

**Procedure for Closing of Applications Received Under the  
Biological Diversity Act 2002**

**Background**

The National Biodiversity Authority is the designated statutory body that regulates access to biological resources occurring in or obtained from India and associated knowledge thereto for the purposes of research, commercial utilization and bio-survey / bio-utilization. It decides upon applications preferred by foreigners including foreign entities, non-resident Indians and entities registered in India with non-Indian participation in share capital/management for the above said purposes. Likewise, applications for transfer of results of research by any person to foreign entities are also regulated by the NBA. Applications for intellectual property rights, if any, in or outside India for any invention based on any research or information on a biological resource obtained from India by any person are also dealt with by the NBA.

In deliberating upon such aforementioned applications, the NBA often has to address situations where applicants do not respond to queries made by the NBA relating to the processing of their applications. Lack of response from applicants will result in incomplete applications thereby necessitating the NBA Secretariat to close/terminate the application. In order to follow a due process and eliminate arbitrariness, the NBA secretariat hereby lists the possible situations that would result in the closure/termination of applications under the Biological Diversity Act and the process thereof.

**A. Situations resulting in the closure/termination of applications:**

1. Where the applicants choose to withdraw the application on their own, if requested by the applicant unconditionally and when there is no adverse implication on granting such withdrawal.

[Provided that the applicant chooses to withdraw his application in the event of patent application abandoned / refused to grant / dead in the patent office, in or outside India, the NBA secretariat may close the Form III application after obtaining necessary document, as appropriate, without referring to the Expert Committee / Authority]<sup>1</sup>

2. Where the applicants do not fulfil the conditions stipulated under the Biological Diversity Act and Rules and queries from the NBA Secretariat despite issue of two reminders / notices for compliance by giving 30 days each.

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<sup>1</sup> Inserted vide agenda no.38.17.02, 38<sup>th</sup> Authority held on 4<sup>th</sup> July 2016

3. Where the NBA directs execution of an agreement and the applicant does not execute such an agreement within 60 days.

**B. Process for closure/termination of applications:**

[1. Other than the applications referred under proviso of para A (1) above]<sup>2</sup>, applications that are proposed for closure/termination by the NBA Secretariat, the same shall be examined and deliberated upon by the Expert Committee on ABS, which may consider any one of the following, while making recommendations:

- a) May recommend the closure/termination.
- b) May seek additional reasons for withdrawal by the applicant and then re-examine it.
- c) May recommend an enquiry by designated persons or through SBB or any relevant agency in case of non-response or on suspicion of misappropriation / violation of provisions of the Act.
- d) May recommend any other action.

3. Based on any of the above recommendations, the NBA shall take decision regarding the closure/termination of an application or otherwise.

4. Once the NBA has taken a decision to close/terminate an application, a closure/termination letter shall be sent to the applicant with a copy marked to concerned SBB/BMC or any other relevant agencies. Where required, the decision of closure/termination shall also be communicated to the attorney of the applicant / legal counsel, if any.

5. Once an application has been closed / terminated, the applicant cannot reopen the same application but can apply afresh by paying the prescribed fee and fulfilling the necessary requirements as provided in the Biological Diversity Act and Rules and by the NBA Secretariat.

6. The NBA reserves the right to direct, the applicant filing a new application based on the subject matter of the closed/terminated application, to furnish reasons for their actions or inactions that resulted in the closure/termination of the previous application.

7. Details of closed/terminated applications shall be displayed on the NBA website.

8. These guidelines may be amended by the NBA as and when it may deem fit.

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<sup>2</sup> Inserted vide agenda no.38.17.02, 38<sup>th</sup> Authority held on 4<sup>th</sup> July 2016