

C. PCT 1641

April 28, 2022

Madam,
Sir,

Proposed modifications of the Administrative Instructions under the PCT (“the Administrative Instructions”), the PCT Receiving Office Guidelines (“the RO Guidelines”) and the PCT International Search and Preliminary Examination Guidelines (“the ISPE Guidelines”)

This Circular is addressed to your Office in its capacity as a receiving Office (RO), an International Searching Authority (ISA), an International Preliminary Examining Authority (IPEA), an Authority specified for supplementary search, and/or a designated or elected Office under the Patent Cooperation Treaty (PCT) for the purposes of consultation under PCT Rule 89.2(b). It is also addressed to certain non-governmental organizations representing users of the PCT System.

The purpose of this Circular is to consult on proposed modifications of the Administrative Instructions, the RO Guidelines and the ISPE Guidelines (contained in the Annexes) which have been prepared so as to implement the amendments to Rule 82^{quater} of the Regulations under the PCT (“the Regulations”) adopted by the PCT Assembly at its fifty-third session held in Geneva on October 4 to 8, 2021 (see document PCT/A/53/3, Annex II and document PCT/A/53/4, paragraph 25), which will enter into force on July 1, 2022. As you are aware, these amendments have the purpose of strengthening safeguards for applicants in the case of general disruptions which affect the ability to meet time limits under the Regulations.

Detailed explanations of the proposed modifications are provided below, noting that explanations may not be provided in every case, especially when the proposed modifications are self-evident or of an editorial nature.

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I. Proposed modifications of the Administrative Instructions

Section 111 is proposed to be modified as a result of the amendments to Rule 82*quater*. The title of the Section is proposed to be modified to better align it with the new title of the Rule. In paragraph (a), it is clarified that the existing procedure dealing with requests for the excuse of delays in meeting time limits on a case-by-case basis is limited to the cases of Rule 82*quater*.1 and Rule 82*quater*.2, and that a statement may be submitted in lieu of evidence following the introduction of new Rule 82*quater*.1(d). A new paragraph (b-*bis*) is proposed to clarify that any waiver under Rule 82*quater*.1(d) shall specify the applicable conditions including the specific period of time during which the waiver applies and that details concerning the waiver are to be published by the International Bureau of the World Intellectual Property Organization (WIPO) in the Gazette. In addition, a new paragraph (f) is proposed to clarify when the time limits shall expire following the establishment of a period of extension or additional period of extension under Rule 82*quater*.3, and a new paragraph (g) is proposed to clarify that any notification of period of extension or additional period of extension under Rule 82*quater*.3 shall likewise be published by the International Bureau in the Gazette.

In Annex E of the Administrative Instructions, an item is proposed to be added consequential to the changes proposed in Section 111(g) requiring the International Bureau to publish in the Gazette any notification of period of extension or additional period of extension under Rule 82*quater*.3.

- ./ The proposed modifications of the Administrative Instructions are set out in Annex I to this Circular. Certain paragraphs that are not proposed to be modified have been included for ease of reference.

II. Proposed modifications of the RO Guidelines

Paragraph 19 is proposed to be modified to also refer to the computation of time limits where extensions of time limits have been granted.

In paragraph 30, corresponding changes are proposed to be made as a result of the amendments to Rule 82*quater*.1 and the proposed modifications to Section 111(b-*bis*) as explained above.

A new paragraph 30E is proposed to be added to provide detailed guidance concerning the circumstances under which a period of extension may be established, including a few exemplary scenarios. Some further considerations and procedural guidance are also proposed in new paragraphs 30F to 30H.

- ./ The paragraphs of the RO Guidelines which are proposed to be modified or added are set out in Annex II to this Circular. Certain paragraphs that are not proposed to be modified have been included for ease of reference.

III. Proposed modifications of the ISPE Guidelines

Paragraph 19.50 is proposed to be modified to also mention the case of extension of time limits under Rule 82*quater*.3.

In paragraph 22.52A, corresponding changes are proposed to be made as a result of the amendments to Rule 82*quater*.1 and the proposed modifications to Section 111(b-*bis*) as explained above.

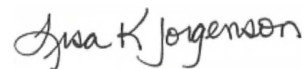
A new paragraph 22.52E is proposed to be added to provide detailed guidance concerning the circumstances under which a period of extension may be established, including a few exemplary scenarios. Some further considerations and procedural guidance are also proposed in new paragraphs 22.52F to 22.52H.

./ The paragraphs of the ISPE Guidelines which are proposed to be modified or added are set out in Annex III to this Circular. Certain paragraphs that are not proposed to be modified have been included for ease of reference.

IV. *Comments on the proposed modifications of the Administrative Instructions, the RO Guidelines and the ISPE Guidelines*

Your Office is invited to provide comments, if any, by May 27, 2022, by e-mail to: pct.legal@wipo.int.

Yours sincerely,



Lisa Jorgenson
Deputy Director General
Patents and Technology Sector

Enclosures: Annex I — Proposed modifications of the Administrative Instructions

Annex II — Proposed modifications of the PCT Receiving Office Guidelines

Annex III — Proposed modifications of the PCT International Search and Preliminary Examination Guidelines

PROPOSED MODIFICATIONS OF THE ADMINISTRATIVE INSTRUCTIONS

Section 111

**~~Procedure and Considerations in the Case of~~ Excuse of ~~the~~ Delay in Meeting
~~Certain Time Limits~~ and Extension of Time Limits under Rule 82~~quater~~**

(a) Where the receiving Office, the International Searching Authority, the Authority specified for supplementary search, the International Preliminary Examining Authority, or the International Bureau receives a request under Rule 82~~quater~~.1 or 82~~quater~~.2 for the excuse of a delay in meeting a time limit, it shall promptly:

(i) communicate its decision whether or not to excuse such a delay to the interested party; and

(ii) where applicable, transmit a copy of such a request, a copy of any evidence or statement furnished and a copy of its decision to the International Bureau.

(b) [No change] An interested party desiring to have delays excused due to general unavailability of electronic communications services under Rule 82~~quater~~.1 must establish that the outage of electronic communications services affected a widespread geographical area rather than being a localized problem, that it was unexpected or unforeseen, and that there was no alternative communication means available to him.

(b-bis) Where, in accordance with Rule 82~~quater~~.1(d), the Office, Authority or the International Bureau waives the requirement for evidence, it shall set out and publish the specific conditions under which the requirement for evidence is waived, including the specific period of time during which the waiver applies. The International Bureau shall promptly publish any waiver notified to it under Rule 82~~quater~~.1(d) in the Gazette.

(c) [No change] Where any Office that acts as the receiving Office, the International Searching Authority, the Authority specified for supplementary search, or the International Preliminary Examining Authority provides for the excuse of a delay in meeting time limits due to the unavailability of electronic means of communication at that Office under Rule 82~~quater~~.2, it shall notify the International Bureau accordingly. The International Bureau shall promptly publish this information in the Gazette.

(d) [No change] Where the International Bureau provides for the excuse of a delay in meeting time limits due to the unavailability of electronic means of communication at the Bureau under Rule 82~~quater~~.2, it shall publish this information in the Gazette.

(e) [No change] The International Bureau shall also promptly publish in the Gazette any notification received by it under Rule 82~~quater~~.2(a), last sentence.

(f) Where the receiving Office, the International Searching Authority, the Authority specified for supplementary search, the International Preliminary Examining Authority, or the International Bureau establishes a period of extension or additional period of extension under Rule 82~~quater~~.3, any time limit fixed in the Regulations for performing a particular action before that specific Office, Authority or the International Bureau which would expire during that period shall, subject to Rule 80.5, expire on the first day after the expiration of that period.

(g) The International Bureau shall promptly publish in the Gazette any notification of period of extension or additional period of extension received by it under Rule 82~~quater~~.3.

ANNEX E
INFORMATION TO BE PUBLISHED IN THE GAZETTE UNDER RULE 86.1(v)

1-14. [No change]

15. [No change] Information about the receiving Offices, the International Bureau and the International Searching and Preliminary Examining Authorities which provide for the excuse of delays in meeting time limits under Rule 82*quater*.2.

16. Any period of extension or additional period of extension under Rule 82*quater*.3.

[Annex II follows]

PROPOSED MODIFICATIONS OF THE PCT RECEIVING OFFICE GUIDELINES

**CHAPTER II
GENERAL**

14 to 18. [No change]

Computation of Time Limits

19. For the computation of periods expressed in years, months or days, see Rules 80.1 to 80.3. For the computation of any period expiring on a non-working day or official holiday, see Rule 80.5. For the determination of the starting date of the computation of any period and the date on which any period expires, see Rules 80.4 and 80.7. For the computation of any period in the case of delay in the mailing or the receipt by the applicant, see Rule 80.6. For the computation of any period in the case of extension of time limits, see Rule 82quater.3 and paragraph 30H. For the (re)computation of any time limit where the priority date has changed, see Rules 26bis.1(c) and 90bis.3(d) and paragraphs 192 and 321.

20 to 27. [No change]

Irregularities in the Mail Service and Excuse of Delay in Meeting Time Limits

28 to 29. [No change]

30. ***Excuse of Delay in Meeting Time Limits under Rule 82quater.1.*** For actions to be performed before the receiving Office, any delay in meeting a time limit is to be excused under Rule 82quater.1 if the receiving Office is satisfied that the following conditions are met:

(a) the time limit was not met due to war, revolution, civil disorder, strike, natural calamity, epidemic, general unavailability of electronic communication services or other like reason in the locality where the interested party resides, has his place of business or is staying;

(b) the relevant action has been taken as soon as reasonably possible;

(c) the evidence provided by the interested party is in a form acceptable to the receiving Office, or where a waiver applies, the statement provided meets the conditions set by the Office; and

(d) the evidence or statement is received by the receiving Office not later than six months after the expiration of the time limit applicable in the given case.

In the particular case of general unavailability of electronic communications services, the interested party must establish that the outage affected a widespread geographical area rather than being a localized problem, that it was unexpected or unforeseen, and that there was no alternative communication means available to him. Actions to be performed include the submission of documents, responses to invitations and the payment of fees. Whether the interested party has taken the relevant action “as soon as reasonably possible” is to be judged by the receiving Office on the facts of the case. Commonly, this would mean within a short period of the cause of the delay ceasing to apply. For example, in cases where a strike prevented an agent from reaching his office, it would be expected that the action should in most cases be taken either the next working day or shortly thereafter, depending on how much preparatory work had been disrupted. On the other hand, where a disaster has resulted in the complete destruction of an agent’s files, it would reasonably be expected to take longer to

reassemble all the necessary documents and systems to allow the necessary action to be taken. Rule 82*quater*.1 does not specifically refer to the action being taken “as soon as reasonably possible after the removal of the cause of the delay”, because an interested party should still be expected to take reasonable steps to overcome problems in cases where it can be seen that the relevant emergency situation will continue for a considerable period and the interested party is not himself prevented by the emergency from taking remedial action. As to the form of evidence acceptable to the receiving Office, for example, a news report from a reliable mass media outlet, or a statement or announcement from the relevant national authority should normally be acceptable for this purpose. In the case of general unavailability of electronic communications services, a statement from the provider of Internet services or the company providing electricity to the interested party may also be acceptable.

In exceptional circumstances, for example, where the receiving Office is aware of the occurrence of an event in a particular State or place which would justify an excuse of delay in meeting time limits, it may waive the requirement for evidence (Rule 82*quater*.1(d)). In this case, it will set and publish the conditions for such a waiver. Where the receiving Office finds that the conditions are met, no evidence will be required. The interested party must still submit a request for excuse of the delay and state that the failure to meet the time limit was due to the reason to which the waiver applies.

The excuse of delay only applies to time limits fixed in the Regulations and not to the priority period (for restoration of the right of priority, see paragraphs 166A to 166M). The receiving Office should promptly inform the interested party of its decision (Form PCT/RO/132). A copy of the request, any evidence furnished and the decision should be sent to the International Bureau (Section 111).

30A. [No change] ***Excuse of Delay in Meeting Time Limits under Rule 82*quater*.2.*** Rule 82*quater*.2 allows the receiving Office to excuse delays in meeting PCT time limits due to the unavailability of any of the permitted electronic means of communication at the Office. When a receiving Office which offers such excuse of delays becomes aware of planned or unforeseen outages in the electronic means of communication at the Office, it:

- (a) publishes information about the unavailability including its duration; and
- (b) notifies the International Bureau, which will accordingly publish the information to that effect in the Gazette.

30B. [No change] Receiving Offices will excuse delays in meeting time limits for this reason if the following conditions are met:

- (a) the applicant indicates, where so required by the receiving Office, that the time limit was not met due to the unavailability of one of the permitted electronic means of communication at the receiving Office;
- (b) the receiving Office acknowledges that the said electronic means of communication at the receiving Office was not available during the period of time concerned; and
- (c) the relevant action was performed on the next working day on which the said electronic means of communication became available.

30C. [No change] The receiving Office promptly informs the applicant of its decision (Form PCT/RO/132) and sends to the International Bureau a copy of the decision and, where applicable, any request and evidence furnished (Section 111).

30D. [No change] Rule 82*quater*.2 only applies to time limits fixed in the Regulations and not to the priority period.

30E. ***Extension of Time Limits Under Rule 82*quater*.3.*** When the State in which the receiving Office is located is experiencing a general disruption caused by an event listed in Rule 82*quater*.1(a) which affects the operations at the receiving Office and thereby interferes with the ability of interested parties to perform actions before that Office, the receiving Office

may decide to establish a period of extension in accordance with Rule 82quater.3. The receiving Office may make such a decision if it finds that the following two conditions are met:

(1) the State in which it is located is experiencing a general disruption caused by an event listed in Rule 82quater.1(a) (the disruption does not have to affect the entire State); and

(2) the general disruption has affected the operations of the receiving Office and significantly impacted its ability to provide the usual services to the interested parties.

This may be the case, for example, when the State concerned is experiencing an epidemic and the relevant authority has decided to restrict the movements of persons so that a large proportion of the staff of the Office can no longer work on premises. Another example would be a natural disaster which has caused significant damage to the electronic systems of the receiving Office which it relies on to process international applications. It may also be the case when the infrastructure (such as electricity supply, water supply or roads) in the place where the receiving Office is located has been seriously damaged due to an earthquake or tsunami and the Office, although still open for business, can only provide limited services to the public. If the receiving Office has several branch offices but only the operations of one or some of them were affected, it would be left to the discretion of the receiving Office to invoke Rule 82quater.3 according to the circumstances.

30F. When the receiving Office makes a determination that establishing a period of extension under Rule 82quater.3(a) is appropriate, it will then need to decide the beginning and end dates of the period of extension. In this respect, the receiving Office should consider how long the restrictions or limitations to its ability to provide services to the public are likely to last, taking account of the nature of the event, the gravity of the general disruption, possible future developments of the event, and other relevant factors. The period of extension should be as short as possible and justifiable by the circumstances so that possible delays to subsequent procedures can be minimized. In any case, it may not be longer than two months from the date of its commencement. If the general disruption continues, the receiving Office may establish additional periods of extension under Rule 82quater.3(b), which shall not be longer than two months each time.

30G. Once a decision to extend or to additionally extend the time limits is made, the receiving Office publishes the information about the beginning and end dates of such period of extension and notifies the International Bureau accordingly.

30H. Where the receiving Office establishes a period of extension or additional period of extension under Rule 82quater.3, any time limit fixed in the Regulations for performing a particular action before the Office which would expire during that period will expire on the first working day after the expiration of that period. The applicant does not need to request an extension and the receiving Office does not need to issue any specific decision in this respect in relation to the international application. It should be note that this Rule does not apply to the priority period since it is not a time limit fixed in the Regulations.

31. [No change]

[Annex III follows]

PROPOSED MODIFICATIONS OF THE PCT INTERNATIONAL SEARCH AND
PRELIMINARY EXAMINATION GUIDELINES

Chapter 19
Examination Procedure Before The International Preliminary Examining Authority

19.01 to 19.48 [No change]

Determination of Time Limits

Articles 35(1), 47(1)

19.49 [No change] When it is a matter for the Authority to determine applicable time limits referred to in the PCT, the examiner must consult all the factors relevant to the particular international application under consideration as well as the Regulations under the PCT which govern such time limits. The most important time limits for international preliminary examination so far as International Preliminary Examining Authorities are concerned, have been considered in more detail in the various chapters and paragraphs as follows:

- (i) translations of priority document: see Chapter 6 and Chapter 18;
- (ii) amendments: see Chapter 20 and paragraph 17.57;
- (iii) rectifications of obvious mistakes: see paragraph 19.39 and Chapter 8;
- (iv) response by the applicant to first written opinion: see Chapter 17;
- (v) restricting claims or payment of additional fees: see Chapter 10;
- (vi) furnishing priority documents: see Chapter 6;
- (vii) establishment of the international preliminary examination report: see paragraphs 19.10 and 19.11.

Rules 80, 82, 82quater

19.50 Any time limit fixed by the International Preliminary Examining Authority will usually be specified in full months, which should be calculated from the day following the date of mailing of a particular communication inviting a response by the applicant. Rules 80.1 to 80.4 provide precise details for the determination of the day of expiration of the prescribed time limit. Rule 80.5 contains provisions covering certain contingencies, for example, that the Office of the International Preliminary Examining Authority is not open on the day on which the time limit to respond by the applicant expires (or there is an official holiday in the locality of any branch of the Office, or in a part of the Contracting State for which the Office is the government authority, such that the national law of the Office provides that such periods for national applications expire on a subsequent working day). Rule 82 covers the situation where there is a **general** disruption in the postal service ([see paragraph 22.52](#)). Rules [82quater.1](#) and [82quater.2](#) provides for an excuse of delays in meeting time limits because of *force majeure* reasons or the unavailability of any permitted electronic means of communication at the International Preliminary Examining Authority ([see paragraphs 22.52A to 22.52D](#)). [Rule 82quater.3](#) authorizes the International Preliminary Examining Authority to [extend time limits in case of a general disruption caused by a force majeure event which affects the operations at the Authority \(see paragraphs 22.52E to 22.52H\)](#).

19.51 to 19.52 [No change]

Chapter 22
Clerical and Administrative Procedures

22.01 to 22.52 [No change]

Excuse of Delay in Meeting Time Limits

Rule 82quater.1, Section 111

22.52A Any delay in meeting a time limit is to be excused under Rule 82quater.1 if the International Searching Authority, the Authority specified for supplementary search, or the International Preliminary Examining Authority, as the case may be, is satisfied that the following conditions are met:

- (a) the time limit was not met due to war, revolution, civil disorder, strike, natural calamity, epidemic, general unavailability of electronic communication services or other like reason in the locality where the interested party resides, has his place of business or is staying;
- (b) the relevant action has been taken as soon as reasonably possible;
- (c) the evidence provided by the interested party is in a form acceptable to the Authority, or where a waiver applies, the statement provided meets the conditions set by the Authority; and
- (d) the evidence or statement is received by the Authority not later than six months after the expiration of the time limit applicable in the given case.

In the particular case of general unavailability of electronic communications services, the interested party must establish that the outage affected a widespread geographical area rather than being a localized problem, that it was unexpected or unforeseen, and that there was no alternative communication means available to him. Actions to be performed include the submission of documents, responses to invitations and the payment of fees. Whether the interested party has taken the relevant action “as soon as reasonably possible” is to be judged by the Authority on the facts of the case. Commonly, this would mean within a short period of the cause of the delay ceasing to apply. For example, in cases where a strike prevented an agent from reaching his office, it would be expected that the action should in most cases be taken either the next working day or shortly thereafter, depending on how much preparatory work had been disrupted. On the other hand, where a disaster has resulted in the complete destruction of an agent’s files, it would reasonably be expected to take longer to reassemble all the necessary documents and systems to allow the necessary action to be taken. Rule 82quater.1 does not specifically refer to the action being taken “as soon as reasonably possible after the removal of the cause of the delay”, because an interested party should still be expected to take reasonable steps to overcome problems in cases where it can be seen that the relevant emergency situation will continue for a considerable period and the interested party is not himself prevented by the emergency from taking remedial action. As to the form of evidence acceptable to the Authority, for example, a news report from a reliable mass media outlet, or a statement or announcement from the relevant national authority should normally be acceptable for this purpose. In the case of general unavailability of electronic communications services, a statement from the provider of Internet services or the company providing electricity to the interested party may also be acceptable.

In exceptional circumstances, for example, where the Authority is aware of the occurrence of an event in a particular State or place which would justify an excuse of delay in meeting time limits, it may waive the requirement for evidence (Rule 82quater.1(d)). In this case, it will set and publish the conditions for such a waiver. Where the Authority finds that the conditions are

met, no evidence will be required. The interested party must still submit a request for excuse of the delay and state that the failure to meet the time limit was due to the reason to which the waiver applies.

Rule 82quater.2, Section 111

22.52B [No change] Rule 82quater.2 allows the International Searching Authority, the Authority specified for supplementary search, and the International Preliminary Examining Authority to provide for the excuse of any delay in meeting time limits due to the unavailability of any of the permitted electronic means of communication at the Authority. If the Authority provides for such an excuse, it notifies the International Bureau, which will publish the information in the Gazette. Moreover, at the time when such an event has taken place (e.g., unforeseen outage) or is scheduled to take place (e.g., scheduled maintenance), the Authority also publishes the information on any such unavailability, including the period of the unavailability, and notifies the International Bureau accordingly.

22.52C [No change] Where the International Searching Authority, the Authority specified for supplementary search, or the International Preliminary Examining Authority, as the case may be, provides for the excuse of a delay in meeting time limits under Rule 82quater.2, it excuses any delay in meeting a time limit if:

(a) the applicant indicates, where so required by the Authority, that the time limit was not met due to the unavailability of one of the permitted electronic means of communication at the Authority;

(b) the Authority acknowledges that the said electronic means of communication at the Authority was not available during the period of time concerned; and

(c) the relevant action was performed on the next working day on which the said electronic means of communication became available.

22.52D [No change] The Authority should promptly inform the interested party of its decision (using Form PCT/ISA/224 or Form PCT/IPEA/424, as the case may be). It also transmits a copy of the decision and, where applicable, any request and evidence furnished to the International Bureau.

Extension of Time Limits Under Rule 82quater.3

Rule 82quater.3, Section 111

22.52E When the State in which the International Searching Authority, the Authority specified for supplementary search, or the International Preliminary Examining Authority, as the case may be, is located is experiencing a general disruption caused by an event listed in Rule 82quater.1(a) which affects the operations at the Authority and thereby interferes with the ability of interested parties to perform actions before that Authority, the Authority may decide to establish a period of extension in accordance with Rule 82quater.3. The Authority may make such a decision if it finds that the following two conditions are met:

(1) the State in which it is located is experiencing a general disruption caused by an event listed in Rule 82quater.1(a) (the disruption does not have to affect the entire State); and

(2) the general disruption has affected the operations of the Authority and significantly impacted its ability to provide the usual services to the interested parties.

This may be the case, for example, when the State concerned is experiencing an epidemic and the relevant local authority has decided to restrict the movements of persons so that a large proportion of the staff of the Authority can no longer work on premises. Another example would be a natural disaster which has caused significant damage to the electronic systems of the Authority which it relies on to process international applications. It may also be the case when the infrastructure (such as electricity supply, water supply or roads) in the place where the Authority is located has been seriously damaged due to an earthquake or tsunami and the Authority, although still open for business, can only provide limited services to the public. If

the Authority has several branch offices but only the operations of one or some of them were affected, it would be left to the discretion of that Authority to invoke Rule 82^{quater}.3 according to the circumstances.

22.52F When the Authority makes a determination that establishing a period of extension under Rule 82^{quater}.3 is appropriate, it will then need to decide the beginning and end dates of the period of extension. In this respect, the Authority should consider how long the restrictions or limitations to its ability to provide services to the public are likely to last, taking account of the nature of the event, the gravity of the general disruption, possible future developments of the event, and other relevant factors. The period of extension should be as short as possible and justifiable by the circumstances so that possible delays to subsequent procedures can be minimized. In any case, it may not be longer than two months from the date of its commencement. If the general disruption continues, the Authority may establish additional periods of extension under Rule 82^{quater}.3(b), which shall not be longer than two months each time.

22.52G Once a decision to extend or to additionally extend the time limits is made, the Authority publishes the information about the beginning and end dates of such period of extension and notifies the International Bureau accordingly.

22.52H Where the International Searching Authority, the Authority specified for supplementary search, or the International Preliminary Examining Authority, as the case may be, establishes a period of extension or additional period of extension under Rule 82^{quater}.3, any time limit fixed in the Regulations for performing a particular action before the Authority which would expire during that period will expire on the first working day after the expiration of that period. The applicant does not need to request an extension and the Authority does not need to issue any specific decision in this respect in relation to the international application. It should be noted that this Rule does not apply to the priority period since it is not a time limit fixed in the Regulations.

22.53 to 22.59 [No change]

[End of Annexes and of Circular]