E

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

WO/PBC/36/9
ORIGINAL: ENGLISH
DATE: JUNE 5, 2023

Program and Budget Committee

Thirty-Sixth Session
Geneva, June 19 to 23, 2023

STUDY ON THE CREATION OF A SEPARATE ENTITY FOR AFTER-SERVICE HEALTH INSURANCE (ASHI)

prepared by the Secretariat

Background

1. Following the discussions on agenda item 14, Financing Plan to Manage Risks Arising from Long-Term Employee Benefits at WIPO (document WO/PBC/34/14), during the July 2022 session of the Program and Budget Committee (PBC), the PBC recommended to the Assemblies of WIPO, each as far as it is concerned to:

> *"(…):* (i) approve the funding proposal for long-term employee benefits outlined in document WO/PBC/34/14, namely to have an annual charge up to 10 per cent of personnel costs starting from the biennium 2024/25; (ii) take note of the risks and benefits of formally designating ASHI investments as dedicated plan assets and request the Secretariat to undertake a more detailed study on how a separate entity could be established in order to formally designate earmarked ASHI investments as plan assets and present the findings to the 35th session of the PBC; and (iii) take note of the ongoing efforts of the WIPO Collective Staff Insurance Management Committee to contain the growth of actual medical costs and thus the growth of the ASHI liability.*"*

2. The WIPO Assemblies subsequently adopted the recommendation to fund specified long-term employee benefits through an annual charge of up to 10 per cent of personnel costs starting from the biennium 2024/25 [A/63/7].

Benefits and risks of presenting the ASHI investments as plan assets

3. In its report related to WIPO's 2020 Financial Statements, the External Auditor included a recommendation [2020(WO/PBC/33/5 R#2(b)] to consider the risks and benefits of formally designating earmarked ASHI investments as plan assets to enhance transparency over the net liability. WIPO's Financial Statements present the ASHI liabilities at the gross amount calculated by the actuary. The investments designated as funding for ASHI liabilities, following an earlier decision taken by the WIPO Assemblies to transfer a lump sum amount to a separate bank account [A/51/20] and through the adoption of the Policy on Investments [A/59/13], are recognized separately as investment assets in the Financial Statements.

4. If the funds WIPO has set aside for ASHI financing meet the requirements for recognition as plan assets of WIPO, the financial statement presentation could be modified to present the ASHI liabilities net of the accumulated financing authorized by the WIPO Assemblies. This would more transparently and accurately reflect the actual status of WIPO's assets and liabilities. Detailed information on the total liability and on the investments held as plan assets would be explained in the notes.

5. In order for WIPO to be able to recognize the ASHI funding as an offset to the ASHI liabilities within its Financial Statements, the Organization would have to adhere to the requirements of International Public Sector Accounting Standard (IPSAS) 39 – Employee Benefits. The recognition of the ASHI funding is limited to assets that:

(a) are held by an entity in a fund that is legally separate from the reporting entity and (which) exists solely to pay or fund employee benefits;

(b) are available to be used only to pay or fund employee benefits;

(c) are not available to the reporting entity's own creditors (even in bankruptcy); and

(d) cannot be returned to the reporting entity, unless:

(i) the remaining assets of the fund are sufficient to meet all the related employee benefit obligations of the plan or the reporting entity; or

(ii) the assets are returned to the reporting entity to reimburse it for employee benefits already paid.

6. Should WIPO establish a separate entity that meets the requirements of IPSAS 39 above, WIPO would be unable to utilize any of the assets transferred to the entity to meet any potential unanticipated requirements that might occur in the future. While the recommendation made by the External Auditor related specifically to the ASHI liability, the same or a similar separate entity could also be utilized to make more transparent the financial statement presentation of the assets that the Assemblies have set aside to finance additional long-term employee benefits, namely accumulated annual leave and repatriation grants. For all such employee benefits, the assets would remain the responsibility of the separate entity and remain available to finance the long-term commitment made to WIPO staff for post-retirement benefits.

Study of requirements to establish a separate entity in order to formally designate earmarked long-term employee benefit investments as plan assets

Study Methodology

7. As indicated in paragraph 5 above, in order for the investments set aside by the Assemblies to finance employee benefit liabilities to be recognized as plan assets, WIPO's governing bodies must agree to:

1) establish a separate entity that exists solely to pay or fund the ASHI liability and any other employee benefits to be financed through the entity;

2) designate that the funds set aside may be used only to pay or fund the designated employee benefits; and

3) provide that the funds may not be returned to WIPO unless the funding exceeds the liability or to reimburse WIPO for funds already paid to beneficiaries.

8. A detailed analysis of the financial statements of all 24 UN system entities was conducted to determine whether any of the organizations had been able to meet the IPSAS requirements for recognition of plan assets. In addition, the Secretariat undertook a review of the financial statements of several Geneva based non-governmental organizations (NGOs) that are prepared in accordance with IPSAS or International Financial Reporting Standards (IFRS), which have similar requirements. The review identified two approaches that meet the IPSAS 39 requirements for the recognition of plan assets and that have been used by some of the organizations analyzed:

Multi-employer Plan – IPSAS 39 contains certain specific provisions related to employee benefit funds that serve two or more entities under separate control. The multi-employer plan approach has enabled WHO, PAHO, UNAIDS, UNICC and several non-UN system entities that jointly participate in the WHO Staff Health Insurance (SHI) to recognize the funds that have been set aside to finance their ASHI liabilities as plan assets and offset them against the ASHI liabilities in their financial statements. A similar approach is utilized by CERN and the European Southern Observatory (ESO) that jointly participate in the CERN Health Insurance Scheme (CHIS). The authority to recognize the plan assets, if a multi-employer Plan is established, comes from provisions in IPSAS 39 that recognize that, with two or more entities involved, the separate fund would not be under the control of a single entity.

Since staff and former staff of both WIPO and UPOV participate in the same health insurance plan, it would be feasible for WIPO, with the agreement of UPOV's Council, to employ a similar approach. The requirements for using the multi-employer approach are explained below.

Foundation – the requirements for the establishment of a legally separate entity have also been met by the UPU Provident Scheme that has been established as a foundation under Swiss law. As a consequence, UPU is able to offset plan assets against the liabilities of their pension scheme. This approach does not require the involvement of more than one entity.

The WIPO Closed Pension Fund (CROMPI) was also created as a foundation under Swiss law. Since CROMPI is a separate legal entity with its own governance structure, WIPO's Financial Statements recognize the net liability position of CROMPI along with the liability for supplementary payments to the remaining pensioners in CROMPI. The requirements to establish a foundation are explained below.

9. No other approaches have been utilized by any of the UN organizations or NGOs to recognize plan assets under IPSAS 39.

10. Discussions were held with representatives of WHO and UPU to obtain additional information about the procedures used to implement the approach utilized by each organization and to identify any requirements that the use of the approach would impose upon WIPO. The detailed findings and requirements are explained below.

Multi-employer Plan Approach

11. The analysis of the WHO SHI and CERN CHIS identified certain basic requirements needed to enable WHO, CERN and the other organizations participating in their health insurance schemes to recognize their ASHI liabilities net of the funding of their liabilities agreed by their governing bodies. Neither the CERN nor WHO plan includes benefits other than staff health insurance. The basic requirements include:

(a) Establishment of a separate fund that enables all related revenue, expense, assets, liabilities and fund balance related to the employee benefits included in the fund to be accounted for separately for each organization participating in the employee benefits fund.

(b) Establishment of a governing body for the separate entity to include representatives of both the participating organizations and the plan participants with sufficient authority for the plan to meet the IPSAS 39 requirements for a multi-employer plan as follows:

> **"Multi-employer plans are defined contribution plans (other than state plans) or defined benefit plans (other than state plans) that:**
>
> (a) **Pool the assets contributed by various entities that are not under common control; and**
>
> (b) **Use those assets to provide benefits to employees of more than one entity, on the basis that contribution and benefit levels are determined without regard to the identity of the entity that employs the employees."**

The governing body would have the responsibility of adopting a detailed set of regulations and rules defining the relationship of the plan to each organization including the responsibilities of each organization and the benefits available to the plan participants. The governing body would be able to make changes to the regulations and rules, as required, arising from any future changes in procedures. The governing body of the plan would also have responsibility for issuing an annual report providing financial, demographic and statistical information on the plan operations during the preceding year.

(c) The transfer to the employee benefits fund of all assets and liabilities existing at the date of the creation of the fund. However, the net unfunded portion of the liability of each employee benefit remains a liability for each participating organization.

(d) Prepare separate IPSAS-compliant financial statements for the employee benefits fund and revise each participating organization's financial statements to reflect the IPSAS requirements for disclosure of multi-employer plans.

12. The approach taken by the WHO SHI and CERN CHIS enables each participating organization to separately maintain its own policies related to the funding of each of its employee benefit liabilities. The authority to modify the benefit levels offered by the employee benefits fund also remains with the governing bodies of the participating organizations.

13. In order for the multi-employer approach to be used, the WIPO Assemblies and UPOV Council would have to agree to the establishment of the separate fund, designate the composition of the employee benefits fund governing structure and approve the transfer of assets and liabilities to the separate fund. Agreement would have to be reached with the External Auditors of both organizations that the IPSAS requirements are met.

14. The benefit of using the multi-employer plan is that the implementation can be accomplished jointly by the WIPO Assemblies and the UPOV Council without the involvement of an external Swiss or other governmental entity. The main issue relates to the significant differences in the employee benefit funding made available by the WIPO and UPOV governing bodies. Since the two organizations have differences in membership and very different sources of funding, the separate fund would have to be established in such a way as to ensure that the assets of each organization are used only to finance the employee benefits obligations of the respective organization as established by the governing bodies of each organization.

15. The implementation would also have to ensure compliance with the IPSAS 39 requirement that contribution and benefit levels for staff and former staff of both organizations are determined without regard to the entity employing the staff.

<u>Foundation Approach</u>

16. The Foundation created for the UPU Provident Scheme has certain basic elements that would be applicable to any similar foundation structure created under Swiss Federal law:

(a) Requirement for a constitution or statute defining:

1. Membership and authority of the Board of Trustees
2. Employee benefits under the responsibility of the foundation
3. Method of financing
4. Capital and resources of the foundation
5. Funding guarantees given by the Organization
6. Commitment to a minimal percentage funding level
7. Establishment of Foundation Regulations and Rules
8. Rules of Procedure of the Board of Trustees

(b) Designation of a Supervisory Authority meeting the requirements of Swiss law. UPU's foundation is under the authority of the Canton of Berne. Should WIPO establish a foundation, the *Autorité Cantonale de Surveillance des Fondations et des Institutions de Prévoyance* (ASFIP Genève), which supervises CROMPI, would most likely be the authority.

17. The foundation would prepare financial statements as required using the accounting standards specified by the Authority under Swiss law. The financial statements would be subject to audit by an External Auditor designated by the Board of Trustees. In addition, ASFIP would require that certain documents be filed annually including attestations by the actuary and auditor.

18. In order for the Foundation option to be implemented, WIPO would be required to:

1) Establish the foundation in accordance with the requirements of ASFIP and applicable Swiss Federal and Geneva Cantonal laws.

2) Adopt a constitution or statute meeting the ASFIP requirements.

3) Appoint the initial membership of the Board of Trustees.

4) Establish separate accounts for the foundation and transfer the resources designated in the statute to the accounts of the Foundation.

19. The foundation approach would have the advantage of involving only WIPO, simplifying the accounting of the funding. However, the involvement of an external authority could be considered a disadvantage, since the constitution/statute creating the foundation would be subject to the approval of this Authority. In addition, the Board of Trustees of the Foundation would have to comply with the requirements imposed by the authority regarding accounting and reporting. WIPO's experience of working with ASFIP in relation to the CROMPI and UPU's experience of working with the authorities of the Canton of Berne have not identified issues resulting in significant additional work or in any restrictions creating additional funding requirements.

20. Experience has indicated, however, that the main concern of these authorities is to ensure that the entity initiating the creation of the foundation meets the commitment it makes to ensure adequate funding of the employee benefits within the scope of the foundation. This has required WIPO to continue to finance the liability related to CROMPI and required UPU, when its funding level fell below its original commitment to maintain a funding level of 85%, to provide the authority with an updated plan that would enable UPU to meet its commitment. This should not be a major issue for WIPO if a foundation were to be created, given the commitment made by the WIPO Assemblies to fully finance its employee benefit liabilities. However, should future events result in any limitations on WIPO's ability to meet its funding commitments, it would be within the Cantonal authority's power to request an updated funding plan.

21. In summary, using either a multi-employer plan or a foundation is feasible and would result in increased transparency in the financial statement presentation identified by the External Auditor. However, the determination of which approach to use should be pursued after a more detailed study by Finance together with the Office of Legal Counsel in conjunction with the External Auditor and external expertise, if required.

22. The following decision paragraph is proposed.

23. The Program and Budget Committee (PBC) is invited to take note and discuss the contents of the Study on the creation of a separate entity for After-Service Health Insurance (ASHI) (document WO/PBC/36/9) and provide guidance to the Secretariat in order to take a decision at the 2024 PBC session.

[End of document]