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Program and Budget Committee

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

prepared by the Secretariat

Background

1. The Program and Budget Committee (PBC), at its June 2023 session, considered, under agenda item 11, the Study on the creation of a Separate Entity for After Service Health Insurance (document WO/PBC/36/9). Following its discussions on this agenda item, the PBC recommended to the Assemblies of WIPO, each as far as it is concerned, to note the following:

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

2. The Secretariat has prepared the following document in response to guidance provided by the PBC at its 36th Session. The PBC guidance included the requirements to provide additional information on the financial consequences, the implications of including UPOV (and possibly other entities) in a future plan, as well as the impact on current health arrangements. The PBC further requested that the Secretariat obtain the views of the IAOC, the WIPO Staff Council, and WIPO retirees. A response is given later in the document, which first provides an explanation of the benefits and risks of presenting the ASHI investments as plan assets, the term used in International Public Sector Accounting Standard (IPSAS) 39 – Employee Benefits to denote assets held by a long-term employee benefit fund.

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 regarding the net ASHI liability. WIPO's Financial Statements currently present the ASHI liabilities as the gross amount calculated by the actuary. Funds have been set aside to finance these liabilities since 2013, as authorized by the WIPO Assemblies. If these funds were to meet the requirements for recognition as plan assets, as stipulated in IPSAS 39, the financial statement presentation could be modified to present ASHI liabilities net of accumulated financing. This would more transparently and accurately reflect the actual status of WIPO's assets and liabilities.

4. For WIPO to be able to recognize the ASHI funding as plan assets, the Organization would have to adhere to the requirements of IPSAS 39. According to this standard, such recognition of 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.

5. While the recommendation made by the External Auditor related specifically to the ASHI liability, the same separate entity (as noted in paragraph 4(a) above) could also be used to hold the assets that the Assemblies have set aside to finance additional long-term employee benefits, namely accumulated annual leave, repatriation grants, travel and shipping costs. This would provide the added advantage of permitting a more transparent presentation in the financial statements of these additional liabilities, which would consequently be shown as amounts net of financing. For all such employee benefits, the funds set aside by WIPO 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.

6. In 2023, a detailed analysis was undertaken to determine whether any of the UN organizations had been able to meet the IPSAS requirements for recognition of plan assets in accordance with IPSAS 39. As previously described in WO/PBC/36/9, the review identified two approaches that meet the IPSAS 39 requirements for the recognition of plan assets that have been used by some of the organizations analyzed:

Multi-employer Plan – IPSAS 39 contains provisions related to employee benefit funds that serve two or more entities that are not under the control of a single entity and that would be able to offset plan assets against plan liabilities as recommended by the External Auditor. Since staff and former staff of both WIPO and UPOV participate in the same health insurance plan, it is feasible for WIPO, following the agreement of the UPOV Council at its October 2023 session (C/57), to employ this approach. Further, future applications from other entities to participate in such a multi-employer plan could also be considered, although the inclusion of each entity would require careful study to ensure that the entity's employee benefit liability funding arrangements and Staff Regulations were compatible with the Plan's Regulations and Rules. The requirements for using the multi-employer approach are explained below.

Foundation – the requirements of IPSAS 39 can also be met by the establishment of a legally separate entity such as a foundation under Swiss law that does not require the involvement of other entities. In 2023, the Secretariat engaged the services of a Swiss law firm with expertise in Swiss foundation law. The firm provided information on the requirements for establishing such a foundation and the related costs. In addition, the Secretariat held discussions with representatives of the Swiss Mission to confirm the requirements and to obtain assurances on issues related to taxation and supervision of such a foundation by Swiss Authorities. The information provided by the law firm and by the Swiss Mission is explained below.

7. The Secretariat discussed the creation of a separate entity to hold investments set aside to finance employee benefit liabilities with both the WIPO Staff Council and one of the representatives of the WIPO/UPOV retirees on the WIPO Collective Staff Insurance Management Committee. Both provided positive responses regarding the creation of either type of entity, with a slight preference for a foundation. The Secretariat also discussed the two options with the IAOC during its March 2023 meeting. Their deliberations are captured in the minutes of their meeting as follows: The Committee was further updated on the options being explored to segregate ASHI assets. The Management is in close coordination with the Swiss Mission to clarify and understand the implications of the development of a separate foundation on taxation, oversight, control as well as immunities. The second option was a multi-employer entity. The IAOC agreed to consider the matter once again at its meeting in May 2024, a meeting yet to take place at the time of this document's publication.

Creation of multi-employer staff health benefits plan under IPSAS 39

8. IPSAS 39 does not provide specific procedures for the creation of a multi-employer employee benefit plan or on the plan administration. The only UN specialized agency that has created such a plan is the World Health Organization (WHO), which has created the WHO Staff Health Insurance (SHI) that also includes UNAIDS, PAHO, IARC, UNICC and UNITAID. The plan functions as a multi-employer plan under IPSAS 39 and has been accepted by WHO External Auditors as meeting the IPSAS requirements since IPSAS adoption in 2012. The WIPO/UPOV health benefit plan could adopt a similar model. Using the WHO model would require:

a. Establishing formal Regulations and Rules under which the plan would operate.
b. Establishing a formal advisory committee with membership from participants and the participating organizations with defined responsibilities.
c. Preparation of separate annual financial statements meeting all IPSAS requirements.
d. Publication of an annual report available to plan participants and organization governing body members describing the activities of the plan and providing statistical and financial information.

9. Based on information provided by WHO, meeting these requirements could be accomplished primarily by existing WIPO and UPOV staff and could be completed without significant additional cost as follows:

a. Regulations and Rules: The WIPO/UPOV health benefits plan is an insured arrangement with CIGNA under which WIPO/UPOV and the participants pay annual premiums and the risk related to the actual benefits paid is assumed by CIGNA. CIGNA, therefore, provides detailed Regulations and Rules on the coverage provided, which are updated periodically to reflect contractual changes. Rules on eligibility for WIPO staff are documented by the WIPO Human Resources Management Department (HRMD) for staff of both organizations. For WIPO/UPOV the applicable rules would have to be expanded to provide information on financial reporting, annual reporting, the duties and membership of the advisory committee, and the existing staff eligibility provisions.

b. Advisory Committee: An advisory committee with responsibilities and membership similar to the WHO SHI would be established. The advisory committee would have responsibility for oversight of the plans and for advising the Director General and UPOV Deputy Secretary-General on plan operations and financial stability. It is proposed that membership of the committee be composed of one person selected by the WIPO PBC among the representatives of Member States, two appointed by the WIPO Director General from among WIPO staff members, one selected by the WIPO Staff Council from WIPO staff members and one selected from among WIPO former staff members. Members of the advisory committee would not receive any remuneration for their services but could be reimbursed for incidental costs incurred.

c. Annual Audit: If a WIPO/UPOV multi-employer plan is established, the plan would be a separate entity under IPSAS and would require financial statements meeting all IPSAS requirements as well as a full annual audit. The audit would be reviewed by the advisory committee and would also be available to the Member States of the two organizations. There would be anticipated costs for the preparation of the statements and for the separate audit. These costs are discussed below.

d. Annual Report: In addition to the audit report, the WHO SHI prepares an annual report providing information on membership, sustainability of the financing of the individual employee benefits included in the plan, and an analysis of the investment performance; a similar report would be prepared for the WIPO/UPOV multi-employer plan if created. A copy of the annual financial statements would also be included in the annual report along with detailed information on the composition of the investment fund and its performance. Such financial statements would be made available to participants and Member States of each Organization. Most of the information in the report could be collected by existing WIPO/UPOV staff, however, it is anticipated that some additional cost would be incurred for report preparation, editing and translation, which is discussed below.

Creation of Foundation to hold Investments for Employee Benefit Liabilities

10. The establishment of a separate foundation to hold the investments set aside by the WIPO Assemblies to finance employee liabilities would meet the requirements of a separate entity under IPSAS-39 but would also have to meet the requirements of Swiss law under which it will be established. While the creation of a foundation does not require the inclusion of an additional employer or co-founder, the staff of UPOV would be covered by its operations since they are paid through the WIPO payroll and subject to the WIPO Staff Regulations and Rules. While it is anticipated that a foundation would enjoy the same privileges and immunities – in particular, exemption from Swiss taxes – as those accorded to WIPO itself, this has not been confirmed in writing by the Swiss authorities. Based on the information provided by the law firm, the main requirements, with estimated costs, are discussed below:

a. Supervisory Authority: Under Swiss law, a governmental entity (the “Supervisory Authority”) would ensure that the assets of the foundation are used in accordance with their intended purpose and verifies compliance with legal and regulatory provisions regarding the organization, management, administration, and investment of foundation assets. It also ensures that the organizational structure, procedures, and distribution of tasks are planned clearly and meet the requirements of Swiss law. Both an initial and annual fee would be charged by the Supervisory Authority.

b. Registration: A registration of the foundation must be made with the commercial register, generally in the Canton in which the foundation is located. A Swiss law firm would assist in the registration of the foundation, if created.

c. Statute: The foundation statute specifies the goals of the foundation, its non-profit status, and method of financing its operations. The statute would be prepared by the WIPO Secretariat. Pursuant to Swiss law, the goals of the foundation may only be modified in a restricted way, namely ten years after its creation and subject to approval by the Supervisory Authority. The statute of the foundation would also provide for approval of proposed modifications by the WIPO Director General before submitting them to the Supervisory Authority.

d. Council (Board of Directors): The foundation would be governed by a council that serves as the Board of Directors. There is no specific requirement in Swiss law for membership of the council. It is proposed to use a similar composition to that of the UPU Provident Scheme (Pension Fund), with one member selected by the WIPO PBC among the representatives of Member States, two appointed by the WIPO Director General from among WIPO staff members, one selected by the WIPO Staff Council from WIPO staff members and one selected from among WIPO former staff members. Members of the foundation council would not receive any remuneration for their services but could be reimbursed for incremental costs incurred.

e. Annual financial statements: Swiss law requires that the foundation prepare annual accounts in a form prescribed by Swiss generally accepted principles of accounting (GAAP). Both the format of these accounts and much of the content differ from the accounting principles used in the WIPO IPSAS based accounts and the accounts would therefore have to be prepared separately. The annual accounts would contain detailed information on the composition of the investment fund and its performance and would be available to plan participants, WIPO and UPOV Member States. The use of an external accounting firm to prepare the accounts is considered necessary. In addition, the actuarial methodology required by Swiss GAAP differs from the IPSAS methodology used in the WIPO and UPOV financial statements, so an additional actuarial study will be required.

f. Annual audit: Swiss law also requires that the foundation appoint an auditor to perform a full audit of the annual financial statements. Since the financial statements are prepared in accordance with Swiss GAAP, it is anticipated that an audit separate from that of WIPO will be required.

Costs of plan/foundation creation and continuing costs related to operations

11. Costs related to the creation of a separate entity and to its annual operating expenses have been estimated based on information provided by the WHO SHI. The one-time and annual operating costs in connection with the creation of a Swiss foundation option were estimated by the law firm engaged by the Secretariat. Information on the activities required and the total costs involved are shown in the table below.

Costs	Multi-employer Plan	Foundation
Costs of creation of entity	• Preparation of Regulations and Rules • Organization of Advisory Committee [Estimated one-time cost CHF 15’000]	• Registration • Supervisory Fee • Preparation of Foundation Statutes • Organization of Foundation council [Estimated one-time cost CHF 20’000]
Annual operating costs	• Preparation of financial statements • Annual audit [under IPSAS] by WIPO’s external auditor • Preparation of annual report to participants and WIPO/UPOV Members • Staffing assistance to Advisory Committee [Estimated annual cost CHF 52’000]	• Annual Supervisory Fee • Preparation of financial statements • Annual audit [under Swiss GAAP] by independent external auditor • Periodic actuarial study conforming with requirements of Supervisory Authority • Staffing assistance of Foundation council [Estimated annual cost CHF 40’000]

12. All of the initial and annual costs would be paid by the separate entity from investment earnings and would not be charged to WIPO’s operating budget.

Operational management model

13. To limit the costs of the operation of either the foundation or the multi-employer plan, the day-to-day operations, including the payment of benefits (i.e., annual leave reimbursement, repatriation expenses and health insurance premiums) would continue to be managed by WIPO as is done presently. The WIPO Treasurer, in consultation with the Advisory Committee on Investments, would retain responsibility for the management of the investments held by the plan or foundation. The day-to-day accounting responsibilities would also be managed by the WIPO Finance Division though the preparation of financial statements would require outside support as discussed above.

14. The attached annex contains an example of the impact that the creation of a separate entity to finance employee benefit liabilities would have on WIPO’s Statement of Financial Position (balance sheet) and the financial statement notes related to cash, investments, and employee benefit liabilities. As indicated, the liability would be reduced by the recognition of the funds set aside by Member States as plan assets, which are netted against the liability. However, detailed information on investments and employee benefit liabilities would continue to be presented in the statements.

Plan/foundation administration

15. Once investment funds are transferred to the foundation or the multi-employer plan, WIPO would be unable to obtain the return of the funds. This is a requirement under IPSAS 39 Employee Benefits and would be supervised by WIPO's External Auditor. The only exception would be if the investments held by either entity exceeded the liability for the designated employee benefits as calculated by the actuary. In such a case, either the multi-employer plan or the foundation would reimburse WIPO and UPOV for any excess of investment assets over the actuarial liability.

16. If UPOV were to withdraw from the multi-employer plan, it would be required to pay a contribution to cover the benefits earned by employees up to the date of withdrawal as determined by the actuary engaged by WIPO. If no other employer were to join with WIPO in the plan, the plan would be dissolved and WIPO would have to make a full provision for the outstanding liability in accordance with IPSAS. Accounting for the employee benefit liabilities in WIPO's financial statements would revert to the approach currently applied.

17. The foundation may only be dissolved by a decision of the Supervisory Authority. In such a case, the foundation council would have to make provision for the payment of all debts of the foundation and could then allocate any remaining assets to WIPO and UPOV.

18. After a period of years, it is also anticipated that the foundation or multi-employer plan would accumulate sufficient investments to enable either entity to assume responsibility for reimbursing WIPO and UPOV for the health insurance premiums for retirees and their dependents, for termination payments to retirees covering repatriation (grant, travel and shipping) and for unused annual leave. The reimbursement would be paid from the investment earnings on the funds transferred from the two organizations to the foundation/multi-employer plan thus removing these costs from the WIPO/UPOV budgets. The date at which the foundation/multi-employer plan would begin to reimburse the organizations would be established by the Director General of WIPO based on actuarial analysis, and for the foundation would be subject to approval by the Supervisory Authority.

19. The governing bodies of the two organizations and the Director General of WIPO would, nevertheless, retain authority over:

Investment policy – establishing the policy on investments would continue to be under the authority of the WIPO Assemblies. The Treasurer of WIPO would continue to manage the investments, the custodian of the investments would continue to be designated in accordance with WIPO's Procurement Policy, and the investment advisor selected by WIPO would continue to provide advice to the WIPO Advisory Committee on Investments on the investments held by either the foundation or multi-employer plan. Therefore, it is not anticipated that there would be any significant changes in the composition of the strategic investment portfolio if either a foundation or multi-employer plan were to be created.

Health Insurance Benefits – the contract covering the provision of health insurance to retirees of WIPO and UPOV would continue to be designated in accordance with WIPO's Procurement Policy and the definition of benefits available to retirees would continue to be set in accordance with the WIPO Staff Regulations, which are approved by the WIPO Assemblies and with the Staff Rules, which are promulgated by the Director General.

Employee benefits – the payment of unused annual leave and repatriation (grant, travel and shipping) would continue to be set in accordance with the WIPO Staff Regulations, which are approved by the WIPO Assemblies and with the Staff Rules, which are promulgated by the Director General.

Financing – the WIPO Assemblies and the UPOV Council would retain authority over the determination of the percentage payroll charge (currently a maximum of ten per cent for WIPO and six per cent for UPOV) included in WIPO's and UPOV's budgets. This charge finances costs of certain long-term benefits with any excess of the funds raised by the charge over the costs of the benefits transferred to the investments that would be held by either the foundation or multi-employer plan.

Statute and Regulations – the WIPO Director General would have authority to approve the initial statute of a foundation or the initial regulations of a multi-employer plan along with authority to approve any subsequent modifications in the statute or regulations.

20. Authority to determine the funding level, benefit level and investment policy would be retained by WIPO for both types of entity. The Organization would retain some control over the way in which a foundation would carry out its responsibilities by using the authority of the DG to approve the internal regulations. In the case of a multi-employer plan WIPO would retain substantial control since the plan's regulations and rules would follow the WHO model. WIPO and UPOV's financial statements would provide more transparent information about each Organization's net employee benefit liabilities and continue to provide detailed information on each Organization's investments and liabilities. An example of the changes that would be included in the WIPO financial statements is included in the Annex.

Proposal

21. As discussed above, establishing either a foundation or a multi-employer plan is feasible and would result in increased transparency in the financial statement presentation as identified by the External Auditor. After review, the Secretariat believes that the establishment of a multi-employer plan is the preferable option. The multi-employer plan arrangement is already in effect at WHO, and its model can be implemented by the WIPO Assembles having already received the approval of the UPOV Council. While the costs are slightly higher, the implementation and operation of a multi-employer plan can be managed solely by WIPO staff without the involvement of a third party such as a Swiss Supervisory Authority.

22. The establishment of a Swiss foundation to manage employee benefit liabilities such as ASHI, annual leave, and repatriation grants would differ, for example, from the UPU Caisse de Prevoyance, which is established under specific Swiss legislation related to pension funds. There is no similar legislation with specific provisions related to the type of foundation being proposed by WIPO, which raises the possibility that legal issues might arise in the future and costs not currently anticipated might be incurred.

23. The following decision paragraph is proposed.

24. *The Program and Budget Committee (PBC) recommended to the Assemblies of WIPO, each as far as it is concerned, to approve the proposal for the establishment of a multi-employer plan meeting the requirements of IPSAS 39 with responsibility for the funds set aside by the WIPO Assemblies and the UPOV Council for the financing of employee benefit liabilities outlined in document WO/PBC/37/12.*

[Annex follows]

Example of the Impact of the creation of a separate entity to manage strategic investments on WIPO's Financial Statements

World Intellectual Property Organization		
Impact of creation of separate entity		
on 2023 Statement of Financial Position		
	Current Presentation	**With Separate Entity**
	as is	modified
	December 31, 2023	**December 31, 2023**
ASSETS		
Current assets		
Cash and cash equivalents (Note 1)	88,806	69,473
Investments	192,819	192,819
Contributions receivable	2,013	2,013
Exchange transactions receivable	77,012	77,012
	360,650	341,317
Non-current assets		
Investments (Note 1)	1,018,483	788,981
Intangible assets	26,389	26,389
Property, plant, and equipment	326,952	326,952
	1,371,824	1,142,322
TOTAL ASSETS	**1,732,474**	**1,483,639**
LIABILITIES		
Current liabilities		
Payables and accruals	21,784	21,784
Employee benefits	18,236	18,236
Transfers payable	103,906	103,906
Advance receipts	326,598	326,598
Provisions	264	264
Current accounts	75,817	75,817
	546,605	546,605
Non-current liabilities		
Employee benefits (Note 2)	577,241	328,406
Advance receipts	3,459	3,459
	580,700	331,865
TOTAL LIABILITIES	**1,127,305**	**878,470**
Accumulated Surpluses	802,314	802,314
Special Projects Reserve	21,868	21,868
Revaluation Reserve Surplus	8,056	8,056
Actuarial gains/(losses) through Net Assets	-233,411	-233,411
Working Capital Funds	6,342	6,342
NET ASSETS	**605,169**	**605,169**
Note 1 - transfer of Strategic Cash and Investments to plan assets held by separate entity		
Note 2 - reduction of Employee Benefits liability by fair value of plan assets		

NOTE 3: CASH AND CASH EQUIVALENTS

Impact of transfer of Strategic term deposit to separate entity

	Current Presentation **December 31, 2023**	**With separate entity** **December 31, 2023**
	(in thousands of Swiss francs)	*(in thousands of Swiss francs)*
Cash on hand	48	48
Deposits with banks	22,619	22,619
Term deposits less than 3 months	38,000	38,000
Notice accounts	8,806	8,806
Total operating and core cash	**69,473**	**69,473**
Deposits with banks	19,333	-
Total strategic cash	**19,333**	**-**
Total cash and cash equivalents	**88,806**	**69,473**

NOTE 4: INVESTMENTS

Impact of transfer of Strategic Investments to separate entity

	Current Presentation **December 31, 2023**	**With separate entity** **December 31, 2023**
	(in thousands of Swiss francs)	*(in thousands of Swiss francs)*
Short term investments (operating cash)	183,888	183,888
Derivative financial instruments	8,931	8,931
Current investments	**192,819**	**192,819**
Medium term Investment portfolio (core cash)	788,981	788,981
Long term Investment portfolio (strategic cash)	229,502	0
Non-current investments	**1,018,483**	**788,981**
Total investments	**1,211,302**	**981,800**

NOTE 9: After Service Health Insurance Liability

Impact of the recognition of plan assets on ASHI liability

	Current Presentation December 31, 2023	**With separate entity** December 31, 2023
	(in thousands of Swiss francs)	*(in thousands of Swiss francs)*
Defined benefit obligation at beginning of year	468,634	468,634
Interest cost	11,617	11,617
Current service cost	25,554	25,554
Contribution paid	-4,814	-4,814
Actuarial (gain)/loss on obligation:		
Experience (gain)/loss	-4,223	-4,223
Medical cost trend rate	*-9,300*	*-9,300*
Discount rate	*70,167*	*70,167*
Other	-	-
(Gain)/loss on change in financial assumptions	60,867	60,867
Medical claims cost	-	-
Other demographic assumptions	*-330*	*-330*
(Gain)/loss on change in demographic assumptions	-330	-330
Defined benefit obligation recognized at end of year	**557,305**	**557,305**
Plan assets at beginning of year		**219,716**
Additional cash/investments		19,284
Forex gains/(losses)		-4,217
Fair value increase/(decrease)		12,612
Assets at end of year (Note A)		**248,835**
Net liability recognized in Statement of Financial Position	**557,305**	**308,470**

[End of Annex and of document]