risk management framework in place to develop suitable risk registers and internal controls in those operational units where they did not exist or existed partially.</p>	<p>The Management stated that Action plan included the following: undertake a periodic review (at least once in six months) to track identified risks, identify new risks, and evaluate risk process effectiveness with a view to determine whether the agreed mitigation measure(s) designed to manage, eliminate, or reduce risk to an acceptable level is/are properly implemented and adequate or it/these need(s) revision/improvement to reduce or eliminate the risk concerned and, in the event of its occurrence, reduce or manage its impact. Risk mitigation handling options include:</p> <ul style="list-style-type: none"> <li>• Assume/Accept: Acknowledge the existence of a particular risk, and make a deliberate decision to accept it without engaging in special efforts to control it. Approval of project or program leaders is required.</li> <li>• Avoid: Adjust program requirements or constraints to eliminate or reduce the risk. This adjustment could be accommodated by a change in funding, schedule, or technical requirements.</li> <li>• Control: Implement actions to minimize the impact or likelihood of the risk.</li> <li>• Transfer: Reassign organizational accountability, responsibility, and authority to another stakeholder willing to accept the risk.</li> <li>• Watch/Monitor: Monitor the environment for changes that affect the nature and/or the impact of the risk.</li> </ul>	<p><b>Further progress will be watched in next audit.</b></p> <p><b>Ongoing.</b></p>
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<p><b>Financial Audit</b></p>	<p>The Management should review the integration of various modules of the AIMS system and carry out necessary reclassification of assets in line with the declared accounting policies.</p>	<p>The Management attributed the discrepancies to various reasons such as additions in 2011 and 2012 non-reversal of the adjustment for the increase in fair value in the GL which was to be added to the asset in the AM module, a series of cost adjustments made and technical problems in AIMS, and maintained that these would not have any impact on the financial statements.</p>	<p><b><i>Ongoing. Progress is to be made in this area.</i></b></p>
<p><b>Financial Audit</b></p>	<p>The Management should improve the internal controls for review of dormant FIT accounts and take appropriate action in time. Further, the internal controls for periodic review of fund accounts for their completeness and correctness should be improved.</p>	<p>The Management stated that Finance has reviewed the procedures which were currently in place with regard to dormant FIT accounts. In the future, where a FIT has been dormant for more than three years (no new contributions received and no activities undertaken), whenever possible and after clearance with the Program Manager, Finance would take the initiative to contact the donor directly, requesting details of the bank account to which WIPO can transfer the balance of the FIT. This communication will indicate that if no answer is forthcoming from the donor within six months, WIPO will issue a bank cheque to the donor and will close the FIT. As much as possible, WIPO requests that FITs be established and operated in Swiss francs only, in order to avoid exchange differences. Finance has examined the current situation of those FITs which are held in currencies other than the Swiss franc in order to determine what</p>	<p>Progress is being made by the WIPO.</p> <p><b>The recommendation may be considered as 'implemented'.</b></p>

		<p>corrective action can be taken. Finance has also contacted sister agencies in the UN system in order to establish how they are handling voluntary contributions received in currencies other than their functional currency. This work has assisted with the review of FITs currently underway (see below).</p> <p>For all the FITs maintained in other currencies which were closed in the past and which showed an exchange difference, the difference has now been written off in 2013. Work is currently being undertaken, as part of a review of the strategy and policies which concern FITs, with regard to the nature of future FITs contracts. The objective is to operate future FITs in Swiss franc only and where this will not be possible, on an exceptional basis, contracts will include a clause to deal with exchange considerations.</p>	
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## MANAGEMENT'S RESPONSES TO THE RECOMMENDATIONS MADE BY THE EXTERNAL AUDITOR

### Recommendation 1

*WIPO may ensure the creation of a separate reserve for the purpose of financing projects and reflect the same separately in the financial statements to provide a better understanding of the transactions related to the utilization of accumulated surplus/reserves.*

#### Response

Management will take into account this recommendation and the Member States guidance in this respect in its review of the policies related to reserves should the Member States so decide. A document has been submitted to the Member States for the 22<sup>nd</sup> Session of the PBC to facilitate their review and discussion on the reserves and related policies (document WO/PBC/22/28).

By way of background, it may be noted that WIPO had a Special Reserve Fund for Additional premises and Computerization which was discontinued by Member States' decision in 2000. This was partly because of the liquidity issues associated with having to first build up the Special Reserve for large long-term projects, before being able to embark upon such projects.

### Recommendation 2

*We recommend that WIPO may review the status of unpaid applications of the receiving offices and adjust the fees for already filed applications lying in PCT Current Accounts from PCT Debtors to reflect the actual amounts outstanding against PCT applications.*

#### Response

Management will review the status of unpaid applications, to determine if a reasonable estimate can be determined to adjust for amounts held in PCT Current accounts. However, direct identification of amounts from the PCT Current Accounts which can be allocated against individual applications is only possible on receipt of notification from the Receiving Office.

### Recommendation 3

*We recommend that WIPO may consider maintenance of the accounting data relating to fee received and receivable in respect of PCT applications in the related currencies for every application / receiving office.*

#### Response

This recommendation is being actively addressed. A project is currently underway in PCT which will provide Finance with payment data. Once the project is operational, Finance will receive PCT fee payment data in detail, including data relating to PCT applications filed/received/paid/unpaid/published/unpublished, etc. The data will be provided in the original currency paid, and the project is aiming for deployment by the end of 2014. Finance will analyze this data for the calculation of unrealized foreign exchange gains and losses when debtors are revalued at year end.

#### **Recommendation 4**

*We recommend that WIPO may consider reviewing and updating the demographic assumptions relating to retirements/staff turnover adopted in the actuarial valuation of post employment benefits.*

#### **Response**

Management notes the recommendation that demographic assumptions should be reviewed and updated. For the 2014 actuarial valuations, as is the case every year, demographic assumptions shall be reviewed and will be updated where appropriate. It may be noted that complete and up-to-date data concerning retirements and staff turnover was provided to the external actuary for his calculation of the Organization's post-employment benefit liabilities as at December 31, 2013. Based on all the data provided, it was considered appropriate by the actuary to maintain the turnover and retirement rates as applied in the previous year's calculation.

#### **Recommendation 5**

*WIPO Secretariat may ensure that all relevant Development Agenda recommendations are considered while formulating the technical assistance activities.*

#### **Response**

Management agrees that all relevant Development Agenda recommendations must be considered in the formulation of technical assistance activities. Program 9 coordinates the delivery of development oriented activities within the Secretariat and is the primary responsible for the development of national IP strategies and capacity building activities to Member States. In this role, the Program is predominantly guided by the DA recommendations under Cluster A.

#### **Recommendation 6**

*WIPO Secretariat may develop a standard operating procedure for formulation of country plans. The formulation of country plan may also be considered as one of the performance indicators for monitoring and performance evaluation of the Regional Bureaus under this program.*

#### **Response**

Management will address this recommendation. Organizational planning at WIPO follows a uniform procedure for both the biennial and annual planning exercises. The formulation of country plans are incorporated into the annual workplanning process for each of the Regional Bureaus. In efforts to strengthen country plans, the Secretariat is developing a country plan framework to provide a more strategic approach within a flexible model in order to address the varying needs of the individual Member States.

### **Recommendation 7**

*WIPO may clearly define development expenditure and formulate a method for determining the 'development share' under each program and activity so that effectiveness of the mainstreaming exercise can be assessed objectively.*

#### **Response**

The definition of development expenditure is an agenda item of the 22<sup>nd</sup> Session of the PBC and will be addressed by the Member States. A method for estimating the development share for each program and activity already exists. It is based on the current definition of development expenditure and allows for an objective assessment of the effectiveness of mainstream development throughout the nine strategic goals.

### **Recommendation 8**

*WIPO may continue implementation of a robust tracking system to ensure availability of data on actual development expenditure against the estimates.*

#### **Response**

This recommendation is being actively addressed. Tools to support WIPO's performance cycle are gradually being introduced and strengthened through the ERP portfolio of projects. In 2012/13, reports comparing budget allocations and actual expenditure from the AIMS financial system were available on a quarterly basis. In 2014/15, integration of the EPM planning and AIMS financial systems has been further enhanced with a full alignment of Program Activities in both systems and budget versus actual expenditure reports, including development share, updated on a daily basis.

### **Recommendation 9**

*The job descriptions pertaining to Program 9 may be updated.*

#### **Response**

This recommendation is being actively addressed. Management agrees that the job descriptions related to Program 9 require updating.

### **Recommendation 10**

*We recommend that quality of the risk registers may be monitored on regular basis by DDG, Development Sector.*

#### **Response**

Management agrees with this recommendation.

### **Recommendation 11**

*WIPO may consider indicating the set targets in Program Performance Report.*

#### **Response**

Management has now implemented this recommendation based on Member States requests during the discussions of the Program Performance Report (PPR) for 2012 (WO/PBC/20/2 Rev.) during the 20th session of the PBC. The performance tables have been enhanced for the PPR 2012/13 (WO/PBC/22/8) to include targets.

### **Recommendation 12**

*WIPO may ensure developing a monitoring mechanism at RBs Director level to validate the information about development activities which are being entered in the e-work and IP-TAD database. To ensure data integrity, new validation checks may also be introduced in WIPO IP-TAD database.*

#### **Response**

The Secretariat welcomes this recommendation. One of the reasons for the lack of data integrity is due to the stand-alone nature of the IP-TAD database, i.e. that it is not integrated with the other administrative and management systems. Such integration is being planned under the ERP portfolio of projects. Until such time, it is the responsibility of the Regional Bureau Directors to validate the integrity of the data being entered.

### **Recommendation 13**

*We recommend that all future proposals for construction projects may contain cost benefit analysis of the proposed investment based on the cost of construction and operation & maintenance in present value terms.*

#### **Response**

The Recommendation is accepted for implementation in respect of future construction projects, as well as major projects included in the Capital Master Plan.

### **Recommendation 14**

*We recommend that past performance of a contractor, particularly in respect of projects implemented for WIPO, may be accorded due weightage in the criteria for selection.*

#### **Response**

The Recommendation is accepted, noting that it is already in the course of being implemented by the WIPO Secretariat in relation to contract tendering in general.

With reference to paragraph 76, the Management draws the attention of the PBC to the following facts. The defects in the parquet floor appeared at the end of June 2011 and two of the three changes in key members of the former general contractor management happened in Summer 2011, that is, after the contract was signed in May 2011.

The reference to spring 2010 in paragraph 78 should read spring 2011.

## **Recommendation 15**

*We recommend that payments to the contractors should be linked with construction milestones.*

## **Response**

All payments to the contractors were made as per the contracts and in line with the SIA Norms and other applicable Geneva Cantonal or municipal provisions. This recommendation in respect of future construction projects will be implemented subject to negotiations with contractors in the context of the provisions of Swiss regulatory or other legal frameworks, in particular the Code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions and to the extent it can be incorporated in the contract with the contractors.

With reference to paragraphs 81 and 82, the Management draws the attention of the PBC to the following facts.

The value of “work done” but not totally paid by the former general contractor to its sub-contractors amounted to about 14 million Swiss francs. As a consequence, the total “excess payment” was in the order of 10 million Swiss francs.

An important decision taken by the Management, to be noted in conjunction with paragraph 82 (second bullet point) of the Auditors’ report, is that as a result of the delays in the progress of the worksite, the Project Management decided to stop the monthly payments to the former general contractor as from the March 2012.

The reference made in paragraph 82 (3<sup>rd</sup> bullet point, last sentence) and in the Executive Summary (page 5, lines 10 and 11) of the External Auditors’ report to the effect that “reason for not imposing penalty of 1.2 million Swiss francs on the general contractor was not on record” does not fully consider the contractual context in which the amicable and jointly agreed termination of contract took place. It is in full compliance with the contract with the former General Contractor that the Management entered into negotiations to resolve the conflict with the former General Contractor. Since the matter was resolved in a satisfactory manner, there was no reason for the Secretariat to put on record explanations about a matter (penalty for delays) that had become moot under the terms of the amicable and jointly agreed termination of the contract.

Reference is made to paragraph 82 (end of 4<sup>th</sup> bullet point) of the External Auditors’ report. The contract between WIPO and the former General Contractor is the basis for addressing substantive and procedural issues and details the mechanisms by which any disputes are resolved. The specific terms of that contract provide that, before any consideration of arbitral procedure under UNCITRAL, “WIPO and the General Contractor will do their utmost to settle amicably any conflict, disagreement or claim arising from the contract, or from any violation of the contract, or its interpretation or termination or nullity” [*translation of the original French text of Article 14.8.1.2 of the contract*]. Therefore, under the provisions of the contract with the former General contractor, UNCITRAL is a dispute resolution mechanism of last resort. The approach followed by WIPO between spring and summer 2012 that concluded in the amicable and jointly agreed termination of the contract was in full compliance with the contract signed by the parties.

Reference is made to paragraph 82 (end of 5<sup>th</sup> bullet point) of the External Auditors' report. As at the time of writing this report, Management can confirm that WIPO and the former General Contractor have agreed the final recoverable amount which has been fully paid to WIPO on August 26, 2014.

In respect of the reference made in paragraph 82 (6<sup>th</sup> bullet point, penultimate sentence) of the External Auditors' report to the effect that "no detailed justification was recorded for reduction of penalty", it is noted that the breakdown, by periods of time and corresponding percentage of the daily amount of penalty applied, are on record, as presented to the Construction Committee in July 2011 and included in the minutes of the session. Those minutes were made available to the External Auditors during the audit period in March and April 2014.

Reference is made to paragraph 82 (6<sup>th</sup> bullet point, end of last sentence) and to the Executive Summary (middle of page 5) of the External Auditors' report to the effect that "reduction of penalty [...] was in contravention of contractual provisions". Article 10.4 of the contract with the former General Contractor includes specific provisions for partial handover ("*réception partielle*") of the New Building. In compliance with the contract with the former General Contractor and in conformity with this provision, the phased reception of areas started towards the end of 2010 and occupation of the New Building from rented premises started as from mid-March 2011. By the time the penalty was being negotiated, the majority of the New Building was received and functional. It is to be noted that any delay in vacating the rented premises would have had a costly, unjustifiable and adverse effect on the regular budget (eight million Swiss francs per year in rental and charges).

#### **Recommendation 16**

*We recommend that payments of honoraria to the architect should be based on the value of actual work performed by him.*

#### **Response**

All payments of honoraria to the architect were made as per the contract with the architect. In addition, since the beginning of 2014, the Management has in practice been basing payments of honoraria to the architect on the value of actual work performed.

This Recommendation is accepted and will be implemented in respect of future construction projects, with due regard to the context of the provisions of Swiss regulatory or other applicable legal frameworks, in particular the Code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions and to the extent it can be incorporated in the contract with the architect.

#### **Recommendation 17**

*We recommend that remuneration and penalties of the architect should be commensurate with his role and responsibility.*

#### **Response**

Remuneration and other conditions (such as a retainer on invoices) for the architect were calculated as per the provisions of the contract with the architect that stipulates their roles and responsibilities.

This Recommendation is accepted and will be implemented in respect of future construction projects, with due regard to the context of the provisions of Swiss regulatory or other applicable legal frameworks, in particular the Code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions and to the extent it can be incorporated in the contract with the architect.

### **Recommendation 18**

*We recommend that quality control measures should be explicitly incorporated in the contracts relating to capital projects.*

### **Response**

Quality control measures are explicitly incorporated in the SIA Norms that govern the contracts with the contractors, architects and engineers, each as far as they are concerned. This Recommendation is accepted and will be implemented in respect of future construction projects, with due regard to the context of the provisions of Swiss regulatory or other applicable legal frameworks, in particular the Code of obligations, the SIA Norms, and any other applicable Geneva Cantonal or Municipal provisions and to the extent it can be incorporated in the contract with the architect.

### **Recommendation 19**

*We recommend that the WIPO secretariat may obtain a revised budgetary approval from the Member States for NCHP as the cost has exceeded the budget of 68.2 million Swiss francs.*

### **Response**

With reference to paragraph 98 of the External Auditors Report, the Management draws the attention of the PBC to the following facts. The Secretariat highlights that the budget for the New Conference Hall Project (NCHP) as approved by Member States in 2011 amounts to 72,700,000 Swiss francs, and that, as at December 31, 2013, the amount of commitment of 69.12 million Swiss francs did not exceed the approved budget.

In respect of paragraph 100 of the External Auditors Report, the transfer of an amount of 4.5 million Swiss francs from the New Construction budget to the New Conference Hall budget was duly approved by Member States in 2011, with the consequence that the amount of 4.5 million Swiss francs is fully available for the New Conference Hall Project. The resulting budget envelope approved by Member States for the NCHP has therefore been, as from October 2011, in the amount of 72,700,000 Swiss francs.

In respect of paragraph 101 of the External Auditors Report, it is further noted that, in 2011, the amount of 4.5 million Swiss francs was comprised of an amount of 2,225,000 Swiss francs constituting the penalty to be paid by the former General Contractor to WIPO for the delay and an amount of 2,275,000 Swiss francs constituting uncommitted and unspent balance of the New Construction Project (savings). It was assumed that the amount of the penalty received by WIPO could be used towards offsetting the construction expenditure. However, in accordance with IPSAS and because the building had already been completed at the time of reaching the agreement on the penalty, the amount of the penalty (2,225,000 Swiss francs) for delay received from the former General Contractor was recognized in the accounting books as WIPO's revenue ("Miscellaneous Income").

**Recommendation 20**

*The management should continuously monitor time and cost overruns and take appropriate remedial measures, whenever required.*

**Response**

It has been continuous practice of the Management since 2006 to monitor time and expenditure level against approved budget, and to report on such, via progress reports and other documents presented to the PBC (yearly reporting), the Assemblies (yearly reporting), the Audit Committee and then the IAOC (quarterly reporting), on the occasion of each session of these bodies since 2006. In addition, since October 2012, monthly briefings have been presented to the Member States. As a consequence, the Recommendation should be closed.



## **STATEMENT ON INTERNAL CONTROL FOR 2013**

### **Scope of Responsibility**

As Director General of the World Intellectual Property Organization (WIPO), I am accountable, in accordance with the responsibility assigned to me, in particular, Regulation 5.8 (d) of the Financial Regulations and Rules, for maintaining a system of internal financial control which ensures:

- (i) the regularity of the receipt, custody and disposal of all funds and other financial resources of the Organization;
- (ii) the conformity of obligations and expenditures with appropriations or other financial provisions approved by the General Assembly or with the purposes and rules relating to specific trust funds;
- (iii) the effective, efficient and economic use of the resources of the Organization.

### **Purpose of the system of internal control**

The system of internal control is designed to reduce and manage rather than eliminate the risk of failure to achieve the Organization's aims and objectives and related policies. Therefore, it can only provide reasonable and not absolute assurance of effectiveness. It is based on an ongoing process designed to identify the principal risks, to evaluate the nature and extent of those risks and to manage them efficiently, effectively and economically.

Internal control is a process, effected by the Governing Bodies, the Director General, senior management and other personnel, and designed to provide reasonable assurance on the achievement of the following internal control objectives:

- Effectiveness and efficiency of operations and safeguarding of assets,
- Reliability of financial reporting and
- Compliance with applicable rules and regulations.

Thus, on an operational level, WIPO's internal control system is not solely a policy or procedure that is performed at certain points in time, but rather continually operated at all levels within the Organization through internal controls processes to ensure the above objectives.

My current statement on WIPO's internal control processes, as described above, applies for the year ended December 31, 2013, and up to the date of the approval of the Organization's 2013 financial statements.

### **Risk Management and control framework**

The SRP initiative to "Strengthen Risk Management and Internal Controls" was mainstreamed during 2013 and was formally closed out in December 2013, after having fully achieved its objectives. Specifically, the risk management process for each Program has been integrated into biennial planning, risk and internal controls policies and manuals have been drafted and have undergone a pilot period with staff, and risk coordinators have been identified. In addition, Organizational risks are now clearly identified and articulated in the Program and Budget for every Program.

Within the Office of the Controller, the Central Risk Coordinator has been identified and has been assigned responsibility for strengthening risk management and internal controls, coordinating the risk management process and the ongoing improvement and enhancement of risk management in the Organization. As part of the mainstreaming of risk management, oversight in this area will be provided as part of the wider mandate of a Risk Management Group (RMG), to be announced shortly. The RMG will carry the responsibility to ensure the continued implementation of risk management and to ensure a post-implementation review is conducted in due course.

The WIPO Policy of Investments was approved by the Assemblies in 2011. In accordance with this policy, an Advisory Committee on Investments (ACI) has been established to monitor the investments of WIPO to ensure that they are consistent with the policy and reports to me any variations from the policy, the reasons and remedial actions. WIPO's cash position remained sound throughout 2013.

The Contracts Review Committee and the High Level Official on Procurement continue to review relevant procurement cases and to advise me on appropriate procurement action.

### **Review of effectiveness**

My review of effectiveness of the system of internal controls is mainly informed by:


- My senior managers, in particular Deputy Directors-General and Assistant Directors-General who play important roles and are accountable for expected results, performance, their Division's activities and the resources entrusted to them. The information channels mainly rely on periodic meetings held by the Senior Management Team.
- I derive assurance from Management Representation Letters signed by key WIPO officers. These letters recognize their responsibility for having and maintaining, in the programs, well-functioning systems and a mechanism for internal control aimed at presenting and/or detecting instances of fraud and major errors
- The Chief Ethics Officer who provides confidential advice and counsel to the Organization and its staff on ethics and standards of conduct and promotes ethical awareness and responsible behavior in handling referrals concerning allegations of unethical behavior including conflict of interest,
- The Internal Audit and Oversight Division (IAOD), on whose reports of internal audits, evaluations and advisory services I rely, also provide their reports to the Internal Audit and Oversight Committee (IAOC). These include independent and objective information on the adequacy and effectiveness of the Organization's system of internal controls, and the related functions of oversight.
- In accordance with its terms of reference, the IAOC provides assurance to Member States on the appropriateness and effectiveness of internal controls at WIPO. The Committee oversees audit performance by monitoring of timely, effective and appropriate responses from management with regard to audit recommendations and implementation of the same. Finally, the IAOC keeps Member States informed of its work on a regular basis and reports annually to the Program and Budget Committee (PBC) and to the General Assembly,
- The JIU of the United Nations System,
- The External Auditor, whose comments are submitted to the PBC and the Assemblies, and
- The Governing Bodies' observations.

## Conclusion

Effective internal control, no matter how well designed, has inherent limitations – including the possibility of circumvention – and therefore can provide only reasonable assurance. Furthermore, because of changes of conditions, the effectiveness of internal control may vary over time.

As Director General, I ensure that the “tone at the top” is a clear message that rigorous internal control is critical to the Organization and I am committed to addressing any weaknesses in internal controls noted during the year and to ensure that continuous improvement of the system of internal controls is in place.

Based on the above, I conclude that, to the best of my knowledge and information, there are no material weaknesses which would prevent the External Auditor from providing an unqualified opinion on the Organization’s financial statements nor are there significant matters arising which would need to be raised in the present document for the year ended December 31, 2013.



Francis Gurry  
Director General

[End of document]