

APPENDIX 1

CHECKLISTS OF POINTS TO BE ATTENDED TO WHEN DEPOSITING MICROORGANISMS AND REQUESTING SAMPLES UNDER THE BUDAPEST TREATY

The purpose of these checklists is to enable depositors and requesting parties to see at a glance whether they have omitted any essential step in making a deposit or asking for a sample of a microorganism, as the case may be. The points on the checklists are intentionally brief and the main body of the Guide should be consulted as necessary for more detailed information, explanation and/or discussion. To facilitate this, each point on the checklists is followed by reference to those sections or paragraphs of the Guide where more detailed information may be found and, where relevant, to the pertinent provisions of the Treaty itself.

Checklists for Depositors

- (a) Making the Original Deposit (Section A)
 - (i) Check the latest date by which deposit must be made (Section E).
 - (ii) Start the deposit procedure in good time (43 to 49; 53).
 - (iii) Check that the IDA can accept your microorganism (25 and 26; 49; 54; Section D; Rule 6.4(a)(i) and (ii)).
 - (iv) Check the requirements of the IDA (17 to 22; 55; 59; Section D; Rule 6.3(a)).
 - (v) Ask for the appropriate forms (18; 55; Section D; Appendix 3; Rule 6.3(a)(ii)).
 - (vi) Complete the forms fully and correctly and sign them (11 to 15; 56; Rule 6.1(a)).
 - (vii) Make it clear to whom the IDA should send official communications (50; 57; Rules 7; 10; 11.4(g); Article 4(1)(a); Rule 5.1(a)(iii)).
 - (viii) Give the name and address of your patent agent and state if he should receive copies of the receipt and viability statement (50; 58; Rules 7; 10).
 - (ix) Ensure your microorganism is in the form and quantity required by the IDA (17; 59; Section D; Rule 6.3(a)(i)).
 - (x) Ensure your microorganism is correctly packaged (27; 46; Rule 6.4(a)(iii)).
 - (xi) Do not lose the receipt and/or viability statement (32 to 39; 63).

- (xii) Test promptly any preparations the IDA sends for authenticity checking (62; Section D).
 - (xiii) If you are converting an existing deposit into a Budapest deposit, attend to points (iv) to (viii) and (xi) and (xii), above (30; 31; 64; Rule 6.4(d)).
 - (xiv) If, despite the exhortations in the Guide, you have left making a deposit until the last minute, give priority to sending the microorganism itself to the IDA (29; 61; Rule 6.4(c)).
- (b) Making a New Deposit (Section B)
- (i) Note the date on which you received notification from the IDA of its inability to furnish samples, and the reason for such inability (65; 77; Article 4(1)(a)).
 - (ii) Calculate the latest date by which your new deposit must be made (67 to 69; 77; Article 4(1)(d)).
 - (iii) Start the deposit procedure in good time (43 to 49; 75).
 - (iv) If the reason in (i), above, is discontinuance or loss of status, ask the IDA if your deposits will be transferred to a substitute IDA under Rule 5.1(a)(i) (69; 77; 83; 84; 86; Rule 5).
 - (v) If the answer to (iv), above, is YES, then you do not have the right to make a new deposit (66; Article 4(2)).
 - (vi) If the answer to (iv), above, is NO, or if import/export restrictions make a new deposit with another IDA necessary (65; Article 4(1)(b)(i) and (ii)), check that the IDA you select can accept your microorganism (79; Section D; Rule 6.4(a)(i) and (ii)).
 - (vii) Check the requirements of the IDA (79; Rule 6.3(a)).
 - (viii) If you are making a new deposit with another IDA or with the original IDA, ask for the appropriate forms for making a new deposit under Article 4 (18; 55; Section D; Appendix 3).
 - (ix) Complete the forms fully and correctly and sign them (11 to 15; 56; 66; Rules 6.1(a) and 6.2(a) and (b)).

- (x) Unless the forms provide space for it, ensure that you append a signed statement giving:
 - the reason for making a new deposit;
 - the date on which you received notification from the IDA of its inability to furnish samples; and
 - a declaration that the microorganism you are submitting is the same as that previously deposited (66; 81; Article 4(1)(c); Rule 6.2(a)(ii)).
- (xi) Ensure that you enclose with the forms and statement copies of the receipt, the latest viability statement and, where applicable, the latest scientific description/taxonomic designation in respect of the previous deposit (66; 82; Rule 6.2(a)).
- (xii) Attend to points (vii) to (xii) and (xiv) of checklist (a), above.

Checklists for Requesting Parties (Section C)

In all cases, before requesting a sample, ensure that you have complied with any import, quarantine, health and safety, etc., requirements (107).

- (a) Requesting a Sample with the Authorization for the Depositor (90; 93; 94; 101; Rules 11.2(ii) and 11.4(a), (c) and (d)(i) and (ii))

Attempt this route to obtaining a sample only if you know the identity of the depositor, in which case either:

- (i) ask the IDA for WIPO model form BP/11, if it keeps copies of this form (Section D; Appendix 3); and
- (ii) complete parts I, III and IV of the form, then send it to the depositor asking him to complete part II; or
- (iii) write to the depositor asking him for an appropriate declaration of authorization (90; 101; Rule 11.4(a), (c) and (d) (i) and (ii)).
- (iv) send completed form BP/11 or the depositor's declaration, as the case may be, to the IDA together with your request and purchase order.
- (v) When requested, pay the fee charged by the IDA for furnishing the sample (97; Rule 12.1(a)(iv)).

(b) Requesting A Sample with Industrial Property Office Certification (91; 93; 94; 102; 103; Rules 11.3(a) and 11.4(a), (c) and (d))

- (i) Ask the industrial property office or the IDA for the appropriate form (Section E; Appendix 3).
- (ii) Complete that part of the form to be filled in by “the requesting party.”
- (iii) Send the form to the industrial property office (Section E).
- (iv) When the form, endorsed by the industrial property office, is returned, send it and any certificate to the IDA together with a purchase order.
- (v) When requested, pay the fee charged by the IDA for furnishing the sample (97; Rule 12.1(a)(iv)).

(c) Requesting a Sample of an Unrestricted Deposit (92 to 94; 106; Rules 11.3(b) and 11.4(a), (c) and (e))

To request a sample of a microorganism which is the subject of a granted and published patent, which is available without the need for certification, and of which the accession number has been communicated by the industrial property office to the IDA:

- (i) write to the IDA with purchase order giving your name and address and quoting the accession number of the microorganism (106; Rule 11.3(b)).
- (ii) When requested, pay the fee charged by the IDA for the furnishing of the sample (97; Rule 12.1(a)(iv)).

(d) Requesting a Sample of a Microorganism which is the Subject of a Published US patent (92 to 94; 104)

- (i) Ask the IDA if it is aware that the relevant US patent has issued (92; 105).
- (ii) If the answer to (i), above, is YES, proceed as in (c), above.
- (iii) If the answer to (i), above, is NO, include with your request and purchase order evidence of the publication of the relevant US patent (92; 105).
- (iv) If you cannot comply with (iii), above, expect a delay until the IDA has verified the fact of publication (92).
- (v) When asked, pay the fee charged by the IDA for the furnishing of the sample (97; Rule 12.1(a)(iv)).

[Appendix 2 follows]