



CC/86/2

ORIGINAL: English

DATE: August 12, 2013

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

CONSULTATIVE COMMITTEE

**Eighty-Sixth Session
Geneva, October 23, 2013**

RESERVE FUND

Document prepared by the Office of the Union

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1. The Consultative Committee, at its eighty-fifth session, held in Geneva on March 22, 2013, requested the Office of the Union to prepare a document for consideration by the Consultative Committee at its eighty-sixth session, to be held on October 23, 2013, proposing a method for reimbursing members of the Union and presenting proposals for projects concerning a special account or trust fund in the event that the reserve fund at the end of the 2012-2013 Biennium exceeds 15 percent of the total income for the 2012-2013 Biennium (see document CC/85/10 "Report on the Conclusions", paragraph 16).
2. This document presents proposals with regard to:
 - (a) a method for reimbursing members of the Union;
 - (b) projects concerning a special UPOV account; and
 - (c) funds in trust for individual members of the Union,

in the event that the reserve fund at the end of the 2012-2013 Biennium exceeds 15 percent of the total income for the 2012-2013 Biennium.

TABLE OF CONTENTS

BACKGROUND	2
Provision for the amount of the reserve fund exceeding 15 percent of the total income for the financial period.....	2
Trust funds and special accounts.....	2
Timetable.....	2
PROPOSALS.....	3
(a) Method for reimbursing members of the Union	3
<i>Illustrative example</i>	4
(b) Projects concerning a special UPOV account.....	4
(c) Funds in trust for individual members of the Union	5

BACKGROUND

Provision for the amount of the reserve fund exceeding 15 percent of the total income for the financial period

3. Regulation 4.6 of document UPOV/INF/4/3 “Financial Regulations and Rules” states that:

“The use, other than for the covering of any deficits, of the reserve fund is a matter for the decision of the Council. If after the closure of the financial period, the amount of the reserve fund exceeds 15 percent of the total income for the financial period, the amount in excess shall be reimbursed to the members of UPOV, unless otherwise decided by the Council. Any member of UPOV may request that the reimbursement attributed to it be deposited in a special account or trust fund specified by it.”

4. Regulation 4.7 of document UPOV/INF/4/3 states that:

“If, after the closure of the financial period, UPOV shows a surplus of income, such surplus shall be accounted for under the reserve fund, unless otherwise decided by the Council.”

5. Thus, unless otherwise decided by the Council, if after the closure of the financial period the amount of the reserve fund exceeds 15 percent of the total income for the financial period, the amount in excess shall be accounted for under the reserve fund, until the Council decides on the measures to address the amount in excess.

Trust funds and special accounts

6. Document UPOV/INF/4/3 states the following with regard to “Trust funds and special accounts”:

“Regulation 4.5

“The purpose and limits of each trust fund and special account shall be clearly defined by the Secretary-General. Such funds and special accounts shall be administered in accordance with the present Regulations.

“Rule 104.1

“The establishment, purpose and limits of trust funds and special accounts shall be approved on behalf of the Secretary-General by the Controller of WIPO. The Controller of WIPO, is authorized to levy a charge on trust funds and special accounts. This charge shall be used to reimburse all, or part of, the indirect costs incurred by UPOV in respect of the generation and administration of trust funds and special accounts. All direct costs of the implementation of programs that are financed by trust funds and special accounts shall be charged against the relevant trust fund and special account.”

Timetable

7. Document UPOV/INF/4/3 states the following with regard to “Financial Reporting”:

“Regulation 6.5

“(1) The annual financial statements for each calendar year of the financial period shall be submitted by the Secretary-General to the External Auditor no later than March 31 following the end of the calendar year to which they relate.

“(2) Within eight months after the end of each calendar year the Secretary-General shall submit the annual financial statements and the audit report of the External Auditor to the Council.

“(3) The Council shall examine the annual financial statements. It may identify adjustments to the share of UPOV in common expenditures¹, if it finds that this share has not been correctly estimated and assessed by the Secretary-General. In such a case, after having consulted the Coordination Committee of WIPO, the Council shall establish the final allocation.

¹ The WIPO/UPOV Agreement (document UPOV/INF/8), Article 2 (2) and (3), states that: “(2) Where any service rendered by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as “common services”), or where any expenditure incurred by WIPO concerns both UPOV and one or more Unions administered by WIPO (hereinafter referred to as “common expenditures”), the amounts of the indemnification owed by UPOV to WIPO shall be established in proportion to the interest of UPOV in the said service or expenditure.” “(3) The value of any service rendered exclusively to UPOV by WIPO and the evaluation of the interest of UPOV in common services and common expenditures shall be established by the Council of UPOV and the Director General of WIPO.”

“(4) The Council shall approve the annual financial statements, after they have been audited in accordance with Article 24 of the 1961 Convention, Article 25 of the 1978 Act and Article 29(6) of the 1991 Act.

“Rule 106.11

“(a) Annual financial statements covering each calendar year of the financial period, as at December 31, shall be submitted to the External Auditor not later than March 31 following the end of the calendar year to which they relate. The annual financial statements shall include all business units of UPOV. Copies of the annual financial statements shall also be transmitted to the Consultative Committee. Additional financial statements may be prepared as and when the Controller of WIPO deems it necessary.

“[...]

“Regulation 6.6

“(1) Within six months after the end of each financial period, the Secretary-General shall prepare the financial management report for that financial period. That report shall include the following information:

“(a) A statement of budget and actual income and expenditure for the financial period reported on the same accounting basis as the adopted budget;

“(b) The income and expenditures of all funds;

“(c) The status of appropriations, including:

“(i) the original budget appropriation;

“(ii)

“(iii)

“(iv) credits, if any, other than the appropriations approved by the Council;

“(v) the amounts charged against those appropriations and/or other credits;

“(d) Primary financial statements for the financial period prepared on the same accounting basis as the annual financial statements;

“(e) A report on investments;

“(f) A statement on the status of contributions of the members of UPOV.

“(2) The Secretary-General shall also give such other information as may be appropriate to indicate the current financial position of UPOV.

“Rule 106.12

“(a) The Controller of WIPO shall prepare the financial management report in accordance with Regulation 6.3.

“(b) Within eight months after the end of each financial period, the Secretary-General shall submit to the Council the financial management report prepared in accordance with Regulation 6.3.”

8. In accordance with the Financial Regulations and Rules, the financial management report and the audit report of the External Auditor for the 2012-2013 financial period will be submitted to the Council by August 31, 2014, at which time it will be established whether the amount of the reserve fund exceeds 15 percent of the total income for the financial period.

PROPOSALS

(a) Method for reimbursing members of the Union

9. Unless otherwise decided by the Council, the amount of the reserve fund exceeding 15 percent of the total income for the financial period will be reimbursed to the members of UPOV.

10. At its eightieth session, held in Geneva on October 20, 2010, the Consultative Committee agreed that “in the event of such reimbursement, the calculation of the amount to be allocated to individual members would be according to the number of contribution units paid by the member of the Union concerned” (see document CC/80/11 “Report”, paragraph 27).

11. On the basis above, it is proposed that the method of reimbursement would be as follows:
- (i) the share of the reimbursement to each member of UPOV would be calculated according to its share of the total contributions billed in the 2012-2013 Biennium; and
 - (ii) no reimbursement would be made to any member of UPOV that had arrears in contributions at the end of the 2012-2013 Biennium.
12. The proposed method is illustrated in the following theoretical example:

Illustrative example

	Contribution units	Sfr
Total number of contribution units (Year 1 of Biennium)	61.95	
Total number of contribution units (Year 2 of Biennium)	62.15	
Total contribution for Biennium	124.10	
Amount of the reserve fund exceeding 15 percent of the total income for the Biennium		100,000

UPOV member A

Annual number of contribution units: 1 unit
Arrears as of December 31, Year 2: none

		Sfr
Total number of contribution units (Year 1 of Biennium)	1.00	
Total number of contribution units (Year 2 of Biennium)	1.00	
Total contribution for Biennium	2.00	
Amount of reimbursement		$((2.00/124.10) \times 100,000)$ 1,612

UPOV member B

Annual number of contribution units: 1 unit
Arrears as of December 31, Year 2: yes

Amount of reimbursement		not applicable
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(b) Projects concerning a special UPOV account

13. In relation to Regulation 4.6 of the Financial Regulations and Rules (see paragraph 3), one of the options that the Council might wish to consider, as an alternative to reimbursement to members of the Union, is the creation of a special UPOV account that would be used to finance extra-budgetary projects agreed by the Council. In the event that the reimbursement arrangement is adopted, members of the Union could also choose to deposit their reimbursement in such a special UPOV account.

14. In considering the type of project that would be most appropriate for funding by such an account, it is recognized that a special UPOV account would be established with funds from many, or all, members of the Union. On that basis, and in recognition of the extra-budgetary nature of such projects, it is proposed that the account would be used for projects that would, in particular:

- (i) support members of the Union in the operation of their plant variety protection systems;
- (ii) extend over more than one biennium;
- (iii) provide long-term benefits to members of the Union; and
- (iv) be advanced more rapidly by extra-budgetary funds.

15. Examples of projects that might be relevant could include developments concerning: the UPOV electronic application form; the PLUTO, GENIE and UPOV Lex databases; the electronic template for the drafting of Test Guidelines and for the development of individual authorities' test guidelines; and other new projects that might be considered in relation to the matters raised by the International Seed Federation (ISF) (see document CC/86/11).

16. It is proposed that projects to be considered under a special UPOV account would be presented for consideration by the Consultative Committee prior to submission to the Council for approval.

17. On the basis set out above, no charges are anticipated for costs incurred by UPOV in respect of the generation and administration under Rule 104.1 of document UPOV/INF/4/3 "Financial Regulations and Rules" (see paragraph 6, above).

(c) Funds in trust for individual members of the Union

18. Funds in Trust are voluntary financial donations provided to UPOV by a member of the Union, usually provided to finance a specific program of activities mutually agreed between the Office of the Union and the donor member of the Union. In recognition that such Funds in Trust involve UPOV staff or other resources, the Office of the Union and the member of the Union concerned jointly develop a program of activities in accordance with the policy and priorities set by the UPOV Council.

19. In the case of Funds in Trust a charge of 13 percent is levied to reimburse all, or part of, the indirect costs incurred by UPOV in respect of the generation and administration of the fund.

20. In the case that the reimbursement arrangement is adopted (see Regulation 4.6 under paragraph 3 of this document) and a member of the Union wishes to create a new, individual Fund in Trust for the amount of reimbursement, or to use its existing Fund in Trust, the same arrangements would be made as for a regular Fund in Trust, i.e. the Office of the Union and the member of the Union concerned would jointly develop a program of activities in accordance with the policy and priorities set by the UPOV Council and a charge of 13 percent would be levied to reimburse all, or part of, the indirect costs incurred by UPOV in respect of the generation and administration of the fund.

21. In deciding whether to seek to create a new Fund in Trust for the amount of reimbursement, the member of the Union concerned would be encouraged to discuss with the Office of the Union whether the size of such a Fund in Trust would be proportionate in relation to the UPOV staff and other resources that would be required to generate and administer the fund.

22. The Consultative Committee is invited to consider the following proposals concerning the situation where the amount of the reserve fund exceeds 15 percent of the total income for the 2012-2013 Biennium:

(a) a method for reimbursing members of the Union, as set out in paragraphs 11 and 12;

(b) projects concerning a special UPOV account, as set out in paragraphs 13 to 17; and

(c) funds in trust for individual members of the Union, as set out in paragraphs 20 and 21.

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