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Item No. 11 on the Agenda: Update on implementation of whistle-blower and anti-retaliation policy

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Presentation of draft whistleblower and anti-retaliation policy</i>
<i>Action to be taken</i>	<i>For the approval of the General Assembly</i>
<i>Related documents</i>	<u>UNIDROIT 2019 - C.D. (98) 15(b)</u> ; <u>UNIDROIT 2021 - (F.C. (91) 5)</u> <u>UNIDROIT 2021 - C.D. (100) B.21</u> ; <u>UNIDROIT 2021 - C.D. (100) B Misc 2</u> ; <i>Forthcoming Report of the Finance Committee – UNIDROIT 2021 - F.C. (92) 9</i>

1. Smaller international organisations generally have more limited resources to dedicate to regulatory compliance matters. Limited staff or even the lack of a separate Human Resources department, along with limited financial resources compared to larger intergovernmental institutions explain the lack of a complete internal regulatory framework. However, due to increasing awareness of their constituencies, even the smallest institutions are seeking to bridge the gap to bring their workplace policies up to par with those of larger organisations.
2. While the review of the UNIDROIT Regulations is an ongoing process ([C.D. \(98\) 15\(b\)](#), para 14), the issue of implementing policies to address ethics in the workplace was raised at the Finance Committee at its 91st session ([UNIDROIT 2021 - \(F.C. \(91\) 5\)](#), para 32). In particular, it was acknowledged that the Secretariat could draw on the practices and policies of other organisations and implement them at a relatively low cost.
3. In order to give prompt furtherance to the forementioned acknowledgement and priorities, the Secretariat has formulated a Draft Whistleblower and Anti-retaliation Policy (see Annexe). The document is limited in scope, since the consequences of misconduct and relevant disciplinary actions will be included in the general revision of the Regulations, a proposal of which will be presented at the 101st session of the Governing Council.
4. At its 100th session, the Governing Council took note of the draft Whistle-blower and Anti-retaliation Policy prepared by the Secretariat and stated it had no objection to its immediate application, pending final completion of certain matters in the forthcoming revision of the Regulations (C.D. (100) B Misc 2, para 26).

5. *In the light of the foregoing, the General Assembly is invited take note of the attached Whistleblower and Anti-retaliation Policy prepared by the Secretariat, request any comments deemed adequate, and state its non objection to the immediate application, pending final completion of certain matters in the forthcoming revision of the Regulations.*

ANNEXE**WHISTLEBLOWER AND ANTI-RETALIATION POLICY**

The International Institute for the Unification of Private Law (“UNIDROIT”) is committed to detecting, investigating and taking action against misconduct, as defined herein, that occurs in the context of its activity. This document outlines the policy and procedures for reporting suspected misconduct. It is a binding document from the moment of its issuance by the Secretariat, and shall become an integral part of the Regulations applicable to the Staff of the Institute as soon as the General Assembly so approves in ordinary session. This document shall also be deemed an integral part of the Guidelines provided to all visiting researchers, scholars or interns.

1. Scope and Application

The terms of this policy apply to all UNIDROIT staff members and individuals in a direct contractual relationship with UNIDROIT such as, for this matter, consultants, contractors, secondees, chairholders, interns or visiting scholars (hereinafter referred to, for this purpose only, as “Staff”).

2. Definitions

Misconduct means any illegality, breach of UNIDROIT’s Regulations, gross waste, mismanagement, abuse of authority, substantial and specific danger to public health or safety, and any other activity that undermines the institutional mission to its membership. Examples include, but are not limited to, corruption, fraud, theft, misrepresentation, misuse of UNIDROIT property, retaliation against Whistleblowers, and abuse of privileges and immunities.

Retaliation means adverse action taken, threatened or recommended against an individual because he or she made a good faith report of suspected misconduct.

Whistleblower is a person who, in good faith and based on an objectively reasonable belief that misconduct has occurred, reports suspected misconduct.

Whistleblower Report Officer is any person designated by procedure under section 5 below to be on the receiving end of a report from a Whistleblower.

3. Duty to Report and Cooperate

Staff have a duty to promptly report suspected misconduct associated with any activity of UNIDROIT and to cooperate fully and truthfully in any internal or external review, audit, or investigation conducted by or on behalf of UNIDROIT.

Negligent or wilful failure to report and/or cooperate, including by withholding material information, may result in disciplinary action, including termination of employment or contractual relationship, in accordance with the procedure envisaged in the Regulations.

4. Confidentiality

It is the duty of the Whistleblower Report Officer to maintain the confidentiality of the Whistleblower and all communications in relation to the report of suspected misconduct to the maximum extent possible.

The identity of the Whistleblower should only be exceptionally disclosed in the absence of consent if it is necessary for administrative, disciplinary or judicial action or in order to ensure due process in the investigation of the allegations made.

5. The Determination of the Whistleblower Report Officer

Staff members must report suspected misconduct in the first instance to the Secretary-General.

If the suspected misconduct involves the Secretary-General, the Whistleblower has reason to believe that he or she may be subject to retaliation, or the Whistleblower has reason to believe that evidence of suspected conduct will be concealed, destroyed, or not acted upon, the individual should report the suspected misconduct to the President of the Governing Council.

If the suspected misconduct involves the President, and the Whistleblower has reason to believe that he/she might be subject to retaliation, or the Whistleblower has reason to believe that evidence of suspected conduct will be concealed, destroyed, or not acted upon, the individual should report the suspected misconduct to the Member of the Permanent Committee with the shortest serving time in office at the said Permanent Committee, and, in case of several members with equal time of service, the youngest one, whose contact information will be made available to all Staff.

6. Personal Information and Anonymous Reporting

Whistleblowers are encouraged to include their names or other contact information in their reports of suspected misconduct to add credibility to the report and facilitate any follow-up action or investigation.

The names of individuals making reports will be kept confidential to the maximum extent possible, and within the limits established under Section 4 above.

Reports submitted in complete anonymity will also be given adequate consideration.

7. Information to be Included in a Report of Suspected Misconduct

Whistleblowers must submit all pertinent information regarding the suspected misconduct including any documentary or other evidence in writing to the relevant Whistleblower Report Officer.

8. Decision to start a Procedure Following a Report of Suspected Misconduct

The decision on whether any action is warranted under the circumstances will be determined on a case-by-case basis by the Whistleblower Report Officer.

Such a decision must be made within 30 days of the receipt of the report of suspected misconduct.

The Whistleblower, if his/her identity is disclosed to the Whistleblower Report Officer, will likewise be informed of whether follow-up action is being taken with respect to his or her report.

The Whistleblower Report Officer shall elevate all reports of suspected misconduct directly to the Permanent Committee, even if the decision has been not to take any action. The reports will include sufficient justification of the decision adopted.

9. Reviews, Audits, or other Investigations

The Whistleblower Report Officer shall determine what action, if any, to take in response to the report.

When, based on the facts reported or any other relevant information collected, it is objectively reasonable to infer that misconduct might have taken place, the Whistleblower Report Officer must take one of the following actions:

- i. Conduct an internal review
- ii. When the complexity of the case so advises, retain one or more external reviewers, auditors or investigators.

When the alleged misconduct concerns the President, the Whistleblower Report Officer that is a Member of the Permanent Committee will decide to take any of the actions envisaged in the previous paragraph in consultation with the rest of the Permanent Committee Members, excluding the President.

Based on the result of the review, audit or investigation, the Whistleblower Report Officer will draft a report with a proposal to close the case or adopt the disciplinary or remedial actions required to address the confirmed misconduct. The disciplinary or remedial actions will be taken as determined by UNIDROIT Statute and Regulations.

10. Due Notification to the Whistleblower

The Whistleblower must be informed, as appropriate, of the action taken with respect to his or her report.

11. Bad Faith Conduct

In order to receive protection under this Policy, individuals must make a report in good faith and have a reasonable belief that misconduct has occurred. The transmission or dissemination of unsubstantiated rumours is not considered a protected activity under this Policy.

UNIDROIT views the intentional submission of false reports or false witness testimony under this Policy as conduct susceptible to sanctions under the UNIDROIT Regulations.

Making allegations through the Whistleblower and Anti-Retaliation Policy that the individual knows to be false, intentionally and materially incomplete, or with an intent to misinform will be investigated and may result in disciplinary action, up to and including termination of employment or contractual relationship, as determined by the UNIDROIT Regulations.

12. No Retaliation

Retaliation against Whistleblowers is strictly prohibited and is susceptible to sanctions the UNIDROIT Regulations.

Staff who retaliate against any person making a report shall be subject to disciplinary measures, up to and including termination of employment or contractual relationship, as determined by the UNIDROIT Regulations.

Examples of retaliation include, but are not limited to:

- Employment actions such as termination, and denial of renewal of contract or promotion unless otherwise justified;

- Other unjustified actions affecting employment such as negative evaluations, negative references, placement on administrative leave, increased oversight, changes in duties, reduction of responsibilities, denial of leave or creation of an uncomfortable physical environment; and
- Other actions including, but not limited to, harassment, intimidation, or assault that are intended to punish an individual for reporting alleged illegal activities or misconduct or to deter such individual from continuing to cooperate in an ongoing review, audit, or other investigation.

13. Reports of Suspected Retaliation

Reports of suspected retaliation will be treated as reports of suspected misconduct under this Policy.

Reports of suspected retaliation must be made as soon as possible and not later than three months after the alleged acts of retaliation have taken place.

14. Application of Ordinary Standards of Performance or Conduct

Whistleblowers and those participating in a review, audit or other investigation are not exempt from the application of normal standards of performance and conduct or other policies affecting continued employment.

UNIDROIT is not required to maintain the employment of a Whistleblower or of an investigation witness when the Organization has an independent basis to terminate the employment or abolish a position in accordance with UNIDROIT's policies and procedures for the disestablishment of positions.

15. Protection of the Person Who Suffered Retaliation

If retaliation against an individual is established, appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory actions shall be adopted by the competent Officer.

16. Review

The Secretary-General shall take reasonable steps to ensure that this Policy is followed and to evaluate the effectiveness of this Policy in coordination with the Permanent Committee on an annual basis.

The office of the Secretary-General shall maintain a confidential and anonymous record of all cases reported to the Secretary-General and the President or the relevant Member of the Permanent Committee, as applicable, and provide an annual summary report to the Permanent Committee.

The Policy may be revised as necessary and as required by any changes to any internal rules, regulations, and standards.