

Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management



Part 4: A detailed review of the national instruments relevant to this project

Strategy

The WIPOLEX search facility was used to identify national legislation relevant to this project. The WIPOLEX search facility allows national legislation to be searched by country and subject matter. The two categories of subject matter relevant to this project were traditional knowledge and genetic resources. The database only provides for searching on one subject at a time. The initial search was based on traditional knowledge. The results from this search also include instruments that deal with genetic resources. Ideally this initial search would be supplemented by a second search on genetic resources to identify any additional relevant instruments not detected in the initial search. However time has not permitted this to be carried out.

The search strategy is necessarily limited to those countries listed on the WIPOLEX database. However this database encompasses a large number of countries and includes countries that have been active in legislating in this area. The volume of data generated from the search is significant.

The instruments relevant to this project have been included in this report where there is English language text available. For those instruments for which no English language text is available the name and subject matter as described in WIPOLEX is provided.

In addition to providing English language text the English language instruments have been analysed in comparison with the common provisions identified from comparing the Nagoya Protocol with the draft WIPO international agreements.

Finally a synopsis of observations made during this analysis has been created that may be of assistance to workshop participants in evaluating the merits of the various instruments.

Synopsis

Instruments from over 50 countries have been analysed. In a number of instances an English language version of the legislation was not available. Consequently these instruments could not be examined. Some instruments have very limited coverage of relevant issues. In those instances where relevant issues are covered typically some issues are not addressed.

In some instances the provisions relating to traditional knowledge have been incorporated into a generalised intellectual property law. While the resulting legislation is therefore lengthy and of limited relevance to this project the texts have been included for the sake of completeness and as instructive in providing examples of differing approaches to legislation in this area. Others combine plant varieties or farmers rights or copyright law with relevant provisions. Again the relevant issues receive limited treatment.

The following table of contents summaries the countries for which instruments were analysed and their relevance. Countries highlighted in green provide legislation with provisions that relate to a significant number of the common provisions whereas those highlighted in yellow have some relevant provisions. It is suggested that the green highlighted countries could serve as primary sources for developing Australian legislation while the yellow highlighted countries could serve as secondary sources.

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National legislation

1. Benin

Law No. 91-006 of February 25, 1991 implementing the Cultural Charter in the Republic of Benin- no copy accessed as yet.

2. Bolivia

a. *OFFICIAL GAZETTE OF BOLIVIA* SUPREME DECREE No. 29004 [Courtesy translation provided by WIPO, © 2011 EVO MORALES AYMA]

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

WHEREAS:

Subparagraph (a) of Article 7 of the Political Constitution of the State states that any person has the fundamental right to life, health and safety; Articles 158 and 164 also stipulate that the State has the obligation to defend human capital by protecting the health of the population, and that the rules on public health are binding and compulsory.

One of the fundamental principles is the Right to Health, in accordance with international agreements such as the International Covenant on Economic, Social and Cultural Rights; the Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS; and the Doha Declaration on the TRIPS Agreement and Public Health of the World Trade Organization – WTO, which states that the TRIPS Agreement must be interpreted and applied in a way that protects public health and promotes access to all medicines.

The World Health Organization – WHO reaffirms the right of its member countries, which include Bolivia, to make full use of the flexibilities included in the TRIPS Agreement to protect public health and boost access to medicines.

It is necessary to protect Public Health and access to medicines for all Bolivians and foreigners living or staying in the national territory, reaffirming the obligations established in the Political Constitution of the State.

Article 2 of the Health Code, approved by Decree Law No. 15629 of July 18, 1978, states that health is a public interest good, and that it is the duty of the State to protect the health of the individual, the family and the population as a whole.

Article 4 of Law No. 3351 of February 21, 2006 – Organization of the Executive Branch Act, establishes the responsibilities of the Ministry of Health and Sport as including the regulation, planning, control and leadership of the National Health System and the private and public subsectors of Social Security.

Law No. 1737 of December 17, 1996, Medicines Act establishes, in Articles 1 and 3, mechanisms for the regulation and control of medicines, in accordance with the Medicines Policy established in Articles 1 and 3 of Supreme Decree No. 25235 of November 30, 1998, Regulations under the Medicines Act.

The Ministry of Health and Sport, subject to Ministerial Resolution No. 580 of August 29, 2006, approves the Organizational Structure of the Unit of Medicines – UNIMED, so that it complies with the obligations stipulated in the Medicines Act and the Regulations thereunder.

Supreme Decree No. 27938 of December 20, 2004, amended by Supreme Decree No. 28152 of May 16, 2005, establishes the jurisdiction of the National Intellectual Property Service – SENAPI, as the competent national office to administer the intellectual property regime, and for the monitoring and effective protection of the rights of exclusivity in relation to industrial property.

The State must protect the public interest, guaranteeing the social function that must be fulfilled by private ownership; in this sense, it is necessary to establish a special procedure for the treatment of pharmaceutical products, as differentiated social goods.

IN COUNCIL OF MINISTERS, D E C R E E S:

ARTICLE 1. (OBJECTIVE). The objective of this Supreme Decree is to establish a prior consent procedure in a product patent application and/or pharmaceutical invention process.

ARTICLE 2. (PRIOR CONSENT). For the purposes of this Supreme Decree, Prior Consent shall mean the concrete mechanism to determine whether the content and scope for which protection is sought in the patent application do not interfere with the right to health and access to medicines.

ARTICLE 3. (GRANTING OF PATENTS). The granting of pharmaceutical invention patents for products and procedures shall depend on the Prior Consent given by the Unit of Medicines and Health Technology – UNIMED.

ARTICLE 4. (COMPETENT ENTITIES). The Competent Entities are as follows:

(a) the National Intellectual Property Service – SENAPI, which is responsible for analyzing the requirements for the award of patents and the registration procedure.

(b) The Unit of Medicines and Health Technology – UNIMED, of which the main responsibility is to issue Prior Consent in response to a patent application for a pharmaceutical invention.

ARTICLE 5. (RESPONSIBILITY). Responsibilities of competent entities:

(a) SENAPI, following the award of an invention patent in the pharmaceutical area, shall refer the relevant procedure to UNIMED.

(b) when the result of the Prior Consent is positive, UNIMED shall refer to SENAPI the pharmaceutical invention patent application, giving the grounds for the result of the Prior Consent. If the result of the Prior Consent is negative, UNIMED shall refer the patent application to SENAPI, giving the grounds for the refusal and supporting it with documentation.

ARTICLE 6. (TECHNICAL COMMISSION FOR PRIOR CONSENT). In accordance with Article 1 of this Supreme Decree, UNIMED will form a Technical Commission for Prior Consent, to enable objective decisions to be made to analyze the pharmaceutical invention patent application referred by SENAPI.

TRANSITIONAL PROVISIONS

SINGLE TRANSITIONAL PROVISION. The Ministry of Health and Sport shall draft and approve, 90 (ninety) days from the publication of this Supreme Decree, the supplementary regulations needed to apply this rule.

All the provisions that contradict the present Supreme Decree are repealed and abolished. The Ministers of State for the Offices of Production and Micro-enterprise and Health and Sport shall be responsible for the implementation and enforcement of the present Supreme Decree. Done at the Palace of Government in the city of La Paz, on the ninth day of the month of January of the year two thousand and seven.

SIGNED BY EVO MORALES AYMA, David Choquehuanca Céspedes, Juan Ramón Quintana Taborga, Alicia Muñoz Alá, Walker San Miguel Rodríguez, Casimira Rodríguez Romero, Hernando Larrazábal Córdova, Luís Alberto Arce Catacora, Abel Mamani Marca, Celinda Sosa Lunda, Salvador Ric Riera, Hugo Salvatierra Gutiérrez, Carlos Villegas Quiroga, José Guillermo Dalence Salinas, Santiago Alex Gálvez Mamani, Félix Patzi Paco, Nila Heredia Miranda.

Comparison of Bolivian Decree with common provisions under the Nagoya Protocol and WIPO draft agreements

This Decree appears to be a precursor to implementation of regulation that may address relevant provisions. It has very little coverage of the subject matter covered by the common provisions.

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	ARTICLE 1. (OBJECTIVE). The objective of this Supreme Decree is to establish a prior consent procedure in a product patent application and/or pharmaceutical invention process.	This is restricted in application to product patents and pharmaceutical inventions
2. definition of terms- key terms used in the draft		Not addressed
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights		Not addressed
4. beneficiaries- who should benefit		Not addressed
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	ARTICLE 2. (PRIOR CONSENT). For the purposes of this Supreme Decree, Prior Consent shall mean the concrete mechanism to determine whether the content and scope for which protection is sought in the patent application do not interfere with the right to health and access to medicines. ARTICLE 3. (GRANTING OF PATENTS). The granting of pharmaceutical invention patents for products and procedures shall depend on the Prior Consent given by the Unit of Medicines and Health Technology – UNIMED	Preventing conflict with access to health and medicine

6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building		Not addressed
7. Sanctions and remedies- dealing with breaches		Not addressed
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>ARTICLE 4. (COMPETENT ENTITIES). The Competent Entities are as follows: (a) the National Intellectual Property Service – SENAPI, which is responsible for analyzing the requirements for the award of patents and the registration procedure. (b) The Unit of Medicines and Health Technology – UNIMED, of which the main responsibility is to issue Prior Consent in response to a patent application for a pharmaceutical invention.</p> <p>ARTICLE 5. (RESPONSIBILITY). Responsibilities of competent entities: (a) SENAPI, following the award of an invention patent in the pharmaceutical area, shall refer the relevant procedure to UNIMED.</p> <p>(b) when the result of the Prior Consent is positive, UNIMED shall refer to SENAPI the pharmaceutical invention patent application, giving the grounds for the result of the Prior Consent. If the result of the Prior Consent is negative, UNIMED shall refer the patent application to SENAPI, giving the grounds for the refusal and supporting it with documentation.</p> <p>ARTICLE 6. (TECHNICAL COMMISSION FOR PRIOR CONSENT). In accordance with Article 1 of this Supreme Decree, UNIMED will form a Technical Commission for Prior Consent, to enable objective decisions to be made to analyze the pharmaceutical invention patent application referred by SENAPI.</p>	
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		Not addressed
10. exceptions – emergencies, traditional use, conservation		Not addressed
11. disclosure- permits, databases, disclosure in intellectual property applications		Not addressed
12. interaction with existing laws- avoiding conflict with other laws		Not addressed
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are		Not addressed

complied with		
14. transitional provisions- existing uses		Not addressed

b. Law of the Productive, Communal, and Agricultural Revolution (Spanish text only appears to be available)

3. Bhutan

The Biodiversity Act of Bhutan Water Sheep Year 2003

PREAMBLE

Noting the provisions of the Convention on Biological Diversity on the sovereignty of the States over their genetic resources and the need to promote the conservation and sustainable use of these resources as well as the fair and equitable sharing of benefits arising from its utilization;
 Recalling the numerous decisions of the Conferences of the Parties and other Bodies of the Convention on Biological Diversity promoting and encouraging the Parties to implement legal, administrative and policy measures to regulate access to genetic resources and benefit sharing;
 Recognizing that access to genetic resources is currently unregulated in the Kingdom of Bhutan;
 Realizing the value of biological and genetic resources in the development of products, compounds and substances that have medicinal, industrial and agricultural and related applications;
 Whereas it is necessary to protect and encourage cultural diversity giving due value to the knowledge, innovations and practices of local communities in Bhutan;
 Aware of the fundamental principle that prior informed consent and mutually agreed terms for benefit sharing shall be secured before access can take place;
 The National Assembly of Bhutan hereby adopts this Act.

CHAPTER 1: TITLE, ENACTMENT, COMMENCEMENT, EXTENT, PURPOSE & OBJECTIVES, SCOPE AND EXEMPTIONS

1. Title, Enactment, Commencement and Extent.

- This Act shall be called the Biodiversity Act of Bhutan, 2003.
- Be it enacted by the National Assembly at it's 81st session on the day of the month of the Water Sheep Year corresponding today of the month of 2003.
- It shall come into force in the year of the Water Sheep Year, the month, the day, corresponding to the day of month, 2003.
- It shall extend to the whole of the Kingdom of Bhutan.

2. Purpose and objectives

This Act shall have the following purposes and objectives:

- To ensure national sovereignty of the RGOB over genetic resources in accordance with relevant National and International Law.
- To ensure the conservation and sustainable use of the biochemical and genetic resources.
- To promote the equitable sharing of benefits derived from the use of genetic resources.

- d. To promote technology transfer and capacity building at the national and local levels, including the building of scientific and technological capacity relevant to the conservation and sustainable use of biological diversity.
- e. To recognize and protect Traditional Knowledge, innovation and practices of local communities associated with biodiversity.
- f. To regulate and facilitate the process by which collectors may legally obtain genetic resources.
- g. To prevent illegal access to genetic and biochemical resources and associated Traditional Knowledge.
- h. To recognize and protect the farmers' and breeder's rights.
- i. To make plant varieties subject to property rights.
- j. Ensure that plant breeders are able to recover the cost from useful improvements and innovations, and continue to do so.
- k. Provide legal recognition of varieties which are not protectable under the internationally existing patent and/or plant breeders rights laws and thereby recognize farmers' plant variety improvements and innovations and provide a means of sharing benefits derived from the use of farmers' or traditional varieties as breeding material for commercial purposes.
- l. To promote access to foreign sources of improved plant varieties to Bhutanese farmers.

3. Scope

- a. This Act shall apply to all the genetic and biochemical resources including wild, domesticated and cultivated species of flora and fauna, both in-situ and ex-situ conditions found within the territory of Kingdom of Bhutan.
- b. The procedure and conditions provided by this Act shall apply even if the genetic resources for which access is sought are located in protected areas or government reserved forests.
- c. The provision of this Act shall apply to the Traditional Knowledge, innovation and practices associated with biodiversity.
- d. The Traditional Knowledge includes any knowledge that generally fulfills one or more of the following conditions:
 - i) Is or has been transmitted from generation to generation.
 - ii) Is regarded as pertaining to a particular traditional group, clan and community of people in Bhutan.
 - iii) Is collectively originated and held.

4. Exemptions.

This Act shall not apply:

- a. Where the biological material is used as a commodity for the purpose of direct use or consumption as determined by the Competent Authority, based on the processes and end use of genetic resources, in accordance with the provisions of the Act.
- b. To access, use and exchange of biological and genetic resources among local communities resulting from their traditional and customary practices.
- c. To access of human genetic resources.
- d. Where the Competent Authority may determine plant and animal genetic resources access, which will be governed by Special Rules and Regulations or Conditions such as those established by multilateral systems for access and benefit sharing, especially in the case of plant genetic resources for food and agriculture, in accordance with the international law.
- e. To varieties for which patent protection is available.
- f. To the prevention of the commercial exploitation, which is necessary to protect public order or morality including prejudice to the environment, the general interest or traditional rights of farmers.

CHAPTER 2 : ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING CONDITIONS OF ACCESS

5. Prior Informed Consent.

Access covered by this Act shall be subject to the prior informed consent of the Competent Authority of Bhutan, representing national interests and the interests of the local communities harbouring, cultivating, developing and maintaining the biological diversity concerned.

In case of access to Traditional Knowledge, innovation and practices of local communities, the procedure and conditions set out in Chapter 4 and Chapter 1, Section 3 of this Act shall also apply.

In both cases, the Authorized Agency is responsible for processing the applications and monitoring the Permits granted.

6. Authorization Procedure: Application

The applicant shall submit an application for access to the Authorized Agency in accordance with Section 7. In the event the Authorized Agency is satisfied that the application for access complies with the requirement under Section 7, such an application may be submitted to the Competent Authority to arrive at a decision to grant or refuse a permit in accordance with Sections 7 and 9.

For duly registered ex-situ collections the Regulations of this Act may set special procedures for access authorization.

Likewise, the requirements of this Act will be determined in a different way for commercial and for non-commercial applications.

7. Application for Access Permit

To enable the Competent Authority to arrive at a decision to grant or refuse a permit, the applicant shall include the following information, when submitting an application for access to genetic and/or biochemical resources or associated Traditional Knowledge covered by this Act:

- a. Provide a description of the applicant including their legal status, place of residence and a list of all entities and individuals, which will be involved in the access activities and their respective responsibilities.
- b. Describe the applicant's technical and financial capability to conduct the access activity and previous biological resource collection activities within Bhutan and elsewhere.
- c. Identify the kind of genetic and biological resources it is seeking.
- d. Identify the purpose and fields of the access activity and the purpose for which access is requested including the type and extent of research, teaching or commercial intention and use expected to be derived from it. For a different purpose, the applicant shall submit a separate application.
- e. State the potential use and anticipated benefits of the accessed material and how the results will be shared.
- f. Identify the nature of the legal rights the applicant may seek over the collected resources, derivatives of the collected resources, and innovations that are derived from those resources, including any intellectual property rights.
- g. Indicate agreement to abide by the conditions set out by the Competent Authority for collection activities. This includes appropriate arrangements with the Authorized Agency to facilitate the collection mission, including establishing provisional routes, estimated timing, types of material collected and quantities and identification of methods of collection (sampling, harvest and storage methods).
- h. The identification of the national institution or institutions, which will participate in the research
- i. Indicate agreement to bear all costs involved in collection, including participation of at least one government official of the RGOB in the collection mission.
- j. Provide information about existing or proposed contracts between the applicant and any third party relating to the use of any information and products resulting from the access activity.

- k. Provide information on the primary destination of the resources and any expected subsequent destinations of the resources.
- l. Provide information on the arrangements made within Bhutan to facilitate the collection mission.
- m. Indicate plans, if any, for cooperation with national institutions, scholars, scientists, students, farmers and farmer groups in Bhutan in the field mission and/or its follow-up activities.
- n. Provide information on intended distribution of the germplasm collected and list actual or potential beneficiaries.
- o. Demonstrate that the collection/access activity will have no negative environmental impact.
- p. Provide information on the prior informed consent of the relevant stakeholders when necessary
- q. The economic, social, technical, scientific, environmental or any other benefits that are intended or may be likely to be accrued to the country and an indication of the types of short, medium and long term benefits to be shared with the RGOB and other relevant stakeholders as well as the proposed mechanisms and arrangements for benefit sharing.
- r. All information provided shall be supplied in English or Dzongkha.
- s. An application shall be affixed with an affidavit.

7.1. The applicant shall be informed in writing of the decision taken within 30 days of receipt of the application by the Competent Authority.

8. Confidentiality.

The Authorized Agency shall protect all the information deemed confidential as per the Act, such as trade secrets or other forms of intellectual property rights.

9. Conditions for the Grant of Access.

Competent Authority, through the Authorized Agency, may grant access if in addition to Section 10, the following minimum requirements are satisfied:

- a. The applicant agrees to bear all costs relevant to the collection, including costs of participating staff identified by the Competent Authority.
- b. The applicant agrees to deposit with the Authorized Agency duplicates of each sample collected and the associated information on collection sites of collected materials gathered from farmers' field or government forest.
- c. The applicant agrees to inform the Competent Authority, through the Authorized Agency, of all findings from subsequent research and development on the collected samples in accordance with the terms of the Material Transfer Agreement or Contract signed between both.
- d. The applicant shall not transfer the resources accessed or associated Traditional Knowledge to any third party without the authorization of the Competent Authority.
- e. The applicant shall notify the Competent Authority prior to applying for intellectual property rights relating to the collected material or intellectual property rights relating to an invention, which is based on associated Traditional Knowledge obtained in Bhutan.
- f. The applicant agrees to benefit sharing conditions negotiated in accordance with Section 10 below. These conditions shall be contained in an appropriate Material Transfer Agreement or Contract Agreement signed between the applicant and the Competent Authority.
- g. The applicant agrees to submit a full report to Authorized Agency on completion of the collection activity, including sites of collection, number of samples collected and associated information gathered.
- h. During collection, the collector should systematically record common passport data and describe plant populations, its diversity, habitat and ecology in detail.
- i. The applicant agrees that, the acquisition of germplasm must not deplete populations or farmers' seed stocks, in order to avoid genetic erosion.

- j. If appropriate, the applicant agrees to bear the cost of environmental impact assessment and abide by the Environmental Assessment Act, 2000 of Bhutan.
- k. The applicant shall abide by the relevant laws of the country, local customs, traditions and values.
- l. In addition to the requirements laid down in Section 9(a) to Section 9(k), the competent authority and the local community or person may where it is deemed necessary or appropriate require the collector to comply with additional requirements.

10. Conditions for benefit sharing

Upon fulfilment of all the conditions described above, the Competent Authority may grant access if one or more, when relevant, of the following minimum conditions for benefit sharing, which are to be included in the Material Transfer Agreement or Contract Agreement to be signed between the Competent Authority and the Applicant. These conditions may also be considered in any Material Transfer Agreement or Contract Agreement to be signed between the applicant and any other relevant stakeholder.

- a. A flat fee and upfront payments.
- b. The sharing of the research results and relevant information.
- c. Royalties
- d. Milestones payments.
- e. Recognition as a partner in intellectual property ownership of products derived from the supplied material.
- f. Joint research activities.
- g. Concessionary rates or free supply of commercial products derived from the resources provided.
- h. Transfer of technologies.
- i. Training and capacity building.
- j. The acknowledgment of the origin of the genetic resources in any publication resulting from the research activities.
- k. Donation of equipment to national institutions.
- l. Other benefits, monetary or non-monetary.

10.1. The Competent Authority shall issue a Certificate of Origin, which states that, the procedures and conditions for granting access to the applicant have been met.

CHAPTER 3: A SUI GENERIS SYSTEM FOR THE PROTECTION OF PLANT VARIETIES

Part I: CONDITIONS FOR PROTECTION

11. Conditions of Protection.

Plant variety protection shall be granted for plant varieties that are novel, distinct, identifiable, uniform and stable.

12. Novelty.

The variety is novel if at the date of filing of the application, the material of the variety has not been sold with the consent of the applicant or her/his successor in title, for purpose of exploitation of the variety:

- a. For longer than one year for commercial varieties.
- b. In case of varieties bred and developed by farmers and only cultivated within limited areas of the country for longer than 10 years.

13. Distinctness.

The plant variety is distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application.

14. Uniformity/ Stability/ Identifiability.

a. Uniformity;

The variety is uniform if, subject to the variation that may be expected from the particular features of its propagation and reproduction, it is sufficiently uniform in relevant characteristics.

b. Stability;

The variety is stable if its relevant characteristics remain sufficiently unchanged after repeated propagation.

c. Identifiability;

The variety is identifiable if it can be identified by a person skilled in the art of such identification, recognized by the Competent Authority.

15. Certificate of Origin.

A Certificate of Origin of the plant variety under this chapter may be required at the discretion of the Competent Authority.

Part II: RIGHTS CONFERRED

16. Rights conferred.

a. Entitlement to the right conferred under this Chapter shall vest in the person(s) who (jointly) bred and developed the plant variety or in her/ his or their successor(s) in title.

b. Where the person who bred and developed the plant variety is an employee, entitlement to the Right conferred under this Chapter shall be vested in the employer, unless otherwise agreed.

c. Where an application has been filed by a person who is not entitled, the person entitled may submit a request to the Competent Authority for assignment of the application. Where the right has already been granted to the person not entitled, the person entitled may file an objection for the restitution of the title.

17. Acts requiring the rights holder's authorization.

The following acts in respect of material of varieties shall require the rights holder's authorization:

a. Producing or reproducing (multiplication) for commercial marketing.

b. Offering for sale, selling or other marketing.

c. Exporting.

d. Importing.

e. Stocking for the purpose of a – d.

18. Exceptions to the rights conferred.

a. Farming (farmers' rights)

The Competent Authority may restrict breeder's rights in relation to plant varieties protected by these provisions in order to permit small farmers, as defined in the regulations of this Chapter or at the discretion of the Competent Authority, to propagate seed which they have harvested on their holding and to exchange that seed with others on a non-commercial basis.

b. Breeding (breeder's exemptions).

The rights conferred on right holders in Section 16, shall not apply to acts done for the purpose of breeding other varieties and shall not apply to any acts in respect of such other varieties provided these other varieties have not been essentially derived from a protected variety.

19. Duration of the rights

The plant variety protection shall last 20 years from date of grant of the right and 25 years for trees and vines.

20. Exhaustion of the rights

The right conferred in Section 16 shall not extend to acts concerning any material of the protected variety or any material derived from such protected variety, which has been sold or otherwise marketed by the holder with her/ his consent, unless such activities:

a. Involve further propagation of the variety in question.

b. Involve an export of material, for the purpose of propagation, into a country that does not protect varieties of the plant genus or species to which the variety belongs.

21. Compulsory Licenses.

Any person may, by means of an application filed to the Competent Authority, seek the grant of a Compulsory License in respect with the Rights conferred under this Act. A Compulsory License shall not be granted unless one or more of the following conditions are fulfilled:

- a. It is necessary to safeguard public interest.
- b. It is necessary due to insufficient supply by the rights holder of the subject variety.
- c. It is necessary since to high a proportion of the plant variety offered for sale by the right holder in Bhutan is being imported and not produced in the country.
- d. That the right holder is not prepared to grant a license on reasonable commercial terms.

22. Other requirements for granting compulsory license.

The Competent Authority shall act in compliance with the general laws and regulations in granting or refusing a compulsory license. In particular, the Competent Authority shall:

- a. Offer opportunity to the right holder to be heard and to respond to all assertions of the applicant of the compulsory license.
- b. Hear interest groups and national professional organizations in the field concerned before granting or refusing a compulsory license.

22.1. Any decision of the Competent Authority to grant or refuse a compulsory license, or on the amount of equitable remuneration thereof, shall be subject to appeal to a court of law.

23. Derogation from exceptions.

Private contracts, to the extent that they impose restrictions on the use of the material of the variety, or parts thereof, in conflict with the exceptions set out in Section 18 shall be unenforceable.

Part III: MISCELLANEOUS

24. Persons entitled to file applications.

Any natural or legal person may file an application for a right considered under this Chapter.

The regulation shall set the information and requirement the application form must contain including the procedures of application.

25. Examination of application.

The variety shall undergo, under the supervision of the Competent Authority, an examination based on the results obtained by the applicant.

26. Denomination.

The denomination of a protected variety shall be its generic designation in a way that the variety may be identified. The denomination may consist of any suitable word, combination of words, combination of words and figures or combination of letters and figures, provided that the denomination allows the variety to be identified.

27. Interface with seed certification system.

The Rights conferred under this Chapter shall be separate from the measures taken by the RGOB to regulate the production, certification and marketing of material of plant varieties or the importing or exporting of such material.

28. Interface with patent law.

Notwithstanding any patent rights restricting the use of material of the variety or parts thereof, the exceptions as set out in Section 18 shall apply.

29. Nullity of breeder's right

The Competent Authority shall declare a breeder's right null and void when it is established that:

- a. The conditions laid down in Sections 11, 12, 13 and 14 were not complied with at the time of the grant of the breeder's right,

b. The breeder's right has been granted to a person who is not entitled to it.

30. Cancellation of breeder's right

The Competent Authority may cancel a breeder's right if the conditions laid down in Sections 11, 12, 13 and 14 are no longer fulfilled.

Furthermore, the Competent Authority may cancel a breeder's right granted by it if, after being requested to do so and within a prescribed period:

- a. The breeder fails to provide the Competent Authority with the information, documents or material deemed necessary for verifying the maintenance of the variety.
- b. The breeder fails to pay such fees as may be payable to keep his right in force.
- c. The breeder fails to propose, where the denomination of the variety is cancelled after the grant of the rights, another suitable denomination.

CHAPTER 4: PROTECTION OF TRADITIONAL KNOWLEDGE

Part I: CONDITIONS FOR PROTECTION

31. Applicability.

This Chapter applies to Traditional Knowledge that was in existence before the commencement of this Act or is created on or after the commencement of this Act.

32. Customary uses.

The customary use of Traditional Knowledge among the local communities does not give rise to any criminal or civil action for liability under this Act.

33. Rights owners.

The owners of Traditional Knowledge are the holders of the rights in the Traditional Knowledge.

34. Material form not required.

The rights exist in Traditional Knowledge whether or not the Traditional Knowledge is in material form.

35. Duration.

Rights conferred by this Chapter continue in force in perpetuity and are inalienable.

36. Additional rights.

The Rights in Traditional Knowledge are in addition to and do not affect, any rights that may subsist under any intellectual property laws.

Part II: PROCEDURES

37. Application.

The applicant shall obtain the prior informed consent of the traditional owners of the Traditional Knowledge for use of Traditional Knowledge for a non-customary use.

The Regulations shall set the information and requirements the application form must contain.

38. Appraisal of application.

The owners of the Traditional Knowledge must decide whether:

- a. To reject the application.
- b. To accept the application and enter into negotiations for a written authorized user agreement in relation with the application containing the appropriate benefit sharing arrangements.

39. Proposed agreement.

Before entering into an authorized user agreement the owners of the Traditional Knowledge must submit the proposed agreement for comments to the Competent Authority.

The Competent Authority has the final right to approve or deny the proposed user agreement based on the national interest of the country.

40. User agreement and prior informed consent

If the applicant and the traditional owners enter into an authorized agreement, the owners of the Traditional Knowledge are deemed to have given their prior informed consent to the proposed use. A final copy of the agreement must be forwarded to the Competent Authority. If a copy is not provided the user agreement is null and void.

41. Advice of Competent Authority

The Competent Authority, upon request, may provide advice to the owners of the Traditional Knowledge during the negotiations of the user agreement or during the processing of the access application.

42. Inventory of Traditional Knowledge.

The Authorized Agency in collaboration with the owners of the Traditional Knowledge will carry out an inventory and documentation of Traditional Knowledge. The Regulations shall set the terms and conditions for applicants for the access of the information inventoried.

CHAPTER 5: OFFENCES AND PENALTIES

43. Offences.

The following acts shall constitute an offense under this Act.

- a. In-situ or ex-situ collection of genetic resources without access Permit.
- b. Non-compliance of conditions for grant of access as provided in Section 9.
- c. Non-compliance of the conditions for benefit sharing as provided in Section 10.
- d. Breach of confidentiality as provided in Section 8.
- e. Non-compliance with the traditional knowledge rights as provided in Chapter 4.
- f. Failure to comply with any other provisions of this Act or Regulations.

43.1 Civil liability

Beside the offences mentioned in the Section 43, any violation of material terms and agreement in respect to this Act shall be treated as a breach of contract.

44. Penalties

- a. Whoever,
 - i) Conducts in-situ or ex-situ collection of genetic resources without access Permit, or
 - ii) Fails to comply with or contravenes the provisions of Section 10 or Section 11, or
 - iii) Fails to comply with or contravenes with Chapter 4 of the Act, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to 3 years or with fine which shall not be less than 2 years equivalent of the minimum daily wage rate but which may extend to 6 years equivalent of minimum daily wage rate provided in the Chathrim for wage rate and recruitment agencies and workman's compensation, 1994 or with both.
- b. The Authorized Agency shall take appropriate measures to provide for confiscation of such genetic resources collected in contravention of the provisions of this Act and impose liability on the person deemed guilty to pay damages.
- c. Where the Authorized Agency contravenes the provisions of Section 8, the Authorized Agency shall be liable to compensate for the damage caused by the contravention with a fine equivalent to the compensation paid for the damage.
- d. Whoever contravenes any of the provisions of this Act or rules and regulations issued there under, for which no penalty has been elsewhere provided under this Act, shall be punishable with

imprisonment for a term which may extend to 3 months or with fine which may extend to 6 months equivalent of minimum daily wage rate as provided in Chathrim for wage rate, recruitment agencies and workman compensation, 1994.

45. Revocation of access permit

Access permits may be withdrawn by the Competent Authority under any of the following circumstances:

- a. When the collector has violated any of the provisions of this law.
- b. When the permit was obtained by providing false or misleading information under Section 8.
- c. When the collector has failed to comply with the conditions of the access permit and the Material Transfer Agreement or Contract Agreement.
- d. For reasons of public interest, including the protection of the environment and biological diversity.

46. Determination of liability.

The determination of liability for offences committed under this Act shall take the following factors.

- a. Magnitude of the offence.
- b. Frequency of the offence.
- c. Actual or potential impact on the plant genetic resources.
- d. Culpability of the offender.
- e. The extent of the achieved or intended economic advantage from the offence.

47. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall be against the Competent Authority or the Authorized Agency or any member or employee thereof in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules and regulations made there under.

48. Jurisdiction.

- a. A court of law or any specialized court or tribunal, which may be established by the RGOB having original jurisdiction shall hear the disputes under this Act.
- b. When any other law also covers the penalties for offences committed under this Act, the penalty shall be determined as per this Act.

CHAPTER 6: RULES AND REGULATIONS, AMENDMENTS, INTERPRETATION AND DEFINITIONS.

49. Rules and regulations.

In accordance with the provisions of this Act, the Competent Authority shall have the power to formulate and adopt rules and regulations for the implementation of the Act.

50. Amendments.

When necessary the National Assembly of Bhutan shall amend the Act.

51. Interpretation

In case of differences, in interpretation of this Act between Dzongkha and English, the interpretation in Dzongkha text shall be final and binding.

52. Definitions

In this Act, unless the context requires otherwise;

- a. Access: means obtaining, collecting, utilizing and/or exporting genetic or biochemical resources covered by this Act for purposes of conservation, research, bioprospecting or commercial use.
- b. Applicant: means a natural or legal person seeking access to genetic or biochemical resources.
- c. Authorized Agency: means the body designated as Authorized Agency by the Competent Authority under this Act.
- d. Biochemical Resources: means any material derived from plants, fungi, animals or micro-organism, which contains specific characteristics and special molecules.

- e. Bioprospecting: means the systematic search, classification and research of new sources of chemical compounds, genes, proteins and microorganism for commercial purposes with real or potential economic value, which are found in biodiversity.
- f. Competent Authority: means the Head of the Ministry of Agriculture of RGOB.
- g. Compulsory License: means the mechanism through which the Royal Government of Bhutan or any Third Party, without the consent of the owner of the intellectual property rights, and after compliance with due process is entitled to use the protected plant variety for reasons of public interest
- h. Collectors: means any natural or legal person, entity or agent obtaining access to genetic and biochemical resources or associated traditional knowledge under authority given by the Competent Authority.
- i. Essentially derived varieties: means varieties that are genetically similar to an existing variety, except for one or a few characters. Such a variety can, for instance, be obtained through natural or induced mutation, or a soma-clonal variant, the selection of a variant individual from plants of the original variety, resulting from back -crossing or from transformation by genetic engineering.
- j. Genetic resources: means any material derived from plants, animals, fungi or microorganisms which contains functional unit of heredity.
- k. Material: means vegetative and reproductive material for the purpose of commercial exploitation.
- l. Plant variety: means any variety of all the plant species found in Bhutan.
- m. Prior informed consent: means the procedure through which the RGOB and other stakeholders, as the case may be, properly supplied with all the relevant information, allow access to their genetic and biochemical resources or associated Traditional Knowledge, under mutually agreed terms.
- n. RGOB: means Royal Government of Bhutan.
- o. Right holder: means natural or legal person who owns the intellectual property rights on a plant variety.
- p. Sui Generis System: means a system of its own kind for the protection of plant varieties.
- q. Traditional Knowledge: means the knowledge, innovation and practices of local communities relating to the use, properties, values and processes of any biological and genetic resources or any part thereof.

Comparison of Bhutan Biodiversity Act with common provisions under the Nagoya Protocol and WIPO draft agreements

Many of the requirements under the Protocol are not dealt with under this Act. The Act deals with plant variety rights as well as access and benefit sharing. Its access and benefit sharing provisions deal with biochemical as well as genetic resources.

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	2. Purpose and objectives This Act shall have the following purposes and objectives: a. To ensure national sovereignty of the RGOB over genetic resources in accordance with relevant National and International Law. b. To ensure the conservation and sustainable use of the biochemical and genetic resources. c. To promote the equitable sharing of benefits derived from the use of genetic resources. d. To promote technology transfer and capacity building at the national and local levels, including the building of scientific and technological capacity relevant to the conservation and sustainable use of biological diversity. e. To recognize and protect Traditional Knowledge, innovation and practices of local communities associated with biodiversity. f. To regulate and facilitate the process by which collectors may legally obtain genetic resources.	Deals with genetic resources and associated traditional knowledge

	<p>g. To prevent illegal access to genetic and biochemical resources and associated Traditional Knowledge.</p> <p>h. To recognize and protect the farmers' and breeder's rights.</p> <p>i. To make plant varieties subject to property rights.</p> <p>j. Ensure that plant breeders are able to recover the cost from useful improvements and innovations, and continue to do so.</p> <p>k. Provide legal recognition of varieties which are not protectable under the internationally existing patent and/or plant breeders rights laws and thereby recognize farmers' plant variety improvements and innovations and provide a means of sharing benefits derived from the use of farmers' or traditional varieties as breeding material for commercial purposes.</p> <p>l. To promote access to foreign sources of improved plant varieties to Bhutanese farmers.</p>	
2. definition of terms- key terms used in the draft	<p>52. Definitions</p> <p>In this Act, unless the context requires otherwise;</p> <p>a. Access: means obtaining, collecting, utilizing and/or exporting genetic or biochemical resources covered by this Act for purposes of conservation, research, bioprospecting or commercial use.</p> <p>b. Applicant: means a natural or legal person seeking access to genetic or biochemical resources.</p> <p>c. Authorized Agency: means the body designated as Authorized Agency by the Competent Authority under this Act.</p> <p>d. Biochemical Resources: means any material derived from plants, fungi, animals or micro-organism, which contains specific characteristics and special molecules.</p> <p>e. Bioprospecting: means the systematic search, classification and research of new sources of chemical compounds, genes, proteins and microorganism for commercial purposes with real or potential economic value, which are found in biodiversity.</p> <p>f. Competent Authority: means the Head of the Ministry of Agriculture of RGOB.</p> <p>g. Compulsory License: means the mechanism through which the Royal Government of Bhutan or any Third Party, without the consent of the owner of the intellectual property rights, and after compliance with due process is entitled to use the protected plant variety for reasons of public interest</p> <p>h. Collectors: means any natural or legal person, entity or agent obtaining access to genetic and biochemical resources or associated traditional knowledge under authority given by the Competent Authority.</p> <p>i. Essentially derived varieties: means varieties that are genetically similar to an existing variety, except for one or a few characters. Such a variety can, for instance, be obtained through natural or induced mutation, or a soma-clonal variant, the selection of a variant individual from plants of the original variety, resulting from back -crossing or from transformation by genetic engineering.</p> <p>j. Genetic resources: means any material derived from plants, animals, fungi or microorganisms which contains functional unit of heredity.</p> <p>k. Material: means vegetative and reproductive material for the purpose of commercial exploitation.</p> <p>l. Plant variety: means any variety of all the plant species found in Bhutan.</p> <p>m. Prior informed consent: means the procedure through which the RGOB and other stakeholders, as the case may be, properly supplied with all the relevant information, allow access to their genetic and biochemical resources or associated Traditional Knowledge, under mutually agreed terms.</p> <p>n. RGOB: means Royal Government of Bhutan.</p> <p>o. Right holder: means natural or legal person who owns the intellectual property rights on a plant variety.</p> <p>p. Sui Generis System: means a system of its own kind for the protection of plant varieties.</p> <p>q. Traditional Knowledge: means the knowledge, innovation and practices of local communities relating to the use, properties, values and processes of any biological and genetic resources or any part thereof.</p>	
3. scope- what is covered, respect for traditional ownership, respect for	<p>3. Scope</p> <p>a. This Act shall apply to all the genetic and biochemical resources including wild, domesticated and cultivated species of flora and fauna, both in-situ and</p>	

sovereignty over genetic resources, moral rights	<p>ex-situ conditions found within the territory of Kingdom of Bhutan.</p> <p>b. The procedure and conditions provided by this Act shall apply even if the genetic resources for which access is sought are located in protected areas or government reserved forests.</p> <p>c. The provision of this Act shall apply to the Traditional Knowledge, innovation and practices associated with biodiversity.</p> <p>d. The Traditional Knowledge includes any knowledge that generally fulfills one or more of the following conditions:</p> <p>i) Is or has been transmitted from generation to generation.</p> <p>ii) Is regarded as pertaining to a particular traditional group, clan and community of people in Bhutan.</p> <p>iii) Is collectively originated and held.</p> <p>31. Applicability. This Chapter applies to Traditional Knowledge that was in existence before the commencement of this Act or is created on or after the commencement of this Act.</p> <p>32. Customary uses. The customary use of Traditional Knowledge among the local communities does not give rise to any criminal or civil action for liability under this Act.</p> <p>33. Rights owners. The owners of Traditional Knowledge are the holders of the rights in the Traditional Knowledge.</p> <p>34. Material form not required. The rights exist in Traditional Knowledge whether or not the Traditional Knowledge is in material form.</p> <p>35. Duration. Rights conferred by this Chapter continue in force in perpetuity and are inalienable.</p> <p>36. Additional rights. The Rights in Traditional Knowledge are in addition to and do not affect, any rights that may subsist under any intellectual property laws.</p> <p>49. Rules and regulations. In accordance with the provisions of this Act, the Competent Authority shall have the power to formulate and adopt rules and regulations for the implementation of the Act.</p> <p>50. Amendments. When necessary the National Assembly of Bhutan shall amend the Act.</p> <p>51. Interpretation In case of differences, in interpretation of this Act between Dzongkha and English, the interpretation in Dzongkha text shall be final and binding.</p>	
4. beneficiaries- who should benefit		Not addressed
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>CHAPTER 2 : ACCESS TO GENETIC RESOURCES AND BENEFIT SHARING</p> <p>CONDITIONS OF ACCESS</p> <p>5. Prior Informed Consent. Access covered by this Act shall be subject to the prior informed consent of the Competent Authority of Bhutan, representing national interests and the interests of the local communities harbouring, cultivating, developing and maintaining the biological diversity concerned.</p> <p>In case of access to Traditional Knowledge, innovation and practices of local communities, the procedure and conditions set out in Chapter 4 and Chapter 1, Section 3 of this Act shall also apply.</p> <p>In both cases, the Authorized Agency is responsible for processing the applications and monitoring the Permits granted.</p> <p>6. Authorization Procedure: Application The applicant shall submit an application for access to the Authorized Agency in accordance with Section 7. In the event the Authorized Agency is satisfied that the application for access complies with the requirement under Section 7, such an application may be submitted to the Competent Authority to arrive at a decision to grant or refuse a permit in accordance with Sections 7 and 9.</p>	

	<p>For duly registered ex-situ collections the Regulations of this Act may set special procedures for access authorization.</p> <p>Likewise, the requirements of this Act will be determined in a different way for commercial and for non-commercial applications.</p> <p>7. Application for Access Permit</p> <p>To enable the Competent Authority to arrive at a decision to grant or refuse a permit, the applicant shall include the following information, when submitting an application for access to genetic and/or biochemical resources or associated Traditional Knowledge covered by this Act:</p> <ol style="list-style-type: none"> Provide a description of the applicant including their legal status, place of residence and a list of all entities and individuals, which will be involved in the access activities and their respective responsibilities. Describe the applicant's technical and financial capability to conduct the access activity and previous biological resource collection activities within Bhutan and elsewhere. Identify the kind of genetic and biological resources it is seeking. Identify the purpose and fields of the access activity and the purpose for which access is requested including the type and extent of research, teaching or commercial intention and use expected to be derived from it. For a different purpose, the applicant shall submit a separate application. State the potential use and anticipated benefits of the accessed material and how the results will be shared. Identify the nature of the legal rights the applicant may seek over the collected resources, derivatives of the collected resources, and innovations that are derived from those resources, including any intellectual property rights. Indicate agreement to abide by the conditions set out by the Competent Authority for collection activities. This includes appropriate arrangements with the Authorized Agency to facilitate the collection mission, including establishing provisional routes, estimated timing, types of material collected and quantities and identification of methods of collection (sampling, harvest and storage methods). The identification of the national institution or institutions, which will participate in the research Indicate agreement to bear all costs involved in collection, including participation of at least one government official of the RGOB in the collection mission. Provide information about existing or proposed contracts between the applicant and any third party relating to the use of any information and products resulting from the access activity. Provide information on the primary destination of the resources and any expected subsequent destinations of the resources. Provide information on the arrangements made within Bhutan to facilitate the collection mission. Indicate plans, if any, for cooperation with national institutions, scholars, scientists, students, farmers and farmer groups in Bhutan in the field mission and/or its follow-up activities. Provide information on intended distribution of the germplasm collected and list actual or potential beneficiaries. Demonstrate that the collection/access activity will have no negative environmental impact. Provide information on the prior informed consent of the relevant stakeholders when necessary The economic, social, technical, scientific, environmental or any other benefits that are intended or may be likely to be accrued to the country and an indication of the types of short, medium and long term benefits to be shared with the RGOB and other relevant stakeholders as well as the proposed mechanisms and arrangements for benefit sharing. All information provided shall be supplied in English or Dzongkha. An application shall be affixed with an affidavit. <p>7.1. The applicant shall be informed in writing of the decision taken within 30 days of receipt of the application by the Competent Authority.</p> <p>9. Conditions for the Grant of Access.</p> <p>Competent Authority, through the Authorized Agency, may grant access if in</p>	
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	<p>addition to Section 10, the following minimum requirements are satisfied:</p> <ul style="list-style-type: none"> a. The applicant agrees to bear all costs relevant to the collection, including costs of participating staff identified by the Competent Authority. b. The applicant agrees to deposit with the Authorized Agency duplicates of each sample collected and the associated information on collection sites of collected materials gathered from farmers' field or government forest. c. The applicant agrees to inform the Competent Authority, through the Authorized Agency, of all findings from subsequent research and development on the collected samples in accordance with the terms of the Material Transfer Agreement or Contract signed between both. d. The applicant shall not transfer the resources accessed or associated Traditional Knowledge to any third party without the authorization of the Competent Authority. e. The applicant shall notify the Competent Authority prior to applying for intellectual property rights relating to the collected material or intellectual property rights relating to an invention, which is based on associated Traditional Knowledge obtained in Bhutan. f. The applicant agrees to benefit sharing conditions negotiated in accordance with Section 10 below. These conditions shall be contained in an appropriate Material Transfer Agreement or Contract Agreement signed between the applicant and the Competent Authority. g. The applicant agrees to submit a full report to Authorized Agency on completion of the collection activity, including sites of collection, number of samples collected and associated information gathered. h. During collection, the collector should systematically record common passport data and describe plant populations, its diversity, habitat and ecology in detail. i. The applicant agrees that, the acquisition of germplasm must not deplete populations or farmers' seed stocks, in order to avoid genetic erosion. j. If appropriate, the applicant agrees to bear the cost of environmental impact assessment and abide by the Environmental Assessment Act, 2000 of Bhutan. k. The applicant shall abide by the relevant laws of the country, local customs, traditions and values. l. In addition to the requirements laid down in Section 9(a) to Section 9(k), the competent authority and the local community or person may where it is deemed necessary or appropriate require the collector to comply with additional requirements. <p>CHAPTER 4: PROTECTION OF TRADITIONAL KNOWLEDGE</p> <p>Part II: PROCEDURES</p> <p>37. Application. The applicant shall obtain the prior informed consent of the traditional owners of the Traditional Knowledge for use of Traditional Knowledge for a non-customary use. The Regulations shall set the information and requirements the application form must contain.</p> <p>38. Appraisal of application. The owners of the Traditional Knowledge must decide whether:</p> <ul style="list-style-type: none"> a. To reject the application. b. To accept the application and enter into negotiations for a written authorized user agreement in relation with the application containing the appropriate benefit sharing arrangements. <p>39. Proposed agreement. Before entering into an authorized user agreement the owners of the Traditional Knowledge must submit the proposed agreement for comments to the Competent Authority. The Competent Authority has the final right to approve or deny the proposed user agreement based on the national interest of the country.</p> <p>40. User agreement and prior informed consent If the applicant and the traditional owners enter into an authorized agreement, the owners of the Traditional Knowledge are deemed to have given their prior informed consent to the proposed use. A final copy of the agreement must be forwarded to the Competent Authority. If a copy is not</p>	
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	provided the user agreement is null and void.	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>10. Conditions for benefit sharing</p> <p>Upon fulfilment of all the conditions described above, the Competent Authority may grant access if one or more, when relevant, of the following minimum conditions for benefit sharing, which are to be included in the Material Transfer Agreement or Contract Agreement to be signed between the Competent Authority and the Applicant. These conditions may also be considered in any Material Transfer Agreement or Contract Agreement to be signed between the applicant and any other relevant stakeholder.</p> <ol style="list-style-type: none"> A flat fee and upfront payments. The sharing of the research results and relevant information. Royalties Milestones payments. Recognition as a partner in intellectual property ownership of products derived from the supplied material. Joint research activities. Concessionary rates or free supply of commercial products derived from the resources provided. Transfer of technologies. Training and capacity building. The acknowledgment of the origin of the genetic resources in any publication resulting from the research activities. Donation of equipment to national institutions. Other benefits, monetary or non-monetary. <p>10.1. The Competent Authority shall issue a Certificate of Origin, which states that, the procedures and conditions for granting access to the applicant have been met.</p>	
7. Sanctions and remedies- dealing with breaches	<p>CHAPTER 5: OFFENCES AND PENALTIES</p> <p>43. Offences.</p> <p>The following acts shall constitute an offense under this Act.</p> <ol style="list-style-type: none"> In-situ or ex-situ collection of genetic resources without access Permit. Non-compliance of conditions for grant of access as provided in Section 9. Non-compliance of the conditions for benefit sharing as provided in Section 10. Breach of confidentiality as provided in Section 8. Non-compliance with the traditional knowledge rights as provided in Chapter 4. Failure to comply with any other provisions of this Act or Regulations. <p>Civil liability</p> <p>Beside the offences mentioned in the Section 43, any violation of material terms and agreement in respect to this Act shall be treated as a breach of contract.</p> <p>44. Penalties</p> <ol style="list-style-type: none"> Whoever, <ol style="list-style-type: none"> Conducts in-situ or ex-situ collection of genetic resources without access Permit, or Fails to comply with or contravenes the provisions of Section 10 or Section 11, or Fails to comply with or contravenes with Chapter 4 of the Act, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to 3 years or with fine which shall not be less than 2 years equivalent of the minimum daily wage rate but which may extend to 6 years equivalent of minimum daily wage rate provided in the Chathrim for wage rate and recruitment agencies and workman's compensation, 1994 or with both. The Authorized Agency shall take appropriate measures to provide for confiscation of such genetic resources collected in contravention of the provisions of this Act and impose liability on the person deemed guilty to pay damages. Where the Authorized Agency contravenes the provisions of Section 8, the Authorized Agency shall be liable to compensate for the damage caused by the contravention with a fine equivalent to the compensation paid for the damage. Whoever contravenes any of the provisions of this Act or rules and regulations issued there under, for which no penalty has been elsewhere 	

	<p>provided under this Act, shall be punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to 6 months equivalent of minimum daily wage rate as provided in Chathrim for wage rate, recruitment agencies and workman compensation, 1994.</p> <p>45. Revocation of access permit Access permits may be withdrawn by the Competent Authority under any of the following circumstances:</p> <ol style="list-style-type: none"> When the collector has violated any of the provisions of this law. When the permit was obtained by providing false or misleading information under Section 8. When the collector has failed to comply with the conditions of the access permit and the Material Transfer Agreement or Contract Agreement. For reasons of public interest, including the protection of the environment and biological diversity. <p>46. Determination of liability. The determination of liability for offences committed under this Act shall take the following factors.</p> <ol style="list-style-type: none"> Magnitude of the offence. Frequency of the offence. Actual or potential impact on the plant genetic resources. Culpability of the offender. The extent of the achieved or intended economic advantage from the offence. <p>47. Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall be against the Competent Authority or the Authorized Agency or any member or employee thereof in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules and regulations made there under.</p> <p>48. Jurisdiction.</p> <ol style="list-style-type: none"> A court of law or any specialized court or tribunal, which may be established by the RGOB having original jurisdiction shall hear the disputes under this Act. When any other law also covers the penalties for offences committed under this Act, the penalty shall be determined as per this Act. 	
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>8. Confidentiality. The Authorized Agency shall protect all the information deemed confidential as per the Act, such as trade secrets or other forms of intellectual property rights.</p> <p>41. Advice of Competent Authority The Competent Authority, upon request, may provide advice to the owners of the Traditional Knowledge during the negotiations of the user agreement or during the processing of the access application.</p> <p>42. Inventory of Traditional Knowledge. The Authorized Agency in collaboration with the owners of the Traditional Knowledge will carry out an inventory and documentation of Traditional Knowledge. The Regulations shall set the terms and conditions for applicants for the access of the information inventoried.</p>	See also definitions
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		Not addressed
10. exceptions – emergencies, traditional use, conservation	<p>4. Exemptions. This Act shall not apply:</p> <ol style="list-style-type: none"> Where the biological material is used as a commodity for the purpose of direct use or consumption as determined by the Competent Authority, based 	

	<p>on the processes and end use of genetic resources, in accordance with the provisions of the Act.</p> <p>b. To access, use and exchange of biological and genetic resources among local communities resulting from their traditional and customary practices.</p> <p>c. To access of human genetic resources.</p> <p>d. Where the Competent Authority may determine plant and animal genetic resources access, which will be governed by Special Rules and Regulations or Conditions such as those established by multilateral systems for access and benefit sharing, especially in the case of plant genetic resources for food and agriculture, in accordance with the international law.</p> <p>e. To varieties for which patent protection is available.</p> <p>f. To the prevention of the commercial exploitation, which is necessary to protect public order or morality including prejudice to the environment, the general interest or traditional rights of farmers</p>	
11. disclosure-permits, databases, disclosure in intellectual property applications		Not addressed
12. interaction with existing laws- avoiding conflict with other laws		Not addressed
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		Not addressed
14. transitional provisions-existing uses		Not addressed

4. Brazil

Provisional Measure No. 2186-16 of 2001 Regulating Access to the Genetic Heritage, Protection of and Access to Associated Traditional Knowledge

Enacting provisions under paragraphs (1)(ii) and (4) of Article 225 of the Constitution, Articles 1, 8(j), 10(c), 15 and 16(3) and (4) of the Convention on Biological Diversity, regulating access to the genetic heritage, protection of and access to associated traditional knowledge, sharing of benefits and access to and transfer of technology for their conservation and use, and introducing other provisions.

THE PRESIDENT OF THE REPUBLIC, by virtue of the powers invested in him by Article 62 of the Constitution, adopts the following Provisional Measure, with force of law:

Chapter I

General Provisions

Art. 1. This Provisional Measure provides for the benefits, rights and obligations concerning:

I. access to components of the genetic heritage on the national territory, on the continental shelf and in the exclusive economic zone for purposes of scientific research, technological development or biological prospection;

- II. access to traditional knowledge relating to the genetic heritage that is relevant to the conservation of biological diversity, the integrity of the Country's genetic heritage and the use of its components;
- III. the fair and equitable sharing of the benefits deriving from exploitation of components of the genetic heritage and the associated traditional knowledge; and
- IV. access to and transfer of technology for the conservation and use of biological diversity.

§1. Access to components of the genetic heritage for purposes of scientific research, technological development or bioprospection shall be had in accordance with this Provisional Measure, without prejudice to any material or immaterial property rights that might subsist in components of the genetic resources accessed, or the location where access is had.

§2. Access to components of the genetic heritage on the continental shelf shall be subject to the provisions of Law No. 8.617 of January 4, 1993.

Art. 2. Access to components of the genetic heritage within national boundaries shall only be had with the authority of the Union and its use, marketing and exploitation for whatever purpose shall be subject to inspection, restrictions and benefit-sharing on the terms and conditions established in this Provisional Measure and in the regulations under it.

Art. 3. This Provisional Measure does not apply to human genetic resources.

Art. 4. The exchange and dissemination of components of the genetic heritage and associated traditional knowledge practised within indigenous and local communities for their own benefit and based on customary usage are preserved.

Art. 5. Access to the genetic heritage for purposes that are harmful to the environment and to human health, and for the development of biological and chemical weapons, is prohibited.

Art. 6. If at any time there is scientific evidence to suggest a risk of serious and irreversible damage to biological diversity resulting from activities provided for in this Provisional Measure, the public authorities, acting through the Council for the Management of the Genetic Heritage provided for in Article 10, shall, on the basis of technical opinion and criteria, decide on measures to prevent the damage, which may include suspension of the activity, due regard being had to the competence of the body responsible for the biological security of genetically modified organisms.

Chapter II

Definitions

Art. 7. In addition to the concepts and standard definitions in the Convention on Biological Diversity, the following definitions shall apply for the purposes of this Provisional Measure:

- I. Genetic heritage: information of genetic origin contained in samples of all or part of plant, fungal, microbial or animal specimens, in the form of molecules and substances deriving from the metabolism of such living beings and extracts obtained from such organisms, live or dead, encountered *in situ*, including domestic situations, or kept in *ex situ* collections after *in situ* collection within the national territory, on the continental shelf or in the exclusive economic zone;

- II. Associated traditional knowledge: information or individual or collective practices of an indigenous or local community having real or potential value and associated with the genetic heritage;
- III. Local community: human group, including remnants of Quilombo communities, distinguished by its cultural conditions, that traditionally organizes itself throughout successive generations and through its own customs and preserves its social and economic institutions;
- IV. Access to the genetic heritage: acquisition of samples of components of the genetic heritage for purposes of scientific research, technological development or bioprospection, with a view to its application in industry or elsewhere;
- V. Access to associated traditional knowledge: acquisition of information pertaining to knowledge or individual or collective practices, associated with the genetic heritage, of an indigenous or local community for purposes of scientific research, technological development or biological prospection, with a view to its application in industry or elsewhere;
- VI. Access to and transfer of technology: action whose purpose is access to and the development and transfer of technology for the preservation and use of biological diversity or technology developed from samples of components of the genetic heritage or from associated traditional knowledge;
- VII. Bioprospection: exploratory activity aimed at identifying components of the genetic heritage and information on associated traditional knowledge with potential for commercial use;
- VIII. Species threatened with extinction: species carrying a high risk of disappearance from nature in the near future, and recognized as such by the competent authority;
- IX. domesticated species: a species in whose course of evolution human beings have intervened in order to meet their own needs;
- X. Authorization of Access and Dispatch: document that allows, under specific conditions, access to samples of components of the genetic heritage and the dispatch thereof to a receiving institution, and access to associated traditional knowledge;
- XI. Special Authorization of Access and Dispatch: document that allows, under specific conditions, access to samples of components of the genetic heritage and the dispatch thereof to a receiving institution, and access to associated traditional knowledge, for a period of up to two years, renewable for equal periods;
- XII. Acknowledgement of Material Transfer: formal document to be signed by the receiving institution before any samples of components of the genetic heritage are dispatched, with a mention where appropriate of whether access has been had to associated traditional knowledge;
- XIII. Contract for Use of the Genetic Heritage and Benefit-Sharing: multilateral legal instrument which gives the particulars of the parties, the purpose and the conditions of access to and dispatch of components of the genetic heritage and associated traditional knowledge, and also the conditions for the sharing of benefits;
- XIV. *Ex situ* state: maintenance of samples of components of the nation's genetic resources outside their natural habitat, in collections of live or dead material.

Chapter IV

Institutional Competencies and Powers

Art. 10. The Council for the Management of Genetic Resources is hereby created within the Ministry of the Environment, being deliberative and normative in nature and composed of representatives of organs and agencies of the Federal Public Administration that are competent to perform the various actions provided for in this Provisional Measure.

§1. The Management Council shall be presided over by the representative of the Ministry of the Environment.

§2. The composition and action of the Management Council shall be laid down in the regulations.

Art. 11. The Management Council shall be competent to:

I. coordinate the implementation of policies for the management of the genetic heritage;

II. establish:

(a) technical standards;

(b) criteria for authorization of access and dispatch;

(c) directives for drafting the Contract for Use of the Genetic Heritage and Benefit-Sharing;

(d) criteria for the creation of a database for recording information on associated traditional knowledge;

III. take part, in concert with Federal bodies or by agreement with other institutions, in the work of accessing and dispatching samples of components of the genetic heritage, and accessing associated traditional knowledge;

IV. deliberate on:

(a) authorization of access and dispatch of samples of components of the genetic heritage, subject to the prior consent of the owner;

(b) authorization of access to associated traditional knowledge, subject to the prior consent of the owner;

(c) special authorization of access to and dispatch of samples of components of the genetic heritage for a national institution, whether public or private, which carries on research and development activities in the areas of biology and related subjects, and for a national university, whether public or private, for a term of up to two years, renewable for equal periods, as provided in the regulations;

(d) special authorization of access to associated traditional knowledge for a national institution, whether public or private, that carries on research and development activities in the biological and related fields, and for a national university, whether public or private, for a term of up to two years, renewable for equal periods, as provided in the regulations;

(e) accreditation of a national public research and development institution or Federal public management institution for authorizing another national institution, whether public or private, which carries on research and development activities in the biological and related fields, to:

1. access samples of components of the genetic heritage and associated traditional knowledge;
2. dispatch samples of components of the genetic heritage to a national institution, whether public or private, or to an institution with its headquarters abroad;

(f) accreditation of a national public institution as a depositary of samples of components of the genetic heritage.

V. approve Contracts for the Use of the Genetic Heritage and Benefit-Sharing as complying with the requirements of this Provisional Measure and the regulations under it;

VI. promote discussion and public consultation on the subjects provided for in this Provisional Measure;

VII. function as a higher court of appeal in relation to decisions of an accredited institution and acts resulting from the application of this Provisional Measure;

VIII. approve its statutes.

§1. Decisions of the Management Council may be referred to the plenary session, as provided in the regulations.

§2. The Management Council may organize itself into subject groups to prepare decisions of the plenary session.

Art. 12 . The activity of collecting components of the genetic heritage and access to associated traditional knowledge that contributes to the advancement of bioprospection shall, when it involves the participation of a foreign legal entity, require authorization by the body responsible for national policy on scientific and technological research, subject to the terms of this Provisional Measure and the laws in force.

Sole Paragraph. The aforesaid authorization shall conform to the technical standards laid down by the Management Council, which shall oversee such activities.

Art. 13 . The Chairman of the Management Council shall be competent to sign, in the name of the Union, the Contract for the Use of the Genetic Heritage and Benefit-Sharing.

§1. While retaining the competence specified in the heading of this Article, the Chairman of the Management Council may delegate that competence to the incumbent of a Federal public research and development institution or Federal public management institution, depending on the area of activity with which it is concerned.

§2 Where the institution mentioned in the preceding paragraph has an interest in the contract, the contract shall be signed by the Chairman of the Management Council.

Art. 14. The accredited institution referred to in Article 11.IV(e) 1 and 2 of this Provisional Measure may be accorded one or more of the following powers, as directed by the Management Council:

I. to analyze applications and to issue authorizations to third parties for:

- (a) access to samples of components of the genetic heritage existing *in situ* within the national territory, on the continental shelf and in the exclusive economic zone, subject to the prior consent of the owners;
- (b) access to associated traditional knowledge, subject to the prior consent of the owners from the area;
- (c) dispatch of samples of components of the genetic heritage to a national institution, whether public or private, or to an institution with its headquarters abroad;

II. With Federal bodies, or by agreement with other institutions, to take part in the work of access to and dispatch of samples of components of the genetic heritage and access to associated traditional knowledge;

III. to create and maintain:

- (a) a register of *ex situ* collections, as provided in Article 18 of this Provisional Measure;
- (b) a database for recording information obtained during the collection of samples of components of the genetic heritage;
- (c) a database of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for the Use of Genetic Heritage and Benefit-Sharing, as provided in the regulations;

IV. to disclose periodically a list of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for the Use of the Genetic Heritage and Benefit-Sharing;

V. to take part in the implementation of Terms of Transfer of Material and Contracts for the Use of the Genetic Heritage and Benefit-Sharing in the case of processes that it has itself authorized.

§1. An accredited institution shall every year report fully on its activity to the Management Council and supply a copy of its databases to the executive body provided for in Article 15.

§2. An accredited institution under Article 11 shall comply with the terms of this Provisional Measure, the regulations under it and the decisions of the Management Council, on pain of forfeiture of its

accreditation and liability also, where applicable, to the penalties provided for in Article 30 and in the relevant legislation.

Art. 15. The creation is authorized, within the Ministry of the Environment, of an executive body which shall exercise the function of executive secretariat of the Management Council provided for in Article 10 of this Provisional Measure, and which shall have the following powers, among others:

- I. to implement the resolutions of the Management Council;
- II. to give support to the accredited institutions;
- III. to issue, in accordance with the resolutions of the Management Council and in its name
 - (a) Authorizations of Access and Dispatch;
 - (b) Special Authorizations of Access and Dispatch;
- IV. to take part, in concert with other Federal bodies, in the work of accessing and dispatching samples of components of the genetic heritage and accessing associated traditional knowledge;
- V. to give accreditation, in accordance with resolutions of the Management Council and in its name, to a national public research and development institution or a Federal public management institution for authorizing a national institution, whether public or private, to:
 - (a) access samples of components of the genetic heritage and associated traditional knowledge;
 - (b) dispatch samples of components of the genetic heritage to a national institution, whether public or private, or to an institution with its headquarters abroad, subject to the requirements of Article 19 of this Provisional Measure;
- VI. to give accreditation, in accordance with resolutions of the Management Council and in its name, to a national public institution as depository of samples of components of the genetic heritage;
- VII. to register Contracts for Use of the Genetic Heritage and Benefit-Sharing, following their approval by the Management Council;
- VIII. to disclose a list of species designated for facilitated exchange in international agreements, including those relating to food safety, of which the country is a signatory, in accordance with Article 19.II of this Provisional Measure;
- IX. to create and maintain:
 - (a) a register of *ex situ* collections, as provided in Article 18;
 - (b) a database for recording information obtained during the collection of samples of components of the genetic heritage;
 - (c) a database of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for Use of the Genetic Heritage and Benefit-Sharing;
- X. to disclose periodically a list of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for Use of the Genetic Heritage and Benefit-Sharing.

Chapter V

Access and Dispatch

Art. 16. Access to components of the genetic heritage existing *in situ* within the national territory, on the continental shelf or in the exclusive economic zone, and to associated traditional knowledge, shall be had by collection of samples and information respectively, and authorization shall only be given to a national institution, whether public or private, that carries on research and development activities in the biological and related fields by prior authorization, as provided in this Provisional Measure.

§1. The person responsible for the expedition to collect samples shall, at the end of his work in each area accessed, sign with the owner or representative thereof a declaration listing the material accessed, as provided in the regulations.

§2. In exceptional cases, where the owner of the area or his representative was not identified or located when the expedition to collect samples took place, the declaration listing the material accessed shall be signed by the person responsible for the expedition and sent to the Management Council.

§3. A representative sub-sample of each accessed population constituting a component of the genetic heritage shall be deposited *ex situ* with an accredited depository, described in Article 11.IV(f) of this Provisional Measure, as provided in the regulations.

§4. When there is a prospect of commercial use, *in situ* access to samples of components of the genetic heritage and to associated traditional knowledge may only occur after the Contract for Use of the Genetic Heritage and Benefit-Sharing has been signed.

§5. If potential for economic use has been identified in either a product or a process, whether or not it qualifies for intellectual protection on the basis of a sample of a component of the genetic heritage and information derived from associated traditional knowledge, accessed by virtue of authorization that did not establish that hypothesis, the benefiting institution is obliged to communicate with the Management Council, or the institution with which the process of access and dispatch originated, for execution of the Contract for the Use of the Genetic Heritage and Benefit-Sharing.

§6. Participation of a foreign legal entity in an expedition to collect samples of components of the genetic heritage *in situ* and to gain access to associated traditional knowledge shall only be authorized when it is to be in conjunction with a national public institution, which shall compulsorily be responsible for the coordination of activities, and provided that all institutions involved carry out research and development activities in biological and other related fields.

§7. Research on components of the genetic heritage shall preferably be done on the national territory.

§8. The Authorization of Access to and Dispatch of samples of components of the genetic heritage in the case of species that are strictly endemic or threatened with extinction shall be dependent on the prior consent of the competent body.

§9. Authorization of Access and Dispatch shall be granted with the prior consent of:

I. the indigenous community involved, the views of its official representative body having been heard where access occurs on indigenous territory;

II. the competent body where access occurs in a protected area;

III. the owner where access occurs on private land;

IV. the National Defense Council where access occurs in an area indispensable to national security;

V. the maritime authority where access occurs in Brazilian territorial waters, on the continental shelf or in the exclusive economic zone.

§10. The holder of an Authorization of Access and Dispatch under §9.1 to V of this Article is responsible for indemnifying the owner of the area for any damage or harm that has been duly proved.

§11. An institution holding a Special Authorization of Access and Dispatch shall send to the Management Council the consents referred to in paragraphs §8 and §9 of this Article before or on the occasion of collection expeditions to be carried out during the period of validity of the Authorization, and failure to do so shall result in its cancellation.

Art. 17. In the event of relevant public interest, as defined by the Management Council, entry into a public or private area for access to samples of components of the genetic heritage shall not require prior authorization by its owners, who shall be assured of the benefits provided for in Articles 24 and 25 of this Provisional Measure.

§1. In the case provided for in the heading of this Article the indigenous community, local community or owner shall be given advance notice.

§2. In cases involving indigenous lands, the provisions of Article 231(6) of the Federal Constitution shall apply.

Art. 18. The *ex situ* preservation of samples of components of the genetic heritage shall take place on the national territory, provided that it may take place abroad at the discretion of the Management Council.

§1. *Ex situ* collections of samples of components of the genetic heritage must be registered with the executive body of the Management Council, as provided in the regulations.

§2. The Management Council may delegate registration under paragraph (1) of this Article to one or more institutions accredited as provided in Article 11.IV(d) and (e) of this Provisional Measure.

Art. 19. The dispatch of samples of components of the genetic heritage by a national institution, whether public or private, to another national institution, whether public or private, shall make use of material held *ex situ* subject to information on the intended use and cumulative compliance with the following conditions, in addition to others that the Management Council might establish:

I. deposit of a representative sub-sample of components of the genetic heritage in a collection maintained by an accredited institution, even if the provisions of Article 16§3 of this Provisional Measure have not been complied with;

II. where samples of components of the genetic heritage have been accessed *in situ* before the publication of this Provisional Measure, the deposit referred to in the preceding paragraph shall be made in the form accessed, if still available, as provided in the regulations;

III. provision of information obtained during collection of samples of components of the genetic heritage for recording in the database mentioned in Article 14.III(b) and Article 15.IX(b) of this Provisional Measure;

IV. prior signature of the Terms of Transfer of Material.

§1. Whenever there is a prospect of commercial use of a product or process resulting from the use of components of the genetic heritage, the Contract for Use of the Genetic Heritage and Benefit-Sharing shall be signed in advance.

§2. Dispatch of samples of components of the genetic heritage in the case of species designated for facilitated exchange in international agreements, including those on food safety, of which the country is a signatory, shall be carried out in accordance with the conditions defined therein, the requirements of such agreements being constantly observed.

§3. Dispatch of any sample of components of the genetic heritage by a national institution, whether public or private, to an institution with its headquarters abroad, shall make use of *ex situ* material, subject to information on the intended use, prior authorization by the Management Council or the accredited institution and cumulative compliance with all the conditions laid down in subparagraphs I to IV and paragraphs §1 and §2 of this Article.

Art. 20. The format of the Terms of Transfer of Material shall be approved by the Management Council.

Chapter VI

Access to and Transfer of Technology

Art. 21. The institution receiving samples of components of the genetic heritage or associated traditional knowledge shall facilitate access to and transfer of technology for the preservation and use of that heritage or knowledge for the national institution responsible for access and dispatch of samples and information on the knowledge, or an institution specified by it.

Art. 22. Access to and transfer of technology between the national research and development institution, whether public or private, and an institution with its headquarters abroad may be achieved, among other activities, by means of:

- I. scientific research and technological development;
- II. basic and specialized training of human resources;
- III. exchange of information;
- IV. exchange between the national research institution and the research institution with its headquarters abroad;
- V. consolidation of the infrastructure for scientific research and technological development;
- VI. economic exploitation, in partnership, of a process or product derived from the use of components of the genetic heritage; and
- VII. establishment of a technology-based joint venture.

Art. 23. A company that invests in research and development activity in the Country in the process of affording access to and transfer of technology to a national institution, whether public or private, responsible for access to and dispatch of samples of components of the genetic heritage and for access to information on associated traditional knowledge shall qualify for tax incentives for technological training in industry, agriculture and livestock breeding and for other incentives in accordance with relevant legislation.

Chapter VII

Benefit-Sharing

Art. 24. The benefits arising from economic exploitation of a product or process developed from samples of components of the genetic heritage and associated traditional knowledge, obtained by a national institution or an institution with its headquarters abroad shall be shared in a fair and equitable way between the contracting parties, as provided in the regulations and relevant legislation.

Sole paragraph. When the Union is not a party to the Contract for Use of Genetic Heritage and Benefit-Sharing, it shall be assured where applicable of a share in the benefits referred to in the heading of this Article, as provided in the regulations.

Art. 25. The benefits derived from the economic exploitation of a product or process developed from samples of the genetic heritage or associated traditional knowledge may consist of the following among other things:

- I. division of profits;
- II. payment of royalties;
- III. technology access and transfer;
- IV. unrestricted licensing of products or services; and
- V. training of human resources.

Art. 26. Economic exploitation of a product or process developed from samples of components of the genetic heritage or associated traditional knowledge that have been accessed in a manner not conforming to the terms of this Provisional Measure shall make the guilty party liable to payment of an indemnity equivalent to a minimum of twenty per cent of the gross invoiced amount obtained through the marketing of the product or of royalties obtained from third parties by the guilty party as a result of the licensing of the product or process or the use of the technology, whether or not protected by intellectual property, without prejudice to administrative sanctions and appropriate penalties.

Art. 27. The Contract for Use of the Genetic Heritage and Benefit-Sharing shall mention and clearly identify the contracting parties, being on the one hand the owner of the public or private area or the representative of the indigenous community and the official indigenous body, or the representative of the local community and, on the other hand, the national institution authorized to have access and the receiving institution.

Art. 28. Essential clauses in the Contract for Use of the Genetic Heritage and Benefit-Sharing, as provided in the regulations, and without prejudice to others, are those that relate to:

- I. purpose, elements, quantification of samples and intended use;
- II. duration;
- III. method of fair and equitable sharing of benefits and, where applicable, access to and transfer of technology;
- IV. rights and responsibilities of the parties;
- V. intellectual property rights;

- VI. cancellation;
- VII. penalties;
- VIII. jurisdiction in Brazil.

Sole Paragraph. When the Union is a party to the contract referred to in the heading of this Article, it shall be governed by the provisions of public law.

Art. 29. Contracts for Use of the Genetic Heritage and Benefit-Sharing shall be submitted to the Management Council for registration and shall only become effective once approved.

Sole paragraph. Contracts for Use of the Genetic Heritage and Benefit-Sharing that are signed in a manner not conforming to the terms of this Provisional Measure and the regulations shall be null and devoid of legal effect.

Chapter VIII

Administrative Sanctions

Art. 30. Any act or omission that contravenes the terms of this Provisional Measure and other relevant legal provisions shall be considered an administrative offense against the genetic heritage and associated traditional knowledge.

§1. Administrative offenses shall be punished, as provided in the regulations under this Provisional Measure, with the following sanctions:

- I. a warning;
- II. a fine;
- III. confiscation of samples of components of the genetic heritage and of instruments used for collecting or processing them, or of products obtained on the basis of information relating to associated traditional knowledge;
- IV. confiscation of products derived from samples of components of the genetic heritage or associated traditional knowledge;
- V. suspension of sales of the product derived from the sample of components of the genetic heritage or the associated traditional knowledge, and confiscation thereof;
- VI. a ban on activities;
- VII. partial or total prohibition of the establishment, activity or undertaking;
- VIII. suspension of registration, patent, license or authorization;
- IX. cancellation of registration, patent, license or authorization;
- X. loss or restriction of tax incentives and benefits accorded by the Government;
- XI. loss or suspension of financing arrangements with an official credit establishment;
- XII. intervention in the establishment;
- XIII. a ban on signing contracts with public authorities for a period of up to five years.

§2. The fate of the samples, products and instruments referred to in subparagraphs III, IV and V of paragraph §1 of this Article shall be determined by the Management Council.

§3. Sanctions provided for in this Article shall be applied according to the procedure set out in the regulations under this Provisional Measure, without prejudice to civil sanctions or appropriate penalties.

§4. The fines referred to in subparagraph II of paragraph §1 of this Article shall be determined by the competent authority according to the gravity of the offense and as provided in the regulations, and may vary from R\$200 (two hundred reais) to R\$100,000 (one hundred thousand reais) in the case of a natural person.

§5. If the offense was committed by a legal entity or with its consent, the fine shall be from R\$10,000 (ten thousand reais) to R\$50,000,000 (fifty million reais), as determined by the competent authority, according to the gravity of the offense and as provided in the regulations.

§6. In the event of a repeat offense, the fine shall be doubled.

Chapter IX

Final Provisions

Art. 31. The grant of industrial property rights by the competent bodies for a process or product obtained using samples of components of the genetic heritage is contingent on the observance of this Provisional Measure, the applicant being obliged to specify the origin of the genetic material and the associated traditional knowledge, as the case may be.

Art. 32. The competent Federal bodies shall carry out inspection, interception and confiscation of samples of components of the genetic heritage or of products obtained from information on associated traditional knowledge that have been accessed in a manner not conforming to the provisions of this Provisional Measure, it being possible to decentralize those activities by agreement, as provided in the regulations.

Art. 33. The portion of income and royalties payable to the Union as a result of the economic exploitation of a process or product developed on the basis of a sample of components of the genetic heritage, as well as the value of fines and indemnities provided for in this Provisional Measure, shall be credited to the National Environment Fund created by Law No. 7.797 of July 10, 1989, to the Naval Fund created by Decree No. 20.923 of January 8, 1932, and to the National Fund for Scientific and Technological Development created by Decree-Law No. 719 of July 31, 1969, and confirmed by Law No. 8.172 of January 18, 1991, as provided in the regulations.

Sole Paragraph. The resources to which this Article refers shall be used exclusively for the conservation of biological diversity, recovery and the creation and maintenance of depositary institutions, for the furtherance of scientific research, for technological development associated with genetic resources and for the training of human resources associated with the conduct of activities relating to the use and conservation of genetic resources.

Art. 34. Any person using or economically exploiting components of the genetic heritage and associated traditional knowledge shall ensure that or her activities conform to the standards laid down in this Provisional Measure and the regulations under it.

Art. 35. The Government shall regulate this Provisional Measure up to December 30, 2001.

Art. 36. The provisions of this Provisional Measure shall not apply to material regulated by Law No. 8.974 of January 5, 1995.

Art. 37. Actions based on Provisional Measure No. 2.186-15 of June 26, 2001, shall remain valid.

Art. 38. This Provisional Measure shall enter into force on the date of its publication.

Brasilia, August 23, 2001; 180th year of Independence and 113th year of the Republic.

Brazil 2

Decree No. 5,459, of 07.06.2005

Regulates art. 30 of Provisional Measure No. 2,186-16 of August 23, 2001, regulating the penalties for the conduct and activities harmful to genetic resources or associated traditional knowledge and other measures.

THE PRESIDENT OF THE REPUBLIC, in exercise of the powers conferred by article. 84, item IV of the Constitution, and in view of the provisions of art. 30, § 1 s, the Provisional Measure the 2.186-16, of August 23, 2001,

Hereby decrees:

CHAPTER I PRELIMINARY PROVISIONS

Article 1 s is considered an administrative violation against the genetic heritage or associated traditional knowledge any action or omission that violates the norms of Provisional Measure the 2,186-16 of August 23, 2001, and other relevant provisions.

Single paragraph. Apply to this Decree the definitions of art. 7 the Provisional Measure n the 2186-16, 2001, and the Convention on Biological Diversity, promulgated by Decree the 2,519, of March 16, 1998 , as well as the technical guidelines issued by the Board of Management of Genetic Heritage.

Section I Administrative Procedure

Article 2 the Offences against the genetic heritage or associated traditional knowledge will be cleared in a proper administrative proceeding for each competent authority, upon the issuance of a notice of violation and its terms, guaranteed the right to legal defense and contradictory.

Article 3 to anyone, noting offense against genetic heritage or associated traditional knowledge, may direct representation to the related authorities in art. 4 s for the purpose of exercising its police power.

Art 4 the public agents of the following organ and authority are competent authorities for scrutiny in the form of this Decree, within their respective competences:

I - the Brazilian Institute of Environment and Renewable Natural Resources - IBAMA;

II - the Navy Command, Ministry of Defence.

§ 1 the holders of the organ and federal entity mentioned in items I and II of the *caput* may enter into agreements with members of the National Environmental System state and local environmental agencies - SISNAMA to decentralize the activities described in the *caput* .

§ 2 the exercise of the supervision referred to the *caput* by the Navy Command occur within Brazilian waters and the Brazilian continental shelf, in coordination with environmental agencies, when necessary, through cooperation instruments.

Article 5 The Public agent agency and entity referred to in art. 4 what it is aware of infringement under this Decree is required to promote their immediate investigation, under penalty of accountability.

Article 6 The administrative procedure for the determination of infringement against genetic heritage or associated traditional knowledge should note the following deadlines:

I - fined twenty days to provide the defense or objection against the assessment notice, from the date the notice of science;

II - thirty days to the competent authority deems the notice of violation from the date the notice of science, presented or not the defense or objection;

III - fined twenty days to appeal against the conviction to the superior than fining organ, as of the science of decision of first instance proceedings;

IV - fined twenty days to appeal against the conviction of appeal to the Board of Management of Genetic Resources, and

V - five days s for the payment of a fine, from the date of receipt of notice.

Article 7 's The fining agent, to plow the assessment notice, indicate the penalties for conduct, observing both for:

I - the seriousness of the facts, in view of the reasons for the violation and its consequences for genetic resources, traditional knowledge associated public health or the environment;

II - the background to the cited, as to enforcement of protection of genetic resources and associated traditional knowledge, and

III - the economic situation apprehended.

Article 8 to the competent authority shall, ex officio or upon request, regardless of the payment of the fine, reduce, maintain or raising its value, subject to the limits laid down in Articles infringed, subject to the provisions of art. 7 the .

Article 9 the In case of recidivism, the fine will be doubled.

Single paragraph. The defaulter can not enjoy the benefit provided for in art. 25.

Section II Administrative Sanctions against genetic heritage or associated traditional knowledge

. Art. 10 Administrative violations against genetic heritage or associated traditional knowledge will be punished by the following penalties apply, individually or cumulatively, to individuals or entities:

I - warning;

II - fine;

III - seizure of samples of genetic heritage components and tools used in its collection or processing of the product or derived from information associated traditional knowledge;

IV - seizure of products derived from samples of components of the genetic heritage or associated traditional knowledge;

V - suspension of sales of the product derived from sample component of genetic heritage or associated traditional knowledge and their apprehension;

VI - embargo of the activity;

VII - partial or total closure of the business, activity or undertaking;

VIII - suspended registration, patent, license or permit;

IX - cancellation of registration, patent, license or permit;

X - loss or restriction of tax incentives and benefits granted by the government;

XI - loss or suspension of participation in the credit line on an official credit institution;

XII - intervention in the property, and

XIII - prohibition from contracting with the government for a period of up to five years.

§ 1 it is understood as products obtained from information on associated traditional knowledge, set out in Part III of *caput* , records, in any form, of information relating to this knowledge.

§ 2 the If cited, with a single conduit, committing more than one offense, it shall be applied cumulatively, the penalties she comminated.

§ 3 the The penalties provided for in sections I and III to XIII can be applied independent of the single prediction penalty fines for administrative violations described in this Decree.

Article 11 . The penalty warning will be applied to small infractions offensive potential at the discretion of fining authority when she, considering the background of the apprehended understand this step as more educational, without prejudice to other penalties provided in Art. 10.

Article 12 . The penalty of fine shall be applied in the cases provided for in this Decree and its value will be arbitrated by the competent authority, ranging from:

I - \$ 200.00 (two hundred reals) to R \$ 100,000.00 (one hundred thousand reais), in the case of an individual, or

II - U.S. \$ 10,000.00 (ten thousand reais) to R \$ 50,000,000.00 (fifty million dollars), if the offense is committed by a legal person, or with your bid.

. Art. 13 products, animals, equipment, vehicles, supplies and other tools used directly in practice the offense will have their destination set by the Board of Management of Genetic Heritage, taking into account the following criteria:

I - whenever possible, products, samples, equipment, vehicles, supplies and instruments referred to in this article shall be donated to scientific, cultural, environmental, educational, medical, criminal, military, public institutions or other entities with charitable purposes;

II - when the donation referred to in item I is not recommended for reasons of public health or morals reasonableness, the seized property shall be destroyed or auctioned, guaranteed its mischaracterization by recycling where possible, or

III - when the material seized refers to associated traditional knowledge, it should be returned to the provider community, unless it agrees with giving the entities mentioned in item I.

§ 1 the donations in this article do not relieve the grantee to request their permission if you want to make access to genetic resources and associated traditional knowledge from the material received in donation.

§ 2 the values collected at the auction will go to the funds provided for in art. 33 of Provisional Measure the 2186-16, 2001 , in the proportion provided for in art. 14 of this Decree.

§ 3 the vehicles and vessels used directly in the practice of violations shall be entrusted to a trustee in the form of arts. 627-647, 651 and 652 of Law n^{the} 10406 of January 10, 2002, at the option of fining authority, and may be released upon payment of the fine.

. Art. 14 The amounts collected on payment of fines that accrue this Decree:

I - when the offense is committed in an area under the jurisdiction of the Navy Command:

a) fifty percent Naval Fund, and

b) the remainder equally divided between the National Fund for Scientific and Technological Development, governed by Law No. 8,172, of January 18, 1991^{'s}, and the National Environment Fund, established by Law No. 7,797, of July 10, 1989 ;^{the}

II - in other cases the amounts raised will be shared equally between the National Fund for Scientific and Technological Development and the National Environment Fund.

§ 1 The Funds mentioned in this article shall be used exclusively for conservation of biological diversity, including restoration, creation and maintenance of custodian banks, the development of scientific research, technological development associated with genetic resources and training of human resources associated related to the development of the use and conservation of genetic resources activities.

§ 2 it is understood as used in the conservation of biological diversity, the application of the funds transferred to the Naval Fund in the acquisition, operation, maintenance and conservation by Navy Command of means used in inspection activity of conduct and activities harmful to the environment, among them, the detrimental genetic heritage or associated traditional knowledge.

CHAPTER II VIOLATIONS AGAINST GENETIC HERITAGE

. Art. 15 Accessing the genetic heritage for research purposes without permission of the court or in breach of the obtained component:

Minimum fine of \$ 10,000 (ten thousand dollars) and a maximum of U.S. \$ 100,000.00 (one hundred thousand dollars) in the case of a legal entity, and minimum fine of \$ 200.00 (two hundred dollars) and a maximum of U.S. \$ 5,000.00 (five thousand dollars), when dealing with individuals.

§ 1 the penalty provided for in the *caput* shall be doubled if the access to genetic resources is held to practices harmful to the environment or practices harmful to human health.

§ 2 the If access to genetic resources is carried out for the development of biological and chemical weapons, the penalty provided for in the *caput* will be tripled and the sanction of partial or total closure of the business, activity or project should be applied.

. Art. 16 Accessing the genetic heritage for purposes of bioprospecting or technological development, without permission of the court or in breach of the obtained component:

Minimum fine of R \$ 15,000.00 (fifteen thousand dollars) and a maximum of U.S. \$ 10,000,000.00 (ten million dollars) in the case of a legal entity, and minimum fine of \$ 5,000.00 (five thousand reais) and a maximum of U.S. \$ 50,000.00 (fifty thousand dollars), when dealing with individuals.

§ 1 The incur the same penalties those who access genetic heritage components in order to provide or integrate collection *ex situ* for bioprospecting or technological development, without permission of the court or in violation of the authorization obtained.

§ 2 the penalty provided for in the *caput* shall be increased by one-third when the access claim involving industrial property rights related to product or process obtained from illicit access by the competent body.

§ 3 the The penalty provided for in *the caput* will be increased by half if economic exploitation process or product obtained from illicit access to genetic resources.

§ 4 the penalty provided for in the *caput* shall be doubled if the access to genetic resources is held to practices harmful to the environment or practices harmful to human health.

§ 5 the If access to genetic resources is carried out for the development of biological and chemical weapons, the penalty provided for in the *caput* will be tripled and the sanction of partial or total closure of the business, activity or project should be applied.

. Art. 17 Refer to the outside sample component of genetic heritage without permission of the court or in violation of the authorization obtained:

Minimum fine of R \$ 10,000.00 (ten thousand dollars) and a maximum of U.S. \$ 5,000,000.00 (five million dollars) in the case of a legal entity, and minimum fine of \$ 5,000.00 (five thousand reais) and a maximum of U.S. \$ 50,000.00 (fifty thousand dollars), when dealing with individuals.

§ 1 The Pune to attempt the commission of the offense referred to in the *caput* with a fine corresponding to the consummated offense, less than a third.

§ 2 to Tell if an attempted offense, when, is being implemented, is not consummated by beyond the control of the agent.

§ 3 the The penalty provided for in *the caput* will be increased by half if the sample is obtained from species appearing on the official list of Brazilian fauna threatened with extinction and Annex I of the Convention on International Trade in Endangered Species of Wild Flora and Fauna in Peril Extinction - CITES.

§ 4 the penalty provided for in the *caput* shall be doubled if the sample is obtained from species appearing on the official list of Brazilian fauna threatened with extinction and CITES Appendix II.

§ 5 the penalty provided for in the *caput* shall be doubled if the sample is obtained from species appearing on the official list of endangered flora.

Article 18. Failure to allocate, if any, the benefits of economic operation of the product or process developed from access to samples of genetic resources or traditional knowledge associated with those eligible, in accordance with the provisions of the Provisional the 2186-16, 2001, or in accordance with the Agreement for Use of Genetic Heritage and Benefit-Sharing given his agreement by the Board of Management of Genetic Resources:

Minimum fine of U.S. \$ 50,000.00 (fifty thousand dollars) and a maximum of R \$ 50,000,000.00 (fifty million dollars) in the case of a legal entity, and minimum fine of \$ 20,000.00 (twenty thousand dollars) and a maximum of U.S. \$ 100,000.00 (one hundred thousand reais), when dealing with individuals .

. Art. 19 provide false information or omit essential information to the Government on research activity, bioprospecting or technological development related to genetic resources, the time of audit, inspection or application for access authorization or referral:

Minimum fine of R \$ 10,000.00 (ten thousand dollars) and a maximum of U.S. \$ 100,000.00 (one hundred thousand dollars) in the case of a legal entity, and minimum fine of \$ 200.00 (two hundred dollars) and a maximum of U.S. \$ 5,000.00 (five thousand dollars), when dealing with individuals.

CHAPTER III OF THE TRADITIONAL KNOWLEDGE RELATED OFFENSES

. Art. 20 Accessing associated traditional knowledge for purposes of scientific research without the permission of the court or in disagreement with that obtained:

Minimum fine of R \$ 20,000.00 (twenty thousand dollars) and a maximum of U.S. \$ 500,000.00 (five hundred thousand reais), in the case of a legal entity, and minimum fine of R \$ 1,000.00 (one thousand reais) and maximum U.S. \$ 50,000.00 (fifty thousand dollars), when dealing with individuals.

. Art. 21 Accessing associated traditional knowledge for purposes of bioprospecting or technological development without the permission of the court or in disagreement with that obtained:

Minimum fine of U.S. \$ 50,000.00 (fifty thousand dollars) and a maximum of U.S. \$ 15,000,000.00 (fifteen million dollars) in the case of a legal entity, and minimum fine of \$ 10,000.00 (ten thousand reais) and a maximum of U.S. \$ 100,000.00 (one hundred thousand reais), when dealing with individuals.

§ 1 the penalty provided for in the *caput* shall be increased by one third if there is demand for industrial property rights of any kind related to product or process obtained from illegal access with the competent national or foreign court.

§ 2 the penalty provided for in the *caput* will be increased by half if economic exploitation process or product obtained from illicit access to associated traditional knowledge.

. Art. 22 disseminate, transmit or retransmit data or information that constitute part or associated traditional knowledge, without permission of the court or in violation of the authorization obtained, when required:

Minimum fine of R \$ 20,000.00 (twenty thousand dollars) and a maximum of U.S. \$ 500,000.00 (five hundred thousand reais), in the case of a legal entity, and minimum fine of R \$ 1,000.00 (one thousand reais) and maximum U.S. \$ 50,000.00 (fifty thousand dollars), when dealing with individuals.

. Art. 23 Omit the source of associated traditional knowledge in publishing, registration, inventory, use, operation, transmission or any form of dissemination in which this knowledge is directly or indirectly mentioned:

Minimum fine of R \$ 10,000.00 (ten thousand dollars) and a maximum of R \$ 200,000.00 (two hundred thousand dollars) in the case of a legal entity, and minimum fine of \$ 5,000.00 (five thousand dollars) and maximum R \$ 20,000.00 (twenty thousand dollars), when dealing with individuals.

. Art. 24 Omit the essential Government information access activity associated traditional knowledge, at the time of audit, inspection or application for access authorization or referral:

Minimum fine of R \$ 10,000.00 (ten thousand dollars) and a maximum of U.S. \$ 100,000.00 (one hundred thousand dollars) in the case of a legal entity, and minimum fine of \$ 200.00 (two hundred dollars) and a maximum of U.S. \$ 5,000.00 (five thousand dollars), when dealing with individuals.

CHAPTER IV FINAL PROVISIONS

Article 25. Fines under this Decree may have their suspended payment, when apprehended by term sheet approved by the competent authority, force yourself to adopt specific measures to suit the Provisional Measure n the 2,186- 16, 2001, in its regulations and other regulations deriving from the Board of Management of Genetic Heritage.

§ 1 the fulfillment of the obligations assumed by fully apprehended since proven technical opinion issued by the competent body, the fine will be reduced by up to ninety percent of their value, adjusted for inflation.

§ 2 the In the event of interruption of fulfillment of obligations under the deed of undertaking referred to in *the caput* , either by the competent authority or by the fact that the offender decision, the fine amount will be adjusted for inflation.

§ 3 the values calculated in accordance with § § 1 's and 2 's will be collected within five days of receipt of notification.

Article 26. Sanctions set forth in this Decree shall apply, regardless of fault, subject to the penalties provided for in current legislation and objective liability for damages.

Article 27. incumbent IBAMA and the Council of Management of Genetic Resources, within their respective competences, issue normative acts aimed disciplinary procedures needed to comply with this Decree.

Single paragraph. The Navy Command establish normative acts in themselves the procedures to be adopted by him.

Article 28. shall apply the alternative to this Decree the provisions in the Criminal Code, the Criminal Procedure Code, the Law No. 9,784, of January 29, 1999 th, in Law No. 9,605, of February 12, 1998 ^{to} and the Decree to 3,179, of September 21, 1999 .

Article 29. This Decree shall enter into force on the date of its publication.

Comparison of Brazilian Provisional Measure No. 2186-16 and Decree 5459 with common provisions under the Nagoya Protocol and WIPO draft agreements

Deals with traditional knowledge associated with genetic resources as well as genetic resources but some of the common provisions are not addressed

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	General Provisions Art. 1. This Provisional Measure provides for the benefits, rights and obligations concerning: I. access to components of the genetic heritage on the national territory, on the continental shelf and in the exclusive economic zone for purposes of scientific research, technological development or biological prospection; II. access to traditional knowledge relating to the genetic heritage that	Deals with genetic resources and traditional knowledge

	<p>is relevant to the conservation of biological diversity, the integrity of the Country's genetic heritage and the use of its components;</p> <p>III. the fair and equitable sharing of the benefits deriving from exploitation of components of the genetic heritage and the associated traditional knowledge; and</p> <p>IV. access to and transfer of technology for the conservation and use of biological diversity.</p> <p>§1. Access to components of the genetic heritage for purposes of scientific research, technological development or bioprospection shall be had in accordance with this Provisional Measure, without prejudice to any material or immaterial property rights that might subsist in components of the genetic resources accessed, or the location where access is had.</p> <p>§2. Access to components of the genetic heritage on the continental shelf shall be subject to the provisions of Law No. 8.617 of January 4, 1993.</p> <p>Art. 2. Access to components of the genetic heritage within national boundaries shall only be had with the authority of the Union and its use, marketing and exploitation for whatever purpose shall be subject to inspection, restrictions and benefit-sharing on the terms and conditions established in this Provisional Measure and in the regulations under it.</p> <p>Art. 3. This Provisional Measure does not apply to human genetic resources.</p> <p>Chapter I</p> <p>Art. 4. The exchange and dissemination of components of the genetic heritage and associated traditional knowledge practised within indigenous and local communities for their own benefit and based on customary usage are preserved.</p> <p>Art. 5. Access to the genetic heritage for purposes that are harmful to the environment and to human health, and for the development of biological and chemical weapons, is prohibited.</p> <p>Art. 6. If at any time there is scientific evidence to suggest a risk of serious and irreversible damage to biological diversity resulting from activities provided for in this Provisional Measure, the public authorities, acting through the Council for the Management of the Genetic Heritage provided for in Article 10, shall, on the basis of technical opinion and criteria, decide on measures to prevent the damage, which may include suspension of the activity, due regard being had to the competence of the body responsible for the biological security of genetically modified organisms.</p>	
2. definition of terms- key terms used in the draft	<p>Chapter II</p> <p>Definitions</p> <p>Art. 7. In addition to the concepts and standard definitions in the Convention on Biological Diversity, the following definitions shall apply for the purposes of this Provisional Measure:</p> <p>I. Genetic heritage: information of genetic origin contained in samples of all or part of plant, fungal, microbial or animal specimens, in the form of molecules and substances deriving from the metabolism of such living beings and extracts obtained from such organisms, live or dead, encountered <i>in situ</i>, including domestic situations, or kept in <i>ex situ</i> collections after <i>in situ</i> collection within the national territory, on the continental shelf or in the exclusive economic zone;</p> <p>II. Associated traditional knowledge: information or individual or collective practices of an indigenous or local community having real or potential value and associated with the genetic heritage;</p> <p>III. Local community: human group, including remnants of Quilombo communities, distinguished by its cultural conditions, that traditionally organizes itself throughout successive generations and through its own customs and preserves its social and economic institutions;</p> <p>IV. Access to the genetic heritage: acquisition of samples of components of the genetic heritage for purposes of scientific research, technological development or bioprospection, with a view to its</p>	

	<p>application in industry or elsewhere;</p> <p>V. Access to associated traditional knowledge: acquisition of information pertaining to knowledge or individual or collective practices, associated with the genetic heritage, of an indigenous or local community for purposes of scientific research, technological development or biological prospection, with a view to its application in industry or elsewhere;</p> <p>VI. Access to and transfer of technology: action whose purpose is access to and the development and transfer of technology for the preservation and use of biological diversity or technology developed from samples of components of the genetic heritage or from associated traditional knowledge;</p> <p>VII. Bioprospection: exploratory activity aimed at identifying components of the genetic heritage and information on associated traditional knowledge with potential for commercial use;</p> <p>VIII. Species threatened with extinction: species carrying a high risk of disappearance from nature in the near future, and recognized as such by the competent authority;</p> <p>IX. domesticated species: a species in whose course of evolution human beings have intervened in order to meet their own needs;</p> <p>X. Authorization of Access and Dispatch: document that allows, under specific conditions, access to samples of components of the genetic heritage and the dispatch thereof to a receiving institution, and access to associated traditional knowledge;</p> <p>XI. Special Authorization of Access and Dispatch: document that allows, under specific conditions, access to samples of components of the genetic heritage and the dispatch thereof to a receiving institution, and access to associated traditional knowledge, for a period of up to two years, renewable for equal periods;</p> <p>XII. Acknowledgement of Material Transfer: formal document to be signed by the receiving institution before any samples of components of the genetic heritage are dispatched, with a mention where appropriate of whether access has been had to associated traditional knowledge;</p> <p>XIII. Contract for Use of the Genetic Heritage and Benefit-Sharing: multilateral legal instrument which gives the particulars of the parties, the purpose and the conditions of access to and dispatch of components of the genetic heritage and associated traditional knowledge, and also the conditions for the sharing of benefits;</p> <p>XIV. <i>Ex situ</i> state: maintenance of samples of components of the nation's genetic resources outside their natural habitat, in collections of live or dead material.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Art. 8. Traditional knowledge of indigenous and local communities relating to the genetic heritage is protected by this Provisional Measure against illegal use and exploitation and other actions that are harmful or have not been authorized by the Management Council referred to in Article 10 or by an accredited institution.</p> <p>I. The State recognizes the right of indigenous and local communities to decide on the use of their traditional knowledge associated with the genetic heritage, as provided in this Provisional Measure and the regulations under it.</p> <p>II. The traditional knowledge associated with genetic heritage that is covered by this Provisional Measure encompasses the cultural heritage of Brazil and may be subject to a cadastral record, as directed by the Management Council or provided in specific legislation.</p> <p>III. The protection afforded by this Provisional Measure may not be interpreted in such a way as to impede the preservation, use and development of traditional knowledge of an indigenous or local community.</p> <p>IV. The protection hereby instituted shall not affect, prejudice or limit rights pertaining to intellectual property.</p> <p>Art. 9. Indigenous or local communities that create, develop, hold or preserve traditional knowledge associated with the genetic heritage are guaranteed the right to:</p> <p>I. have the origin of the access to traditional knowledge mentioned in all publications, uses, exploitation and disclosures;</p>	Deals only with traditional knowledge relating to genetic resources- these provisions were provided in a Tk chapter not a general scope

	<p>II. prevent unauthorized third parties from:</p> <p>(a) using or carrying out tests, research or investigations relating to associated traditional knowledge;</p> <p>(b) disclosing, broadcasting or re-broadcasting data or information that incorporate or constitute associated traditional knowledge;</p> <p>III. derive profit from economic exploitation by third parties of associated traditional knowledge the rights in which are owned by the community as provided in this Provisional Measure.</p> <p>Sole Paragraph: For the purposes of this Provisional Measure, any traditional knowledge associated with the genetic heritage may be owned by the community, even if only one single member of the community holds that knowledge.</p> <p>Art. 34. Any person using or economically exploiting components of the genetic heritage and associated traditional knowledge shall ensure that or her activities conform to the standards laid down in this Provisional Measure and the regulations under it.</p>	
4. beneficiaries- who should benefit		Not addressed
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms-ensuring the bargaining process is fair and equitable</p>	<p>Chapter V</p> <p>Access and Dispatch</p> <p>Art. 16. Access to components of the genetic heritage existing <i>in situ</i> within the national territory, on the continental shelf or in the exclusive economic zone, and to associated traditional knowledge, shall be had by collection of samples and information respectively, and authorization shall only be given to a national institution, whether public or private, that carries on research and development activities in the biological and related fields by prior authorization, as provided in this Provisional Measure.</p> <p>§1. The person responsible for the expedition to collect samples shall, at the end of his work in each area accessed, sign with the owner or representative thereof a declaration listing the material accessed, as provided in the regulations.</p> <p>§2. In exceptional cases, where the owner of the area or his representative was not identified or located when the expedition to collect samples took place, the declaration listing the material accessed shall be signed by the person responsible for the expedition and sent to the Management Council.</p> <p>§3. A representative sub-sample of each accessed population constituting a component of the genetic heritage shall be deposited <i>ex situ</i> with an accredited depository, described in Article 11.IV(f) of this Provisional Measure, as provided in the regulations.</p> <p>§4. When there is a prospect of commercial use, <i>in situ</i> access to samples of components of the genetic heritage and to associated traditional knowledge may only occur after the Contract for Use of the Genetic Heritage and Benefit-Sharing has been signed.</p> <p>§5. If potential for economic use has been identified in either a product or a process, whether or not it qualifies for intellectual protection on the basis of a sample of a component of the genetic heritage and information derived from associated traditional knowledge, accessed by virtue of authorization that did not establish that hypothesis, the benefiting institution is obliged to communicate with the Management Council, or the institution with which the process of access and dispatch originated, for execution of the Contract for the Use of the Genetic Heritage and Benefit-Sharing.</p> <p>§6. Participation of a foreign legal entity in an expedition to collect samples of components of the genetic heritage <i>in situ</i> and to gain access to associated traditional knowledge shall only be authorized when it is to be in conjunction with a national public institution, which shall compulsorily be responsible for the coordination of activities, and provided that all institutions involved carry out research and development activities in biological and other related fields.</p> <p>§7. Research on components of the genetic heritage shall preferably</p>	

	<p>be done on the national territory.</p> <p>§8. The Authorization of Access to and Dispatch of samples of components of the genetic heritage in the case of species that are strictly endemic or threatened with extinction shall be dependent on the prior consent of the competent body.</p> <p>§9. Authorization of Access and Dispatch shall be granted with the prior consent of:</p> <p>I. the indigenous community involved, the views of its official representative body having been heard where access occurs on indigenous territory;</p> <p>II. the competent body where access occurs in a protected area;</p> <p>III. the owner where access occurs on private land;</p> <p>IV. the National Defense Council where access occurs in an area indispensable to national security;</p> <p>V. the maritime authority where access occurs in Brazilian territorial waters, on the continental shelf or in the exclusive economic zone.</p> <p>§10. The holder of an Authorization of Access and Dispatch under §9.1 to V of this Article is responsible for indemnifying the owner of the area for any damage or harm that has been duly proved.</p> <p>§11. An institution holding a Special Authorization of Access and Dispatch shall send to the Management Council the consents referred to in paragraphs §8 and §9 of this Article before or on the occasion of collection expeditions to be carried out during the period of validity of the Authorization, and failure to do so shall result in its cancellation.</p> <p>Art. 17. In the event of relevant public interest, as defined by the Management Council, entry into a public or private area for access to samples of components of the genetic heritage shall not require prior authorization by its owners, who shall be assured of the benefits provided for in Articles 24 and 25 of this Provisional Measure.</p> <p>§1. In the case provided for in the heading of this Article the indigenous community, local community or owner shall be given advance notice.</p> <p>§2. In cases involving indigenous lands, the provisions of Article 231(6) of the Federal Constitution shall apply.</p> <p>Art. 18. The <i>ex situ</i> preservation of samples of components of the genetic heritage shall take place on the national territory, provided that it may take place abroad at the discretion of the Management Council.</p> <p>§1. <i>Ex situ</i> collections of samples of components of the genetic heritage must be registered with the executive body of the Management Council, as provided in the regulations.</p> <p>§2. The Management Council may delegate registration under paragraph (1) of this Article to one or more institutions accredited as provided in Article 11.IV(d) and (e) of this Provisional Measure.</p> <p>Art. 19. The dispatch of samples of components of the genetic heritage by a national institution, whether public or private, to another national institution, whether public or private, shall make use of material held <i>ex situ</i> subject to information on the intended use and cumulative compliance with the following conditions, in addition to others that the Management Council might establish:</p> <p>I. deposit of a representative sub-sample of components of the genetic heritage in a collection maintained by an accredited institution, even if the provisions of Article 16§3 of this Provisional Measure have not been complied with;</p> <p>II. where samples of components of the genetic heritage have been accessed <i>in situ</i> before the publication of this Provisional Measure, the deposit referred to in the preceding paragraph shall be made in the form accessed, if still available, as provided in the regulations;</p> <p>III. provision of information obtained during collection of samples of components of the genetic heritage for recording in the database mentioned in Article 14.III(b) and Article 15.IX(b) of this Provisional Measure;</p> <p>IV. prior signature of the Terms of Transfer of Material.</p> <p>§1. Whenever there is a prospect of commercial use of a product or process resulting from the use of components of the genetic heritage,</p>	
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	<p>the Contract for Use of the Genetic Heritage and Benefit-Sharing shall be signed in advance.</p> <p>§2. Dispatch of samples of components of the genetic heritage in the case of species designated for facilitated exchange in international agreements, including those on food safety, of which the country is a signatory, shall be carried out in accordance with the conditions defined therein, the requirements of such agreements being constantly observed.</p> <p>§3. Dispatch of any sample of components of the genetic heritage by a national institution, whether public or private, to an institution with its headquarters abroad, shall make use of <i>ex situ</i> material, subject to information on the intended use, prior authorization by the Management Council or the accredited institution and cumulative compliance with all the conditions laid down in subparagraphs I to IV and paragraphs §1 and §2 of this Article.</p> <p>Art. 20. The format of the Terms of Transfer of Material shall be approved by the Management Council.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>Chapter VII Benefit-Sharing</p> <p>Art. 24. The benefits arising from economic exploitation of a product or process developed from samples of components of the genetic heritage and associated traditional knowledge, obtained by a national institution or an institution with its headquarters abroad shall be shared in a fair and equitable way between the contracting parties, as provided in the regulations and relevant legislation.</p> <p>Sole paragraph. When the Union is not a party to the Contract for Use of Genetic Heritage and Benefit-Sharing, it shall be assured where applicable of a share in the benefits referred to in the heading of this Article, as provided in the regulations.</p> <p>Art. 25. The benefits derived from the economic exploitation of a product or process developed from samples of the genetic heritage or associated traditional knowledge may consist of the following among other things:</p> <ul style="list-style-type: none"> I. division of profits; II. payment of royalties; III. technology access and transfer; IV. unrestricted licensing of products or services; and V. training of human resources. <p>Art. 26. Economic exploitation of a product or process developed from samples of components of the genetic heritage or associated traditional knowledge that have been accessed in a manner not conforming to the terms of this Provisional Measure shall make the guilty party liable to payment of an indemnity equivalent to a minimum of twenty per cent of the gross invoiced amount obtained through the marketing of the product or of royalties obtained from third parties by the guilty party as a result of the licensing of the product or process or the use of the technology, whether or not protected by intellectual property, without prejudice to administrative sanctions and appropriate penalties.</p> <p>Art. 27. The Contract for Use of the Genetic Heritage and Benefit-Sharing shall mention and clearly identify the contracting parties, being on the one hand the owner of the public or private area or the representative of the indigenous community and the official indigenous body, or the representative of the local community and, on the other hand, the national institution authorized to have access and the receiving institution.</p> <p>Art. 28. Essential clauses in the Contract for Use of the Genetic Heritage and Benefit-Sharing, as provided in the regulations, and without prejudice to others, are those that relate to:</p> <ul style="list-style-type: none"> I. purpose, elements, quantification of samples and intended use; II. duration; III. method of fair and equitable sharing of benefits and, where applicable, access to and transfer of technology; IV. rights and responsibilities of the parties; V. intellectual property rights; VI. cancellation; 	

	<p>VII. penalties;</p> <p>VIII. jurisdiction in Brazil.</p> <p>Sole Paragraph. When the Union is a party to the contract referred to in the heading of this Article, it shall be governed by the provisions of public law.</p> <p>Art. 29. Contracts for Use of the Genetic Heritage and Benefit-Sharing shall be submitted to the Management Council for registration and shall only become effective once approved.</p> <p>Sole paragraph. Contracts for Use of the Genetic Heritage and Benefit-Sharing that are signed in a manner not conforming to the terms of this Provisional Measure and the regulations shall be null and devoid of legal effect.</p>	
7. Sanctions and remedies-dealing with breaches	<p>Chapter VIII</p> <p>Administrative Sanctions</p> <p>Art. 30. Any act or omission that contravenes the terms of this Provisional Measure and other relevant legal provisions shall be considered an administrative offense against the genetic heritage and associated traditional knowledge.</p> <p>§1. Administrative offenses shall be punished, as provided in the regulations under this Provisional Measure, with the following sanctions:</p> <p>I. a warning;</p> <p>II. a fine;</p> <p>III. confiscation of samples of components of the genetic heritage and of instruments used for collecting or processing them, or of products obtained on the basis of information relating to associated traditional knowledge;</p> <p>IV. confiscation of products derived from samples of components of the genetic heritage or associated traditional knowledge;</p> <p>V. suspension of sales of the product derived from the sample of components of the genetic heritage or the associated traditional knowledge, and confiscation thereof;</p> <p>VI. a ban on activities;</p> <p>VII. partial or total prohibition of the establishment, activity or undertaking;</p> <p>VIII. suspension of registration, patent, license or authorization;</p> <p>IX. cancellation of registration, patent, license or authorization;</p> <p>X. loss or restriction of tax incentives and benefits accorded by the Government;</p> <p>XI. loss or suspension of financing arrangements with an official credit establishment;</p> <p>XII. intervention in the establishment;</p> <p>XIII. a ban on signing contracts with public authorities for a period of up to five years.</p> <p>§2. The fate of the samples, products and instruments referred to in subparagraphs III, IV and V of paragraph §1 of this Article shall be determined by the Management Council.</p> <p>§3. Sanctions provided for in this Article shall be applied according to the procedure set out in the regulations under this Provisional Measure, without prejudice to civil sanctions or appropriate penalties.</p> <p>§4. The fines referred to in subparagraph II of paragraph §1 of this Article shall be determined by the competent authority according to the gravity of the offense and as provided in the regulations, and may vary from R\$200 (two hundred reais) to R\$100,000 (one hundred thousand reais) in the case of a natural person.</p> <p>§5. If the offense was committed by a legal entity or with its consent, the fine shall be from R\$10,000 (ten thousand reais) to R\$50,000,000 (fifty million reais), as determined by the competent authority, according to the gravity of the offense and as provided in the regulations.</p> <p>§6. In the event of a repeat offense, the fine shall be doubled.</p> <p>Art. 32. The competent Federal bodies shall carry out inspection, interception and confiscation of samples of components of the genetic heritage or of products obtained from information on</p>	

	<p>associated traditional knowledge that have been accessed in a manner not conforming to the provisions of this Provisional Measure, it being possible to decentralize those activities by agreement, as provided in the regulations.</p> <p>Chapter VI Access to and Transfer of Technology</p> <p><i>Art. 21.</i> The institution receiving samples of components of the genetic heritage or associated traditional knowledge shall facilitate access to and transfer of technology for the preservation and use of that heritage or knowledge for the national institution responsible for access and dispatch of samples and information on the knowledge, or an institution specified by it.</p> <p><i>Art. 22.</i> Access to and transfer of technology between the national research and development institution, whether public or private, and an institution with its headquarters abroad may be achieved, among other activities, by means of:</p> <ul style="list-style-type: none"> I. scientific research and technological development; II. basic and specialized training of human resources; III. exchange of information; IV. exchange between the national research institution and the research institution with its headquarters abroad; V. consolidation of the infrastructure for scientific research and technological development; VI. economic exploitation, in partnership, of a process or product derived from the use of components of the genetic heritage; and VII. establishment of a technology-based joint venture. <p><i>Art. 23.</i> A company that invests in research and development activity in the Country in the process of affording access to and transfer of technology to a national institution, whether public or private, responsible for access to and dispatch of samples of components of the genetic heritage and for access to information on associated traditional knowledge shall qualify for tax incentives for technological training in industry, agriculture and livestock breeding and for other incentives in accordance with relevant legislation.</p> <p><i>Art. 31.</i> The grant of industrial property rights by the competent bodies for a process or product obtained using samples of components of the genetic heritage is contingent on the observance of this Provisional Measure, the applicant being obliged to specify the origin of the genetic material and the associated traditional knowledge, as the case may be.</p>	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>Chapter IV Institutional Competencies and Powers</p> <p><i>Art. 10.</i> The Council for the Management of Genetic Resources is hereby created within the Ministry of the Environment, being deliberative and normative in nature and composed of representatives of organs and agencies of the Federal Public Administration that are competent to perform the various actions provided for in this Provisional Measure.</p> <p>§1. The Management Council shall be presided over by the representative of the Ministry of the Environment.</p> <p>§2. The composition and action of the Management Council shall be laid down in the regulations.</p> <p><i>Art. 11.</i> The Management Council shall be competent to:</p> <ul style="list-style-type: none"> I. coordinate the implementation of policies for the management of the genetic heritage; II. establish: <ul style="list-style-type: none"> (a) technical standards; (b) criteria for authorization of access and dispatch; 	

	<p>(c) directives for drafting the Contract for Use of the Genetic Heritage and Benefit-Sharing;</p> <p>(d) criteria for the creation of a database for recording information on associated traditional knowledge;</p> <p>III. take part, in concert with Federal bodies or by agreement with other institutions, in the work of accessing and dispatching samples of components of the genetic heritage, and accessing associated traditional knowledge;</p> <p>IV. deliberate on:</p> <p>(a) authorization of access and dispatch of samples of components of the genetic heritage, subject to the prior consent of the owner;</p> <p>(b) authorization of access to associated traditional knowledge, subject to the prior consent of the owner;</p> <p>(c) special authorization of access to and dispatch of samples of components of the genetic heritage for a national institution, whether public or private, which carries on research and development activities in the areas of biology and related subjects, and for a national university, whether public or private, for a term of up to two years, renewable for equal periods, as provided in the regulations;</p> <p>(d) special authorization of access to associated traditional knowledge for a national institution, whether public or private, that carries on research and development activities in the biological and related fields, and for a national university, whether public or private, for a term of up to two years, renewable for equal periods, as provided in the regulations;</p> <p>(e) accreditation of a national public research and development institution or Federal public management institution for authorizing another national institution, whether public or private, which carries on research and development activities in the biological and related fields, to:</p> <ol style="list-style-type: none"> 1. access samples of components of the genetic heritage and associated traditional knowledge; 2. dispatch samples of components of the genetic heritage to a national institution, whether public or private, or to an institution with its headquarters abroad; <p>(f) accreditation of a national public institution as a depository of samples of components of the genetic heritage.</p> <p>V. approve Contracts for the Use of the Genetic Heritage and Benefit-Sharing as complying with the requirements of this Provisional Measure and the regulations under it;</p> <p>VI. promote discussion and public consultation on the subjects provided for in this Provisional Measure;</p> <p>VII. function as a higher court of appeal in relation to decisions of an accredited institution and acts resulting from the application of this Provisional Measure;</p> <p>VIII. approve its statutes.</p> <p>§1. Decisions of the Management Council may be referred to the plenary session, as provided in the regulations.</p> <p>§2. The Management Council may organize itself into subject groups to prepare decisions of the plenary session.</p> <p>Art. 12 . The activity of collecting components of the genetic heritage and access to associated traditional knowledge that contributes to the advancement of bioprospection shall, when it involves the participation of a foreign legal entity, require authorization by the body responsible for national policy on scientific and technological research, subject to the terms of this Provisional Measure and the laws in force</p> <p>Sole Paragraph. The aforesaid authorization shall conform to the technical standards laid down by the Management Council, which shall oversee such activities.</p> <p>Art. 13 . The Chairman of the Management Council shall be competent to sign, in the name of the Union, the Contract for the Use of the Genetic Heritage and Benefit-Sharing.</p> <p>§1. While retaining the competence specified in the heading of this Article, the Chairman of the Management Council may delegate that competence to the incumbent of a Federal public research and</p>	
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	<p>development institution or Federal public management institution, depending on the area of activity with which it is concerned.</p> <p>§2 Where the institution mentioned in the preceding paragraph has an interest in the contract, the contract shall be signed by the Chairman of the Management Council.</p> <p>Art. 14. The accredited institution referred to in Article 11.IV(e) 1 and 2 of this Provisional Measure may be accorded one or more of the following powers, as directed by the Management Council:</p> <p>I. to analyze applications and to issue authorizations to third parties for:</p> <p>(a) access to samples of components of the genetic heritage existing <i>in situ</i> within the national territory, on the continental shelf and in the exclusive economic zone, subject to the prior consent of the owners;</p> <p>(b) access to associated traditional knowledge, subject to the prior consent of the owners from the area;</p> <p>(c) dispatch of samples of components of the genetic heritage to a national institution, whether public or private, or to an institution with its headquarters abroad;</p> <p>II. With Federal bodies, or by agreement with other institutions, to take part in the work of access to and dispatch of samples of components of the genetic heritage and access to associated traditional knowledge;</p> <p>III. to create and maintain:</p> <p>(a) a register of <i>ex situ</i> collections, as provided in Article 18 of this Provisional Measure;</p> <p>(b) a database for recording information obtained during the collection of samples of components of the genetic heritage;</p> <p>(c) a database of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for the Use of Genetic Heritage and Benefit-Sharing, as provided in the regulations;</p> <p>IV. to disclose periodically a list of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for the Use of the Genetic Heritage and Benefit-Sharing;</p> <p>V. to take part in the implementation of Terms of Transfer of Material and Contracts for the Use of the Genetic Heritage and Benefit-Sharing in the case of processes that it has itself authorized.</p> <p>§1. An accredited institution shall every year report fully on its activity to the Management Council and supply a copy of its databases to the executive body provided for in Article 15.</p> <p>§2. An accredited institution under Article 11 shall comply with the terms of this Provisional Measure, the regulations under it and the decisions of the Management Council, on pain of forfeiture of its accreditation and liability also, where applicable, to the penalties provided for in Article 30 and in the relevant legislation.</p> <p>Art. 15. The creation is authorized, within the Ministry of the Environment, of an executive body which shall exercise the function of executive secretariat of the Management Council provided for in Article 10 of this Provisional Measure, and which shall have the following powers, among others:</p> <p>I. to implement the resolutions of the Management Council;</p> <p>II. to give support to the accredited institutions;</p> <p>III. to issue, in accordance with the resolutions of the Management Council and in its name</p> <p>(a) Authorizations of Access and Dispatch;</p> <p>(b) Special Authorizations of Access and Dispatch;</p> <p>IV. to take part, in concert with other Federal bodies, in the work of accessing and dispatching samples of components of the genetic heritage and accessing associated traditional knowledge;</p> <p>V. to give accreditation, in accordance with resolutions of the Management Council and in its name, to a national public research and development institution or a Federal public management institution for authorizing a national institution, whether public or private, to:</p> <p>(a) access samples of components of the genetic heritage and associated traditional knowledge;</p> <p>(b) dispatch samples of components of the genetic heritage to a</p>	
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	<p>national institution, whether public or private, or to an institution with its headquarters abroad, subject to the requirements of Article 19 of this Provisional Measure;</p> <p>VI. to give accreditation, in accordance with resolutions of the Management Council and in its name, to a national public institution as depositary of samples of components of the genetic heritage;</p> <p>VII. to register Contracts for Use of the Genetic Heritage and Benefit-Sharing, following their approval by the Management Council;</p> <p>VIII. to disclose a list of species designated for facilitated exchange in international agreements, including those relating to food safety, of which the country is a signatory, in accordance with Article 19.II of this Provisional Measure;</p> <p>IX. to create and maintain:</p> <p>(a) a register of <i>ex situ</i> collections, as provided in Article 18;</p> <p>(b) a database for recording information obtained during the collection of samples of components of the genetic heritage;</p> <p>(c) a database of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for Use of the Genetic Heritage and Benefit-Sharing;</p> <p>X. to disclose periodically a list of Authorizations of Access and Dispatch, Terms of Transfer of Material and Contracts for Use of the Genetic Heritage and Benefit-Sharing.</p>	
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		Not addressed
10. exceptions – emergencies, traditional use, conservation	Art. 33. The portion of income and royalties payable to the Union as a result of the economic exploitation of a process or product developed on the basis of a sample of components of the genetic heritage, as well as the value of fines and indemnities provided for in this Provisional Measure, shall be credited to the National Environment Fund created by Law No. 7.797 of July 10, 1989, to the Naval Fund created by Decree No. 20.923 of January 8, 1932, and to the National Fund for Scientific and Technological Development created by Decree-Law No. 719 of July 31, 1969, and confirmed by Law No. 8.172 of January 18, 1991, as provided in the regulations.	
11. disclosure-permits, databases, disclosure in intellectual property applications		Not addressed
12. interaction with existing laws- avoiding conflict with other laws		Not addressed
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		Not addressed
14. transitional provisions- existing uses		Not addressed

5. Burundi

REPUBLIC OF BURUNDI

OFFICE OF THE PRESIDENT

LAW NO. 1/13 OF JULY 28, 2009 RELATING TO INDUSTRIAL PROPERTY IN BURUNDI

THE PRESIDENT OF THE REPUBLIC:

Given the Constitution of the Republic of Burundi;

Given Decree-Law No. 1/045 of July 9, 1993 on General Provisions of the Code of Commerce;

Given Law No. 1/021 of December 30, 2005 on the Protection of Copyright and Neighboring Rights in Burundi;

Given Law No. 1/02 of January 11, 2007 establishing the Customs Code;

Having reviewed Decree-Law No. 1/171 of July 1, 1968 amending the Law of August 20, 1964 on Industrial Designs, as amended to date;

Having reviewed Decree-Law No. 1/170 of July 1, 1968 on Patents, as amended to date;

Having reviewed Decree-Law No. 1/169 of July 1, 1968 amending the Law on Factory and Trademarks of August 20, 1964, as amended to date;

Given Law No. 1/142 of August 27, 1976 ratifying the Convention setting up the World Intellectual Property Organization;

Given the act of September 3, 1977 ratifying the Paris Convention for the Protection of Industrial Property of March 20, 1883, as amended on September 28, 1979;

Given the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, and the relevant Protocol of June 27, 1989;

Given the Agreement on Trade-related Aspects of Intellectual Property of 1994;

Given the Hague Agreement Concerning the International Registration of Industrial Designs of November 6, 1925;

Given the Nairobi Treaty on the Protection of the Olympic Symbol of 1981;
The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted:

ENACTS:

PART ONE: GENERAL PROVISIONS

ONLY TITLE: PURPOSE AND DEFINITIONS

Article 1: The purpose of this Law is to organize and protect industrial property. It regulates in particular the rights relating to patents, utility model certificates, industrial designs, layout designs for integrated circuits, traditional knowledge, crafts objects and distinctive signs.

Article 2: For the purposes of this Law, the following definitions shall apply:

- Budapest Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, signed in

Budapest on April 28, 1977 and amended on September 26, 1980;

- Certificate, the title issued to protect a utility model, an industrial design, a layout design for integrated circuits or a mark. It shall establish a presumption

of the validity and of the possibility of applying the right in order to prohibit third parties from exploiting the right registered in Burundi. Certificates shall

be issued by the Minister responsible for trade, without incurring the liability of the Government of Burundi with regard to the conditions for registrability

and the right to titles;

- Certificate of addition, the title issued to protect the right to add to the invention changes, improvements or additions noted in the certificates issued

in the same form as the primary patent and which produce the same effects as it does;

- Certification signs, signs or combinations of signs suitable for designating any characteristic common to goods or services, in particular their quality,

origin or methods of production, and whose use is controlled by the owner of the signs;

- Collective mark, any mark belonging to a group such as a cooperative, association or federation of industrialists, producers or merchants

- Compulsory license, an authorization granted by the competent authority to a person, company, private entity, an entity held or controlled by the State, for the exploitation of a patent, a utility model, a layout design or an industrial design in Burundi without the consent of the right holder;

- Counterfeit branded goods, all goods, including their packaging, which bear, without authorization, a factory or trademark which is identical to a factory or trademark that has been validly registered for said goods, or whose essential aspects cannot be distinguished from this factory or trademark, and which therefore infringes the rights of the holder of the mark in question under the legislation in Burundi;

- Date of priority, the date of a prior request which serves as a basis for the right of priority provided for by the Paris Convention;

- Decision of the General Council of the World Trade Organization (WTO) of August 30, 2003, the decision of the WTO General Council on the implementation of paragraph 6 of the Doha Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and public health;

- Distinctive sign of a firm, a variety of designations such as marks, business symbols, emblems, logos and slogans used by a firm to make known, in the exercise of industrial or business activities, the identity of the firm and the products it manufactures or the services it provides;

- Industrial design, any combination of lines or colors or any plastic form, whether or not it is associated with lines or colors, provided this combination or this form gives a special appearance to an

industrial or crafts product and can serve as a type for the manufacture of an industrial or crafts product, and

that it attracts the eye and is judged visually;

- Exclusive license, a licensing contract which gives the licensee and, when this contract expressly so provides, the persons authorized by the licensee, the right to exploit the licensed industrial property to the exclusion of all other persons, including the rights holder;
- Geographical indication, an indication used to identify a product as being from the territory of a country, region or locality of this territory, when a quality, reputation or other given characteristic of the product can be essentially attributed to this geographical origin; - Integrated circuit, the final or intermediate form of a product designed to perform an electronic function and in which the elements, at least one of which is active, and all or part of the interconnections are integrated in or on – or both in and on – a part of the materials;
- International classification, with regard to patents and utility models, the classification for patents, copyright certificates for inventions, utility models and utility model certificates, called “International Classification of Patents and Certificates”, established by the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, amended on September 28, 1979; with regard to industrial designs, the classification established by the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968, in its most recent version; and, with regard to marks, the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, in its most recent version;
- Invention, an invention, an idea of an inventor which in practice makes it possible to solve a given problem in the technical field. An invention may consist of a product or process, or refer thereto;
- Layout design or topography, the three-dimensional view, expressed in any form whatever, of elements at least one of which is active, and the interconnections present in the integrated circuit or designed to be used for the manufacturing of an integrated circuit;
- Local communities, groups of citizens who are resident in Burundi and who collectively have a specific identity as well as social, cultural and linguistic and economic characteristics which are peculiar to them and which differentiate them from the rest of society in Burundi;
- Mark, any sign capable of being specifically represented graphically and making it possible to distinguish the products or the product mark, services or the service mark of a company from those of other companies. A mark may in particular consist of words, including names of persons, motifs, letters, colors or combinations of colors, figures or by the form of products or their packaging, by holograms, sounds, smells or tastes. When slogans are not long enough to be protected by copyright, they shall be protected as marks;
- Paris Convention, the Paris Convention for the Protection of Industrial Property of March 20, 1883, in its most recent version;
- Patent, the title issued to protect an invention. The patent establishes a presumption of the validity and the possibility of applying the right in order to prohibit third parties from exploiting the invention claimed in Burundi;

Patent Cooperation Treaty, the Patent Cooperation Treaty signed in Washington, D.C. on June 19, 1970, and amended on September 28, 1979, February 3, 1984 and October 3, 2001;

- Pirated goods violating industrial property rights, any copies made without the consent of the holder of the right or a person duly authorized by him in the country of production and which are made directly or indirectly on the basis of an article in cases where the making of these copies would have infringed copyright or a related right under the legislation of Burundi;
- Producer, any farmer or other person who exploits natural products, any manufacturer of crafts or industrial products, and anyone who trades in said products;
- Product, any natural, agricultural, crafts or industrial product;
- Trade name, the name or designation identifying and distinguishing a firm;
- Traditional knowledge, the ideas, practices, uses and inventions which may or may not be linked to biological diversity, created by local indigenous communities in a traditional and informal manner, in response to the challenges posed by their material and cultural environment, and which serve as identifiers for these communities;
- Utility model, a technical creation which consists of a form, a new configuration of an object or the element of an object which enhances its functionality or usefulness.

PART TWO: PATENTS, UTILITY MODEL CERTIFICATES, INDUSTRIAL DESIGNS, LAYOUT DESIGNS FOR INTEGRATED CIRCUITS, TRADITIONAL KNOWLEDGE AND CRAFTS OBJECTS

TITLE 1: PATENTS

Chapter I: Patentable inventions

Article 3: An invention shall be patentable if it is new, involves an inventive step and is industrially applicable. An invention shall be new if it has not been a part of any state of the art

Article 4: The state of the art shall consist of everything that has been made available to the public, regardless of the place, means or manner, prior to the date of filing of the patent application in Burundi or that applied for abroad, for which priority has been validly claimed.

Article 5: The novelty of an invention shall not be defeated if, in the 12 months preceding the day covered by the previous article, this invention has been the subject of disclosure arising from:

- a clear abuse in relation to the applicant or his successor in title;
- the fact that the applicant or his successor in title has displayed it at an official or officially recognized international exhibition.

Article 6: An invention shall be deemed to involve an inventive step if, given the differences and similarities between the invention claimed and the state of the art as defined in Article 4, the claimed invention, considered as a whole, would not have been obvious to a person skilled in the art at the date of filing or, as the case may be, the date of priority of the claimed invention.

Article 7: An invention shall be deemed to be industrially applicable if its subject matter can be produced or used in any kind of industry. The term “industry” shall be defined as any human economic

activity leading to the production of goods and services; it shall cover in particular crafts, agriculture, fisheries and services.

Chapter II: Patent rights and mention of the inventor

Article 8: Patent rights shall belong to the inventor.

If several persons have jointly made an invention, they shall jointly own the patent rights.

Article 9: In the event that several persons have made the same invention independently of each other, the patent right shall belong to the person who has filed the application with the oldest filing date, or if a priority is claimed, the date of the validly claimed priority, as long as said application has not been withdrawn, abandoned or rejected.

In order to establish the preferential right, the Industrial Property Director shall take account of what is claimed in the applications.

Article 10: The patent right may be assigned or bequeathed.

Article 11: If the invention has been made by an employee in the performance of an employment contract, the patent right shall belong to the employer, unless the contract specifically stipulates otherwise.

If the financial gains made by the employer are disproportionate in relation to the employee's salary and in relation to the gains which the employer could reasonably expect from his employee's inventive input when he hired him, the employee shall be entitled to fair compensation.

Article 12: In the event that the invention has been made by an employee outside the performance of an employment contract with the help of material, data or know how belonging to the employer the patent right shall belong to the employer unless the contract otherwise stipulates.

The employee who has made the invention shall be entitled to compensation taking into account the importance of the patented invention; failing an agreement between the parties, such compensation shall be set by the courts.

Any promise or undertaking given by the inventor to his employer with the effect of waiving the compensation to which he is entitled under the previous subparagraph shall have no legal effect.

Article 13: In the event that the employer fails to file a patent application in the year following the date on which the employee informed him of the invention, the patent right, including the right to assign this right to any interested third party and to license the patent or assign it, if it has been issued, shall belong to the employee.

Article 14: Any invention claimed in a patent application filed by the employee in the year following the expiration of the employment contract which is part of the main activities of the former employer shall be deemed to have been made within the framework of the contract which has expired, unless the employee provides proof to the contrary.

Article 15: The inventor shall be mentioned as such in the patent unless, in a special written statement addressed to the Industrial Property Director, he indicates that he does not wish to be mentioned. Any

promise or undertaking made towards anyone by the inventor to the effect of making such a statement shall have no legal effect.

Article 16: The provisions of this Chapter shall apply to civil servants, to persons governed by the Labor Code as well as to persons whose services have been hired pursuant to the provisions of the Civil Code.

Chapter III: Subject matter excluded from patent protection

Article 17: The following shall be excluded from patent protection:

- Discoveries, scientific theories and mathematical methods;
- Plans, principles or methods in the field of economic activities, in the performance of purely intellectual activities or in games;
- Methods of surgical or therapeutic treatment of the human or animal body as well as diagnostic methods. This provision shall not apply to the products used for the implementation of one of these methods;
- Natural substances, even if they had been purified, synthesized or isolated in another manner. This provision shall not apply to processes making it possible to isolate these natural substances from their original environment;
- Known substances for which a new use has been discovered;
- Plants and animals, including parts thereof, other than microorganisms, and essentially biological processes for the breeding of plants and animals and parts thereof, other than non-biological and microbiological processes;
- Animal breeds and plant varieties;
- Inventions whose exploitation is contrary to public order or morality, it being understood that the exploitation of said invention is not contrary to public order or morality owing to the sole fact that such exploitation is prohibited by legislation;
- Pharmaceutical products, up until January 1, 2016.

Article 18: The provisions of Article 17 shall not apply:

- to process inventions which consist in full or in part of procedures which are carried out by a computer and run by a computer program;
- to product inventions consisting of elements of an invention implemented by computer, in particular, a machine-readable computer code stored on a material medium such as a diskette, a computer hard drive or a computer memory and a universal calculator, the novelty of which in relation to prior art primarily stems from its combination with a specific software.

It is understood that persons filing patent applications concerning computer programs and inventions relating to computers covered by paragraph 1 have waived their right to any copyright protection.

Chapter IV: Patent application

Section 1: Filing of applications

Article 19: Patent applications shall be filed with the Industrial Property Director. They shall comprise a request, a description, one or more claims, one or more drawings, as the case may be, and a summary.

The request shall consist of a petition for the grant of a patent, the name and the other required information relating to the applicant and the inventor as well as the title of the invention.

If the applicant is not the inventor, the request shall be accompanied by a statement providing proof of the applicant's right to apply for the patent.

The filing of the application shall be subject to payment of the prescribed fee.

Article 20: The description must disclose the invention in a manner that is sufficiently clear and comprehensive so that a person skilled in the art and with average knowledge and skill can carry it out. It must in particular indicate at least one embodiment of the invention known to the inventor on the date of filing or, if priority is claimed, on the date of priority of the application.

For the purposes of this Article, a person skilled in the art and with average knowledge and skill shall mean a citizen of Burundi who has studied and carried out his profession in Burundi and who has acquired average skills and experience in the technical field to which the claimed invention belongs.

To evaluate whether disclosure is sufficient, it is appropriate to take into consideration the content of the description, the claims and drawings, as they appear on the date on which the sufficiency of disclosure was examined.

Article 21: The description must contain a clear indication of the origin of the genetic or biological resources collected in the territory of Burundi and used directly or indirectly in the making of the claimed invention as well as any element of the traditional knowledge which may or may not be linked to these resources that is protected under Title V of this part and that has been used directly or indirectly in the making of the claimed invention without the prior informed consent of its individual or joint creators.

Article 22: The Industrial Property Director may, at any time prior to the grant of the patent, request that the description contained in foreign patent applications be adapted to fit the ordinary skills of Burundian citizens in order to ensure the dissemination of the technology.

Article 23: In the case of a patent application relating to microorganisms, the Industrial Property Director shall recognize the deposit and the date of deposit indicated by the international deposit authority as well as the sample of the microorganism deposited provided the applicant gives him a copy of the deposit receipt issued by the international deposit authority.

Article 24: Claims shall define the scope of the protection sought. The description and drawings may be used to interpret the claims.

Claims must be clear, concise and entirely based on the description.

Drawings must be provided when they are necessary for understanding the invention.

Article 25: The abstract must be concise and precise. It shall be solely for purposes of technical information and shall not be taken into consideration in assessing the scope of protection.

Unless it is necessary, the abstract must not be longer than 300 words.

Article 26: The applicant may withdraw the application at any time before the decision to grant the patent.

Article 27: A subsequent application may be filed in Burundi for the same invention if the application has been withdrawn without having been made available to the public for inspection. Such withdrawal shall only be possible if no right of priority has been claimed under this application and if no right related to the application is pending in Burundi.

The subsequent application shall be considered the first in Burundi as far as the invention is concerned.

After the subsequent application has been filed on the basis of the withdrawn application, no right of priority may be claimed.

Section 2: Unity of the invention, and modification and division of the application

Article 28: The application shall be limited to a single main subject matter with the detailed objects that compose it and the applications indicated. It may not contain restrictions, conditions or reservations. It shall indicate a title designating the subject matter of the invention in a concise and accurate manner.

Article 29: The applicant may modify the application up until the time it is noted that the application meets the necessary conditions for the grant of the patent. However, the modification may not go beyond the subject matter set out in the initial application.

Article 30: The applicant may divide the application into several applications known as divisional applications up until the time it is noted that the application meets the necessary conditions for the grant of the patent. However, no divisional application may go beyond the subject matter set out in the initial application.

Each divisional application shall bear the date of filing and, as the case may be, the date of priority of the initial application.

Section 3: Priority claims

Article 31: Anyone wishing to claim the priority of a prior filing must attach the following to his patent application, at the latest within 12 months following the filing of his application, and send to the Industrial Property Director:

1. a written statement indicating the date and number of this prior filing, the country in which it was made and the name of the applicant;
2. a certified true copy of said prior application;
3. written authorization from the applicant or his successors in title empowering him to claim the priority in question if he is not the author of this application.

Article 32: An applicant wishing to claim several rights of priority for an application must, for each of them, comply with the same requirements set out in Article 31.

He must further pay a fee by right of priority claimed and produce proof of payment of said fee within the same period of 12 months provided for in that same Article.

Article 33: Failure to furnish any of the above-mentioned items in due time shall automatically lead, for the sole application considered, to the loss of benefit of the claimed right of priority.

Any item which reaches the Industrial Property Director later than 12 months after the filing of the application for registration shall be deemed inadmissible.

Article 34: The filing in Burundi of this application for the claiming of priority before the expiration of the set time limit of 12 months may not be invalidated by any act which has occurred in the meanwhile, in particular by another deposit, the publication of the invention or its exploitation.

Section 4: Patent applications filed abroad

Article 35: Anyone wishing to claim a filing of a prior application concerning the same invention as the one claimed in the application filed in Burundi must produce:

1. a document indicating the date and number of the filing made abroad;
2. a copy of all communications received by the applicant relating to the results of any search or any examination made in relation to the foreign application;
3. a copy of the patent granted on the basis of the foreign application;
4. a copy of any final decision rejecting the foreign application or the request for grant made in the foreign application;
5. a copy of any final decision revoking the patent granted on the basis of the foreign application.

Section 5: Date of filing

Article 36: The Industrial Property Director shall assign as the date of filing the date of receipt of the application, provided it contains:

1. an express or implicit indication that the grant of a patent has been applied for;
2. the applicant's identity;
3. the description of an invention and one or more claims indicating the characteristic elements of the invention;
4. proof of payment of the prescribed fees.

Article 37: In the event that the Industrial Property Director notes, upon receiving a filing application, that it does not meet the conditions set out in Article 36, he shall invite the applicant to make the necessary correction and shall assign as the date of filing the date of receipt of the required correction.

Nevertheless, if no correction is made, the application shall be deemed not to have been filed.

Article 38: In the event that the application refers to drawings that have not been included, the Industrial Property Director shall invite the applicant to furnish the missing drawings. If the applicant complies, the Industrial Property Director shall assign the date of receipt of said drawings as the date of filing.

3. the description of an invention and one or more claims indicating the characteristic elements of the invention;

4. proof of payment of the prescribed fees.

Article 37: In the event that the Industrial Property Director notes, upon receiving a filing application, that it does not meet the conditions set out in Article 36, he shall invite the applicant to make the necessary correction and shall assign as the date of filing the date of receipt of the required correction.

Nevertheless, if no correction is made, the application shall be deemed not to have been filed.

Article 38: In the event that the application refers to drawings that have not been included, the Industrial Property Director shall invite the applicant to furnish the missing drawings. If the applicant complies, the Industrial Property Director shall assign the date of receipt of said drawings as the date of filing.

Section 6: Classification

Article 39: After the Industrial Property Director has assigned a date of filing and the invention has been classified according to the International Classification, he shall verify whether the application meets all of the conditions set out in this Law and its regulations.

In each instance, a ministerial ordinance shall determine the substantive and formal conditions that must be met by the applicant.

Section 7: Examination of applications

Article 40: For every patent application, an examination shall be made to ascertain that:

1. the invention which forms the subject matter of the patent application is not excluded from the protection granted by the patent, under Articles 17 and 18 of this Law;
2. the claims comply with the provisions of Article 19 of this Law;
3. the provisions of Articles 28, 29 and 30 are respected;
4. at the time the patent application is filed, no prior patent application filed before or benefiting from a validly claimed prior priority and concerning the same invention is about to be granted;
5. the invention is new, arises from an inventive step and is industrially applicable.

Article 41: Patents shall be granted without prior examination of the patentability of inventions, with no guarantee as to the merits of the inventions or the accuracy of the description thereof and at applicants' own risks.

Article 42: The Industrial Property Director shall decide if all or part of the provisions of Article 40 apply to one or more of the technical fields under which the inventions fall. He shall determine such fields in relation to the International Patent Classification.

Article 43: For all international applications, the Industrial Property Director shall take into consideration:

1. the findings of any international search report and any international preliminary examination report prepared according to the Patent Cooperation Treaty;
2. a search and examination report forwarded in accordance with Article 35 or a final decision rejecting the foreign application;
3. a search and examination report prepared at his request by an outside authority responsible for search and examination or a specialized body in Burundi.

Section 8: Publication and opposition

Article 44: After the expiration of a period of 18 months as from the date of filing, the Industrial Property Director shall make the patent application available to the public for inspection. The public shall be informed of this act through the publication, in the Official Journal of Burundi, of the following elements:

- the number and date of filing of the application;
- the title of the invention;
- the name(s) of the applicant(s) and of the inventor(s);
- the date of priority;
- the international classification;
- the drawing, as the case may be, which illustrates the main element(s) of the invention;
- the abstract.

Article 45: The Industrial Property Director shall not grant third parties access to the content of the patent application or furnish any information on its contents to third parties prior to such publication.

Article 46: The fee for filing the application must be set high enough to cover the costs of publication and the notice that the application has been made available to the public for inspection.

Any interested person may obtain a copy of the full contents of the patent applications made available to the public for inspection.

Article 47: Once the prescribed fee has been paid, at any time between the date of filing and the end of the period of 18 months, the applicant may ask the Industrial Property Director to make the application available to the public for inspection earlier than foreseen.

Article 48: Within 90 days following the publication provided for in Article 43, any interested person may file a notice of opposition with the Industrial Property Director. Such opposition shall indicate the patent application concerned as well as the arguments and evidence put forward by the opposing party to prevent the grant of the patent. The opposing party must further pay the prescribed fee. The Industrial Property Director shall publish the opposition in the Official Journal of Burundi.

The person filing the patent application shall have 60 days as from the publication of the notice of opposition to submit a reply.

Article 49: Before taking a decision, the Industrial Property Director shall hear the patent applicant and the opposing party, who shall put forward their respective arguments and present additional proof, including testimonial evidence.

Chapter V: Grant and rights conferred by the patent

Section 1: Grant of the patent

Article 50: If the Industrial Property Director notes that all of the conditions for granting a patent have been met, he shall grant it. Should this not be the case, he shall reject the application and notify the applicant of this decision.

Article 51: In the event that he grants a patent, the Industrial Property Director shall proceed to:

- publish a reference to the grant of the patent;
- give the applicant the certificate of grant for the patent and a copy of the patent;
- register the patent;
- supply copies of the patent to the public subject to payment of the prescribed fee.

Article 52: At the patent holder's request, the Industrial Property Director shall make changes to the patent text or drawings designed to limit the scope of the protection granted by the patent. The changes made may in no case go beyond the claim made in the initial application, at the risk of being null and void.

Section 2: Rights granted by the patent

Article 53: The patent shall give its holder the exclusive right to exploit the patented invention as well as the right to prohibit any party from exploiting the patented invention.

Article 54: "Exploitation" of a patented invention shall be defined as one of the following acts:

1. If the patent has been granted for a product:
 - making, importing, offering for sale, selling or using the product;
 - holding this product with a view to offering it for sale, selling it or using it;
2. If the patent has been granted for a process:
 - using the process;
 - accomplishing one of the acts mentioned under point 1 of this Article in relation to a product, such that it stems directly from the utilization of the process.

Article 55: The owner of a patent shall also have the right to assign or to transfer by means of succession the patent, or to conclude license contracts.

Article 56: Patent holders shall be entitled to bring proceedings before the competent court against any party who counterfeits a patent by performing, without his consent, one of the acts mentioned in Article 53 or which make it likely that counterfeiting will be committed.

Section 3: Limits on the rights conferred by the patent

Article 57: The rights arising from the patent shall not cover:

1. acts relating to goods placed on sale in Burundi or in any other country by the patent holder or with his consent, leading to the exhaustion of the patent holder's rights;
2. use of goods on board aircraft, land vehicles or foreign vessels which enter temporarily or accidentally the airspace, territory or waters of Burundi;
3. acts relating to a patented invention performed solely for the purposes of experimentation in the

case of scientific and technical research;

4. acts performed by any person who, in good faith, before the date of filing or, if priority has been claimed, on the date of priority for the application on the basis of which the patent has been granted and, in the territory of the WTO Member State, used the invention or made effective and serious preparations to use it in the case that the acts do not differ in terms of their nature or their purpose of the effective or envisaged prior use;

5. the acts of any person who makes, produces, uses or sells a patented invention solely for purposes having a reasonable relationship with the gathering and transmission of the information required by a law of Burundi or another country regulating the manufacturing, use or sale of any product.

Article 58: The user's right referred to in Article 57(4) may only be transferred or devolved with the firm or company in which the use or preparations for use took place.

Article 59: Without prejudice to the provisions of Article 57(1), the Minister responsible for trade shall be entitled to declare, either on his own initiative or at the request of any interested party, that the patent rights have been exhausted and hence authorize a third party to import the patented product or a product manufactured directly or indirectly by means of the patented invention in another territory if this product is not available in the territory of Burundi or is available in insufficient quality and quantity to meet local demand or at prices which the Minister deems abusive or for any other reason of public interest including anti-competitive practices provided that:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the patent holder or with his consent;
2. the patent claiming the product or process used for its manufacture is in force in the territory from which the product is to be imported and is the property of the same person who holds the patent in Burundi or that of a person under his control.

Article 60: In the event that the importer fails to meet the goal which had justified the decision of the Minister responsible for trade to consider the patent rights exhausted, the Minister shall revoke the authorization on his own initiative or at the request of the patent holder.

Article 61: In the event that the conditions which have led to the Minister's decision to consider the patent exhausted no longer obtain, the Minister may, on his own initiative or at the request of the patent holder or owner of the mark, revoke the authorization, provided that the legitimate interests of the importer are safeguarded, primarily to the effect that the importer shall retain the right to clear his stock.

Section 4: Term of protection and annual fees

Article 62: The patent shall expire at the end of the twentieth year as from the date of filing.

If the patent is granted more than four years after the date of filing, the term of protection granted by this patent shall be automatically extended by the entire period which has elapsed as from the date of filing.

Article 63: A progressive annual fee must be paid in advance to the Industrial Property Office as from the first year following the filing date of the patent application in order to maintain the patent or patent application in force.

Any patentee who fails to pay his annuity on the dating of filing of his patent application shall be stripped of all his rights.

Nevertheless, the patentee shall have a six-month grace period to make payment.

Under these circumstances, he shall be obliged to pay a surcharge for late payment.

Section 5: Restoration of patent

Article 64: In the event that the protection conferred by a patent has not been renewed owing to circumstances outside the patent holder's control, he or his successors in title may, subject to payment of the prescribed annual fee and, as the case may be, payment of a late surcharge, request the restoration of the protection, within a period of six months as from the date at which the above-mentioned circumstances ceased to obtain, and at the latest, within a period of two years as from the date on which the renewal should have been made.

Article 65: Requests for restoration of the patent, accompanied by receipts for payment of the fee, as necessary, the surcharge for late payment and the corresponding grounds, shall be addressed to the Industrial Property Director.

The Director shall examine the above-mentioned grounds and restore the patent or reject the request if he feels that the grounds are not substantiated.

Article 66: Restoration shall not imply an extension of the maximum term of the patent.

Third parties who have started to exploit the invention after expiration of the patent shall be entitled to continue such exploitation.

Article 67: Restoration of the patent shall also imply restoration of the certifications of addition relating to said patent. The certificates of addition taken by one of the successors in title shall benefit all others.

Restored patents shall be published by the Industrial Property Director in the forms set out in Article 44.

Article 68: Decisions of the Industrial Property Director may be appealed to an Appeals Commission within a period of 30 days as from the date of notification.

The make-up, tasks and functioning of said Commissions shall be defined in a decree.

Chapter VI: Licensing contracts

Section 1. Signature and term of licensing contracts

Article 69: A patent holder may, by contract, assign to a natural person or legal entity a license enabling him/it to exploit the patented invention. The term of the license may not exceed that of the patent.

The licensing contract shall be drawn up in writing and signed by the parties.

Article 70: The licensing contract must be entered in the special patent register maintained by the Industrial Property Director.

It shall only become binding on third parties once it has been entered in the above-mentioned register and published in the forms provided for in Chapter IV, Section 8.

Article 71: The license shall be struck from the register at the request of the patent holder or licensee upon presentation of proof that the licensing contract has expired or been terminated.

Article 72: Unless stipulated otherwise in the licensing contract, the granting of a license shall not preclude for the licensor either the possibility of granting licenses to other persons provided he informs the licensee, or that of himself exploiting the patented invention.

Section 2: Unenforceable clauses

Article 74: Any clauses contained in the licensing contracts or agreed in relation to these contracts shall be null and void if they impose on the licensee, in industrial or commercial terms, limitations which do not stem from the rights conferred by the patent or are not necessary for the maintenance of such rights.

Article 75: Unless stipulated otherwise in the licensing contract the license may not be assigned to third parties and the licensee shall not be authorised to grant sub-licenses.

Article 76: The following shall not be considered limitations as defined by Article 74:

1. Restrictions concerning the measurement, scope or term of exploitation of the patented invention;
2. The obligation for the licensee to refrain from any act which could harm the validity of the patent.

Article 77: Ascertainment of the unenforceable clauses as defined by Articles 74 to 76 shall be made by the competent court, at the request of any interested party.

Chapter VII: Compulsory and non-voluntary licenses

Section 1: Compulsory licenses for failure to work

Article 78: At the request of any interested person or the Public Prosecutor's Office, submitted after the expiration of a period of four years as from the date of filing of the patent application or three years as from the grant of the patent, it being necessary to apply the period which expires last, a compulsory or non-voluntary license may be granted if one or more of the following conditions has been met:

1. The public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy, so requires;
2. A judicial or administrative body has deemed that the way in which the patent holder or his licensee are exploiting the invention is abusive, anti-competitive or fails to meet reasonable conditions of demand for the protected product in sufficient quality and quantity;
3. The refusal of the patent holder to grant licenses on reasonable commercial conditions and terms;
4. The establishment or development of industrial or commercial activities suffers unfair or substantial damage.

Nevertheless, a compulsory license may not be granted if the patent holder gives legitimate grounds to justify his failure to work the invention.

Section 2: Compulsory licenses for dependent patents

Article 79: In the event that an invention protected by a patent cannot be used without infringing the rights attached to a prior patent whose holder refuses to authorize use on reasonable commercial conditions and procedures, the holder of the subsequent patent may obtain a non-voluntary license from the court for such use, on the same conditions as those which apply to the non-voluntary licenses granted under Article 78 as well as on the following additional conditions:

1. The invention claimed in the subsequent patent represents significant technical progress of considerable economic interest in relation to the invention claimed in the prior patent;
2. The holder of the prior patent is entitled to a reciprocal license on reasonable conditions to use the claimed invention;
3. The use authorized in relation to the prior patent shall be non-transferable unless the subsequent patent is assigned as well.

Section 3: Compulsory licenses granted by the Minister responsible for trade

Article 80: The Minister may decide that, even without the consent of the patent holder, a State service or a third party designated by him may exploit the invention.

Every request for compulsory licensing shall be examined by the Minister on its own merits. Exploitation of the invention shall be limited to the purposes for which the license was granted and shall be subject to the payment, to the patent holder, of appropriate compensation according to the case at hand, in view of the economic value of the Minister's decision, as it is determined in said decision and, if the decision is taken on the basis of a court judgment, in view of the need to correct anti-competitive practices.

The Minister shall take his decision after hearing the patent holder and any interested persons, if they wish to be heard.

Article 81: Decisions relating to compensation for a compulsory license covering a patent claiming a pharmaceutical product or manufacturing process for a pharmaceutical product must take into consideration, as the case may be, the procedures and conditions set in the decision of the WTO General Council of August 30, 2003, if no other process for manufacturing the same product is known or available.

Article 82: The Minister may, at the patent holder's request and after hearing the parties, modify the terms of the decision authorizing the exploitation of the patented invention insofar as a change in circumstances warrants such modification.

Article 83: The Minister shall put an end to the compulsory license, at the patent holder's request, if he is convinced that the circumstances which led him to take his decision have ceased to obtain and shall not reoccur or that the State service or third party appointed by him has failed to respect the terms of the decision.

Article 84: The compulsory license may only be transferred with the firm or goodwill of this person or with the part of the firm or goodwill within which the patented invention is exploited.

Article 85: The compulsory license shall always be non-exclusive. As a result, it shall not prohibit:

- exploitation of the invention by the patent holder himself, either by manufacturing in Burundi, by import, or by both means;
- signature of licensing contracts by the patent holder;
- continued exercise, by the patent holder, of the rights granted to him.

Article 86: A request for a compulsory license must be addressed to the Minister responsible for trade.

It must be accompanied by proof indicating that the patent holder has refused to grant the applicant a contractual license on reasonable conditions and procedures and within a reasonable time frame.

Save in exceptional circumstances, the maximum period shall be six months between the date on which the patent holder was informed of the request for a voluntary license and the date on which the applicant was informed by the patent holder of the final decision to reject the proposal.

Article 87: Evidence of an attempt to obtain a voluntary license, as defined by Article 86, shall not be required in case of a national emergency or in other situations of extreme urgency, in case of non-commercial public use or if the license is granted to remedy a practice that has been recognized as anti-competitive at the conclusion of judicial or administrative proceedings.

Notwithstanding, in such a case, the patent holder must be informed of the decision taken.

Article 88: Exploitation of the invention by the State service or the third party to which/whom the Minister has granted a license must be primarily aimed at supplying the market in Burundi, unless the compulsory license concerns a patent relating to a pharmaceutical product or a manufacturing process for a pharmaceutical product, provided that no other process for manufacturing the same product is known or available and that the license is for the export of patented products or products manufactured by means of the patented process in a foreign territory or country with non-existent or insufficient manufacturing capacities, in accordance with the procedures set by the decision of the WTO General Council dated August 30, 2003.

Article 89: Compulsory licenses for the exploitation of inventions in the field of semi-conductor technology shall only be granted for non-commercial public use or if an administrative or judicial body has ruled that the way in which the patented invention is exploited by the patent holder or his licensee is anti-competitive.

Article 90: In the event that a compulsory license is granted under Article 80, the holder of the first patent shall be entitled to a reciprocal license, on terms to be determined in the regulations, to exploit the invention claimed in the second patent.

The license granted for the first patent may not be assigned unless the second patent is assigned.

Section 4: Grant of a compulsory license by the courts

Article 91: Requests for the grant of a compulsory license shall be filed with the commercial court of the patentee's domicile, or if the patentee is domiciled abroad, with the court of the place where domicile has been elected or an agent authorized for filing purposes.

The patent holder or his agent shall be notified of the request within eight days at the latest.

Article 92: The request must contain:

- the name and address of the applicant;
- the title of the patented invention and the patent number for which the compulsory license is sought;
- proof that the industrial exploitation of the patented invention does not meet reasonable conditions of demand for the protected product;
- proof that the applicant first wrote by registered letter to the patent holder asking him for a contractual license, but was not able to obtain such a license from him on commercial conditions and procedures within a reasonable time frame;
- proof that the applicant is capable of industrially exploiting the patented invention.

Article 93: The court hearing the matter shall examine whether the request for the grant of a compulsory license meets the conditions set out in this Chapter.

After examining the case, the court shall take a decision to grant or refuse the non-voluntary license.

Article 94: In the event that the compulsory license is granted, the court's decision shall specify:

1. The field of application of the license, that is, the acts it covers and its period of validity, it being understood that a non-compulsory license does not cover the act of importing;
2. The fee due from the beneficiary of the license to the patent holder, in the absence of an agreement between the parties. This fee must be fair and may be subject to judicial review.

Article 95: The court shall notify the decision to the Industrial Property Director, the applicant and the patent holder. This same decision shall be brought to the attention of any beneficiary of a license whose name appears in the special patent register, by the Industrial Property Director. This decision shall be the subject of publication in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Section 5: Appeals against decisions to grant a compulsory license

Article 96: The patent holder, the holder of a license whose name appears in the special patent register or any person who has requested the grant of a compulsory license may, within a period of one month, as from notification, lodge an appeal against the decision handed down by the first judge with the next higher legal instance.

Article 97: Appeals lodged against a decision to grant a compulsory license shall stay its execution. Decisions handed down on appeals shall be forwarded to the Industrial Property Director with a view to their publication.

Section 5: Rights and obligations of compulsory license holders

Article 98: Compulsory licenses shall authorize their holder to exploit a patented invention, in accordance with the conditions set by the court.

Article 99: The grant of a compulsory license shall not affect the licensing contracts or compulsory licenses in force and shall not preclude the signing of other licensing contracts or the grant of other non-voluntary licenses.

Nevertheless, the patentee may not sign licensing agreements on more favorable terms than those of the compulsory licenses.

Section 7. Limitations on compulsory licenses

Article 100: The holder of the compulsory license may not, without the patent holder's consent, authorize a third party to perform the acts which fall within the field of application of his non-voluntary license.

Notwithstanding the provisions of Article 84, a compulsory license may be transmitted with the license holder's establishment or with the part of this establishment which exploits the patented invention.

Section 8. Modification and withdrawal of the compulsory license

Article 101: At the request of the patent holder or compulsory license holder, the competent court may amend the decision to grant the compulsory license in the event that new facts so warrant.

Article 102: The court shall withdraw the compulsory license at the patent holder's request in one of the following cases:

1. the reasons for its granting have ceased to obtain;
2. the compulsory license holder has not respected the license's field of application;
3. the compulsory license holder is in arrears with the payment of the fee provided for in Article 94.

TITLE X: REGISTRATION OF UTILITY MODELS

Chapter 1. Registration of utility models

Section 1. Utility models suitable for registration

Article 103: An invention shall be suitable for registration as a utility model if it is new, involves a sufficiently inventive step, and is industrially applicable. A utility model shall be new if there is no prior art.

Article 104: Prior art encompasses everything that has been made public, anywhere in the world, in a publication in tangible form or via oral disclosure, through use or in any other fashion, before the date of filing or, as the case may be, the date of priority of the application in which the invention is claimed.

Article 105: Disclosure of the invention shall not be taken into consideration if:

1. it occurs within the twelve months prior to the date of filing or, as the case may be, the date of priority of the application;
2. it arises directly or indirectly from fraudulent acts committed by the applicant or his successor in title;
3. it arises from an abuse committed by a third party towards the applicant or his successor in title.

Article 106: A utility model shall be deemed to involve a sufficiently inventive step if, for a person skilled in the art and average skill and know-how, given the differences and similarities between the utility model claimed and the prior art made public as defined in Article 103, the utility model cannot be easily deduced from the prior art of interest for an average person skilled in the art.

Article 107: A utility model shall be deemed suitable for industrial application if its subject matter can be entirely or partly manufactured or used in any kind of industry.

Any kind of industry shall be defined as designating any human economic activity leading to the production of goods and services, especially crafts, agriculture, fisheries and services.

Article 108: Utility models whose commercial exploitation must be banned on the territory of Burundi to protect public order or morality may not be registered.

Section 2. Right to the registration certificate for utility models

Article 109: The right to the registration certificate for a utility model shall belong to the inventor.

If several persons have made a utility model jointly, they shall be jointly entitled to the registration certificate.

Article 110: In the event that several persons have made the same invention independently of each other, the right to the registration certificate shall belong to the person who filed the application for which the date of filing, the validly claimed date of priority is the oldest, provided said application is not withdrawn, abandoned or rejected.

To establish the right of preference, the court shall take into consideration the subject matter claimed in the applications.

Article 111: The inventor shall be mentioned as such in the certificate unless, in a special written statement signed by him and addressed to the Industrial Property Director, he indicates that he does not wish to be mentioned. Any promise or undertaking given to anyone by the inventor to make such a statement shall have no legal effect.

Article 112: The right to the certificate may be assigned or bequeathed.

Chapter II: Subject matter excluded from protection by registration certificates for utility models

Article 113: The following shall be excluded from protection by the certificate:

- Discoveries, scientific theories and mathematical methods;
- Plans, principles or methods in the field of economic activities, in the exercise of purely intellectual activities, or in games;
- Methods of surgical or therapeutic treatment for the human or animal body, as well as diagnostic methods applied to the human or animal body; this provision shall not apply to products used for the implementation of one of these methods;

- Natural substances, even if they are purified, synthesized or isolated in another manner; this provision shall not apply to processes used to isolate these natural substances from their original environment;
- Known substances for which a new utilization has been discovered;
- Plants and animals, including parts thereof, other than microorganisms, and essentially biological processes for breeding plants or animals or parts thereof, other than non-biological and microbiological processes;
- Animal breeds and plant varieties;
- Registration certificates for utility models whose exploitation is contrary to public order or morality, it being understood that the exploitation of said certificate is not contrary to public order or morality owing to the sole fact that such exploitation is prohibited by legislation;
- Pharmaceutical products, up until January 1, 2016.

Article 114: The provisions of Article 113 shall not apply:

- to process certificates which consist in full or in part of procedures performed by a computer and run by a computer program;
- to product certificates consisting of elements of an invention implemented by a computer, in particular a machine-readable decipherable computer code stored on a material medium such as a computer diskette or hard drive or computer memory and a universal calculator, whose novelty in relation to prior art primarily stems from its combination with a specific software.

It is understood that persons applying for a utility model certificate linked to the computers in question have waived their right to any copyright protection.

Chapter III: Applications for registration certificates for utility models

Section 1. Filing of applications for registration

Article 115: Applications for registration certificates for utility models shall be filed with the Industrial Property Director. They shall comprise a request, a description, one or more claims, one or more drawings, as the case may be, and an abstract. Filing of the application shall be subject to payment of the prescribed fee.

Article 116: The request shall comprise a petition for the grant of a certificate, the name of the applicant, the inventor and, as the case may be, the agent and the other required information relating to these persons and to the title of the utility model.

In the event that the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the certificate.

Article 117: The description must disclose the utility model in a sufficiently clear and complete manner that a person skilled in the art and with average skill and know-how can carry it out.

It must in particular indicate how the claimed utility model enhances the utility or functionality of the object.

Article 118: The claims shall define the subject matter for which protection is sought. The description and the drawings may be used to interpret the claims. These must be clear, concise, and based entirely on the description.

Drawings shall be provided when they are necessary for understanding the utility model.

Article 119: The summary shall be used solely for providing technical information. It shall not be taken into consideration when assessing the scope of protection.

Article 120: The applicant may withdraw the application at any moment while it is pending before the decision to grant the registration certificate for the utility model.

Section 2. Unity of the invention, modification and division of the application

Article 121: The application may only cover a single utility model or a group of utility models related to each other in such a way that they form a single general inventive concept.

Article 122: The applicant may modify the application, but the modification must not go beyond the subject matter claimed in the initial application, until the time it is noted that the application meets the necessary conditions for the grant of the certificate.

Article 123: The applicant may divide the application into several applications called divisional applications up until the time when the application meets the necessary conditions for the grant of the certificate. However, divisional applications may not go beyond the subject matter claimed in the initial application and must cover an inventive concept in its entirety.

Each divisional application is supposed to bear the date of filing and, as the case may be, the date of priority of the initial application.

Section 3. Priority claims

Article 124: Any party wishing to claim the priority of a prior filing must attach to his application for a utility model certificate or forward to the Industrial Property Director at the latest 12 months as from the filing of his application the following:

1. A written statement indicating the date and number of this prior filing, the country in which it was made and the applicant's name;
2. A certified true copy of said prior application;
3. A written statement from the applicant or his successors in title authorizing him to claim the priority in question if he is not the author of this application.

Article 125: An applicant seeking to claim several rights of priority for a single application must, for each of them, comply with the same requirements provided for under Article 124.

He must further pay a fee for each right of priority claimed and produce proof of payment thereof within the same period of 12 months provided for under the same Article.

Article 126: Failure to produce in good time any of the above-mentioned items shall automatically lead to the loss of the right of priority claimed, for the sole application considered.

Any item which reaches the Industrial Property Director later than 12 months after the filing of the application for registration shall be deemed inadmissible.

Article 127: The filing, in Burundi, of this application for claiming priority before the expiration of the 12-month time limit may not be invalidated by any act issued in the meanwhile and in particular by another filing, a publication of the invention or its exploitation.

Section 4. Applications for registration certificates for utility models filed abroad

Article 128: Anyone wishing to claim a filing from a prior application concerning the same invention as the one claimed in the application filed in Burundi must produce:

1. a document indicating the application and the number of any application for a certificate filed abroad;
2. a copy of all communications received by the applicant relating to the results of any search or examination conducted with regard to the foreign application;
3. a copy of the certificate issued on the basis of the foreign application;
4. a copy of any final decision rejecting the foreign application or the request for grant made in the foreign application;
5. a copy of any final decision revoking the certificate granted on the basis of the foreign application.

Section 5. Date of filing and classification

Article 129: The Industrial Property Director shall assign, as the filing date, the date of receipt of the application, provided that it contains:

1. an express or implicit indication according to which the grant of a utility model certificate has been applied for;
2. indications making it possible to establish the applicant's identity;
3. Part of the indications which constitute a description of a utility model;
4. One or more claims specifying the characteristic elements of the utility model.

Article 130: In the event that the Industrial Property Director notes, upon receipt of an application for filing, that it does not meet the conditions set out in Article 129, he shall invite the applicant to make the necessary correction and shall assign, as the date of filing, the date of receipt of the required correction.

Nevertheless, if no correction is made, the application shall be deemed not to have been filed.

Article 131: In the event that the application refers to drawings that have not been included, the Industrial Property Director shall invite the applicant to supply the missing drawings. If the applicant complies, the Industrial Property Director shall assign, as the date of filing, the date of receipt of said drawings. Should this not be the case he shall assign as a date of filing the date of receipt of the application and consider any reference to these drawings as non-existent.

Article 132: The Industrial Property Director shall order the utility model that forms the subject matter of an application for a certificate to be classified. Classification shall take place according to the international classification.

Section 6. Examination of applications and grant of certificates

Article 133: For any application for a registration certification for a utility model, an examination shall be made to ascertain that:

1. the creation which forms the subject matter of the application for a registration certificate is not excluded under the provisions of Article 113 and 114 of this Law on the protection granted by the utility model;
2. the claims comply with the provisions of Article 129 of this Law;
3. the provisions of Article 121 of this Law are respected;
4. when the application for the registration certificate is filed, no application for a registration certificate filed elsewhere or benefiting from validly claimed prior priority concerning the same invention is about to be granted;
5. the invention is new and is industrially applicable.

Article 134: In the event that the Industrial Property Director notes that the application meets the conditions indicated in Article 133, he shall grant the requested utility model certificate.

To this end, he shall notify the applicant that the certificate has been granted and give him a copy after registering it.

In addition, the Industrial Property Director shall publish a reference to the grant of the certificate in the Official Journal of Burundi and shall make copies of the certificate available to the public subject to payment of the prescribed fee.

Article 135: Any application that does not comply with the requirements set out in Articles 115 to 122 shall be deemed irregular. Such irregularity shall be notified to the applicant or his agent, who shall be invited to rectify the documents within a period of three months as from the date of notification.

This period may be extended by 30 days in the case of justifiable need, at the request of the applicant or his agent.

The application which has been thus rectified within said period shall retain the date of the initial application. If the rectified documents are not supplied in time, the application for the registration certificate for the utility model shall be rejected.

Article 136: The Industrial Property Director, at the certificate holder's request, shall make to the text or drawings of the certificate the modifications designed to limit the scope of the protection granted, provided these modifications do not cause the claimed subject matter contained in the certificate to go beyond the subject matter claimed in the initial application on the basis of which the certificate was issued.

Section 7. Rights conferred by the utility model certificate

Article 137: Utility model certificates shall give their holder the right to prevent third parties from exploiting a utility model registered in Burundi.

Exploitation of a utility model shall be defined as the following acts:

- making, importing, offering for sale, selling and using the product;
- holding this product with a view to offering it for sale, selling it or using it

Article 138: The certificate holder shall also be entitled to assign or bequeath the utility model and to sign licensing contracts.

Article 139: The holder of the utility model certificate shall be entitled to institute judicial proceedings before the competent judge against any party who counterfeits a utility model certificate by performing, without his consent, one of the acts which are mentioned in Article 137 or which make it likely that counterfeiting will be committed.

Section 8. Limitation of rights conferred by utility model certificates

Article 140: The rights arising from a utility model certificate shall not cover:

1. acts relating to goods placed on sale in Burundi or in any other country by the holder of the utility model certificate or with his consent which lead to the exhaustion of the rights of the holder of the utility model certificate;
2. the use of goods on board aircraft, land vehicles or foreign vessels which enter, temporarily or accidentally, the airspace, territory or waters of Burundi;
3. acts relating to utility model certificates which are performed solely for purposes of experimentation in the case of scientific and technical research;
4. acts performed by any party who, in good faith, before the date of filing or, if priority is claimed, on the date of priority of the application on the basis of which the certificate is granted, used the utility model certificate or made effective and serious preparations to use it in the case of acts which do not differ in terms of their nature or purpose from the previous effective or envisaged use;
5. acts by a person who makes, manufactures, uses or sells a utility model certificate solely for purposes which are reasonably related to the gathering and transmission of information required by a law in Burundi or a country other than Burundi regulating the manufacture, use or sale of any product.

Article 141: The user's right referred to in Article 140 may only be transferred or devolved with the firm or the company or the part of the firm or company in which the use or preparations for use took place.

Article 142: Without prejudice to the provisions of Article 140, the Minister responsible for trade shall be entitled to declare on his own initiative or at the request of any interested party that the rights conferred by the utility model certificate have been exhausted and to authorize third parties to import the product produced directly or indirectly by means of a utility model certificate from another territory if this product is not available in the territory of Burundi or is available in insufficient quantity or quality to meet local demand or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. the certificate claiming the product or process used for its manufacturing is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Article 143: In the event that the importer has not achieved the goal that justified the decision by the Minister responsible for trade to consider the rights granted by the certificate exhausted, the Minister shall revoke the authorization on his own initiative or at the certificate holder's request.

Article 144: In the event that the conditions which led to the decision by the Minister to consider the utility model certificate exhausted no longer obtain, the Minister responsible for trade may, on his own initiative or at the request of the certificate holder or the owner of the mark, revoke the authorization, provided that that the importer's legitimate interests are taken into consideration, primarily to the effect that the importer shall retain the right to clear his stock.

Section 9. Term of protection and annual fees

Article 145: The utility model certificate shall expire ten years after the corresponding application is filed.

In the event that the utility model certificate is issued more than four years after the date of filing, the term of protection conferred by this certificate shall be automatically extended by the entire period which has elapsed since the date of filing.

Article 146: A progressive annual fee must be paid in advance to the Industrial Property Director as from the first year following the date on which the application for the utility model certificate is filed, in order to maintain the validity of the utility model certificate or its application.

A holder of a utility model certificate who has failed to pay his annuity on the date on which the application for the utility model certificate is filed shall lose all his rights.

Nevertheless, the holder of the utility model certificate shall have a six-month grace period to make payment. Should this be the case, he shall be obliged to pay a surcharge for late payment.

Section 10. Re-establishment of the utility model certificate

Article 147: If the protection granted by a utility model certificate has not been renewed owing to circumstances beyond the holder's control, he or his successors in title may, subject to payment of the prescribed annual fee and, as the case may be, payment of a surcharge for late payment, request its restoration within a period of six months as from the date on which the above-mentioned circumstances ceased to obtain and at the latest within a period of two years as from the date on which renewal should have been made.

Article 148: The request for the re-establishment of the certificate, accompanied by proof of payment of the fee, and as appropriate the surcharge for late payment, and the corresponding grounds, shall be addressed to the Industrial Property Director.

He shall ascertain whether the above-mentioned grounds have been substantiated and restore the certificate. Should this not be the case, he shall reject the request.

Article 149: The re-establishment of a utility model certificate shall not result in an extension of the maximum term of the certificate.

Any third parties who have started exploiting a certificate after its expiration shall be entitled to continue such exploitation.

Article 150: the re establishment of a utility model certificate shall also result in the re establishment of the corresponding certificate of addition Re-established certificates shall be published by the Industrial Property Director in the forms prescribed by law.

Article 151: Decisions of the Industrial Property Director shall be subject to review by an appeals commission within a period of 30 days as from the date of notification.

The make-up, tasks and functioning of said commission shall be determined by decree.

Chapter IV. Licensing contracts

Section 1. Signature and term of licensing contracts

Article 152: Holders of a utility model certificate may, by contract, grant a natural person or legal entity a license enabling him/it to exploit the utility model certificate. The term of the license may not exceed that of the certificate.

Licensing contracts shall be drawn up in writing and signed by the parties.

Article 153: Licensing contracts must be entered in the special register for utility model certificates. They shall only be binding on third parties once they have been entered in the above-mentioned register and published in the forms prescribed by this Law.

Article 154: The license shall be struck from the register at the request of the certificate holder or licensee upon presentation of proof of the expiration or termination of the licensing contract.

Article 155: Unless stipulated otherwise in the licensing contract, the grant of a license shall not preclude for the licensor the possibility of granting licenses to other persons provided that he informs the licensee, or that of himself exploiting the utility model certificate.

Article 156: The grant of an exclusive license shall prevent the licensor from giving licenses to other persons and, unless the licensing contract stipulates otherwise, from exploiting the utility model certificate himself.

Section 2 Unenforceable clauses

Article 157: Unenforceable clauses shall be defined as those contained in licensing contracts or agreed in relation to such contracts, insofar as they impose on the licensee, from an industrial or commercial standpoint, limitations which do not arise from the rights granted by the utility model certificate and which are not necessary for the maintenance of such rights.

Article 158: Unless stipulated otherwise in the licensing contract the licence may not be transferred to third parties and the licensee shall not be entitled to grant sub-licenses.

Article 159: The following shall not be considered limitations covered by Article 157:

1. restrictions concerning the measurement, scope or term of exploitation of the utility model certificate;
2. the obligation for the licensee to refrain from any act likely to harm the validity of the utility model certificate.

Article 160: Determination of the unenforceable clauses covered by Articles 157, 158 AND 159 shall be made by a commercial court, at the request of any interested party.

Chapter V. Compulsory or non-voluntary licenses

Section 1. Compulsory licenses for failure to work

Article 161: At the request of any interested person, submitted after the expiration of a period of four years as from the date on which the application for the certificate was filed or three years as from the grant of the utility model certificate, as the period which expires the latest must be applied, a compulsory or non-voluntary license may be granted if one or more of the following conditions has been met:

1. The public interest, in particular national security, nutrition, health or the development of other sectors which are vital for the national economy, so requires;

2. A judicial or administrative body has deemed that the manner in which the utility model certificate holder or his licensee are exploiting the invention is abusive, anti-competitive or fails to meet reasonable conditions of demand for the protected product in sufficient quality and quantity;
3. The refusal of the patent holder to grant licenses on reasonable commercial conditions and terms;
4. The establishment or development of industrial or commercial activities suffers unfair or substantial damage.

A compulsory license may not be granted if the holder of the utility model certificate justifies the failure to exploit on legitimate grounds.

Section 2 Compulsory licenses for certificates of dependency

Article 162: If the utility model certificate protected by the certificate cannot be exploited without infringing the right attached to a prior utility model certificate whose holder refuses to authorize use on reasonable commercial conditions and procedures, the holder of the subsequent certificate may obtain a non-voluntary license from the court for such use, on the same terms as those which apply to non-voluntary licenses granted under Article 161 as well as on the following additional conditions:

1. the utility model invention claimed in the subsequent utility model certificate represents significant technical progress of considerable economic interest in relation to the invention claimed in the prior utility model certificate;
2. the holder of the prior certificate shall be entitled to a mutual license on reasonable conditions to use the claimed utility model certificate;
3. the use authorized in relation to the prior certificate shall only be assignable if the subsequent certificate is also assigned.

Section 3. Grants of compulsory licenses by the court

Article 163: Requests for the grant of a compulsory license shall be lodged with the commercial court of the domicile of the holder of the utility model certificate, or if he is domiciled abroad, with the court of the place at which he has elected domicile or appointed an agent for filing purposes.

The certificate holder or his agent shall be notified of the request within a time limit of eight days at the latest.

Article 164: The request must contain:

- the name and address of the applicant;
- the title of the utility model certificate and the certificate number for which the compulsory license is sought;
- proof that the industrial exploitation of the utility model certificate does not meet reasonable conditions of demand for the protected product;
- proof that the applicant first wrote by registered letter to the holder of the utility certificate model, asking him for a contractual license, but was not able to obtain such a license from him on commercial conditions and procedures within a reasonable time frame;
- proof that the applicant is capable of industrially exploiting the certificate;
- the utility model.

Article 165: The court hearing the matter shall ascertain whether the request for the grant of the compulsory license meets the conditions set out in Articles 162 to 164.

After examining the file, the court shall take a decision to grant or reject the non-voluntary license.

Article 166: In the event that the compulsory license is granted, the decision of the court shall specify:

1. the field of application of the license, that is, the acts it covers and its term of validity, it being understood that a non-compulsory license shall not cover the act of importing;
2. the fee due from the license holder to the certificate holder failing an agreement between the parties must be fair and may be subject to judicial review.

Article 167: The court shall notify the decision to the Industrial Property Director and the applicant as well as the certificate holder. The same decision shall be brought to the attention of any holder of a license whose name appears in the special certificate register by the Industrial Property Director. This decision shall be the subject of publication in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Section 4. Appeals against decisions to grant a compulsory license

Article 168: Holders of a utility model certificate, certificate holders whose name appears in the special certificate register or any person having requested the grant of a compulsory license may, within a period of one month, as from notification, lodge an appeal with the higher competent legal instance against the decision handed down by the first judge.

Article 169: Appeals lodged against a decision to grant a compulsory license shall stay the execution thereof. The decision on the appeal shall be communicated to the Industrial Property Director with a view to its publication.

Section 5. Rights and obligations of compulsory license holders

Article 170: A compulsory license shall entitle its holder to exploit the utility model certificate in accordance with the conditions set by the court.

Article 171: The grant of the compulsory license shall not affect existing licensing contracts or compulsory licenses and shall not preclude either the signature of other licensing contracts or the grant of other non-voluntary licenses.

Nevertheless, the holder of the utility model certificate may not sign licensing contracts on more favorable conditions than those of the compulsory licenses.

Section 6. Limitation on compulsory licenses

Article 172: Holders of compulsory licenses may not, without the consent of the holder of the utility model certificate, grant authorization to a third party to accomplish acts which fall within the field of application of a non-voluntary license.

Compulsory licenses may be transmitted with the establishment of the holder of the license or the part of this establishment which exploits the utility model certificate.

Section 7. Modification and withdrawal of compulsory licenses

Article 173: At the request of the holder of a utility model certificate or the compulsory license holder, the competent court may amend the decision to grant the compulsory license if new facts so warrant.

Article 174: The court shall withdraw the compulsory license at the request of the holder of the utility model certificate in one of the following cases:

1. the grounds for its granting no longer obtain;
2. the holder has failed to respect the field of application of his license;
3. the holder is late in paying the fee provided for in Article 166.

Chapter IV. Provisions common to patents and utility model certificates

Section 1. Actions for nullity of a patent or utility model certificate

Article 175: A commercial court shall revoke the utility model certificate or patent if the person requesting revocation proves that one of the conditions provided for in Articles 8 to 32 relating to patents and in Articles 91 to 96 and Article 103 relating to utility model certificates has not been met or that the certificate holder is not the inventor or his successor in title.

Article 176: If grounds for revocation have only been established for part of the invention or utility model certificate, only the corresponding claim(s) shall be revoked.

Article 177: Any revoked patent or utility model certificate, or any revoked claim or part of a revoked claim, shall be deemed to be null and void on the date on which the patent or certificate is granted.

Article 178: In the event of a legal dispute concerning the right to the patent or the utility model certificate, the interested person may ask the court to transfer the title to him rather than revoking it.

Article 179: The court's final decision shall be notified to the Industrial Property Director, who shall register and publish it without delay.

Section 2. Conversion of applications for patents or utility model certificates

Article 180: Before the technical examination, an application for a patent or a utility model certificate or in any event, before the grant of a patent or the rejection of a patent application, the applicant may, subject to payment of the prescribed fee, turn his application into an application for a utility model certificate to which the date of filing of the initial application has been assigned.

Article 181: Before the grant of a utility model certificate or the rejection of an application for a utility model certificate, the applicant may, subject to payment of the prescribed fee, turn his application into a patent application to which the date of filing of the initial application is assigned.

Article 182: A request may not be converted more than once pursuant to Articles 180 and 181.

Article 183: The provisions of Title I of Part Two relating to patents as well as other provisions which apply to patents and patent applications shall apply to utility model certificates if they are compatible or have not been replaced by the provisions of this Title.

TITLE III. INDUSTRIAL DESIGNS

Chapter I. Designs accepted for registration

Section 1. Registration of industrial designs

Article 184: To be accepted for registration, an industrial design must be new.

An industrial design shall be considered to be new if it has not been disclosed in any part of the world, by publication in a tangible form or by use or in any other form prior to the date of filing or, as the case may be, the date of priority of the application for registration.

Industrial designs and references which are contrary to public order or morality may not be accepted for registration.

Section 2. Rights to industrial designs and references to the creator

Article 185: An industrial design shall be owned by the person who has created it or to his successors in title, but the first applicant shall be considered to be the creator thereof, unless there is evidence to the contrary.

If several persons have jointly created a design, the right to the industrial designs shall belong to them.

Article 186: If the industrial design has been created by an employee in the performance of an employment contract, the right in the industrial designs shall belong to the employer, unless the contract stipulates otherwise.

In the event that the financial gains derived by the employer are disproportionate in relation to the employee's salary and in relation to the gains which the employer could reasonably expect from his employee's inventive input when he hired him, the employee shall be entitled to fair compensation.

Article 187: If the invention has been made by an employee outside the performance of an employment contract with the help of material, information or know-how belonging to the employer, the right to the industrial designs shall belong to the employer, unless the contract stipulates otherwise.

The employee who has made the invention shall be entitled to compensation equivalent to at least one-third of the net direct and indirect gains which the employer has obtained from exploiting the invention.

The obligation to pay compensation shall arise from the making of a patentable invention, not the patent.

Any promise or undertaking which the inventor may give his employer to the effect that he waives the compensation to which he is entitled under the previous sub-paragraph, shall have no legal effect.

Article 188: If the employer does not file an application for the industrial design in the year following the date on which the employee shared his invention with him, the right in the industrial designs, including the right to transfer this right to any interested third party and to grant a license for the industrial design or to assign it, if it has been granted, shall belong to the employee.

Article 189: Any invention claimed in an application for an industrial design which is filed by the employee in the year following the expiration of the employment contract and which fits into the main activities of the former employer shall be considered to have been made within the framework of the contract which has expired, unless the employee proves otherwise.

Chapter II. Applications to register industrial designs

Section 1. Filing of applications

Article 190: Applications for the registration of an industrial design shall be filed with the Industrial Property Director, and shall comprise a request, drawings, photographs or other appropriate graphic representations of the subject matter incorporating the industrial design and an indication of the type of products for which the industrial design is to be used. In the case of a two-dimensional drawing, the application for registration may be accompanied by a copy of the subject matter incorporating the design. The application shall be subject to payment of the prescribed fee.

Article 191: If the applicant is not the creator, the request must be accompanied by a statement justifying his right to register the industrial design.

Article 192: Two or more industrial designs may be the subject of the same application, provided they come under the same class in the international classification or refer to the same set or assortment of articles.

Article 193: At the time of filing, the application may contain a request for the postponement of the publication of the design after its registration for a period not exceeding 12 months as from the date on which the application was filed or, if priority is claimed, as from its date of priority.

Article 194: While the application is pending, the applicant may withdraw it at any time.

Section 2. Examination, registration or publication of industrial designs

Article 195: The Industrial Property Director shall assign as the date of filing the date on which the application was received, provided that, on that date, the application contained indications making it possible to establish the identity of the applicant and a graphic representation of the subject matter incorporating the industrial design.

Article 196: Once the date of filing has been assigned, the Industrial Property Director shall examine whether the application meets the conditions set out in Articles 190 to 193 and in the regulations, and verify that the prescribed fee has been paid.

Article 197: In the event that the Industrial Property Director notes that the conditions set out in Articles 190 to 193 have been met, he shall publish in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade a notice that he is prepared to register the industrial design; publish a reference to the registration; and give the applicant a certificate of registration for the industrial design. Should this not be the case, he shall reject the application.

Article 198: Within a period of 90 days as from the publication of the notice referred to in Article 197, the applicant must pay the prescribed fee, the amount of which shall be set in such a way as to cover the costs of registration, publication and the grant of the certificate of registration, as well as the cost of protection for a period of five years.

If the fee is not paid within the time limit, the Industrial Property Director may extend the time limit of 90 days if it has been established that the applicant can provide proof of his inability to pay the fee within the prescribed time limit.

Should this not be the case, he shall reject the application. Rejected applications may not be restored.

Article 199: Notwithstanding the provisions set out in Article 197, if a request for postponement of publication has been submitted under Article 193, neither the representation of the industrial design nor the file relating to the application may be made available to the public for consultation following the registration of the industrial design.

Should this be the case, the Industrial Property Director shall publish a notice relating to the postponement of publication of the industrial design indicating the identity of the holder of the registration, the date of filing of the application, the term of the period for which postponement has been requested, and any other required information.

Upon expiration of the postponement period, the Industrial Property Director shall publish the registered industrial design.

Article 200: The initiation, within the period of postponement, of judicial proceedings relating to a registered industrial design shall be subject to the proviso that the conditions contained in the register and in the file relating to the application are communicated to the person against whom the judicial proceedings have been brought.

Chapter III. Priority claims

Article 201: Anyone wishing to claim priority for a prior filing must attach the following to his application for the registration of an industrial design, at the latest within a period of 12 months calculated as from the filing of his application, and send to the Industrial Property Director:

1. a written statement indicating the date and number of this prior filing, the country in which it was made, and the applicant's name;
2. a certified true copy of said prior application;
3. written authorization from the applicant or his successors in title to claim the priority in question if he is not the author of this application.

Article 202: An applicant wishing to claim several rights of priority for a single application must observe the same instructions set out in Article 201 for each of them.

In addition, he must pay a fee for each right of priority claimed and provide proof of payment thereof within the same time limit of 12 months provided for in this same Article.

Article 203: Failure to provide in good time any of the documents referred to in Article 201 shall automatically lead to the loss of the benefit of the right of priority claimed, for the sole application considered.

Article 204: The filing, in Burundi, of this application for claiming priority before the expiration of the period of 12 months may not be invalidated by any act issued in the meanwhile, in particular by another filing, a publication of the creation or its exploitation.

Chapter IV. Rights conferred by registration, term and renewal

Section 1. Rights conferred by certificates of registration for industrial designs

Article 205: A certificate of registration for an industrial design shall entitle its holder to prevent third parties from exploiting an industrial design registered in Burundi.

Exploitation of a registered industrial design shall mean the manufacture, sale or import of goods incorporating the industrial design in question.

Section 2. Limitation of the rights granted by certificates of registration for industrial designs

Article 206: The rights arising from the certificate of registration for an industrial design shall not cover acts relating to goods placed on sale in Burundi or in any other country by the patent holder or with his consent.

Article 207: Without prejudice to the provisions of Article 185, the Minister responsible for trade shall be entitled to declare, on his own initiative or at the request of any interested party, that the rights to

the registration of an industrial design have been exhausted and to authorize third parties to import the registered product or a product created directly or indirectly by means of a certificate from another territory if this product is not available in the territory of Burundi or is available in insufficient quality or quantity to meet local demand or at prices which the Ministry deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

1. The product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. The certificate claiming the product or process used for its creation is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Article 208: In the event that the importer has not reached the goal which justified the decision by the Minister to consider the rights to the certificate to be exhausted, the Minister shall revoke the authorization on his own initiative or at the request of the certificate holder.

Article 209: In the event that the conditions which led to the decision by the Minister to consider the certificate to be exhausted no longer obtain, the Minister may, on his own initiative or at the request of the certificate holder or the owner of the mark, revoke the authorization, provided that the legitimate interests of the importer are safeguarded, primarily to the effect that the importer shall retain the right to clear his stock.

Article 210: Holders of the registration of an industrial design shall be entitled to institute

judicial proceedings against anyone who infringes the rights arising from the registration of the design by performing, without their consent, one of the acts mentioned in Article 205 or by performing acts which make it likely that there will be a risk of infringement.

Section 3. Term of validity, fees and expiration

Article 211: The term of validity of the registration of an industrial design shall be five years as from the date on which the application for registration is filed.

At the holder's request, in accordance with the regulations and subject to payment of the prescribed fee, registration may be renewed for two consecutive periods of five years each.

Article 212: A six-month grace period shall be granted for payment of the renewal fee after the due date, subject to payment of the surcharge for late payment. Should this not be the case, the registered design shall be invalidated

Article 213: Registered designs which have been invalidated may not be restored.

Chapter V. Licensing contracts for industrial designs

Section 1. Signature of licensing contracts

Article 214: Holders of industrial designs may, by contract, give any natural person or legal entity a license enabling him/it to exploit the design.

The term of the license may not exceed that of the registration of the design.

On pain of nullity, the licensing contract must be drawn up in writing and signed by the contracting parties.

Article 215: Licensing contracts must be entered in the special register for designs kept by the Industrial Property Director, subject to payment of the prescribed fee.

Licenses shall only be binding on third parties once they have been entered therein and published in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Article 216: The entry for a license shall be struck out at the request of the holder of the design or the license holder upon presentation of proof that the license has expired.

Section 2. Unenforceable clauses

Article 217: The following clauses shall be deemed unenforceable: clauses contained in licensing agreements or agreed in relation to such contracts, insofar as they impose on the license holder, from an industrial or commercial standpoint, limitations which do not arise from the rights conferred by the registration of the design or which are not necessary for the maintenance of such rights.

Article 218: Determination of the unenforceable clauses covered by Article 217 shall be made by a commercial court at the request of any interested party.

TITLE IV. LAYOUT DESIGNS FOR INTEGRATED CIRCUITS

Chapter 1. Layout designs for integrated circuits accepted for registration

Section 1. Registration

Article 219: To be accepted for registration, a layout design must be original. A layout design shall be considered original if it is the fruit of the intellectual effort of its creator and if, at the time of its creation, it is not common for creators of layout designs and manufacturers of integrated circuits.

Article 220: Registration of the layout design may only be requested if it has not yet been commercially exploited or if it has been commercially exploited for a maximum of two years, anywhere in the world.

Section 2. Rights to layout designs for integrated circuits

Article 221: The right to protection for the layout design shall belong to the creator of the design. It may be transferred inter vivos or bequeathed. In the event that several persons have jointly created a layout design, the right shall belong to them jointly.

For the purposes of this Part, owner shall mean the natural person or legal entity considered to be the beneficiary of the protection within the meaning of this Article.

Article 222: Protection under this part may be obtained for layout designs for integrated circuits if they are original as defined by Article 219.

Article 223: A layout design consisting of a combination of elements and interconnections which are routine shall only be protected if the combination, taken as a whole, is original within the meaning of Article 219.

Chapter II. Applications for registration

Section 1. Filing of applications

Article 224: Applications for registration of layout designs must be filed in writing with the Industrial Property Director. A separate application must be filed for each layout design.

Article 225: Applications must:

- contain a request for the layout design to be entered in the register of layout designs as well as a brief and accurate description of the layout design;
- indicate the applicant's name, address and nationality and, if it is different from his address, his usual place of residence;
- be accompanied by the power of attorney containing the designation of the applicant's agent, as the case may be, a copy or drawing of the layout design as well as information defining the electronic function that the integrated circuit is designed to perform; however, the request does not necessarily have to contain the parts of the copy or drawing which refer to the way in which the integrated circuit is manufactured, provided that the parts presented suffice for the identification of the layout design;
- indicate the date of the first commercial exploitation of the layout design anywhere in the world or contain a statement to the effect that such exploitation has not yet commenced;
- provide elements establishing the right to protection under Article 221.

Article 226: In the event that the application fails to meet the requirements of Article 225, the Industrial Property Director shall inform the applicant of the irregularities and shall invite him to correct them within a period of two months.

If the irregularities are corrected within the period set, the Industrial Property Director shall assign as the date of filing the date on which the application was received, provided that, when it was received, the application contains an express or implicit statement that the registration of a layout design is sought and information making it possible to establish the applicant's identity, and that it is accompanied by a copy or drawing of the layout design.

If these conditions have not been met when the application is received but the irregularities have been corrected within the period set, the date of receipt for the required correction shall be considered to be the date on which the application is filed. The Industrial Property Director shall confirm the date of filing and communicate it to the applicant.

If the irregularities are not corrected within the period set, the application shall be considered not to have been filed.

Article 227: Each application for protection of a layout design shall be subject to payment of the prescribed fee. In the case of failure to pay the fee, the Industrial Property Director shall inform the applicant that the application shall be considered not to have been made unless payment is made within a period of two months as from the date of notification. If the fee is not paid within this period, the application shall be considered not to have been filed.

Section 2. Examination of applications

Article 228: If the application meets the requirements set out in Articles 224 and 225, the Industrial Property Director shall have the layout design entered in the register of layout designs.

Article 229: The register of layout designs shall contain the number, title and date of filing of the layout design and, if it is indicated in the application under Article 225, paragraph 3, the date of its first

commercial exploitation anywhere in the world, as well as the owner's name and address and the other required information.

Any interested person may consult the register of layout designs and obtain extracts thereof, subject to payment of the prescribed fee.

Article 230: Registration of a layout design shall be published in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Section 3. Invalidation

Article 231: Any interested person may request that the registration of a layout design be invalidated on the grounds that:

- the layout design may not be protected under Articles 219, 220, 222 and 223 of this Law;
- the owner is not eligible for protection under Article 221 of this Law;
- if the layout design has been the subject of commercial exploitation anywhere in the world, prior to the filing of the corresponding application for registration, this application was not filed within the period set in Article 220.

In the event that the grounds for invalidation only affect part of the layout design, only the corresponding part of the registration shall be invalidated.

Article 232: The request for invalidation of the registration of the layout design must be filed with the competent court. It must be substantiated.

In case of a legal dispute concerning the right to register the layout design, the interested person may ask the court to transfer the title rather than invalidating it.

Article 233: Any registration or part of the registration of an invalidated layout design shall be considered to be null and void as from the date on which protection took effect.

Article 234: The final decision of the court shall be notified to the Industrial Property Director, who shall enter it in the register and publish a corresponding notice in accordance with the provisions of the regulations.

Chapter III. Rights conferred by certificates for layout designs of integrated circuits

Section 1. Rights conferred

Article 235: Certificates for the layout designs of integrated circuits shall confer on their owners the right to prevent third parties from exploiting the layout design of integrated circuits registered in Burundi.

Exploitation of the layout design of integrated circuits shall be understood as the following acts:

- manufacturing, importing, offering for sale, selling or using the product;
- holding this product with a view to offering it for sale, selling it or using it.

Article 236: Certificate holders shall also be entitled to assign or bequeath the layout design of integrated circuits and to sign licensing contracts.

Article 237: Holders of certificates for the layout designs of integrated circuits shall be entitled to institute judicial proceedings with the competent judge against any person who counterfeits a

certificate for the layout design of integrated circuits, performing without their consent any of the acts which are mentioned in Article 235 or which make it likely that counterfeiting will occur.

Section 2. Protection and limitation of the rights conferred by certificates for layout designs of integrated circuits

Article 238: The protection provided for under this Law shall be granted whether or not the integrated circuit in which the protected layout design is incorporated is itself incorporated in an article. Subject to the provisions of Article 239, the protection shall imply that the following acts are illegal if they are accomplished without the holder's authorization:

- reproduction, whether it be via incorporation in an integrated circuit or in another fashion, of the entirety of a protected integrated circuit or any part thereof, unless this involves the reproduction of a part that does not meet the requirement of originality laid down in Articles 219 and 223;
- the import, sale or distribution in any manner, for commercial purposes, of the protected layout of an integrated circuit in which the protected layout design is incorporated or of an article incorporating such an integrated circuit insofar as it continues to contain an unlawfully reproduced layout design.

Article 239: The effect of the protection conferred on a layout design under this Law shall not cover:

- reproduction of the protected layout design for private purposes or for the sole purposes of evaluation, analysis, research or teaching;
- incorporation, in an integrated circuit, of a layout design created on the basis of such an analysis or evaluation and itself featuring an originality as per Articles 219 and 223, or the performance, in relation to this layout design, of any of the acts referred to in Article 238;
- performance of any of the acts referred to in Article 238, paragraph 2, if such an act is performed in relation to a protected layout design, or an integrated circuit in which such a layout design has been incorporated, which has been placed on the market in Burundi by the holder or with his consent, leading to the exhaustion of his rights;
- performance of any of the acts referred to in Article 238, paragraph 2, if such an act is performed in relation to a protected layout design, or an integrated circuit in which such a layout design has been incorporated, which has been placed on the market of any territory or country by the holder or with his consent, leading to the exhaustion of his rights;
- performance of any of the acts referred to in Article 238, paragraph 2, in relation to an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating such an integrated circuit, if the person accomplishing or commissioning this act was not aware or had no reason to think, when purchasing the integrated circuit or the article incorporating such an integrated circuit, that it contained an unlawfully reproduced layout design;
- performance of any of the acts referred to in Article 238, paragraph 2, if such an act is performed in relation to an identical original layout design that has been created independently by a third party.

However, once this person has been duly notified that the layout design has been unlawfully reproduced, he may only perform any of the acts referred to above in relation to the stock he has or had ordered before being so notified, and must pay the holder an amount equivalent to a reasonable fee that would be due under a freely negotiated license for such a layout design.

Article 240: Without prejudice to the provisions of Article 239, paragraph 3, the Minister responsible for trade shall be entitled to declare, on his own initiative or at the request of any interested party, that the rights to the certificate for a layout design of integrated circuits have been exhausted and to authorize a third party to import the certified product or a product manufactured directly or indirectly by means of the certified invention from another territory if this product is not available in the territory

of Burundi or is available in insufficient quality or quantity to meet local demand or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. the certificate claiming the product or process used to produce it is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Article 241: If the importer does not perform the function which justified the Minister's decision to consider that the holder's rights have been exhausted, the Minister shall revoke the authorization on his own initiative or at the holder's request.

Article 242: In the event that the conditions underlying the Minister's decision to consider that the holder's rights have been exhausted no longer obtain, the Minister may, on his own initiative or at the holder's request, revoke the authorization provided:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. the certificate claiming the product or process used to produce it is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Section 3. Term of validity of protection

Article 243: The protection conferred on a layout design shall take effect:

- on the date of the first commercial exploitation of the layout design anywhere in the world, by the holder or with his consent, provided that an application for protection has been filed by the holder with the Industrial Property Director within the period set in Article 220;
- on the date of filing assigned to the application for registration of the layout design filed by the holder, if the layout design has not previously been commercially exploited anywhere in the world.

Article 244: The protection conferred on a layout design under this Law shall cease at the end of the tenth calendar year following the date on which it took effect.

Chapter IV. Compulsory licenses

Article 245: Subject to the provisions of Article 246, the provisions of Articles 78 to 91 shall apply to registered layout designs of integrated circuits.

Article 246: Compulsory licenses for registered layout designs shall only be granted for non commercial public use or to remedy a practice deemed anti-competitive following judicial or administrative proceedings.

TITLE V. TRADITIONAL KNOWLEDGE AND CRAFTS OBJECTS

Chapter I. Scope and purposes of protection

Section 1. Scope of protection

Article 247: For the purposes of this Law, traditional knowledge shall be defined as the following elements:

- inventions or other technical ideas, uses, designs, equipment, tools and instruments that can be used in the production of products and services, including the processes, equipment and products used to obtain them, as well as plants domesticated or grown or animal species and microorganisms;
- knowledge of the properties of biological resources as well as combinations of such resources;
- methods, processes and products relating to the fields of medicine, agriculture, food and textiles as well as the other products and services with a practical or spiritual function;
- names, symbols, emblems and other distinctive signs of a religious, spiritual, cultural or economic nature which are used by local indigenous communities in their native language or in any other language;
- designs and objects of a functional or esthetic nature, including clothing, porcelain and other crafts goods which may or may not be related to biological resources and which constitute indissociable elements of the culture, spirituality and traditions of the local indigenous communities.

Section 2. Purposes of protection

Article 248: The provisions of this title shall be designed to provide for industrial property rights for all aspects of the traditional knowledge of the local indigenous communities of Burundi by means of a system of registration.

Article 249: Effective protection and application of the industrial property rights to traditional knowledge must help to preserve the traditions and livelihood of the traditional communities; ensure respect for their cultural identity; and promote the creation, development and commercialization of traditional knowledge.

Chapter II. Traditional knowledge

Section 1. Registration of traditional knowledge

Article 250: Traditional knowledge that has not been disclosed to the public in any way or, even if it has been disclosed, has not been commercially or industrially exploited in Burundi, may be registered under the following conditions:

1. The traditional knowledge must be described and registered, with a reference to the community or communities that created it, in the register of traditional knowledge established and kept by the Industrial Property Director;

The procedure for registering traditional knowledge and the grant of the corresponding certificate shall not be subject to the payment of any fee.

2. The description set out in the previous paragraph must be made in such a way that it is reasonably possible for a third party to reproduce or use the traditional knowledge described and to obtain results identical or similar to those obtained by the communities which hold this traditional knowledge.

This description shall be made without prejudice to the provisions of Article 254.

If the traditional knowledge concerns or comprises living beings or parts thereof, the description may be replaced by the deposit of samples, in accordance with the regulations under this Law.

The registration of traditional knowledge and a certificate attesting to such registration shall be granted without the examination, by the Industrial Property Director, of the elements referred to in

Article 254.

Article 251: The registration of traditional knowledge may be revoked by the courts at any time at the request of the Industrial Property Director or a third party with a legitimate interest, if:

- the traditional knowledge registered has not been created by the community which the certificate designates as the owner; in the event that the traditional knowledge registered was created by another local community, the court may order the Industrial Property Director to transfer the title of ownership to this traditional knowledge to its true creator;
- the traditional knowledge registered has been disclosed to the public by some means, and has been commercially or industrially exploited in Burundi prior to the date on which registration was sought;
- the traditional knowledge registered has lost its value as a cultural identifier following its explicit abandonment, lack of persistent use or continued abuse by third parties, of which the holder of the traditional knowledge was aware.

Article 252: Any element of traditional knowledge protected under this Law may be registered separately and individually, in accordance with its technical characteristics, without prejudice to its holistic nature, that is, independent traditional knowledge, or as a whole, in its entirety, in a single registration combining, as the case may be, all of the elements of the knowledge.

The certificate of registration shall specify whether the registered traditional knowledge has been identified by the local community as independent traditional knowledge or as an inventory of traditional knowledge. In the latter case, the certificate shall contain a brief summary of the protected content of the inventory, in accordance with the regulations under this Law.

Article 253: Notice of the grant of a certificate of registration for traditional knowledge shall be published in the Official Journal of Burundi, without prejudice to the provisions of Article 254. Such notice shall include at least the following information:

1. A summary of the traditional knowledge registered, unless the local community seeking registration has opted for secrecy, as provided for in Article 254;
2. A reference to the community or communities that has/have created the traditional knowledge registered; such a reference must be accompanied by an indication of the geographical distribution of the community in question and the intrinsic characteristics which differentiate it;
3. The application and registration dates.

Article 254: When it files an application for registration of the traditional knowledge, the local community may inform the Industrial Property Director that it has opted to keep secret all or part of the elements for which it is seeking protection. The non-disclosed information shall not appear in the publication referred to in Article 253.

Protection of the non-disclosed traditional knowledge shall be limited to the repression of unfair competition, in accordance with the provisions of Title I of Part IV.

Article 255: In the event that the local community seeking registration has opted to register its traditional knowledge in the form of inventories, it may modify the registration in question at any moment, without having to request a new registration, so as to include in the initial registration

changes or improvements on the traditional knowledge registered. Should this be the case, the Industrial Property Director shall take note of the modification made to the registration and shall amend the certificate accordingly, noting the date on which the modification was entered.

Section 2. Customary practices

Article 256: Title and other rights in the traditional knowledge protected under this Part shall be collective in nature and shall be exercised by each local community in accordance with its customary practices. These customary practices shall also determine the exploitation of the traditional knowledge by the various members of the local communities.

Article 257: In the event that the customary practices establish special systems for legal representation of local communities, which may affect the management of the traditional knowledge, a description of said practices must be included in the description of the traditional knowledge that forms the subject matter of the registration.

Article 258: The means for distributing the profits arising from the exploitation of the traditional knowledge within each local community shall be established in accordance with the community's customary practices.

Article 259: In the event that several local communities which occupy the same territory have created and hold identical or similar elements of traditional knowledge, they may register these elements individually on behalf of each community. Each community concerned may also individually enforce its rights in these elements of traditional knowledge. Nevertheless, nothing shall prevent these communities from joining forces to exploit jointly the traditional knowledge they have in common.

Article 260: A local community which occupies both part of the territory of Burundi and part of the territory of a neighboring country may acquire rights in its traditional knowledge and enforce them in the territory of Burundi, in accordance with this Law.

If the community's traditional knowledge is also protected in the neighboring country, the registration and protection of such knowledge in the territory of Burundi shall not prevent this same community from acquiring rights in the same traditional knowledge and enforcing them in the neighboring country in question.

Section 3. Rights conferred by registration

Article 261: Local communities' collective rights in the traditional knowledge registered shall be of an economic and moral nature.

Article 262: With regard to the traditional knowledge protected under this Law, local communities shall enjoy the following exclusive rights:

- the right to prevent third parties from manufacturing, using, storing, offering for sale or selling this product, or from importing or exporting this product for these purposes without the holder's consent if the subject matter of the protection is a product;
- the right to prevent third parties from using the process to store, offer for sale or sell products obtained directly or indirectly via this process, or from importing or exporting such products for these purposes without the holder's consent, if the subject matter of the protection is a process;
- the right to prevent third parties who do not have the holder's consent from reproducing the species

or microorganism, and to prevent third parties from preparing the species or microorganism for purposes of its reproduction or propagation, offering it for sale, sale or any other form of commercialization, import and export, as well as possessing the species or microorganism for one or other of these purposes if the subject matter of the protection is a grown plant species, a domesticated animal species or a microorganism;

- the right to prevent third parties from manufacturing or reproducing, without the holder's consent, objects which are of a similar configuration in terms of forms, colors, materials and techniques and which display by and large the style and visual impression of the crafts of which they are characteristic if the subject matter of protection is a design or an object of a functional or esthetic nature, including a crafts element;
- the right to prohibit for third parties who do not have the holder's consent any type of use, in the language of origin or in any other language, consisting in affixing identical or similar signs to products, or to products related to services, or manufacturing labels, packaging or other materials which reproduce or contain these signs, for commercial purposes or for any other purpose, if the subject matter of protection is a name, symbol, emblem or other distinctive sign of a religious, spiritual, cultural or economic nature.

Article 263: The exclusive rights set out in Article 262 shall cover any commercial act and any other act likely to distort the spiritual and cultural identity of the community to which the registered traditional knowledge belongs.

Article 264: If a local community opts to keep secret part or all of the inventories of registered traditional knowledge, in accordance with Article 254, it shall be entitled to prevent third parties from disclosing or acquiring without its consent undisclosed traditional knowledge, in a manner contrary to honest business practices, provided that the local community to which the undisclosed registered traditional knowledge belongs has taken reasonable steps to keep it secret.

Article 265: The rights conferred on local communities under this Law shall be industrial property rights which are peculiar to these communities.

These rights may not be assigned, confiscated or transferred in any way.

Article 266: Any proceedings concerning the protection and application of rights in traditional knowledge must be instituted by the local communities in their own name, in accordance with the measures relating to representation and legal capacity that are established in civil law, in this Law and in the customary practices of the communities.

Article 267: The State shall have the right to assist local communities, without replacing their representative bodies, in defending their rights and legitimate interests, at all levels of the public administration and the judiciary, at the national, regional and international level. Such assistance may consist in particular in taking the initiative to draw up inventories of traditional knowledge with a view to its registration; encouraging local communities to form associations in order to obtain legal capacity; and of instituting, on its own initiative, procedures for registering traditional knowledge when emergency situations so warrant.

Article 268: Protection of registered traditional knowledge shall only expire when such knowledge has lost its values, i.e.

- because it is no longer used as a cultural identifier;
- because it has been deliberately and expressly abandoned;
- because of persistent failure to use or continued abuse by third parties of which the local community to which the knowledge belongs is aware.

Section 4. Practices and acts excluded from protection

Article 269: The following shall be excluded from the protection conferred by this Law:

- traditional practices of commercial or industrial exploitation of traditional knowledge which forms part of the traditions and culture of the local communities;
- Non-traditional practices of commercial or industrial exploitation of traditional knowledge prior to the date of the application for registration;
- Commercial acts that have already been performed.

Article 270: If the general interest of a significant share of the population of Burundi so warrants, the Minister responsible for trade, after hearing the local community to which the registered traditional knowledge concerned belongs, may authorize the scientific, commercial or industrial exploitation of one or more of the elements of this knowledge by a third party, provided that such exploitation does not distort the cultural identity of the local community in question or offend it and that the local community receives a fair share of any type of benefits arising from such scientific, commercial or industrial exploitation, in view of the circumstances at hand.

The scope and term of such authorization shall be limited for the specific purposes of public interest which warrant the authorization. Exploitation by the third party must cease once it is no longer justified by the public interest.

Section 5: Licensing contracts

Article 271: Local communities' collective rights in registered traditional knowledge shall include the right to sign exclusive or non-exclusive licensing contracts, subject to the provisions of Article 274.

Article 272: Licenses to exploit traditional knowledge are supposed to be granted on a fee-paying basis. They may give rise to different forms of payment local communities' collective rights in registered traditional knowledge shall include the right to sign exclusive or non-exclusive licensing contracts, subject to the provisions of Article 274.

Article 273: Local communities' collective rights in registered traditional knowledge shall include the right to give registered traditional knowledge as a guarantee, subject to the provisions of Article 274.

Article 274: Traditional knowledge which, owing to exploitation by a third party, has ceased to be a cultural identifier for the local community, such as crafts and signs with intrinsic sacred or religious value, may not form the subject matter of a licensing contract, even with the community's prior consent.

The signature of a licensing agreement or any other form of prior consent concerning the use of such traditional knowledge shall constitute misuse of the registered traditional knowledge. In such cases, the provisions of Article 268 shall apply.

Article 275: The State has a duty to help the local communities to negotiate and monitor licensing agreements involving traditional knowledge. All licensing agreements must be registered with the Industrial Property Director, failing which they shall be considered null and void.

Chapter III. Crafts

Section 1. Registration of crafts

Article 276: Designs and objects with an esthetic or functional configuration, including clothing, pottery and all other crafts which constitute indissociable elements of the culture, spirituality and traditions of local communities, may be registered, even if they have been commercialized prior to their registration, provided they retain the essential link with the culture and spirituality of the local community in question. Should this not be the case, the conditions set out in Articles 250 to 255 shall apply to crafts.

Article 277: In addition to the elements listed in Articles 249 to 255, applications to register crafts must contain a brief description of their use, the production methods and the choice, preparation and utilization of raw materials, as well as the general criteria which apply with regard to the esthetic or functional characteristics, with a view to characterizing the general style and overall impression of each series or type of product.

A general description of the history and development of the crafts in question must also be provided.

Article 278: Crafts shall be registered in a register separate from the one for traditional knowledge by the Industrial Property Director, at the request of the local community concerned.

Section 2. Protection of crafts

Article 279: In order to facilitate the protection of crafts, any article or product of a series or crafts type which existed before or which was created after registration may be added to the general registration at the request of the local community to which a registered series of articles or type of crafts belongs.

Article 280: The provisions of Articles 261 to 275 shall apply to crafts.

Exclusive rights in the registered crafts shall apply to the entirety of the crafts series or type which has been described and registered, in order to prevent third parties, without the holder's consent, from manufacturing, using, storing, selling, offering for sale, importing or exporting products likely to mislead the consumer, in any way whatsoever, as to the origin, creation or manufacturing of the crafts articles.

Section 3: Other measures for the protection of traditional knowledge and crafts

Article 281: All industrial property titles, in particular patents, marks, industrial designs or plant variety certificates, which have been granted in violation of rights in registered traditional knowledge, shall not be binding on third parties if the local community to which this traditional knowledge belongs has not given its consent.

Article 282: Any person may, in proceedings for the infringement of title to industrial property, raise as a defense or exception, the lack of prior consent or any other violations of the rights in protected traditional knowledge. In this case, the court shall hear the local community which holds the rights to the traditional knowledge that have been infringed. If the means is accepted, and if the local community in question agrees, the court shall order the infringer to pay the local community an amount which it shall set in accordance with the provisions of Articles 419 to 421.

Article 283: The industrial property titles referred to under this Title shall be binding on third parties as from the date of publication of the court order fixing the amount and arrangements for the compensation to be paid. They shall have no effect in relation to acts performed by unauthorized third parties prior to this date.

Article 284: Without prejudice to Articles 281 to 283, if an industrial property title concerns an object which consists in part or in full of protected traditional knowledge and the holders of the rights in this knowledge have not given their prior consent, they may ask the court for a proportional transfer of the title. If the court notes that the holders are entitled to full ownership of the industrial property title in question, they may, at their entire discretion, waive the title.

Article 285: Local communities may also protect elements of their traditional knowledge in a complementary or different fashion by means of other industrial property regimes, without prejudice to the rights and interests protected by this Section.

Article 286: The provisions of this Section shall apply to traditional knowledge that has been registered or protected in other countries if these countries grant protection that is identical or equivalent to the protection conferred by this Law on the traditional knowledge belonging to the local communities in Burundi.

Nevertheless, the provisions of this Article shall not apply to traditional knowledge that belongs to foreign communities that is not protected or ceases to be protected in the country of origin for any reason whatsoever, in particular on the grounds set out in Article 268.

PART THREE: DISTINCTIVE SIGNS

TITLE I. PRODUCT MARKS, SERVICE MARKS, COLLECTIVE MARKS, TRADE NAMES AND CERTIFICATION SIGNS

Chapter I: Acquisition of exclusive rights in a mark and its registration

Article 287: Exclusive rights in a mark shall be acquired via registration in accordance with the provisions of this Law.

Article 288: A mark may not be validly registered if:

- it does not make it possible to distinguish the products or services of a firm from those of other firms; the smell, taste or any other material characteristic of a product shall not be deemed to distinguish the product if they are the normal result of the ordinary composition of this product;
- it is contrary to public order or morality; nevertheless, the nature of the goods or services to which a mark is to apply may not in any case hinder the registration of the mark;
- it is likely to mislead the public or business circles, especially as to the geographical origin, nature or characteristics of the goods or services considered; the provisions of Articles 330 and 331 shall apply;
- it reproduces, imitates or contains among its elements coats of arms, flags or other emblems, the name, abbreviation, acronym, an official sign or seal of control and guarantee of a State or

intergovernmental organization established by an international convention, except by authorization of the competent authority of this State or this organization;

- it is identical or similar to such an extent that it leads to confusion with a trademark or name that is widely known in Burundi for identical or similar goods of another firm; or if it constitutes a translation of this trademark or name, or it is widely known and registered in Burundi for goods or services which are not identical or similar to those for which the registration of the mark is sought, provided that the use of this mark for these goods or services indicates a link between said goods or services and the holder of the registered mark and that this use is likely to harm the interests of the holder of the registered mark;

- it is identical or similar to a mark belonging to another holder and which is already registered, or where the date of filing or priority is earlier, for identical or similar goods or services or for goods or services which are very close, or it so closely resembles such a mark that there is a risk of deception or confusion;

- the application for registration was filed in bad faith; or the sign, if registered, would be used for purposes which constitute unfair competition.

Article 289: Notwithstanding the provisions of Article 288, the Industrial Property Director or the court may decide that a mark has acquired a secondary or distinctive character owing to continuous use. Should this be the case, it may be registered.

Article 290: In case of use by a fair competitor or in any other specific circumstance which, in the opinion of the court or that of the Industrial Property Director, justifies such a solution, the court or Industrial Property Director may authorize the registration of marks which are identical or which closely resemble each other for the same goods or services or for the description of goods or services by several owners, subject to any conditions or limitations which the court or the Industrial Property Director, as the case may be, may impose if it/he deems it appropriate.

Article 291: In the event that several applicants request registration as owners of marks which are identical or which closely resemble each other for goods or services which are identical, similar or related or for the description of goods or services, the Director may reject the registration until their rights have been determined by the court.

Article 292: Words or expressions that are commonly used by consumers and technical words or expressions from the field to which the goods and services belong shall be deemed not to be of distinctive nature, as provided for in Article 288.

Article 293: In determining whether a mark is well known, consideration shall be given to the degree of recognition of the mark in the sector in question, including the degree of recognition arising from the advertising made for the mark in accordance with the provisions of Article 288, paragraph 5.

There is a risk of confusion according to paragraph 6 of the same Article, in the case of use of an identical sign for identical goods or services.

Article 294: The prior user of a mark whose name does not appear in the register or who does not have an application pending under Article 288, paragraph 6, may lodge a statement of opposition to an application for registration of a similar or identical mark filed by a third party for similar or identical goods, in accordance with Articles 262 to 268 and with the provisions of the relevant regulations, provided that:

- he proves that he has used this mark in good faith for at least six months before the date of filing or,

as the case may be, the date of priority;

- he proves that he has acquired a clientele and that this clientele attaches a certain reputation to the mark;
- he files an application to register his own mark before lodging a statement of opposition with the Industrial Property Director.

Article 295: The registration by a third party of a mark similar or identical to a mark that has lapsed, under Articles 300 and 301, or which has been abandoned, under Article 311, for similar or identical goods or services, shall only be admitted after the expiration of a period of at least two years as from the date on which the notice of the end of protection for the mark was published in the Official Journal of Burundi. This Article shall not apply to a party who holds a license for a mark that has been granted under license and abandoned under Article 311.

Chapter II: Applications for registration

Article 296: Applications for the registration of a mark must be filed with the Industrial Property Director and must contain a request, a reproduction of the mark and the list of goods and services for which the registration of the mark is sought, listed in the order of the relevant classes of the international classification.

The filing of the application shall be subject to payment of the prescribed fee.

Article 297: In the event that the mark consists of a sign that is not visually perceptible, the application must contain a graphic representation of the mark. This reproduction must be specific and may not consist of a mere general description of the sign.

Article 298: The application may contain a statement claiming priority for a prior national or regional application introduced by the applicant or his successor in title. Should this be the case, the Industrial Property Director shall require the applicant to provide, within the period set, a true copy of the prior application certified by the registration service with which it has been filed.

The term of priority shall be six months.

The filing of the application in Burundi before the expiration of the period mentioned may not be invalidated by acts which occur in the meantime, inter alia by another filing or by the use of the mark, and such acts shall not give rise to any right for a third party or any personal possession.

In the event that the Industrial Property Director notes that the conditions set out in this Article and in the relevant provisions of the regulations have not been met, said statement shall be deemed not to have been submitted.

Article 299: The applicant may, at any time, withdraw his application or reduce the list of goods or services covered in the application.

Chapter III: Examination, opposition, registration of marks and protection in Burundi for marks registered in other member countries of the Paris Union or the World Trade Organization (WTO)

Section 1: Examination, opposition, registration of marks

Article 300: The Industrial Property Director shall verify whether the application meets the conditions set out in Articles 288 and 289 and in the relevant provisions of the regulations.

In the event that the Director notes that the conditions have been met, he shall immediately publish the application in the prescribed fashion.

Article 301: Any interested person may, within a period of 30 days and in the prescribed forms, lodge an opposition to the registration with the Industrial Property Director on the grounds that one or more of the conditions set out in Article 288 and in the relevant provisions of the regulations has not been met.

Article 302: The Industrial Property Director shall publish a notice of opposition in the Official Journal of Burundi. Within a period of 90 days and in the prescribed forms, the applicant shall write to the Director, explaining the grounds on which his request is based. Failing this, he shall be deemed to have abandoned his request.

Article 303: If the applicant sends a reply, the Industrial Property Director shall forward a copy to the opposing party. After hearing the parties and carefully examining the case, he shall decide whether there are grounds to proceed with the registration of the mark.

Article 304: In the event that the Industrial Property Director notes that the conditions referred to in Article 300 to 303 have been met, he shall register the mark, publish a notice of registration, and grant a certificate of registration to the applicant. Should this not be the case, he shall reject the application.

Section 2: Protection of marks registered in other member countries of the Paris Union

Article 305: Any mark which has been duly registered in a territory or country of origin which is a member of the Paris Union or the World Trade Organization and which maintains reciprocal relations with Burundi in this respect shall be admitted for filing and protected in Burundi, subject to the reservations indicated in this Article. The Industrial Property Director, before proceeding to the final registration, shall require the production of a certificate of registration from the country of origin issued by the competent authority. No authentication shall be required for such certificates.

Article 306: The following shall be considered as the country of origin:

- the Paris Union country or WTO Member State in which the applicant has an effective industrial or commercial establishment;
- the country in which he has his domicile, if the applicant does not have such an establishment in a Paris Union country or on the territory of a WTO Member State;
- The country of his nationality, if the applicant does not have a domicile in a Paris Union country or on the territory of a WTO Member State but is a national of a Paris Union country or a WTO Member State.

Article 307: The marks covered by this Section may only be rejected for registration or invalidated in the following cases:

- if they are likely to infringe rights acquired by third parties in Burundi;
- if they do not have any distinctive character or are composed exclusively of signs or indications which can be used in business to designate the type, quality, quantity, destination, value or place of origin of the products or the time of production, or which have become common in everyday language or in the

bona fide and established practices of the trade in the country where protection is sought;
- if they are contrary to public order or morality, in particular when they are of such a nature as to deceive the public; nevertheless, a mark may not be considered contrary to public order solely because it is not in compliance with any provision of this part, unless this provision itself concerns public order.

These provisions shall be without prejudice to the application of those relating to protection against unfair competition.

Article 308: The Industrial Property Director may not reject the registration of a mark under this Section solely on the ground that it only differs from the mark protected in the country of origin in terms of elements which do not alter the distinctive character and leave its identity intact, in the form in which the mark was registered in said country.

Article 309: No one may benefit from the provisions of this Section if the mark for which he claims protection is not registered in the country of origin.

Due account shall be taken of any de facto circumstances, in particular the term of use of the mark, in evaluating whether the mark is eligible for protection.

Article 310: The benefit of the priority shall remain for filings of marks made within the period of six months, even when registration in the country of origin is only made after the expiration of this period.

Chapter IV: Rights conferred by registration, term and renewal

Section 1: Rights conferred by registration

Article 311: Without prejudice to the provisions of Articles 304 and 305, holders of registered marks shall have the exclusive right to prevent any third party from making use, in the course of commercial operations, of identical or similar signs for goods or services that are identical or similar to those for which the mark has been registered, if such use would lead to confusion.

The provisions of this Article shall not cover the use by a third party of the registered mark for information purposes, such as sales promotion or comparative advertising, provided that such use is not of such a nature as to deceive the public or does not constitute unfair competition, under Title I of Part IV.

Article 312: Holders of a registered mark may, in addition to the rights, remedies or actions to which they are entitled, institute judicial proceedings against any party who infringes the mark by using it without their consent or who performs acts likely to constitute infringement.

This right shall cover the use of a sign similar to the registered mark and its use in relation to goods and services similar to those for which the mark has been registered, where this may lead to confusion.

Section 2: Limitations on rights conferred

Article 313: The rights conferred by the registration of a mark shall not cover acts relating to articles placed on sale in Burundi or in any other country by the holder of the registration or with his consent. Should this be the case, these rights shall be deemed to be exhausted.

Article 314: Without prejudice to the provisions of Article 313, the Minister responsible for trade may, on his own initiative or at the request of any interested party, declare that the rights in the mark have been exhausted and authorize third parties to import the goods identified by a mark which is registered or otherwise protected or bears such a mark from another territory, if such goods are not available on the territory of Burundi or are available in insufficient quality and quantity to meet local demand, or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

- the goods have been commercialized on the territory of Burundi or that of another country from which they have been imported by the holder of the mark or with his consent;
- a similar or identical mark has been registered or otherwise protected on the territory from which the product has been imported and it belongs to the holder of the mark registered or otherwise protected in Burundi or to a person over whom this holder has authority.

Article 315: If the importer fails to meet the goals which justified the Minister's decision to consider the rights in the mark exhausted, the Minister shall revoke the authorization on his own initiative or at the request of the owner of the mark.

Article 316: In the event that the conditions underlying the Minister's decision to consider the rights in the mark exhausted no longer obtain, the Minister may, on his own initiative or at the request of the owner of the mark, revoke the authorization without prejudice to the legitimate interests of the importer, in particular the right to clear his stock.

Article 317: The Minister responsible for public health may take steps to limit the use of marks in order to facilitate the prescription of pharmaceutical products and generic medical devices and access to such products and devices in order to dissuade the public from consuming products deemed harmful to health, provided these steps do not further unjustifiably reduce the capacity of the mark in question to distinguish the products of one firm from those of another.

Section 3: Term and renewal of marks

Article 318: Registrations shall have effect for 10 years as from the date on which the application for registration was filed.

Article 319: Registrations of a mark may, at the holder's request, be renewed for consecutive ten-year periods, subject to payment of the prescribed renewal fee.

In the case of late payment, a six-month period shall be granted for the payment of the renewal fee, increased by a prescribed surcharge for late payment. If payment is not made, the registered mark shall become invalid. Should this be the case, it may not be restored.

Chapter V: Revocation and removal owing to failure to use

Section 1: Revocation of marks

Article 320: Any interested person may request the court to revoke the registration of a mark.

Requests for revocation may be filed within a period of five years starting from the date of grant of the certificate of registration, except if the registration was obtained in bad faith or in violation of Article 288, paragraph 7, in which case there shall be no time limit for lodging such a request.

Article 321: The court shall revoke the registration if the applicant can prove that one of the conditions provided for in Articles 288 to 295 has not been met, or if the provisions of Articles 254 and 355 have not been respected.

Article 322: Revocation of the registration of a mark shall be deemed to take effect from the date of registration. It must be entered and give rise to a notice published in the regulations.

Section 2: Removal owing to failure to use

Article 323: Any interested person may ask the court to order the Industrial Property Director to remove a mark from the register, for any goods or services for which it has been registered, on the grounds that the mark, after its registration and up until one month before the submission of the request, has not been used either by the holder of the registration or by a licensee for an uninterrupted period of three years.

Article 324: The mark shall not be removed if it is proved that specific circumstances were opposed to its use, such as import restrictions or other barriers to commercialization imposed by the authorities or the market, and that there was no intention not to use it or to abandon it for the goods or services in question.

Chapter VI: Special provisions

Section 1: Collective marks

Article 325: Subject to the provisions of Articles 326 and 327, Articles 287 to 295 shall apply to collective marks.

Article 326: Anyone filing an application for registration of a collective mark shall not be required to own an industrial or commercial establishment on the territory of a member country of the Paris Union or a Member State of the World Trade Organization.

Article 327: Applications for registration of a collective mark must indicate that such a mark is involved and must be accompanied by a copy of the regulations stipulating the conditions for its use, if such regulations exist.

Any modification to these regulations must be communicated to the Industrial Property Director.

Section 2: Certification signs

Article 328: Applications for registration of a certification sign must indicate that such a mark is involved and must be accompanied by a copy of the regulations stipulating the conditions for use of this sign.

This provision shall apply to all certification signs, including those which belong to public bodies.

Article 329: Holders of a certification sign may not use this sign to identify or certify goods which are not concerned.

Article 330: In addition to the cases provided for in Article 320, the court shall revoke the registration of a certification sign if the person requesting revocation proves that the holder of the certification sign uses this sign, or allows its use, in violation of the regulations referred to in Article 328, or allows it to be used in a way which is likely to deceive business circles or the public as to the source or any other common characteristic of the goods or services in question.

Any interested person may file a request for revocation of a certification sign, in particular the Industrial Property Director, the holder's competitors, the producers of the certified goods or services, associations and organizations which legitimately represent consumers as well as the Public Prosecutor's Office.

Article 331: Anyone who has proved that he satisfies the technical standards and other conditions of the regulations referred to in Article 328 may not be refused the right to use the certification sign in the conditions fixed by these regulations.

Section 3: Trade names

Article 332: A name or designation which, by its nature or the use that can be made of it, is contrary to public order or morality and which, in particular, is likely to deceive business circles or the public as to the nature of the firm designated by this name, may not be used as a trade name.

Article 333: Notwithstanding any legislative or regulatory provisions specifying the obligation to register trade names, these names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

Any subsequent use of the trade name by a third party, be it in the form of a trade name for a mark or collective mark, as well as any use of a similar trade name or a similar mark likely to mislead the public, shall be considered unlawful.

Section 4: Special provisions relating to licenses and assignments of marks

Article 334: Any licensing contract relating to a mark which has been registered or for which registration is sought must provide that the licensor shall exercise effective control over the quality of the licensee's goods or services for which the mark is used, if such control is appropriate or necessary.

If the licensing contract does not provide for such quality control or if such quality control is not effectively exercised, said contract shall not be valid and the court may declare the mark to be abandoned by its holder.

Abandonment may be invoked as a means of defense in proceedings for infringement of a mark.

Article 335: Abandonment of a mark shall be deemed to become effective starting from the date on which the licensing contract took effect. It must be entered and give rise to a notice published in the Official Journal of Burundi in accordance with the regulations.

Article 336: Registrations of a collective mark or applications for registration of such a mark may not be the subject of a licensing contract.

Article 337: The holder of a registered mark may assign such mark without there being any transfer of the firm to which the mark belongs.

This provision shall not apply to certification signs.

Article 338: Subject to the provisions of Articles 331, 334, 335, 336 and 337, the provisions of Articles 287 to 324 shall apply to certification signs.

TITLE II: GEOGRAPHICAL INDICATIONS

Chapter I: Applications for registration

Section 1: Filing of applications

Article 339: Applications for registration of a geographical indication shall be filed with the Industrial Property Director.

The following shall be entitled to file applications for registration:

1. Natural persons or legal entities as well as groups of such persons who are engaged in production in the geographical area indicated for the goods specified in the application;
2. Any competent authority.

Article 340: The Industrial Property Director may, on his own initiative or at the request of any person designated in Article 339, request, obtain and enforce the registration of geographical indications for goods whose producers have not officially formed an organization or association and may not therefore request, obtain and enforce the registration of these indications.

In such cases, the geographical indications shall be governed by the other provisions of this Law, except with regard to the entitlement to apply for their registration and their protection in Burundi and elsewhere.

The Industrial Property Director shall be the custodian of these geographical indications until he or the court has established that the persons or entities entitled to hold and enforce the rights in the geographical indication in question have organized themselves in accordance with the applicable laws or regulations.

Article 341: Applications must contain:

1. The name, address and nationality of the applicant, natural person or legal entity, as well as the capacity in which the applicant is seeking registration;
2. The geographical indication for which registration is sought;
3. The geographical area to which the geographical indication applies;
4. The goods for which the geographical indication applies;
5. The quality, reputation or other characteristic of the goods for which the geographical indication is used.

Applications for registration shall be subject to payment of the prescribed fee.

Section 2: Examination of applications for, opposition to and registration of geographical indications

Article 342: The Industrial Property Director shall examine the application and verify that it complies with the conditions set out in Articles 2, 339, 341 and 351, and with the relevant provisions of the regulations.

In the event that the Industrial Property Director notes that these conditions have been met, he shall have the application published in the Official Journal of Burundi.

Article 343: Any interested person or competent authority may, within the periods set and in the prescribed forms, lodge an opposition to the registration of a geographical indication with the Industrial Property Director, on the grounds that one or more of the conditions set out in Articles 2, 339, 341 and 351 has not been met.

Article 344: The Industrial Property Director shall publish a notice of opposition in the Official Journal of Burundi within a period of 90 days and in the prescribed forms.

The applicant must send the Industrial Property Director a reply setting out the grounds on which he bases his application.

Failing such a reply, he shall be deemed to have abandoned the application.

Article 345: If the applicant sends a reply, the Industrial Property Director shall forward a copy to the opposing party.

After hearing the parties and examining the merits of the case, he shall decide whether there are grounds to proceed with the registration of the geographical indication.

Article 346: In the event that the Industrial Property Director notes that the conditions set out in Articles 342 to 345 have been met, he shall register the geographical indication, publish a notice of registration and grant a certificate of registration to the applicant. Should this not be the case, he shall reject the application.

Section 3: Protection of geographical indications independently of registration

Article 347: The protection granted by this Law shall be:

1. applicable whether or not a geographical indication has been registered.

Nevertheless, in connection with any proceedings instituted under this Law, a registration made in accordance with Articles 342 to 346 of this Law shall be based on the assumption that the indication registered is a geographical indication;

2. enforceable against any geographical indication which, even though it is literally exact as for the territory, region or locality from which the goods come, wrongly leads the public to think that the goods are from another territory.

Section 4: Homonymous geographical indications for wines

Article 348: In the case of homonymous geographical indications for wines, protection shall be granted for each indication, subject to the provisions of Article 323.

If parallel use of these indications is authorized, the Industrial Property Director shall determine the practical arrangements, specifying that the homonymous geographical indications in question are differentiated from each other, in view of the need to guarantee fair treatment of the producers concerned and to ensure that consumers are not misled.

Chapter II: Rights conferred by registration of geographical indications

Article 349: Only producers engaged in production in the geographical area indicated in the register shall be entitled to use, for commercial purposes, a registered geographical indication for the goods indicated in the register, provided that such goods possess the quality, reputation or other characteristics indicated in the register.

Article 350: Subject to the provisions of Part IV relating to the fundamental norms for protection of industrial property rights, any interested person or group of producers or consumers may institute proceedings with the court to prevent:

1. the use, in the designation or presentation of goods, of any means indicating or suggesting that the goods in question come from a geographical region other than the true place of origin in a way which misleads the public as to the geographical origin of the goods;
2. any use which constitutes an act of unfair competition within the meaning of this Law;
3. the use of a geographical indication to identify goods which do not come from the place designated by the geographical indication in question, or are used to identify spirits for those which are not from the place designated by that indication even in cases where the true origin of the goods is indicated or in those where the geographical indication is used in translation or is accompanied by expressions such as kind, type, style, imitation or others.

Chapter III: Geographical indications excluded from protection

Article 351: The following shall not be protected as geographical indications:

1. Indications which do not fit the definition given in Article 2;
2. Indications which are contrary to public order or morality;
3. Geographical indications which are not protected or which are no longer protected in their country of origin, or which have fallen into disuse in this country;
4. Indications for goods which are identical to the term commonly used in current language as the common name for these goods in Burundi.

Chapter IV: Revocation or rectification of registration for geographical indications and marks which mislead or clash with a geographical indication

Section 1: Revocation or rectification of registration

Article 352: Any interested person or competent authority may request the court to order:

1. revocation of the registration of a geographical indication on the grounds that it does not meet the criteria for protection under the provisions of Articles 2, 339, 341 and 351;
2. modification of the registration of a geographical indication on the grounds that the geographical area indicated in the register does not correspond to the geographical indication, or that the indication for the goods for which the geographical indication is used or the indication of the quality, reputation or other characteristics of these goods is lacking or insufficient.

Article 353: In any proceedings instituted under this Chapter, notification of the petition for revocation or modification must be sent to the person who has filed the application for registration of the geographical indication or his successor in title.

It shall further be brought to the attention of all those who are entitled to use the geographical indication under Article 349, by means of publication in the Official Journal of Burundi.

The persons covered by this Article and any other interested party may, within a time limit set by the court and indicated in the foregoing notification, ask to intervene in the proceedings.

Section 2: Revocation or rectification of misleading marks and marks which clash with geographical indications for wines and spirits

Article 354: The court, at the request of an interested party or the Public Prosecutor's Office, shall refuse or revoke the registration of a mark which contains a geographical indication or is composed of such an indication, for goods that do not come from the territory indicated, if the use of this indication in the mark for such goods in Burundi is of such a nature as to mislead the public as to the true place of origin.

Article 355: Registration for wines of a mark which contains a geographical indication identifying wines or which is composed of such an indication, or registration for spirits of a mark which contains a geographical indication identifying the spirits or is composed of such an indication, shall be refused or invalidated by the Industrial Property Director or the court, on their own initiative or at the request of an interested party, with regard to wines or spirits which do not share this origin.

Article 356: No provision of this Law shall prevent the continuous and similar use in Burundi of a specific geographical indication from another country identifying wines or spirits, in relation to goods or services, by a national or a person domiciled in the territory of Burundi, who has used said geographical indication continuously for identical or related goods or services in the territory of Burundi, either for at least 10 years prior to April 15, 1994, or in good faith prior to this date.

Article 357: If a mark has been filed or registered in good faith, or in cases where the rights in a mark have been acquired by use in good faith prior to January 1, 2006; or before the geographical indication is protected in its country of origin, this Law shall not prejudice the admissibility or validity of the registration of this mark, or the right to make use thereof, on the grounds that this mark is identical or similar to a geographical indication.

Article 358: This Law shall not apply either to a geographical indication from any country whatsoever for goods or services whose indication is identical to the usual term used in current language as a common name for these goods or services in Burundi, or to a geographical indication from any other country for grapevine products whose relevant indication is identical to the usual name for a variety of grape existing in Burundi as of January 1, 1995.

This Law shall not prejudice in any way the right of any person to use, in the course of commercial operations, his name or that of his predecessor in trade, except if this name is used in such a way as to mislead the public.

Article 359: Any request for compensation made under this Law in relation to the use or registration of a mark must be submitted within five years after the prejudicial use of the protected indication is known in Burundi or after the date of registration of the mark in Burundi, provided that the mark was published on this date, if it is prior to the date on which the prejudicial use was known in Burundi, and provided that the geographical indication has not been used or registered in bad faith.

PART IV: FUNDAMENTAL NORMS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

TITLE I: PROTECTION AGAINST UNFAIR COMPETITION

Chapter I: General principles

Article 360: In addition to the acts and practices covered in Articles 363 to 382, any act or practice which, in the exercise of industrial or commercial activities, is contrary to honest practices, shall constitute an act of unfair competition.

The following shall constitute acts or practices contrary to honest practices within the meaning defined by this Law: breach of contract; breach of trust and incitation to commit one of the two foregoing acts as well as the acquisition of information not disclosed by a third party who was aware that such acquisition entailed this kind of use or whose ignorance in this regard arose from gross negligence.

The following shall also constitute an act or practice contrary to honest practices: any violation of a legal obligation in general with a view to obtaining unlawful advantages over competitors or which lead to such advantages being obtained, as for example a violation of legislation on the environment or work.

Article 361: Any natural person or legal entity who/which has been harmed or is likely to be harmed by an act of unfair competition shall enjoy the legal remedies referred to in Title II of this Part.

Article 362: The provisions of this Title shall apply independently and in addition to any legislative provision protecting inventions, utility models, industrial designs, layout designs, distinctive signs, literary and artistic works and other intellectual property subject matter.

Chapter II: Acts of unfair competition

Section 1: Confusion with another's firm or its activities

Article 363: An act of unfair competition shall be defined as any act or practice which, in the course of industrial or commercial activities, creates or is likely to create confusion with another's firm or its activities, in particular with the goods or services offered by this firm.

This confusion may relate in particular to:

- a mark registered or not;
- a trade name;
- a distinctive corporate sign other than a mark or trade name;

- a product's external appearance;
- the presentation of goods or services;
- a famous person or well-known fictional character

Section 2: Infringement of the image or reputation of others in the course of industrial or commercial activities

Article 364: Any act or practice which, in the course of industrial or commercial activities, harms or is capable of harming the image or reputation of another's firm, shall constitute an act of unfair competition, whether or not this act or practice creates confusion.

Article 365: The harm to another's image or reputation may arise in particular from the weakening of the image or reputation attached to:

- a mark registered or not;
- a trade name;
- a distinctive corporate sign other than a mark or common name;
- a product's external appearance;
- the presentation of goods or services;
- a famous person or well-known fictional character.

Article 366: The lessening of the distinctive nature or advertising value of a mark, trade name or any other distinctive corporate sign, a product's external appearance or the presentation of goods or services, or of a famous person or well-known fictional character, shall constitute a weakening of the image or reputation.

Section 3: Misleading the public

Article 367: Any act or practice which, in the course of industrial or commercial activities, misleads or is likely to mislead the public with regard to a firm or its activities, in particular the goods or services offered by this firm, shall constitute an act of unfair competition.

Article 368: The public may be misled by advertising or promotional activities, particularly with regard to the following elements:

- the manufacturing process for goods;
- the suitability of goods or services for a specific use;
- the quality, quantity or other characteristic of goods or services;
- the geographical origin of goods or services;
- the conditions on which goods or services are offered or supplied;
- the price of goods or services or the mode of calculation.

Section 4: Disparagement of others' firms and their activities

Article 369: Any false or abusive allegation which, in the course of industrial or commercial activities, discredits or is likely to discredit another's firm or its activities, in particular the goods or services offered by this firm, shall constitute an act of unfair competition.

Article 370: Disparagement may arise from advertising or promotion and concern, in particular, the following actions:

- the manufacturing process for goods;

- the suitability of goods or services for a specific use;
- the quality, quantity or other characteristic of goods or services;
- the conditions on which goods or services are offered or supplied;
- the price of goods or services or the mode of calculation.

Section 5: Unfair competition concerning confidential information

Article 371: Any act or practice which, in the course of industrial or commercial activities, entails the disclosure, acquisition or use by third parties of confidential information without the consent of the person who is legally entitled to dispose of such information, who is the legitimate holder and in a way contrary to honest business practices, shall constitute an act of unfair competition.

Article 372: The disclosure, acquisition or use of confidential information by third parties without the consent of the legitimate holder may, in particular, arise from the following acts:

- industrial or commercial espionage;
- breach of contract;
- breach of trust;
- incitation to commit industrial or commercial espionage, breach of contract or breach of trust;
- acquisition of confidential information by a third party who was aware that this acquisition entailed one of the foregoing acts or whose ignorance in this regard stemmed from gross negligence.

Article 373: Within the meaning of this Section, information shall be considered confidential if:

- it is not, in its entirety or in the exact configuration and assembly of its elements, widely known to persons belonging to circles which generally deal with the type of information in question or is not easily available to them;
- it has commercial value because it is confidential;
- its legitimate holder has taken reasonable steps, given the circumstances, to keep it confidential.

Article 374: Any act or practice which, in the course of industrial or commercial activities, constitutes or entails the following, shall be deemed an act of unfair competition:

- unfair exploitation in trade of confidential data resulting from trials or other confidential data, whose establishment requires considerable effort and which have been communicated to a competent authority with a view to obtaining authorization to commercialize pharmaceutical products or agrochemical products which involve new chemical entities;
- disclosure of such data, unless it is necessary to protect the public and unless measures have been taken to guarantee that the data have been protected against unfair exploitation in trade.

This Article shall apply until the first holder no longer controls the undisclosed data and they have been made available to the public anywhere in the world.

Article 375: It shall be prohibited for any person other than the one who has communicated undisclosed data resulting from trials or other data, whose establishment requires considerable effort, to rely on or mention such data in a request for authorization for commercialization filed by a third party, in the case at hand the first holder, within a reasonable period following the communication of the results of these trials or data.

This period must be set by the competent authority for each good whose commercialization has been approved, in view of the nature of the data as well as the efforts made by the first holder and the costs of conducting trials for each good.

Article 376: The period referred to in Article 375 must be a maximum of five years for all goods, starting from the date of approval.

The authority responsible for approving the commercialization of the goods shall set the term of protection for each good, in view of the nature of the data and the efforts made to finalize these data.

When it evaluates these efforts, the authority shall take due account of all aspects, notably the work and time needed to finalize the data in support of the first registration of the product in all countries and territories which have acceded to the Paris Convention or are members of WTO or when reciprocal treatment is recognized for citizens and residents of Burundi in any other country.

Article 377: If the applicant pays the first holder fair compensation, the amount of which is approved by the subsequent applicant and the first holder or, failing agreement, by the authority responsible for issuing the marketing approval, the competent authority may, during the period mentioned in Article 376, rely on undisclosed data resulting from trials and other undisclosed data communicated by the first holder with a view to the approval of the subsequent application in the following cases:

- if obtaining these undisclosed data resulting from trials or other data has caused suffering in human beings or animals;
- in cases of extreme urgency;
- if the goods concerning the undisclosed protected data resulting from trials or other data have not been commercialized in Burundi within a reasonable period after such commercialization has been approved by Burundi;
- if the undisclosed protected data resulting from trials or from other data are essential for the marketing approval of a product subject to a compulsory license, provided that the fair compensation arising from the compulsory license also takes due account of the economic value of the undisclosed data resulting from trials or from other data on the basis of which the authority grants the marketing approval for the product manufactured under license.

Article 378: The grant of marketing approval by the competent authority for goods whose commercialization depends on the approval referred to in Article 377 shall not take into consideration the existence or validity of the intellectual property rights in the goods concerned and must not be invoked as a personal defense, or in the form of immunity from prosecution following infringement of an intellectual property right.

Article 379: The provisions of Article 375 shall not prohibit a subsequent applicant from relying on data resulting from trials or on other data communicated by a prior applicant, provided that they come from sources available to the public, regardless of whether the prior applicant has given his consent.

In this case, the trials and data communicated by the subsequent applicant must meet the necessary legal conditions for obtaining marketing approval.

This provision shall not apply to the data obtained by the subsequent applicant further to an act deemed unfair in Burundi.

Article 380: Under Article 374, chemical entities shall be considered new if their marketing has not been approved or if they have not been marketed in another way in any territory within a period of 18 months starting from the date of the first grant of marketing approval or the first marketing anywhere in the world.

Undisclosed data resulting from trials or from other data on products whose main characteristic is to constitute a new indication, a new use, a new dosage or a new formulation, which do not contain a new chemical entity but which are nevertheless subject to marketing approval, must only be protected against disclosure.

Article 381: The provisions of this Section shall not apply to the undisclosed data resulting from trials or from other data concerning the following cases:

- if the use of these data is not unfair by nature or has no commercial character, particularly in the case of use by certain institutions such as universities or research centers which may be tasked by government authorities with verifying and testing the goods, even after marketing approval has been granted, provided that these authorities guarantee the confidential nature of the data;
- if the authorities responsible for granting the marketing approval rely on these data exclusively to anticipate the grant of marketing approval in Burundi, provided that the subsequent applicant undertakes not to market the good in Burundi prior to the expiration of the period provided for in Article 376;
- if the authorities responsible for issuing the marketing approval rely on these data exclusively to grant marketing approval for purposes of exporting the product, provided that the subsequent applicant undertakes not to try to market the product in Burundi prior to the expiration of the period provided for in Articles 375 to 380.

Article 382: Undisclosed data resulting from trials or other data on pharmaceutical products shall be protected in Burundi, after January 1, 2016.

This Article shall apply to applications for marketing approval which are being analyzed, filed on this date or subsequently.

TITLE II: PROCEEDINGS FOR INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS

Chapter I: Infringements of industrial property rights and remedial action

Section 1: Infringements of patents or utility models and remedial action

Article 383: Subject to Articles 57 to 59 and 78 to 102, any act covered by Article 54 which has been committed in Burundi by someone other than the patent holder, without said holder's consent, shall constitute an infringement of a patent or utility model.

Article 384: At the request of the holder of the patent or utility model or the holder of an exclusive license, a compulsory license or a non-exclusive license if the holder of the license has asked the holder of the patent to institute proceedings with a view to obtaining compensation and the patent holder has refused or failed to do so within 90 days, the court may issue an injunction to prevent the infringement or avert an imminent infringement and, if the author of the infringement has acted in full knowledge of the facts or with valid reasons to know what this act will entail, to grant damages or take any other corrective measures provided for in general legislation or in Chapter V of this Title.

Article 385: The corrective measures provided for in this Part may also apply, as the case may be, to the holder of a foreign patent which has been the subject of a compulsory license with a view to supplying the market in Burundi with pharmaceutical products, in accordance with the system introduced by the decision of August 30, 2003 by the WTO General Council to avoid the re-export or diversion of the goods in question or to remedy the situation.

In the event that the foreign patent was granted further to an application filed in the country where the compulsory license was granted after the entry into force of this Law or in which priority is claimed in

Burundi on the same date, only applications which are filed in accordance with Article 47 may qualify for the corrective measures provided for in this Title.

Article 386: Without prejudice to the payment of damages, the temporary or final injunctions covered by Article 405 may not be issued in the following cases:

1. after expiration of a four-year period starting from the date of filing of the patent application or three years starting from the date of grant of the patent, the applicant or the person with his consent fails to exploit the invention in a manner making it possible to meet market demand in terms of quantity, or has not begun serious preparations to this effect or do not actually intend to commence such exploitation; this period shall not apply if the invention is exploited in a manner that does not meet market demand in terms of quality;
2. the injunction causes serious harm to the public interest;
3. the patented goods or the goods manufactured according to a patented process are sold by the applicant or by a third party with the applicant's consent at a price deemed excessive in view of consumers' average purchasing power and the special nature of the need which the goods must meet, if there is no competing product on the market;
4. the patent was obtained in violation of the provisions of Articles 19 and 20;
should this be the case, the court shall reject the appeal; after verifying compliance with Articles 19 and 20, the patent holder may at any time institute proceedings for infringement of the patent or utility model; however, he may not be granted any corrective measures for an act performed by a third party before being in compliance with said Articles.

Article 387: The rights attached to a patent concerning a pharmaceutical process shall not be binding on third parties before January 1, 2016 if other processes for manufacturing pharmaceutical products which are not subject to exclusive rights are not available, as a result of which these patents, if they were binding, would indirectly lead to commercial exclusivity for the pharmaceutical products in question.

Section 2: Infringement of marks, collective marks or certification signs and corrective measures

Article 388: Subject to Article 313, any act covered by Article 311 which has been committed in Burundi by a person other than the owner of the mark without the owner's consent shall constitute an infringement of a registered mark, a registered collective mark, a registered certification sign or a well known unregistered mark.

Article 389: Any use of a sign which is identical to a well known mark or similar to such an extent that it creates confusion with a well known mark without the consent of the owner of said mark shall constitute an infringement of a registered well known mark, provided that the sign is used for:

- goods or services which are identical or similar to goods or services for which the well known mark has been registered;
- goods or services which are not identical or analogous to those for which the well known mark was registered, provided that the use of the sign in relation to these goods or services brings out a link between these goods or services and the owner of the well known mark, and that his interests could be harmed by this use.

Article 390: Any use of a sign which is identical to a well known mark or similar to the extent that it leads to confusion with a well known mark without the consent of the owner of said mark, provided that the sign is used for goods or services which are identical or similar to the goods or services to which the well known mark applies, shall constitute an infringement of an unregistered well known mark.

Article 391: At the request of the owner of a registered mark or the holder of an exclusive license or a non-exclusive license if the holder has asked the owner of the mark to institute proceedings to obtain compensation and the owner of the mark has refused or failed to do so within 90 days, the court may issue an injunction to prevent the infringement or avert an imminent infringement, grant damages or take any other corrective measure provided for by legislation or this Title.

Article 392: At the request of any competent authority or any interested person, group, association or trade union, including producers, manufacturers or merchants, the court may also order compensation for harm in the same manner if it is convinced that an infringement covered by Articles 311 to 319 has been or is about to be committed.

Article 393: The owner of an unregistered well known mark shall be entitled to obtain an injunction to prevent infringement or avert imminent infringement as well as adequate damages.

Section 3: Infringement of industrial designs and corrective measures

Article 394: Any act covered by Article 205, which has been committed by a person other than the owner of the industrial design, without the consent of said owner, shall constitute infringement of an industrial design registered in accordance with this Law.

Article 395: At the request of the owner of an industrial model or that of the holder of an exclusive license or non-exclusive license, if the holder has asked the owner to institute proceedings with a view to obtaining compensation and the owner has refused or failed to do so within a period of 90 days, the court may issue an injunction to prevent infringement or avert imminent infringement, grant damages or take any other corrective measure provided for by legislation or this Title.

Section 4: Infringements of geographical indications and corrective measures

Article 396: Any act covered by Article 349 or any use of a geographical indication by a person who is not authorized to use the geographical indication in accordance with this Law shall constitute infringement of a geographical indication protected under this Law.

Article 397: At the request of any interested person or any interested group of producers or consumers or any competent authority covered by Articles 339 to 341, the court may issue an injunction to prevent the illegal use of the geographical indication and grant damages or any other compensation provided for by legislation or this Title.

Section 5: Infringements of layout designs and corrective measures

Article 398: Any act covered by Article 238 which has been committed by a person other than the owner of the layout design, without said owner's consent, shall constitute infringement of a layout design or topography of an integrated circuit protected in accordance with this Law.

Article 399: At the request of the owner of a layout design or topography of an integrated circuit or that of the holder of an exclusive license, a compulsory license or a non-exclusive license, if the holder has asked the owner to institute proceedings to obtain compensation and the owner has refused or failed to do so within a period of 90 days, the court may issue an injunction to prevent infringement or

imminent infringement, grant damages or take any other corrective measure provided for by legislation or this Title.

Section 6: Infringements of traditional knowledge or crafts products and corrective measures

Article 400: The provisions of this Title shall apply to any infringement of rights in protected traditional knowledge or crafts products, subject to the provisions of Articles 261 to 275 and 280.

Section 7: Infringements of copyright and related rights and corrective measures

Article 401: The provisions of this Title shall apply to any infringement of copyright or a related right, subject to the provisions of the Copyright Law.

Chapter II: Common provisions

Section 1: Acts of unfair competition and corrective measures

Article 402: The provisions of this Title shall apply to prevent any act of unfair competition or to put an end to any act of unfair competition covered by the provisions of Articles 254, 347, 360 to 382 and 441 to 444.

Article 403: If an act covered by Articles 374 and 375 to 382 is considered by the court to be an act of unfair competition, the court shall order:

- the government authority to revoke the marketing approval;
- the competitor of the holder of the undisclosed information not to market or to stop marketing the products whose registration constitutes an act of unfair competition because such registration is based on the authorized use of protected undisclosed data resulting from trials or from other data;
- the government authority to pay adequate damages for the unauthorized disclosure of the data;
- the competitor of the holder of the undisclosed data to pay adequate damages for the marketing of the products whose registration constitutes an act of unfair competition.

Section 2: Time limits

Article 404: The civil proceedings provided for in Articles 383 to 401 may be instituted within a period of five years starting from the date on which the right holder learned of the infringement or was supposed to have learned of the infringement, except in the case of bad faith constituting infringement of a distinctive sign or for purposes of unfair competition; in the latter case, no time limit shall be applied for instituting proceedings.

Section 3: Plurality of corrective measures

Article 405: If the court establishes that there has been an infringement of an intellectual property right protected in accordance with this Law, it shall issue an injunction to the effect that the author of the infringement must cease his acts on a temporary or final basis and shall order the payment of damages or any other corrective measure in accordance with the Law.

Article 406: The competent authority shall be entitled to claim ownership of any patent application filed or any patent granted in a manner which does not comply with the provisions of Article 21 concerning genetic resources. Should this be the case, the competent authority shall request the Industrial Property Director to assign to it or to assign to any body or entity designated by it, part of the application or the resulting patent, which may in no event be less than 20 per cent of the value of the claimed invention.

Article 407: If non-compliance with the provisions of Article 21 concerning genetic resources raises keen public concerns or questions of morality and public order, the competent authority, if it has complete control over the application or the resulting patent, may withdraw the application or abandon the patent, so that the claimed invention falls within the public domain.

Chapter III: Provisional measures

Article 408: The court shall order, in accordance with the procedure provided for in the Code of Civil Procedure, rapid and effective provisional measures to prevent any infringement or illegal use covered in the Chapter One of this Title or to safeguard relevant evidence relating to the alleged infringement.

Article 409: If any delay is likely to cause irreparable damage to the right holder or if there is a clear risk that evidence may be destroyed, the court shall order provisional measures without giving the other party an opportunity to be heard, provided that the claimant has:

- supplied all reasonably available evidence so that the court is satisfied that he is the holder of the right and that his right has been infringed or that such infringement is imminent;
- supplied sufficient security or an equivalent guarantee with a view to protecting the defendant and preventing abuses.

Article 410: If provisional measures have been ordered without the other party having been given an opportunity to be heard, the court shall notify the parties at the latest after the enforcement of the measures.

Article 411: If provisional measures have been ordered in accordance with Articles 409 and 410, the defendant may file a request for review with the court within a period of two weeks starting from notification of the decision.

During the review proceedings, the court shall hear the parties and shall uphold, amend or reverse the decision within a reasonable period after notification of the decision.

Article 412: In the event that the claimant has not initiated proceedings leading to a decision on the merits within a period of 20 working days, starting from the notification of the decision ordering provisional measures or within another reasonable period fixed by the court in the decision it has handed down, the judge shall revoke the provisional measures at the defendant's request.

Article 413: In the event that the provisional measures have been revoked or if the court decides after an examination of the merits within the framework of the proceedings covered by Article 412 that there has not been infringement or danger of infringement, the court shall grant the defendant, at his request, appropriate compensation at the plaintiff's expense.

Article 414: The measures provided for in this Chapter aimed at safeguarding relevant evidence may also be taken before the pending registration has been finalized if the court deems it necessary. Should this be the case, the plaintiff must institute proceedings leading to a decision on the merits within a period of 20 working days, starting from the publication of the pending registration.

Chapter IV: Administration of evidence and burden of proof

Article 415: If a party has submitted sufficient evidence to substantiate his allegations and has specified the evidence in support of these allegations held by the opposing party, the court may order that party to produce such evidence, provided that the protection of confidential information is guaranteed.

Article 416: In cases where a party to proceedings, without good cause, denies access to necessary information, fails to provide such information within a reasonable period or obstructs proceedings underway to enforce a right, the court may rule on the basis of the information submitted, including the complaint of the injured party, provided that the parties are given an opportunity to make their case.

Article 417: In the event that the subject matter of the patent is a process for obtaining a product, the court may, in civil proceedings concerning the infringement of a patent holder's rights, order the respondent to prove that the process used to obtain an identical product is different from the patented process.

Any identical product manufactured without the patent holder's consent shall, unless proved otherwise, be considered as having been obtained via the patented process in one of the following cases:

- the product obtained via the patented process is new;
- there is a high probability that the identical product was obtained via the process and the patent holder has not been able to determine which process was in fact used.

Article 418: During the presentation of proof, the court which is hearing the matter in accordance with Article 417 shall take into consideration the legitimate interests of the presumed infringer by not disclosing either his manufacturing secrets or his trade secrets.

Chapter V: Damages and other corrective measures

Section 1: Damages

Article 419: If damages are granted in accordance with Articles 383 to 401, the court shall order the infringer to pay the sum to the right holder or his successors in title, provided that the infringer knew or is supposed to have known of the infringement.

Article 420: The court may order the infringer to pay damages for an infringement that has occurred:

- on or after the date on which the application for registration was made known to the public in the Official Journal of Burundi;
- on or after the date on which the applicant brought the content of his application to the attention of the presumed infringer;
- on or after the date on which the presumed infringer was informed of the content of the application.

Article 421: Applications to obtain the payment of damages from the court in accordance with Article 420 may only be filed after the grant of the industrial property title in question.

These provisions shall only apply to applications relating to industrial designs after January 1, 2016.

Article 422: The court shall order the party at whose request measures were taken and who has abused procedures for the enforcement of industrial property rights to provide to a party wrongfully enjoined or restrained appropriate compensation for the injury suffered because of such abuse.

Section 2: Other corrective measures

Article 423: Once it has been established that goods have infringed a right, the court shall order, in order to create an effective deterrent against infringements of rights and in view of the need to strike a

balance between the seriousness of the infringement and the damages as well as the legitimate interests of third parties, without compensation, that the goods be destroyed or that they be removed from commercial channels so as to avoid causing injury to the right holder.

The court may also order that the materials and instruments which were primarily used to create or manufacture the goods in question be removed from commercial channels without compensation, so as to minimize the risk of new infringements.

For counterfeit trademark goods, merely withdrawing the unlawfully affixed mark shall not be sufficient, barring exceptional circumstances, to allow the introduction of the goods into commercial channels.

Article 424: In the event that a person is found to be at fault with regard to Articles 383 to 401, the court shall order, in order to create an effective deterrent against subsequent infringements, the seizure, confiscation or destruction of the counterfeit articles and of all materials and instruments which were primarily used to commit the criminal offense.

Article 425: If it deems it necessary, the court may order the infringer to inform the right holder of the identity of the third parties who participated in the production and distribution of the goods or services involved, as well as of their distribution channels.

Article 426: Any decision handed down by a commercial court in proceedings for infringement of industrial property rights may be appealed.

TITLE III: BORDER MEASURES

Chapter I: Border measures taken by the customs administration

Section 1: Suspension of customs clearance procedures

Article 427: The customs administration may, at the right holder's request or on its own initiative, suspend customs clearance procedures and the release of goods for free circulation if there are serious indications that counterfeit trademark goods or pirated goods harming the industrial property right holder have been or are about to be imported.

Article 428: If the release for free circulation has been suspended ex officio, the customs administration shall notify the right holder accordingly and shall give him an opportunity to file an application for suspension of the release for free circulation and to provide security in accordance with Article 440, and shall inform him that, if the security is not provided within three working days starting from the receipt of notification, the goods will be released for free circulation.

Article 429: If the customs administration is requested by the right holder to take measures in accordance with Article 427, Articles 439 to 441 shall apply.

Article 430: If the customs administration has suspended the customs clearance procedure in accordance with Articles 427 to 429, it shall notify the importer and the right holder, if it is aware of his identity, of the presumed infringement and the suspension.

Article 431: Without prejudice to the protection of confidential information, the customs administration shall authorize the right holder and the importer to examine the goods for which customs clearance has been suspended and to take samples for purposes of examination, testing and

analysis with a view to supplying proof in support of their respective complaints.

Section 2: Information on the right holder and the release for circulation of goods

Article 432: If the customs clearance procedure for goods has been suspended by the customs administration in accordance with Articles 427 to 429:

- the customs administration may inform the right holder of the names and addresses of the importer, the consignor and the consignee as well as the quantity of the goods in question, provided that this measure is proportionate to the seriousness of the infringement;
- the owner, importer or consignee of the goods shall be entitled to have them released for free circulation against the posting of a sufficiently large bond to protect the right holder when the time limit set in Article 445 has expired without the court having granted provisional measures and provided that all of the conditions set for import have been met.

Article 433: Without prejudice to the protection of confidential information, the customs administration may also provide the right holder, at his request, with copies of documents concerning the goods in question or any other information or documents concerning prior imports of identical or analogous goods for which the importer, consignor and consignee are the same.

Article 434: The customs administration shall not be responsible for measures taken or to be taken in good faith with regard to the release for free circulation or the suspension of the release for free circulation of counterfeit or pirated goods or goods which infringe an intellectual property right, especially in case of failure to identify these goods or the accidental release for circulation of such goods.

The customs administration may require the right holder to provide all information which is relevant to the exercise of its powers in accordance with this Title.

Chapter II: Border measures ordered by the court

Section 1: Possibility of obtaining border measures

Article 435: If the conditions provided for by this Title have been met, the court may order border measures to prevent the import of goods infringing industrial property rights recognized by Burundi in one of the following forms:

- a mark, collective mark, certification sign or trade name;
- an industrial design;
- a geographical indication;
- traditional knowledge or a crafts product;
- copyright or a related right, protected in accordance with the Law on the Protection of Copyright and Related Rights in Burundi.

Article 436: Border measures may also be ordered to prevent the import of goods whose production or marketing in Burundi constitutes an act of unfair competition, in accordance with this Law.

Article 437: The holder of an industrial property right who has valid grounds for suspecting that goods infringing his rights may be imported, may file an application with the court asking it to order the customs administration to suspend the customs clearance procedure for these goods.

Section 2: Contents of the application

Article 438: Applications must be in writing and must be substantiated. They must be accompanied by:

- a description of serious indications attesting that the complainant is the holder of the intellectual property right;
- a description of serious indications attesting that his rights have been or are about to be infringed;
- a sufficiently detailed description of the allegedly infringing goods for ease of recognition;
- proof of payment of the prescribed fee.

Article 439: Complainants shall provide all information in their possession which enables the court to take a decision. Such information may include the following elements:

- the names and addresses of the importers or consignees of the goods which are presumed to infringe his industrial property rights;
- the sample or photograph of the goods which are presumed to infringe his rights or any other element enabling the customs administration to identify said goods;
- the name of the country or countries of origin or manufacture of the goods which are presumed to infringe his rights;
- the names and addresses of the persons or commercial entities who/which were involved in the manufacture and distribution of the goods which are presumed to infringe his rights;
- the mode of transport as well as the names and addresses of the carriers of the goods which are presumed to infringe his rights;
- the name of the port or ports through which the goods which are presumed to infringe his rights are imported into the territory of Burundi and presented to the customs administration;
- the scheduled date of import and presentation to the customs administration;
- the sample of the authentic goods manufactured by the right holder or with the consent of said holder.

Section 3: Security

Article 440: The court may require the right holder to post a bond or any other equivalent guarantee for:

- fulfilling all obligations towards third parties affected by the border measures once the border measures have ended further to an act or omission by the right holder or it transpires subsequently that the goods in question do not infringe an industrial property right;
- paying the costs of the storage of the goods by the customs administration;
- preventing abuses.

The security or equivalent guarantee must not unduly discourage recourse to the procedure for suspension of the release of goods for free circulation.

Section 4: Procedure for suspension of customs clearance and the free circulation of goods

Article 441: The decision of the court to suspend the release for free circulation of the goods which are presumed to infringe the rights shall be taken within the framework of the procedure covered in Article 408 and may be rendered, in accordance with Article 409, without giving the opposing party an opportunity to be heard.

In its decision, the court shall specify the time frame within which the customs administration must act.

Article 442: The court shall notify, without delay to the customs administration which is responsible for the measures to be taken with regard to the goods that are presumed to infringe a right, its decision granting the holder's request.

Article 443: The customs administration, on a decision by the court, shall suspend the procedures for customs clearance and the release for free circulation of the goods suspected of infringing the industrial property rights, in accordance with Articles 383 to 401.

Article 444: The court may order the complainant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury suffered through the wrongful detention of goods or the detention of the goods released for circulation further to a failure to institute the proceedings leading to a decision on the merits of the case in accordance with Article 445.

Section 5: Proceedings on the merits of the case

Article 445: If, within a period of 10 working days after the complainant has been notified of the suspension of the release for free circulation of the goods, no proceedings leading to a decision on the merits have been instituted by a party other than the defendant and the customs administration has decided to suspend the release for free circulation of the goods and has not been notified accordingly, the goods shall be released for circulation, provided that all other import-related conditions have been met.

The customs administration may, if it deems appropriate, extend the duration of the suspension by a maximum of 10 working days.

The court may extend this duration by the number of days it deems reasonable in the case in question.

Article 446: If the proceedings leading to a decision on the merits have been instituted, the court or the customs administration, depending on which of the two is the authority that decided to suspend the release for circulation of goods that are presumed to infringe an intellectual property right, shall review its decision, at the request of the defendant, with a view to deciding whether these measures must be amended, revoked or upheld.

Article 447: In the event that the suspension of the release for circulation of the goods is upheld in accordance with a provisional measure ordered by the court, the court shall set the duration of the extension of suspension. If no term is set, such extension must not exceed 20 working days.

Section 6: Destruction of goods

Article 448: If the conditions provided for in Article 423 have been met, the court shall order, without compensation, the destruction of the goods infringing a right or their exclusion from commercial channels in order to avoid any injury to the right holder.

Article 449: The following acts shall not be authorized:

- re-export of goods which infringe an industrial property right in their present state;
- mere withdrawal of the mark affixed to counterfeit goods without authorization, barring exceptional cases;
- submission of the goods to a different customs procedure.

Chapter III: Common provisions

Article 450: Goods which are not of a commercial nature and are contained in small quantities in the personal luggage of travelers or sent in small consignments may be excluded from the suspension of release for free circulation.

Article 451: The provisions of this Law concerning border measures shall not apply to goods in transit in the territory of Burundi.

Article 452: The injured party may lodge an appeal against any decision or measure taken by the customs administration with regard to the suspension of the release for free circulation of goods presumed to be counterfeit or pirated, or in relation to such suspension.

The appeal must be lodged within a period of 15 working days starting from notification of the decision.

TITLE IV: GENERAL PROVISIONS

Chapter I: Changes in ownership or assignment and licensing contracts

Article 453: Any change in ownership of a patent, utility model certificate, registration of an industrial design, registration of a layout design, registration of a mark, collective mark or certification sign, registration of a geographical indication, as well as any change in ownership of an application relating to one of these titles, must be notified in writing, at the request of the interested party, by the Industrial Property Director, and be entered and published, except in the case of an application for non-publication. Such a change shall not be binding on third parties prior to such entry.

Article 454: Any change in ownership of a trade name must be accompanied by the transfer of the firm or part of the firm identified by the name and must be notified in writing.

Article 455: Any change in ownership of the registration of a mark or collective mark shall be invalid if it is likely to deceive or create confusion, particularly with regard to the nature, source, manufacturing process, characteristics or suitability for the use for which they are intended, of the goods or services in relation to which the mark or the collective mark is meant to be used or is used.

Article 456: An excerpt from each licensing contract relating to a registered patent, utility model or industrial design, a registered layout design, a registered mark, or to an application for one of these titles, must be submitted to the Industrial Property Director, who shall enter it and publish a mention of such entry. The licensing contract shall only be binding on third parties once it has been entered.

Article 457: The Industrial Property Director may refuse to enter a contract for the transfer of ownership or a licensing contract if he notes that the contract concerning the right in question contains one or more abusive or anti-competitive clauses or which, in any way, limit trade or are likely to produce such an effect.

The Industrial Property Director shall hear the allegations of the parties to the contract at the request of one or both of the parties. The parties to the contract may submit relevant evidence.

One or both of the parties may appeal against the decision of the Industrial Property Director to the court within a period of 60 days starting from the date on which the parties were notified of the decision not to record the contract.

Article 458: In accordance with Article 457, any limitations imposed on the assignee or licensee which do not arise from the rights conferred by the registration of the right that is the subject of the license and which are not necessary for safeguarding this right shall be deemed to be abusive or anti-competitive.

Article 459: Without prejudice to the provisions of Article 458, the licensing contract may provide for the following limitations:

- the delimitation of the scope, geographical area and term of use;
- the preconditions for effective control of the quality of the goods and services, subject to the provisions of Article 56;
- the obligations for the licensee to refrain from any act which could harm the reputation of the right holder or the subject of this right.

Article 460: If the right which is the subject of the assignment or licensing contract is invalidated after the contract enters into force, it shall immediately cease to have legal effect. The parties may recover all or part of the payments made in connection with the contract or other advantages arising therefrom unless the party for whose benefit these payments were made or these advantages were granted has benefited in good faith from the contract and the invalidation neither prevents nor revokes these advantages.

Article 461: Procedures and penalties shall apply, in accordance with the Penal Code and the Code of Penal Procedure, for deliberate acts of counterfeit trademark or piracy infringing an intellectual right, which have been committed on a commercial scale.

The provisions of this Title shall apply to penal procedures, particularly with regard to the seizure, confiscation or destruction of the goods concerned and of all materials and instruments used to commit the offense.

Chapter II: The industrial property registration service

Section 1: Administrative organization

Article 462: A service for registration of industrial property is hereby set up within the Ministry responsible for trade and industry. Its organizational structure and the arrangements for its operation shall be determined by decree.

Article 463: The service for registration of industrial property shall be responsible for all functions relating to the procedure for granting patents and registering industrial designs, marks and collective marks, as well as administering the patents granted and the designs, marks and collective marks registered, in accordance with the provisions of this Law and the regulations.

Article 464: The service for registration of industrial property shall keep separate registers for patents, utility models, industrial designs, layout designs, marks, geographical indications, and traditional knowledge. Collective marks and certification signs shall be registered in a special section of the marks register.

Crafts products shall be registered in a special section of the register of traditional knowledge. All entries provided for under this Law shall be made in said registers.

Anyone may consult the registers and obtain excerpts therefrom subject to the conditions provided for in the regulations.

Article 465: Right holders may indicate ownership of the subject of protection in accordance with this Law by relying on commonly used signs, namely, the initials of each legal title surrounded by a circle, provided that these initials do not lead to confusion and are not erroneous. The traditional knowledge and the crafts products registered may be indicated by the initials “TK”, surrounded by a circle. Any use of these signs which leads to confusion or which is erroneous may be considered an act of unfair competition for the purposes of Part IV of this Law.

Article 466: The service for registration of industrial property shall publish in the Official Journal of Burundi all publications provided for by this Law.

The Industrial Property Director may publish administrative instructions concerning the procedures provided for by this Law and by the regulations as well as the other functions for the industrial property registration service.

Article 467: A special law shall fix the rates and arrangements for the fees for applications for the grant of a patent or the registration of an industrial design, a mark or collective mark, and other formalities provided for by this Law.

Article 468: The holder of an industrial property right whose usual residence or main establishment is located outside Burundi must be represented either by a legal advisor who resides and practices in Burundi, or by a natural person or legal entity with professional experience in the field of industrial property who/which resides and exercises his/its profession of legal consultant in Burundi.

Section 2: Correction of errors and extension of deadlines

Article 469: The Industrial Property Director may, subject to the provisions of the regulations, correct any translation or transcription error, any material error or oversight noted in an application or a document filed with the service for registration of industrial property, or in an entry made in accordance with this Law and the regulations.

Nevertheless, substantive errors may only be changed by the court within the framework of the procedure provided for this purpose.

“Substantive error” shall be defined as an error which, once it has been corrected, has an impact on the rights conferred.

Article 470: Unless stipulated otherwise in this Law, the Industrial Property Director may, once a request to this end has been addressed to him in writing and he is convinced that the circumstances so warrant, extend the time limit granted for performing an act or a step in accordance with the provisions of this Law and the regulations and the conditions he sets, by notifying his decision to the parties concerned.

The extension may be granted if the period set for performing the act or the step has expired.

Article 471: Before taking a step against a person in proceedings taking place before him under the discretionary powers conferred upon him by this Law, the Industrial Property Director shall give this party an opportunity to be heard.

Section 3: Jurisdiction of the court and appeals

Article 472: The court shall have jurisdiction in disputes concerning the application of this Law or regulatory measures as well as matters which must be submitted to it under this Law or the regulatory measures.

Article 473: Any decision taken by the Industrial Property Director in accordance with this Law, concerning in particular the grant of a patent, a utility model certificate, the registration an industrial design, a layout design, the registration of a mark, collective mark, certification sign or geographical indication, the registration of traditional knowledge or crafts products, or the rejection of an application for grant or registration of such title, may be appealed before the court by any interested person within 60 days following the date of the decision.

Article 474: Any decision taken by the Minister responsible for trade in accordance with this Law and concerning in particular the grant of a compulsory license under the decision relating to the compensation provided for in connection with a compulsory license, may be appealed before the court by any interested party within 60 days following the date of the decision.

PART V: TRANSITIONAL AND FINAL PROVISIONS

Chapter I: Transitional provisions

Article 475: Unless otherwise stipulated, the provisions of this Law shall apply to any applications pending on the date of their entry into force.

Acts performed by the Industrial Property Director which already have legal effect shall be maintained.

All decisions handed down by the court, final or provisional, which already have legal effect, shall be maintained.

Article 476: In the event that this Law broadens the scope of the rights or creates new rights, including the extension of periods of protection, entries in force shall benefit from such broadening or creation.

In the event that this Law reduces the scope of rights or abolishes rights, entries in force shall not be affected and shall continue to have legal effect with the exception of provisions relating to respect for intellectual property rights, which shall apply in accordance with Article 475.

Article 477: In the event this Law provides for new classification systems, entries in force shall only be reclassified at the time of their renewal, as the case may be. The procedures and fees applicable to the reclassification of entries in force shall be governed by the texts in force.

Chapter II: Final provisions

Article 478: The provisions of the international industrial property treaties to which Burundi is a party shall apply to the matters governed by this Law, and shall prevail in the event of conflict with the provisions of this Law.

Article 479: Any prior provisions contrary to this Law are hereby repealed, more particularly:

- The Patent Law of August 20, 1964;
- The Law on Factory and Trademarks of August 20, 1964;
- The Law on Industrial Designs, of August 20, 1964;

- Decree-Law No. 1/169 of July 1, 1968 amending the Law on Factory and Trademarks of August 20, 1964;
- Decree-Law No. 1/170 of July 1, 1968 amending the Patent Law of August 20, 1964;
- Decree-Law No. 1/171 of July 1, 1968 amending the Law on Industrial Designs of August 20, 1964.

Article 480: This Law shall enter into force on the day of its enactment.

Comparison of Burundi Industrial Property Law with common provisions under the Nagoya Protocol and WIPO draft agreements

This is generalised IP instrument so many of its provisions are not relevant. To the extent that the provisions are relevant they deal in depth with some issues but omit others. Deals with TK but not genetic resources

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	<p>Article 1: The purpose of this Law is to organize and protect industrial property. It regulates in particular the rights relating to patents, utility model certificates, industrial designs, layout designs for integrated circuits, traditional knowledge, crafts objects and distinctive signs.</p> <p>Article 248: The provisions of this title shall be designed to provide for industrial property rights for all aspects of the traditional knowledge of the local indigenous communities of Burundi by means of a system of registration.</p>	Deals with TK
2. definition of terms- key terms used in the draft	<p>Article 2: For the purposes of this Law, the following definitions shall apply:</p> <ul style="list-style-type: none"> - Budapest Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, signed in Budapest on April 28, 1977 and amended on September 26, 1980; - Certificate, the title issued to protect a utility model, an industrial design, a layout design for integrated circuits or a mark. It shall establish a presumption of the validity and of the possibility of applying the right in order to prohibit third parties from exploiting the right registered in Burundi. Certificates shall be issued by the Minister responsible for trade, without incurring the liability of the Government of Burundi with regard to the conditions for registrability and the right to titles; - Certificate of addition, the title issued to protect the right to add to the invention changes, improvements or additions noted in the certificates issued in the same form as the primary patent and which produce the same effects as it does; - Certification signs, signs or combinations of signs suitable for designating any characteristic common to goods or services, in particular their quality, origin or methods of production, and whose use is controlled by the owner of the signs; - Collective mark, any mark belonging to a group such as a cooperative, association or federation of industrialists, producers or merchants - Compulsory license, an authorization granted by the competent authority to a person, company, private entity, an entity held or controlled by the State, for the exploitation of a patent, a utility model, a layout design or an industrial design in Burundi without the consent of the right holder; - Counterfeit branded goods, all goods, including their packaging, which bear, without authorization, a factory or trademark which is identical to a factory or trademark that has been validly registered for said goods, or whose essential aspects cannot be distinguished from this factory or trademark, and which therefore infringes the rights of the holder of the mark in question under the legislation in Burundi; - Date of priority, the date of a prior request which serves as a basis for the right of priority provided for by the Paris Convention; - Decision of the General Council of the World Trade Organization (WTO) of August 30, 2003, the decision of the WTO General Council on the implementation of paragraph 6 of the Doha Declaration on the Agreement on Trade-related Aspects of Intellectual Property 	

	<p>Rights (TRIPS) and public health;</p> <ul style="list-style-type: none"> - Distinctive sign of a firm, a variety of designations such as marks, business symbols, emblems, logos and slogans used by a firm to make known, in the exercise of industrial or business activities, the identity of the firm and the products it manufactures or the services it provides; - Industrial design, any combination of lines or colors or any plastic form, whether or not it is associated with lines or colors, provided this combination or this form gives a special appearance to an industrial or crafts product and can serve as a type for the manufacture of an industrial or crafts product, and that it attracts the eye and is judged visually; - Exclusive license, a licensing contract which gives the licensee and, when this contract expressly so provides, the persons authorized by the licensee, the right to exploit the licensed industrial property to the exclusion of all other persons, including the rights holder; - Geographical indication, an indication used to identify a product as being from the territory of a country, region or locality of this territory, when a quality, reputation or other given characteristic of the product can be essentially attributed to this geographical origin; - Integrated circuit, the final or intermediate form of a product designed to perform an electronic function and in which the elements, at least one of which is active, and all or part of the interconnections are integrated in or on – or both in and on – a part of the materials; - International classification, with regard to patents and utility models, the classification for patents, copyright certificates for inventions, utility models and utility model certificates, called “International Classification of Patents and Certificates”, established by the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, amended on September 28, 1979; with regard to industrial designs, the classification established by the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968, in its most recent version; and, with regard to marks, the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, in its most recent version; - Invention, an invention, an idea of an inventor which in practice makes it possible to solve a given problem in the technical field. An invention may consist of a product or process, or refer thereto; - Layout design or topography, the three-dimensional view, expressed in any form whatever, of elements at least one of which is active, and the interconnections present in the integrated circuit or designed to be used for the manufacturing of an integrated circuit; - Local communities, groups of citizens who are resident in Burundi and who collectively have a specific identity as well as social, cultural and linguistic and economic characteristics which are peculiar to them and which differentiate them from the rest of society in Burundi; - Mark, any sign capable of being specifically represented graphically and making it possible to distinguish the products or the product mark, services or the service mark of a company from those of other companies. A mark may in particular consist of words, including names of persons, motifs, letters, colors or combinations of colors, figures or by the form of products or their packaging, by holograms, sounds, smells or tastes. When slogans are not long enough to be protected by copyright, they shall be protected as marks; - Paris Convention, the Paris Convention for the Protection of Industrial Property of March 20, 1883, in its most recent version; - Patent, the title issued to protect an invention. The patent establishes a presumption of the validity and the possibility of applying the right in order to prohibit third parties from exploiting the invention claimed in Burundi; <p>Patent Cooperation Treaty, the Patent Cooperation Treaty signed in Washington, D.C. on June 19, 1970, and amended on September 28, 1979, February 3, 1984 and October 3, 2001;</p> <ul style="list-style-type: none"> - Pirated goods violating industrial property rights, any copies made without the consent of the holder of the right or a person duly authorized by him in the country of production and which are made directly or indirectly on the basis of an article in cases where the making of these copies would have infringed copyright or a related right under the legislation of Burundi; - Producer, any farmer or other person who exploits natural products, any manufacturer of crafts or industrial products, and anyone who trades in said products; - Product, any natural, agricultural, crafts or industrial product; - Trade name, the name or designation identifying and distinguishing a firm; 	
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	<ul style="list-style-type: none"> - Traditional knowledge, the ideas, practices, uses and inventions which may or may not be linked to biological diversity, created by local indigenous communities in a traditional and informal manner, in response to the challenges posed by their material and cultural environment, and which serve as identifiers for these communities; - Utility model, a technical creation which consists of a form, a new configuration of an object or the element of an object which enhances its functionality or usefulness. <p>Article 247: For the purposes of this Law, traditional knowledge shall be defined as the following elements:</p> <ul style="list-style-type: none"> - inventions or other technical ideas, uses, designs, equipment, tools and instruments that can be used in the production of products and services, including the processes, equipment and products used to obtain them, as well as plants domesticated or grown or animal species and microorganisms; - knowledge of the properties of biological resources as well as combinations of such resources; - methods, processes and products relating to the fields of medicine, agriculture, food and textiles as well as the other products and services with a practical or spiritual function; - names, symbols, emblems and other distinctive signs of a religious, spiritual, cultural or economic nature which are used by local indigenous communities in their native language or in any other language; - designs and objects of a functional or esthetic nature, including clothing, porcelain and other crafts goods which may or may not be related to biological resources and which constitute indissociable elements of the culture, spirituality and traditions of the local indigenous communities. 	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Article 249: Effective protection and application of the industrial property rights to traditional knowledge must help to preserve the traditions and livelihood of the traditional communities; ensure respect for their cultural identity; and promote the creation, development and commercialization of traditional knowledge.</p> <p>Section 2. Customary practices</p> <p>Article 256: Title and other rights in the traditional knowledge protected under this Part shall be collective in nature and shall be exercised by each local community in accordance with its customary practices. These customary practices shall also determine the exploitation of the traditional knowledge by the various members of the local communities.</p> <p>Article 257: In the event that the customary practices establish special systems for legal representation of local communities, which may affect the management of the traditional knowledge, a description of said practices must be included in the description of the traditional knowledge that forms the subject matter of the registration.</p> <p>Article 259: In the event that several local communities which occupy the same territory have created and hold identical or similar elements of traditional knowledge, they may register these elements individually on behalf of each community. Each community concerned may also individually enforce its rights in these elements of traditional knowledge. Nevertheless, nothing shall prevent these communities from joining forces to exploit jointly the traditional knowledge they have in common.</p> <p>Article 262: With regard to the traditional knowledge protected under this Law, local communities shall enjoy the following exclusive rights:</p> <ul style="list-style-type: none"> - the right to prevent third parties from manufacturing, using, storing, offering for sale or selling this product, or from importing or exporting this product for these purposes without the holder's consent if the subject matter of the protection is a product; - the right to prevent third parties from using the process to store, offer for sale or sell products obtained directly or indirectly via this process, or from importing or exporting such products for these purposes without the holder's consent, if the subject matter of the protection is a process; - the right to prevent third parties who do not have the holder's consent from reproducing the species or microorganism, and to prevent third parties from preparing the species or microorganism for purposes of its reproduction or propagation, offering it for sale, sale or any other form of commercialization, import and export, as well as possessing the species or microorganism for one or other of these purposes if the subject matter of the protection is a grown plant species, a domesticated animal species or a 	TK

	<p>microorganism;</p> <ul style="list-style-type: none"> - the right to prevent third parties from manufacturing or reproducing, without the holder's consent, objects which are of a similar configuration in terms of forms, colors, materials and techniques and which display by and large the style and visual impression of the crafts of which they are characteristic if the subject matter of protection is a design or an object of a functional or esthetic nature, including a crafts element; - the right to prohibit for third parties who do not have the holder's consent any type of use, in the language of origin or in any other language, consisting in affixing identical or similar signs to products, or to products related to services, or manufacturing labels, packaging or other materials which reproduce or contain these signs, for commercial purposes or for any other purpose, if the subject matter of protection is a name, symbol, emblem or other distinctive sign of a religious, spiritual, cultural or economic nature. <p>Article 263: The exclusive rights set out in Article 262 shall cover any commercial act and any other act likely to distort the spiritual and cultural identity of the community to which the registered traditional knowledge belongs.</p> <p>Article 264: If a local community opts to keep secret part or all of the inventories of registered traditional knowledge, in accordance with Article 254, it shall be entitled to prevent third parties from disclosing or acquiring without its consent undisclosed traditional knowledge, in a manner contrary to honest business practices, provided that the local community to which the undisclosed registered traditional knowledge belongs has taken reasonable steps to keep it secret.</p> <p>Article 265: The rights conferred on local communities under this Law shall be industrial property rights which are peculiar to these communities. These rights may not be assigned, confiscated or transferred in any way.</p> <p>Article 268: Protection of registered traditional knowledge shall only expire when such knowledge has lost its values, i.e.</p> <ul style="list-style-type: none"> - because it is no longer used as a cultural identifier; - because it has been deliberately and expressly abandoned; - because of persistent failure to use or continued abuse by third parties of which the local community to which the knowledge belongs is aware. <p>Article 273: Local communities' collective rights in registered traditional knowledge shall include the right to give registered traditional knowledge as a guarantee, subject to the provisions of Article 274.</p> <p>Article 274: Traditional knowledge which, owing to exploitation by a third party, has ceased to be a cultural identifier for the local community, such as crafts and signs with intrinsic sacred or religious value, may not form the subject matter of a licensing contract, even with the community's prior consent. The signature of a licensing agreement or any other form of prior consent concerning the use of such traditional knowledge shall constitute misuse of the registered traditional knowledge. In such cases, the provisions of Article 268 shall apply.</p> <p>Article 286: The provisions of this Section shall apply to traditional knowledge that has been registered or protected in other countries if these countries grant protection that is identical or equivalent to the protection conferred by this Law on the traditional knowledge belonging to the local communities in Burundi. Nevertheless, the provisions of this Article shall not apply to traditional knowledge that belongs to foreign communities that is not protected or ceases to be protected in the country of origin for any reason whatsoever, in particular on the grounds set out in Article 268.</p>	
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed	<p>Section 5: Licensing contracts</p> <p>Article 271: Local communities' collective rights in registered traditional knowledge shall include the right to sign exclusive or non-exclusive licensing contracts, subject to the provisions of Article 274.</p>	

consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable		
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>Article 258: The means for distributing the profits arising from the exploitation of the traditional knowledge within each local community shall be established in accordance with the community's customary practices.</p> <p>Article 261: Local communities' collective rights in the traditional knowledge registered shall be of an economic and moral nature.</p> <p>Article 270: If the general interest of a significant share of the population of Burundi so warrants, the Minister responsible for trade, after hearing the local community to which the registered traditional knowledge concerned belongs, may authorize the scientific, commercial or industrial exploitation of one or more of the elements of this knowledge by a third party, provided that such exploitation does not distort the cultural identity of the local community in question or offend it and that the local community receives a fair share of any type of benefits arising from such scientific, commercial or industrial exploitation, in view of the circumstances at hand. The scope and term of such authorization shall be limited for the specific purposes of public interest which warrant the authorization. Exploitation by the third party must cease once it is no longer justified by the public interest.</p> <p>Article 272: Licenses to exploit traditional knowledge are supposed to be granted on a fee-paying basis. They may give rise to different forms of payment local communities' collective rights in registered traditional knowledge shall include the right to sign exclusive or non-exclusive licensing contracts, subject to the provisions of Article 274.</p>	
7. Sanctions and remedies- dealing with breaches	<p>Article 266: Any proceedings concerning the protection and application of rights in traditional knowledge must be instituted by the local communities in their own name, in accordance with the measures relating to representation and legal capacity that are established in civil law, in this Law and in the customary practices of the communities.</p> <p>Article 267: The State shall have the right to assist local communities, without replacing their representative bodies, in defending their rights and legitimate interests, at all levels of the public administration and the judiciary, at the national, regional and international level. Such assistance may consist in particular in taking the initiative to draw up inventories of traditional knowledge with a view to its registration; encouraging local communities to form associations in order to obtain legal capacity; and of instituting, on its own initiative, procedures for registering traditional knowledge when emergency situations so warrant.</p> <p>Article 281: All industrial property titles, in particular patents, marks, industrial designs or plant variety certificates, which have been granted in violation of rights in registered traditional knowledge, shall not be binding on third parties if the local community to which this traditional knowledge belongs has not given its consent.</p> <p>Article 282: Any person may, in proceedings for the infringement of title to industrial property, raise as a defense or exception, the lack of prior consent or any other violations of the rights in protected traditional knowledge. In this case, the court shall hear the local community which holds the rights to the traditional knowledge that have been infringed. If the means is accepted, and if the local community in question agrees, the court shall order the infringer to pay the local community an amount which it shall set in accordance with the provisions of Articles 419 to 421.</p> <p>Article 283: The industrial property titles referred to under this Title shall be binding on third parties as from the date of publication of the court order fixing the amount and arrangements for the compensation to be paid. They shall have no effect in relation to acts performed by unauthorized third parties prior to this date.</p> <p>Article 284: Without prejudice to Articles 281 to 283, if an industrial property title</p>	

	<p>concerns an object which consists in part or in full of protected traditional knowledge and the holders of the rights in this knowledge have not given their prior consent, they may ask the court for a proportional transfer of the title. If the court notes that the holders are entitled to full ownership of the industrial property title in question, they may, at their entire discretion, waive the title.</p> <p>Article 285: Local communities may also protect elements of their traditional knowledge in a complementary or different fashion by means of other industrial property regimes, without prejudice to the rights and interests protected by this Section.</p> <p>Chapter II: Border measures ordered by the court</p> <p>Section 1: Possibility of obtaining border measures</p> <p>Article 435: If the conditions provided for by this Title have been met, the court may order border measures to prevent the import of goods infringing industrial property rights recognized by Burundi in one of the following forms:</p> <ul style="list-style-type: none"> - a mark, collective mark, certification sign or trade name; - an industrial design; - a geographical indication; - traditional knowledge or a crafts product; - copyright or a related right, protected in accordance with the Law on the Protection of Copyright and Related Rights in Burundi. <p>Section 3: Other measures for the protection of traditional knowledge and crafts</p>	
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>Article 275: The State has a duty to help the local communities to negotiate and monitor licensing agreements involving traditional knowledge. All licensing agreements must be registered with the Industrial Property Director, failing which they shall be considered null and void.</p> <p>Chapter II. Traditional knowledge</p> <p>Section 1. Registration of traditional knowledge</p> <p>Article 250: Traditional knowledge that has not been disclosed to the public in any way or, even if it has been disclosed, has not been commercially or industrially exploited in Burundi, may be registered under the following conditions:</p> <ol style="list-style-type: none"> 1. The traditional knowledge must be described and registered, with a reference to the community or communities that created it, in the register of traditional knowledge established and kept by the Industrial Property Director; <p>The procedure for registering traditional knowledge and the grant of the corresponding certificate shall not be subject to the payment of any fee.</p> <ol style="list-style-type: none"> 2. The description set out in the previous paragraph must be made in such a way that it is reasonably possible for a third party to reproduce or use the traditional knowledge described and to obtain results identical or similar to those obtained by the communities which hold this traditional knowledge. <p>This description shall be made without prejudice to the provisions of Article 254.</p> <p>If the traditional knowledge concerns or comprises living beings or parts thereof, the description may be replaced by the deposit of samples, in accordance with the regulations under this Law.</p> <p>The registration of traditional knowledge and a certificate attesting to such registration shall be granted without the examination, by the Industrial Property Director, of the elements referred to in Article 254.</p> <p>Article 251: The registration of traditional knowledge may be revoked by the courts at any time at the request of the Industrial Property Director or a third party with a legitimate interest, if:</p> <ul style="list-style-type: none"> - the traditional knowledge registered has not been created by the community which the certificate designates as the owner; in the event that the traditional knowledge registered was created by another local community, the court may order the Industrial Property Director to transfer the title of ownership to this traditional knowledge to its true creator; - the traditional knowledge registered has been disclosed to the public by some means, and has been commercially or industrially exploited in Burundi prior to the date on which registration was sought; - the traditional knowledge registered has lost its value as a cultural identifier following its explicit abandonment, lack of persistent use or continued abuse by third parties, of which the holder of the traditional knowledge was aware. <p>Article 252: Any element of traditional knowledge protected under this Law may be registered separately and individually, in accordance with its technical characteristics, without prejudice to its holistic nature, that is, independent traditional knowledge, or as a whole, in its entirety, in a single registration combining, as the case may be, all of the</p>	Provisions relating to registration of traditional knowledge have been included here

	<p>elements of the knowledge.</p> <p>The certificate of registration shall specify whether the registered traditional knowledge has been identified by the local community as independent traditional knowledge or as an inventory of traditional knowledge. In the latter case, the certificate shall contain a brief summary of the protected content of the inventory, in accordance with the regulations under this Law.</p> <p>Article 253: Notice of the grant of a certificate of registration for traditional knowledge shall be published in the Official Journal of Burundi, without prejudice to the provisions of Article 254. Such notice shall include at least the following information:</p> <ol style="list-style-type: none"> 1. A summary of the traditional knowledge registered, unless the local community seeking registration has opted for secrecy, as provided for in Article 254; 2. A reference to the community or communities that has/have created the traditional knowledge registered; such a reference must be accompanied by an indication of the geographical distribution of the community in question and the intrinsic characteristics which differentiate it; 3. The application and registration dates. <p>Article 254: When it files an application for registration of the traditional knowledge, the local community may inform the Industrial Property Director that it has opted to keep secret all or part of the elements for which it is seeking protection. The non-disclosed information shall not appear in the publication referred to in Article 253.</p> <p>Protection of the non-disclosed traditional knowledge shall be limited to the repression of unfair competition, in accordance with the provisions of Title I of Part IV.</p> <p>Article 255: In the event that the local community seeking registration has opted to register its traditional knowledge in the form of inventories, it may modify the registration in question at any moment, without having to request a new registration, so as to include in the initial registration changes or improvements on the traditional knowledge registered. Should this be the case, the Industrial Property Director shall take note of the modification made to the registration and shall amend the certificate accordingly, noting the date on which the modification was entered.</p> <p>Chapter III. Crafts</p> <p>Section 1. Registration of crafts</p> <p>Article 276: Designs and objects with an esthetic or functional configuration, including clothing, pottery and all other crafts which constitute indissociable elements of the culture, spirituality and traditions of local communities, may be registered, even if they have been commercialized prior to their registration, provided they retain the essential link with the culture and spirituality of the local community in question. Should this not be the case, the conditions set out in Articles 250 to 255 shall apply to crafts.</p> <p>Article 277: In addition to the elements listed in Articles 249 to 255, applications to register crafts must contain a brief description of their use, the production methods and the choice, preparation and utilization of raw materials, as well as the general criteria which apply with regard to the esthetic or functional characteristics, with a view to characterizing the general style and overall impression of each series or type of product.</p> <p>A general description of the history and development of the crafts in question must also be provided.</p> <p>Article 278: Crafts shall be registered in a register separate from the one for traditional knowledge by the Industrial Property Director, at the request of the local community concerned.</p> <p>Section 2. Protection of crafts</p> <p>Article 279: In order to facilitate the protection of crafts, any article or product of a series or crafts type which existed before or which was created after registration may be added to the general registration at the request of the local community to which a registered series of articles or type of crafts belongs.</p> <p>Article 280: The provisions of Articles 261 to 275 shall apply to crafts.</p> <p>Exclusive rights in the registered crafts shall apply to the entirety of the crafts series or type which has been described and registered, in order to prevent third parties, without the holder's consent, from manufacturing, using, storing, selling, offering for sale, importing or exporting products likely to mislead the consumer, in any way whatsoever, as to the origin, creation or manufacturing of the crafts articles.</p> <p>Article 462: A service for registration of industrial property is hereby set up within the Ministry responsible for trade and industry. Its organizational structure and the arrangements for its operation shall be determined by decree.</p> <p>Article 463: The service for registration of industrial property shall be responsible for all functions relating to the procedure for granting patents and registering industrial designs,</p>	
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	<p>marks and collective marks, as well as administering the patents granted and the designs, marks and collective marks registered, in accordance with the provisions of this Law and the regulations.</p> <p>Article 464: The service for registration of industrial property shall keep separate registers for patents, utility models, industrial designs, layout designs, marks, geographical indications, and traditional knowledge, Collective marks and certification signs shall be registered in a special section of the marks register.</p> <p>Crafts products shall be registered in a special section of the register of traditional knowledge. All entries provided for under this Law shall be made in said registers.</p> <p>Anyone may consult the registers and obtain excerpts therefrom subject to the conditions provided for in the regulations.</p> <p>Article 465: Right holders may indicate ownership of the subject of protection in accordance with this Law by relying on commonly used signs, namely, the initials of each legal title surrounded by a circle, provided that these initials do not lead to confusion and are not erroneous. The traditional knowledge and the crafts products registered may be indicated by the initials "TK", surrounded by a circle. Any use of these signs which leads to confusion or which is erroneous may be considered an act of unfair competition for the purposes of Part IV of this Law.</p> <p>Article 466: The service for registration of industrial property shall publish in the Official Journal of Burundi all publications provided for by this Law.</p> <p>The Industrial Property Director may publish administrative instructions concerning the procedures provided for by this Law and by the regulations as well as the other functions for the industrial property registration service.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group	Article 260: A local community which occupies both part of the territory of Burundi and part of the territory of a neighboring country may acquire rights in its traditional knowledge and enforce them in the territory of Burundi, in accordance with this Law.	
10. exceptions – emergencies, traditional use, conservation	<p>Article 269: The following shall be excluded from the protection conferred by this Law:</p> <ul style="list-style-type: none"> - traditional practices of commercial or industrial exploitation of traditional knowledge which forms part of the traditions and culture of the local communities; - Non-traditional practices of commercial or industrial exploitation of traditional knowledge prior to the date of the application for registration; - Commercial acts that have already been performed. 	
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws-avoiding conflict with other laws	Article 478: The provisions of the international industrial property treaties to which Burundi is a party shall apply to the matters governed by this Law, and shall prevail in the event of conflict with the provisions of this Law.	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

6. China

Law of the People's Republic of China on Intangible Cultural Heritage

Adopted at the 19th Session of the Standing Committee of the 11th National People's Congress on February 25, 2011

Chapter I General Provisions

Article 1 This Law is formulated for the purpose of inheriting and disseminating the fine traditional culture of the Chinese nation, promoting the construction of socialist cultural and educational undertakings of China, and enhancing the protection and preservation of intangible cultural heritage.

Article 2 For the purposes of this Law, the term "intangible cultural heritage" shall refer to all forms of traditional culture which are deemed by generations of Chinese people of all ethnic groups as part of their cultural heritage, and material objects and places in relation to the traditional culture, including:

1. Traditional oral literature and languages as the vehicle of such oral literature;
2. Traditional fine arts, calligraphy, music, dances, dramas, ballads and acrobatics;
3. Traditional skills, medicine and calendars;
4. Folk customs such as traditional etiquettes and festival celebrations;
5. Traditional sports and entertainments; and
6. Other intangible cultural heritage.

Where some material objects and places, as elements of intangible cultural heritage, belong to cultural relics, the Law of the People's Republic of China on the Protection of Cultural Relics shall be applicable to such material objects and places.

Article 3 The State preserves intangible cultural heritage by taking various measures such as cognizance, registration and archiving, and protect intangible cultural heritage which embodies the fine traditional culture of the Chinese nation and has historical, literary, artistic and scientific value by taking measures such as inheritance and dissemination.

Article 4 Intangible cultural heritage protection shall be focused on the authenticity, completeness and inheritance. Such protection shall be conducive to increasing the cultural identification of the Chinese nation, maintaining national unification and ethnic unity and promoting social harmony and sustainable development.

Article 5 The forms and content of intangible cultural heritage shall be respected when intangible cultural heritage is used. The use of intangible cultural heritage by way of distortion and derogation shall be prohibited.

Article 6 People's governments above the county level shall include preservation and protection of intangible cultural heritage into the national economic and social development plan at the corresponding level and list preservation and protection expenses into the fiscal budget on the corresponding level. The State supports the preservation and protection of intangible cultural heritage in regions inhabited by non-Han ethnic groups, remote regions and underdeveloped regions.

Article 7 The competent culture department of the State Council shall be responsible for nationwide preservation and protection of intangible cultural heritage; the competent culture departments of the

people's governments above the county level shall be responsible for the preservation and protection of intangible cultural heritage in their respective administrative regions. Other departments of the people's governments above the county level shall be responsible for the preservation and protection of intangible cultural heritage to the extent of their respective functions.

Article 8 People's governments above the county level shall enhance publicity in relation to intangible cultural heritage protection and increase public awareness of intangible cultural heritage protection.

Article 9 The State encourages citizens, legal persons and other organizations to participate in the protection of intangible cultural heritage.

Article 10 The State honors and rewards to organizations and individuals that make outstanding contribution to protection of intangible cultural heritage.

Chapter II Intangible Cultural Heritage Investigation

Article 11 People's governments above the county level shall organize intangible cultural heritage investigation in response to the demand for intangible cultural heritage preservation and protection.

Other government departments above the county level can be investigated for its intangible cultural heritage in the field of work.

Article XII of the cultural departments and other relevant departments of the intangible cultural heritage surveys, should be considered for non-material cultural heritage, recording, archiving, establish and improve the survey information sharing mechanism.

Information and cultural departments and other relevant departments of the intangible cultural heritage survey should collect the intangible cultural heritage is an integral part of the representation of the physical, finishing in the investigation made and properly stored to prevent damage, loss. Other departments made physical picture, a copy of the information, it should sink to the same level of cultural authorities.

Article 13 Cultural authorities should fully understand the situation of intangible cultural heritage, the establishment of the intangible cultural heritage and related database files. In addition to the law should be kept confidential, the non-material cultural heritage and associated data files should be made public to facilitate public inspection.

Article XIV of citizens, legal persons and other organizations may be non-material cultural heritage of the investigation according to law.

Article XV foreign organizations or individuals in the PRC non-material cultural heritage survey should be reported to the approval of provinces, autonomous regions and municipalities cultural authorities; investigation in two or more provinces, autonomous regions and municipalities directly under the line of administrative areas should be reported to the approval of the cultural department of the State; After the investigation, it should be approved by the competent authorities to investigate the cultural investigation reports and surveys made physical picture, data copy.

Outside the organization carried out in the territory of the People's Republic of intangible cultural heritage surveys of intangible cultural heritage should be within the academic and research institutions in collaboration.

With Article 16 of the intangible cultural heritage survey, the survey should obtain the consent of, and respect their customs, without prejudice to their legal rights.

Article XVII on the verge of disappearing intangible cultural heritage through surveys or other means found, the county government cultural departments shall be immediately recorded and collect information about the physical, or take other measures to save the rescue; need inheritance, shall take effective measures to support heritage.

Chapter III List of Intangible Cultural Heritage representative projects

Establishment of national intangible cultural heritage list representative projects Article XVIII of the State Council, will reflect the fine traditional Chinese culture, has a significant historical, literary, artistic or scientific value of the items included in the list of intangible cultural heritage to be protected.

Provinces, autonomous regions and municipalities to establish local representative projects List of Intangible Cultural Heritage, the administrative area will reflect the fine traditional Chinese culture, historical, literary, artistic or scientific value of the items included in the list of intangible cultural heritage to be protected .

Article XIX provinces, autonomous regions and municipalities directly under the Central Government may recommend the inclusion of national intangible cultural heritage list representative projects from the province, autonomous region or municipality Intangible Cultural Heritage Representative List of the cultural project of the State Council department in charge of the project. Recommendation shall be submitted when the following materials:

- (A) project description, including the name of the project, the history, status and value;
- (B) heritage presentations, including the scope of heritage, heritage genealogy, social impact inheritors skill level, heritage activities;
- (C) protection requirements, including protection should meet the objectives and measures should be taken, steps, management systems;
- (D) The project helps illustrate audio-visual materials and other materials.

Diershitiao citizens, legal persons and other organizations considered an intangible cultural heritage reflects the fine traditional Chinese culture, has a significant historical, literary, artistic or scientific value, may apply to the provinces, autonomous regions and municipalities directly under the Central Government or the cultural department of the State proposed inclusion of a representative national intangible cultural heritage list of recommended projects.

Article 21 of the same intangible cultural heritage, in the form and content in two or more regions are kept intact, can be simultaneously included in the national list of intangible cultural heritage representative projects.

Article 22 of the State Council administrative department of culture expert panel should be organized and expert review committee to recommend or suggest the inclusion of national intangible cultural heritage list of representative projects intangible cultural heritage initial evaluation and consideration.

Initial evaluation by the expert opinion shall be by a majority of panel members. Expert Review Committee for consideration for the initial evaluation opinions presented deliberations.

Assessment should follow an open, fair and impartial manner.

Project under the State Council administrative department of culture shall be included in the national intangible cultural heritage list of representative projects to be publicized for public comment. Time for the announcement of not less than 20 days.

Article 24 of the State Council administrative department of culture and publicity based on the results of the deliberations of the expert review committee, formulate national intangible cultural heritage list representative projects, submitted to and approved by the State Council, announced.

Article 25 of the State Council department in charge of cultural organizations to develop protection plans should be the protection of national intangible cultural heritage representative projects.

Provinces, autonomous regions, municipalities and cultural organizations to develop protection departments shall plan, announced by the corresponding levels of local government for approval representative intangible cultural heritage items to be protected.

Representative projects developed intangible cultural heritage protection plan should be focused on the protection of intangible cultural heritage in danger of disappearing representative projects.

Article 26 representative intangible cultural heritage projects focused on distinctive features, to maintain the integrity of the form and content of a specific area, the local cultural authorities may establish a special protection plan, submitted to the approval of the people's government, the implementation of the overall regional protection. Determine the overall implementation of the regional protection of intangible cultural heritage, should respect the wishes of local residents, and to protect the physical and spaces are part of the intangible cultural heritage, and to avoid destruction.

Involved in the implementation of regional overall protection of intangible cultural heritage towns or neighborhoods concentrated spatial planning, special protection plan should be developed by the local urban and rural planning departments in accordance with relevant laws and regulations.

Article 27 The administrative department of culture and the provinces, autonomous regions and municipalities cultural department of the State shall be a representative of a non-material cultural

heritage protection planning the implementation of the project supervision and inspection; find protection plan not effectively implemented, should be promptly corrected deal.

Chapter IV heritage and dissemination of intangible cultural heritage

Article 28 The State shall encourage and support the implementation of the Intangible Cultural Heritage Representative heritage projects, spread.

Article 29 The administrative department of culture and the provinces, autonomous regions and municipalities in charge of the cultural department of the State Council announced the approval of the corresponding level people's government representative intangible cultural heritage items can be identified representative inheritors.

Representative inheritors of intangible cultural heritage items representative shall meet the following conditions:

- (A) proficiency in their heritage intangible cultural heritage;
- (B) a representative in a specific area and have a greater impact in a certain area;
- (C) active in heritage activities.

Representative projects identified intangible cultural heritage inheritors representation, reference should be made to implement the provisions relating to non-material cultural heritage project review of Law representative, a representative list of the identified heritage and be published.

Article 30 The people's governments above the county level cultural authorities as needed, to take the following measures to support representative inheritors of intangible cultural heritage projects undertaken representative heritage, dissemination activities:

- (A) to provide the necessary heritage sites;
- (B) providing the necessary funding support to carry out their apprentices, Communication Arts, exchanges and other activities;
- (C) to support their participation in social welfare activities;
- (iv) carry out other measures to support their heritage, dissemination activities.

Article 31 of the intangible cultural heritage inheritors representative representative projects shall fulfill the following obligations:

- (A) carry out heritage activities, to develop a successor talent;

(B) keep the relevant physical data;

(C) with the cultural authorities and other relevant departments of the Intangible Cultural Heritage Survey;

(D) the participation of non-material cultural heritage nonprofit advocacy.

Representative inheritors of intangible cultural heritage projects unjustified representative fails to perform the obligations of the preceding paragraph, the competent authorities may cancel its cultural heritage representation qualification, re-identified representative inheritors of the project; lose the ability heritage, culture Administrations may re-identified representative inheritors of the project.

Article 32 The people's governments above the county level should be combined with the actual situation and take effective measures to organize cultural authorities and other relevant publicity, show representative intangible cultural heritage items.

Article 33 The State encourages scientific and technological research and related intangible cultural heritage and intangible cultural heritage protection, preservation methods research, encouraging recording of intangible cultural heritage and intangible cultural heritage of representative projects finishing, publishing, etc. activities.

Article 34 shall be in accordance with the provisions of the school education department of the State Council, carry out related intangible cultural heritage education.

Propaganda news media representative shall carry out non-material cultural heritage project to popularize knowledge of intangible cultural heritage.

Article 35 libraries, cultural centers, museums, science museums and other public cultural institutions and non-material cultural heritage academic and research institutions, conservation agencies and performing arts groups organized by the use of fiscal funds, performance venues and other business units should be based on their respective businesses range, to carry out finishing intangible cultural heritage, research, advocacy and academic exchanges representative intangible cultural heritage items, show.

Article 36 The State encourages and supports citizens, legal persons and other organizations legally established non-material cultural heritage sites and heritage sites demonstrate, display and transmission of intangible cultural heritage representative projects.

Article 37 The state encourages and supports play special advantages of non-material cultural heritage resources, on the basis of effective protection, rational use of representative intangible cultural heritage project development with local, national characteristics and market potential of cultural products and services .

Development and utilization of representative items of intangible cultural heritage, should support representative inheritors heritage activities undertaken to protect the physical and places are an integral part of the project.

Local people's governments above the county level should be support for the rational use of non-material cultural heritage project representative unit. Unit rational use of representative items of intangible cultural heritage, according to the state to enjoy tax benefits.

Chapter V Legal Liability

Article 38 The administrative department of culture and other relevant staff in the non-material cultural heritage protection, conservation work, dereliction of duty, abuse of power, corruption, shall be punished.

Violation of Article 39 cultural authorities and other relevant staff of intangible cultural heritage survey respondents customs, causing serious consequences, shall be punished.

Violation of Article 40 of this Law, belonging to the physical destruction of the intangible cultural heritage and places part, shall bear civil liability; constitute a violation of public order acts shall be given administrative penalties.

41 foreign organizations in violation of the provisions of Article 15, by the cultural department shall order correction, given a warning, confiscate the illegal income and in-kind survey obtained information; circumstances are serious, and impose a one hundred thousand yuan more than five 100,000 yuan fine.

Foreign individual violation of the provisions of Article 15, paragraph by the cultural department shall order correction, given a warning, confiscate the illegal income and in-kind survey obtained information; serious cases, impose a thousand and fifty thousand The following fines.

Violation of Article 42 of this Law constitutes a crime, be held criminally responsible.

Chapter VI Supplementary Provisions

The establishment of local intangible cultural heritage to develop a representative project list approach Article 43 provinces, autonomous regions and municipalities reference to the relevant provisions of this Law.

Article 44 relates to the use of non-material cultural heritage of intellectual property rights, relevant laws and administrative regulations.

Protection of traditional medicine, traditional arts and crafts, and other laws, administrative regulations, in accordance with its provisions.

Article 45 This Law shall go into effect June 1, 2011.

Comparison of Chinese Intangible Cultural Heritage Law with common provisions under the Nagoya Protocol and WIPO draft agreements

This appears to be a preliminary piece of legislation setting up a system for recognition of intangible traditional heritage. As such it does not address many of the common provisions. Problems with translation to a form consistent with English language legislation are apparent. There is no specific language around traditional knowledge or genetic resources.

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	Article 1 This Law is formulated for the purpose of inheriting and disseminating the fine traditional culture of the Chinese nation, promoting the construction of socialist cultural and educational undertakings of China, and enhancing the protection and preservation of intangible cultural heritage.	
2. definition of terms- key terms used in the draft	<p>Article 2 For the purposes of this Law, the term "intangible cultural heritage" shall refer to all forms of traditional culture which are deemed by generations of Chinese people of all ethnic groups as part of their cultural heritage, and material objects and places in relation to the traditional culture, including:</p> <ol style="list-style-type: none"> 1. Traditional oral literature and languages as the vehicle of such oral literature; 2. Traditional fine arts, calligraphy, music, dances, dramas, ballads and acrobatics; 3. Traditional skills, medicine and calendars; 4. Folk customs such as traditional etiquettes and festival celebrations; 5. Traditional sports and entertainments; and 6. Other intangible cultural heritage. <p>Where some material objects and places, as elements of intangible cultural heritage, belong to cultural relics, the Law of the People's Republic of China on the Protection of Cultural Relics shall be applicable to such material objects and places.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Article 3 The State preserves intangible cultural heritage by taking various measures such as cognizance, registration and archiving, and protect intangible cultural heritage which embodies the fine traditional culture of the Chinese nation and has historical, literary, artistic and scientific value by taking measures such as inheritance and dissemination.</p> <p>Article 4 Intangible cultural heritage protection shall be focused on the authenticity, completeness and inheritance. Such protection shall be conducive to increasing the cultural identification of the Chinese nation, maintaining national unification and ethnic unity and promoting social harmony and sustainable development.</p> <p>Article 5 The forms and content of intangible cultural heritage shall be respected when intangible cultural heritage is used. The use of intangible cultural heritage by way of distortion and derogation shall be prohibited.</p> <p>Article 6 People's governments above the county level shall include preservation and protection of intangible cultural heritage into the national economic and social development plan at the corresponding level and list preservation and protection expenses into the fiscal budget on the corresponding level. The State supports the preservation and protection of intangible cultural heritage in regions inhabited by non-Han ethnic groups, remote regions and underdeveloped regions.</p>	
4. beneficiaries- who should benefit	Article 29 The administrative department of culture and the provinces, autonomous regions and municipalities in charge of the cultural department of the State Council	

	<p>announced the approval of the corresponding level people's government representative intangible cultural heritage items can be identified representative inheritors.</p> <p>Representative inheritors of intangible cultural heritage items representative shall meet the following conditions: (A) proficiency in their heritage intangible cultural heritage; (B) a representative in a specific area and have a greater impact in a certain area; (C) active in heritage activities.</p> <p>Representative projects identified intangible cultural heritage inheritors representation, reference should be made to implement the provisions relating to non-material cultural heritage project review of Law representative, a representative list of the identified heritage and be published.</p>	
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable		Not addressed
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building		Not addressed
7. Sanctions and remedies- dealing with breaches	<p>Article 38 The administrative department of culture and other relevant staff in the non-material cultural heritage protection, conservation work, dereliction of duty, abuse of power, corruption, shall be punished.</p> <p>Violation of Article 39 cultural authorities and other relevant staff of intangible cultural heritage survey respondents customs, causing serious consequences, shall be punished.</p> <p>Violation of Article 40 of this Law, belonging to the physical destruction of the intangible cultural heritage and places part, shall bear civil liability; constitute a violation of public order acts shall be given administrative penalties.</p> <p>41 foreign organizations in violation of the provisions of Article 15, by the cultural department shall order correction, given a warning, confiscate the illegal income and in-kind survey obtained information; circumstances are serious, and impose a one hundred thousand yuan more than five 100,000 yuan fine.</p> <p>Foreign individual violation of the provisions of Article 15, paragraph by the cultural department shall order correction, given a warning, confiscate the illegal income and in-kind survey obtained information; serious cases, impose a thousand and fifty thousand The following fines.</p> <p>Violation of Article 42 of this Law constitutes a crime, be held criminally responsible.</p>	

<p>8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases</p>	<p>Article 7 The competent culture department of the State Council shall be responsible for nationwide preservation and protection of intangible cultural heritage; the competent culture departments of the people's governments above the county level shall be responsible for the preservation and protection of intangible cultural heritage in their respective administrative regions. Other departments of the people's governments above the county level shall be responsible for the preservation and protection of intangible cultural heritage to the extent of their respective functions.</p> <p>Article 8 People's governments above the county level shall enhance publicity in relation to intangible cultural heritage protection and increase public awareness of intangible cultural heritage protection.</p> <p>Article 9 The State encourages citizens, legal persons and other organizations to participate in the protection of intangible cultural heritage.</p> <p>Article 10 The State honors and rewards to organizations and individuals that make outstanding contribution to protection of intangible cultural heritage.</p> <p>Article 25 of the State Council department in charge of cultural organizations to develop protection plans should be the protection of national intangible cultural heritage representative projects.</p> <p>Provinces, autonomous regions, municipalities and cultural organizations to develop protection departments shall plan, announced by the corresponding levels of local government for approval representative intangible cultural heritage items to be protected.</p> <p>Representative projects developed intangible cultural heritage protection plan should be focused on the protection of intangible cultural heritage in danger of disappearing representative projects.</p> <p>Article 26 representative intangible cultural heritage projects focused on distinctive features, to maintain the integrity of the form and content of a specific area, the local cultural authorities may establish a special protection plan, submitted to the approval of the people's government, the implementation of the overall regional protection. Determine the overall implementation of the regional protection of intangible cultural heritage, should respect the wishes of local residents, and to protect the physical and spaces are part of the intangible cultural heritage, and to avoid destruction.</p> <p>Involved in the implementation of regional overall protection of intangible cultural heritage towns or neighborhoods concentrated spatial planning, special protection plan should be developed by the local urban and rural planning departments in accordance with relevant laws and regulations.</p> <p>Article 27 The administrative department of culture and the provinces, autonomous regions and municipalities cultural department of the State shall be a representative of a non-material cultural heritage protection planning the implementation of the project supervision and inspection; find protection plan not effectively implemented, should be promptly corrected deal.</p> <p>Article 28 The State shall encourage and support the implementation of the Intangible Cultural Heritage Representative heritage projects, spread.</p>	
<p>9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group</p>		<p>Not addressed</p>

10. exceptions – emergencies, traditional use, conservation		Not addressed
11. disclosure-permits, databases, disclosure in intellectual property applications	<p>Chapter II Intangible Cultural Heritage Investigation</p> <p>Article 11 People's governments above the county level shall organize intangible cultural heritage investigation in response to the demand for intangible cultural heritage preservation and protection.</p> <p>Other government departments above the county level can be investigated for its intangible cultural heritage in the field of work.</p> <p>Article XII of the cultural departments and other relevant departments of the intangible cultural heritage surveys, should be considered for non-material cultural heritage, recording, archiving, establish and improve the survey information sharing mechanism.</p> <p>Information and cultural departments and other relevant departments of the intangible cultural heritage survey should collect the intangible cultural heritage is an integral part of the representation of the physical, finishing in the investigation made and properly stored to prevent damage, loss. Other departments made physical picture, a copy of the information, it should sink to the same level of cultural authorities.</p> <p>Article 13 Cultural authorities should fully understand the situation of intangible cultural heritage, the establishment of the intangible cultural heritage and related database files. In addition to the law should be kept confidential, the non-material cultural heritage and associated data files should be made public to facilitate public inspection.</p> <p>Article XIV of citizens, legal persons and other organizations may be non-material cultural heritage of the investigation according to law.</p> <p>Article XV foreign organizations or individuals in the PRC non-material cultural heritage survey should be reported to the approval of provinces, autonomous regions and municipalities cultural authorities; investigation in two or more provinces, autonomous regions and municipalities directly under the line of administrative areas should be reported to the approval of the cultural department of the State; After the investigation, it should be approved by the competent authorities to investigate the cultural investigation reports and surveys made physical picture, data copy.</p> <p>Outside the organization carried out in the territory of the People's Republic of intangible cultural heritage surveys of intangible cultural heritage should be within the academic and research institutions in collaboration.</p> <p>With Article 16 of the intangible cultural heritage survey, the survey should obtain the consent of, and respect their customs, without prejudice to their legal rights.</p> <p>Article XVII on the verge of disappearing intangible cultural heritage through surveys or other means found, the county government cultural departments shall be immediately recorded and collect information about the physical, or take other measures to save the rescue; need inheritance, shall take effective measures to support heritage.</p> <p>Establishment of national intangible cultural heritage list representative projects</p> <p>Article XVIII of the State Council, will reflect the fine traditional Chinese culture, has a significant historical, literary, artistic or scientific value of the items included in</p>	Not addressed

	<p>the list of intangible cultural heritage to be protected.</p> <p>Provinces, autonomous regions and municipalities to establish local representative projects List of Intangible Cultural Heritage, the administrative area will reflect the fine traditional Chinese culture, historical, literary, artistic or scientific value of the items included in the list of intangible cultural heritage to be protected .</p> <p>Article XIX provinces, autonomous regions and municipalities directly under the Central Government may recommend the inclusion of national intangible cultural heritage list representative projects from the province, autonomous region or municipality Intangible Cultural Heritage Representative List of the cultural project of the State Council department in charge of the project. Recommendation shall be submitted when the following materials:</p> <p>(A) project description, including the name of the project, the history, status and value;</p> <p>(B) heritage presentations, including the scope of heritage, heritage genealogy, social impact inheritors skill level, heritage activities;</p> <p>(C) protection requirements, including protection should meet the objectives and measures should be taken, steps, management systems;</p> <p>(D) The project helps illustrate audio-visual materials and other materials.</p> <p>Diershitiao citizens, legal persons and other organizations considered an intangible cultural heritage reflects the fine traditional Chinese culture, has a significant historical, literary, artistic or scientific value, may apply to the provinces, autonomous regions and municipalities directly under the Central Government or the cultural department of the State proposed inclusion of a representative national intangible cultural heritage list of recommended projects.</p> <p>Article 21 of the same intangible cultural heritage, in the form and content in two or more regions are kept intact, can be simultaneously included in the national list of intangible cultural heritage representative projects.</p> <p>Article 22 of the State Council administrative department of culture expert panel should be organized and expert review committee to recommend or suggest the inclusion of national intangible cultural heritage list of representative projects intangible cultural heritage initial evaluation and consideration.</p> <p>Initial evaluation by the expert opinion shall be by a majority of panel members. Expert Review Committee for consideration for the initial evaluation opinions presented deliberations.</p> <p>Assessment should follow an open, fair and impartial manner.</p> <p>Project under the State Council administrative department of culture shall be included in the national intangible cultural heritage list of representative projects to be publicized for public comment. Time for the announcement of not less than 20 days.</p> <p>Article 24 of the State Council administrative department of culture and publicity based on the results of the deliberations of the expert review committee, formulate national intangible cultural heritage list representative projects, submitted to and approved by the State Council, announced.</p> <p>Article 30 The people's governments above the county level cultural authorities as</p>	
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	<p>needed, to take the following measures to support representative inheritors of intangible cultural heritage projects undertaken representative heritage, dissemination activities:</p> <p>(A) to provide the necessary heritage sites;</p> <p>(B) providing the necessary funding support to carry out their apprentices, Communication Arts, exchanges and other activities;</p> <p>(C) to support their participation in social welfare activities;</p> <p>(iv) carry out other measures to support their heritage, dissemination activities.</p> <p>Article 31 of the intangible cultural heritage inheritors representative representative projects shall fulfill the following obligations:</p> <p>(A) carry out heritage activities, to develop a successor talent;</p> <p>(B) keep the relevant physical data;</p> <p>(C) with the cultural authorities and other relevant departments of the Intangible Cultural Heritage Survey;</p> <p>(D) the participation of non-material cultural heritage nonprofit advocacy.</p> <p>Representative inheritors of intangible cultural heritage projects unjustified representative fails to perform the obligations of the preceding paragraph, the competent authorities may cancel its cultural heritage representation qualification, re-identified representative inheritors of the project; lose the ability heritage, culture Administrations may re-identified representative inheritors of the project.</p> <p>Article 32 The people's governments above the county level should be combined with the actual situation and take effective measures to organize cultural authorities and other relevant publicity, show representative intangible cultural heritage items.</p> <p>Article 33 The State encourages scientific and technological research and related intangible cultural heritage and intangible cultural heritage protection, preservation methods research, encouraging recording of intangible cultural heritage and intangible cultural heritage of representative projects finishing, publishing, etc. activities.</p> <p>Article 34 shall be in accordance with the provisions of the school education department of the State Council, carry out related intangible cultural heritage education.</p> <p>Propaganda news media representative shall carry out non-material cultural heritage project to popularize knowledge of intangible cultural heritage.</p> <p>Article 35 libraries, cultural centers, museums, science museums and other public cultural institutions and non-material cultural heritage academic and research institutions, conservation agencies and performing arts groups organized by the use of fiscal funds, performance venues and other business units should be based on their respective businesses range, to carry out finishing intangible cultural heritage, research, advocacy and academic exchanges representative intangible cultural</p>	
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	<p>heritage items, show.</p> <p>Article 36 The State encourages and supports citizens, legal persons and other organizations legally established non-material cultural heritage sites and heritage sites demonstrate, display and transmission of intangible cultural heritage representative projects.</p> <p>Article 37 The state encourages and supports play special advantages of non-material cultural heritage resources, on the basis of effective protection, rational use of representative intangible cultural heritage project development with local, national characteristics and market potential of cultural products and services .</p> <p>Development and utilization of representative items of intangible cultural heritage, should support representative inheritors heritage activities undertaken to protect the physical and places are an integral part of the project.</p> <p>Local people's governments above the county level should be support for the rational use of non-material cultural heritage project representative unit. Unit rational use of representative items of intangible cultural heritage, according to the state to enjoy tax benefits.</p>	
12. interaction with existing laws- avoiding conflict with other laws		Not addressed
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		Not addressed
14. transitional provisions- existing uses		Not addressed

Order of the State Council of the People's Republic of China (No. 374)

The Regulation of the People's Republic of China on Traditional Chinese Medicines, which was adopted at the 3rd executive meeting of the State Council on April 2, 2003, is hereby promulgated, and shall come into force on October 1, 2003.

Wen Jiabao, Premier

April 7, 2003

Regulation of the People's Republic of China on Traditional Chinese Medicines

Chapter I General Provisions

Article 1 The present regulation is enacted with a view to inheriting and developing the traditional Chinese pharmacology, guaranteeing and promoting the development of the undertaking of traditional Chinese medicines, and protecting the health of human bodies.

Article 2 The entities or individuals engaging in the services of traditional Chinese medical treatment, prevention, care and recovery, the education, scientific research and foreign exchanges on traditional Chinese medic exchanges on traditional Chinese medicines, and in the administrative activities of the undertaking of traditional Chinese medicines inside the territory of the People's Republic of China, shall abide by the present regulation.

The research and development, production, operation, use, supervision and administration of traditional Chinese medicines shall be in compliance with the Pharmaceutical Administration Law of the People's Republic of China.

Article 3 The state protects, supports and develops the undertaking of traditional Chinese medicines, implements the guideline of stressing both traditional Chinese medicine and Western medicine, encourages the mutual study and supplements as well as the common improvement of traditional Chinese medicine and Western medicine, urges the organic combination of traditional Chinese medical science and Western medical science, and completely develops China's undertaking of traditional Chinese medicines.

Article 4 For the development of the undertaking of traditional Chinese medicines, we shall comply with the principle of combining succession with innovations, maintain and carry forward the characteristics and advantages of traditional Chinese medicines, actively make use of modern science and technology, promote the development of the theories and practices of traditional Chinese medicines, and enhance the modernization of traditional Chinese medicines.

Article 5 The people's governments at or above the county level shall include the undertaking of traditional Chinese medicines into the plans of national economic and social development, and harmonize the development of the undertaking of traditional Chinese medicines with the economy and society.

The local people's government at or above the county level shall, when making the regional sanitation planning, arrange the overall establishment and distribution of medical institutions of traditional Chinese medicines as well as improve the network of urban and rural services of traditional Chinese medicines in light of the situation of social and economic development in this region and the residents' needs in medical treatment.

Article 6 The administrative department for traditional Chinese medicines under the State Council shall be responsible for the administration of traditional Chinese medicines nationwide.

The relevant departments under the State Council shall, within the scope of their respective duties, be responsible for the work related to traditional Chinese medicines.

The department for traditional Chinese medicines under the local people's government at or above the county level shall be responsible for the administration of traditional Chinese medicines within its own administrative division. The relevant departments under the local people's government at or above the county level shall, within the scope of their respective duties, be responsible for the work related to traditional Chinese medicines.

Article 7 The people's governments at or above the county level shall grant awards to the entities and individuals who have made remarkable contributions to the succession and development of the undertaking of traditional Chinese medicines or have made prominent achievements in their work of traditional Chinese medicines in remote regions.

Chapter II Medical Institutions and Practitioners of Traditional Chinese Medicines

Article 8 Whoever intends to open a medical institution of traditional Chinese medicines shall meet the standards for setting up medical institutions of traditional Chinese medicines and the local regional sanitation planning, which are made by the administrative department of health under the State Council, and shall go through the formalities for approval in accordance with the Regulation on the Administration of Medical Institutions, but shall not engage in the activities of traditional Chinese medical treatment until having obtained the practicing permit of medical institution.

Article 9 The medical institutions of traditional Chinese medicines shall, when undertaking the activities of medical treatment service, bring the characteristics and advantages of traditional Chinese medicines into full play, follow the law of the development of traditional Chinese medicines, make full use of the functions of traditional Chinese medicines in prevention of diseases, health care and recovery, etc. by using traditional theories and methods and in combination with modern scientific and technological means, and provide the masses with services of traditional Chinese medicines at reasonable prices and good quality.

Article 10 Lawfully established urban or rural sanitary service institutions at the basic level such as community sanitary service centers (stations), town and township hospitals, etc., shall be able to provide services of traditional Chinese medical treatment.

Article 11 Practitioners of traditional Chinese medicines shall, in accordance with the relevant provisions in laws, administrative regulations and departmental rules on sanitary administration pass the qualification examination, and shall not engage in the service activities of traditional Chinese medicines until having been registered and having obtained the practicing certificate.

Those who have learned traditional Chinese medical science from masters and those who do specialize in this field shall, in accordance with the provisions of the administrative department of health under the State Council, pass the qualification assessment of practicing physicians or practicing assistant physicians, and shall not engage in the service activities of traditional Chinese medicines until having been registered and having obtained the practicing certificate.

Article 12 Practitioners of traditional Chinese medicines shall comply with the corresponding principles of diagnosis and treatment, standards of medical treatment techniques and technical operation rules on traditional Chinese medicines.

Generalist physicians and rural doctors shall have basic knowledge of traditional Chinese medicines, knowledge and techniques of using traditional Chinese medical science for diagnosis and treatment, and the basic skills in dealing with common diseases and frequently occurring diseases.

Article 13 A medical institution that intends to make an advertisement of traditional Chinese medical treatment shall, in accordance with the provisions, apply to and submit the relevant documents to the department responsible for the administration of traditional Chinese medicines under the people's government of the province, autonomous region or municipality directly under the Central Government where it is located. The department responsible for the administration of traditional Chinese medicines under the people's government of the province, autonomous region or municipality directly under the Central Government shall, within 10 working days as of the receipt of the relevant documents, examine them and make a decision on whether to issue the registered document of approval for advertising traditional Chinese medical treatment. To the medical institution meeting the prescribed requirements, the registered document of approval for advertising traditional Chinese medical treatment shall be issued. The medical institution failing to obtain the registered document of approval for advertising traditional Chinese medical treatment shall not make advertisements of traditional Chinese medical treatment.

The contents published in an advertisement of traditional Chinese medical treatment shall be consistent with those that have been examined and approved for publishing.

Chapter III Education and Scientific Research on Traditional Chinese Medicines

Article 14 The state takes measures to develop the undertaking of education on traditional Chinese medicines.

Various educational institutions of traditional Chinese medicines shall strengthen the teaching of basic theories of traditional Chinese medicines, stress the combination of the basic theories with the clinical practices of traditional Chinese medicines, and advance the quality education.

Article 15 Whoever intends to establish any of the various educational institutions of traditional Chinese medicines shall meet the standards prescribed by the state for such establishment, and shall establish a clinical teaching base conforming to the standards prescribed by the state.

The standards for the establishment of educational institutions of traditional Chinese medicines shall be made by the administrative department of health under the State Council jointly with the administrative department of education under the State Council; the standards for clinical teaching bases of educational institutions of traditional Chinese medicines shall be made by the administrative department of health under the State Council.

Article 16 The state encourages the succession of academic experiences and technical specialties of traditional Chinese medicine experts, and educates senior clinical talents of traditional Chinese medical science and technical talents of traditional Chinese medicines.

Article 17 A tutor who undertakes the instruction of succession of academic experiences and technical specialties of traditional Chinese medicine experts shall meet the following conditions:

(a) having high academic level and rich practicing experiences, technical specialties and good occupational virtues;

(b) having worked in the field of traditional Chinese medicines for no less than 30 years and have held a senior professional post for no less than 10 years.

Article 18 A successor who is to succeed the academic experiences and technical specialties of traditional Chinese medicine experts shall meet the following conditions:

(a) having the academic qualification of regular course education or above in a higher educational institution and have good occupational virtues;

(b) being employed by a medical and sanitary institution or by an educational or scientific research institution of medical science to work in the field of traditional Chinese medicines, and to hold a professional post of intermediate level or above.

Article 19 The measures on the administration of the tutors and successors Article 19 The measures on the administration of the tutors and successors for the succession of academic experiences and technical specialties of traditional Chinese medicine experts shall be formulated by the administrative department for traditional Chinese medicines under the State Council jointly with other relevant departments.

Article 20 The department responsible for the administration of traditional Chinese medicines under the people's government of the province, autonomous region or municipality directly under the Central Government shall, in accordance with the relevant provisions of the state, improve the system in its own region for the continuing education of persons in the field of traditional Chinese medicines, and make plans on training such persons.

The department responsible for the administration of traditional Chinese medicines under the local people's government at or above the county level shall, upon the requirements of the planning on training persons in the field of traditional Chinese medicines, hold trainings of basic knowledge and skills on traditional Chinese medicines for persons providing urban and rural sanitary services at the basic level.

A medical institution shall create conditions for the professionals of traditional Chinese medicines to accept the continuing education.

Article 21 The state develops the science and technology of traditional Chinese medicines, includes them into the scientific and technological development planning, and strengthens the construction of key scientific research institutions of traditional Chinese medicines.

The local people's government at or above the county level shall make full use of the resources of traditional Chinese medicines, stress the scientific research and technical development of traditional Chinese medicines, take measures to develop, extend and apply technical achievements of traditional Chinese medicines, and promote the scientific and technological development of traditional Chinese medicines.

Article 22 For the scientific research of traditional Chinese medicines, it shall be stressed that both traditional and modern ways shall be used to carry out the basic theory research and clinical research of traditional Chinese medicines, and that traditional Chinese medical theories and modern science and

technology shall be used to carry out the research on prevention and treatment of common diseases, frequently occurring diseases, as well as difficult and complicated diseases.

The scientific research institutions, higher educational institutions and medical institutions of traditional Chinese medicines shall make efforts at tackling the key problems in the scientific research of traditional Chinese medicines and extending and applying scientific and technological achievements of traditional Chinese medicines, and educate the academic leaders and middle-aged and young technical backbones of traditional Chinese medicines.

Article 23 Those who donate diagnostic and treatment methods of traditional Chinese medicines as well as literatures, esoteric recipes and proved recipes of traditional Chinese medicines, which are of great significance to the scientific and technological development of traditional Chinese medicines, shall be granted awards with reference to the Regulation on Scientific and Technological Awards of the State.

Article 24 The state supports the foreign exchange and cooperation in respect of traditional Chinese medicines, and enhances the international dissemination of traditional Chinese medicines.

The extension, transfer, foreign exchange of major scientific research achievements of traditional Chinese medicines, and the Chinese-foreign cooperative research of traditional Chinese medical technologies, shall be approved by the department responsible for the administration of traditional Chinese medicines under the people's government at or above the provincial level, so as to prevent the loss of major traditional Chinese medical resources.

If any scientific research achievement of traditional Chinese medicines belongs to the scientific and technological secrets of the state but is indeed necessary for transfer or foreign exchange, the provisions in laws, administrative regulations and departmental rules on maintenance of state secrets shall be abided by.

Chapter IV Guaranty Measures

Article 25 The local people's government at or above the county level shall, in light of the needs in the development of the undertaking of traditional Chinese medicines and the situation of the local national economic and social development, gradually increase the input to the undertaking of traditional Chinese medicines, and shall support the development of the undertaking of traditional Chinese medicines.

No entity or individual shall misappropriate the expenses for the undertaking of traditional Chinese medicines for other use.

The state encourages domestic and overseas organizations and individuals to support the development of the undertaking of traditional Chinese medicines by means of donating or contributing investments, etc..

Article 26 Non-profit medical institutions of traditional Chinese medicines may, in accordance with the relevant provisions of the state, enjoy fiscal subsidies, tax reduction and exemption, and other preferential policies.

Article 27 The medical institutions designated and determined by the administrative department for labor security under the local people's government at or above the county level to treat patients of urban and town employees enjoying basic medical insurances, shall include the qualified medical institutions of traditional Chinese medicines.

The medical institutions of traditional Chinese medicines qualified for the designation shall provide basic medical treatment services as prescribed to those who enjoy the insurances.

Article 28 The people's governments at or above the county level shall take measures to strengthen the collection, neatening, research and protection of the literatures of traditional Chinese medicines.

The relevant entities and medical institutions of traditional Chinese medicines shall strengthen the management, protection and utilization of important literatures of traditional Chinese medicines.

Article 29 The state protects wild resources of traditional Chinese medicinal materials, supports the research, development and utilization of artificial substitutes of endangered animal and plant of traditional Chinese medicinal materials.

The local people's government at or above the county level shall strengthen the reasonable development and utilization of traditional Chinese medicinal materials, encourage the establishment of bases for planting and cultivating traditional Chinese medicinal materials, and promote the development and production of scarce traditional Chinese medicinal materials.

Article 30 The evaluating and appraising activities related to traditional Chinese medicines shall embody the characteristics of traditional Chinese medicines, and follow the development law of the traditional Chinese medicines.

For the purpose of appraising the qualification for holding the professional posts of traditional Chinese medicines, appraising and evaluating traditional Chinese medical treatment institutions, or educational or scientific research institutions of traditional Chinese medicines, initiating projects of or appraising achievements on scientific research topics of traditional Chinese medicines, a special appraising and evaluating organization of traditional Chinese medicines shall be established, or the experts of traditional Chinese medicines shall participate in the appraisal and evaluation.

Chapter V Legal Liabilities

Article 31 If any functionary in the department responsible for the administration of traditional Chinese medicines violates the present regulation in his administration of traditional Chinese medicines, by taking advantage of his post to accept the properties of others or to obtain other's benefits, by abusing his power or neglecting his duty, or by failing to investigate the illegal acts he has found, and thus causing severe consequences, if a crime has been constituted, he shall be investigated for criminal liabilities in accordance with the law; if the consequences are not serious enough for criminal punishment, he shall be imposed upon the administrative sanction of demotion or dismissal from his post in accordance with the law.

Article 32 If a medical institution of traditional Chinese medicines violates the present regulation and is under any of the following circumstances, it shall be ordered by the department responsible for the administration of traditional Chinese medicines under the local people's government at or above the county level to make a correction within a time limit; if it fails to make a correction before the expiry of the time limit, it shall be ordered to cease its business for rectification, or its practicing permit of medical institution shall be revoked and its qualification as a medical institution designated to treat patients of urban and town employees enjoying basic medical insurances shall be cancelled by the original approving organ, and the liable persons in charge and other directly liable persons shall be imposed upon disciplinary sanctions in accordance with the law:

(a) it does not meet the standards for the establishment of medical institutions of traditional Chinese medicines;

(b) it has acquired the qualifications as a medical institution designated to treat patients of urban and town employees enjoying basic medical insurances, but fails to provide those who have bought insurances with basic medical treatment services as prescribed.

Article 33 Whoever, without authorization, opens a medical institution of traditional Chinese medicines without the approval or engages in the traditional Chinese medical treatment activities

by failing to pass the examination for the qualification of practicing physician or practicing assistant physician as prescribed to obtain the practicing permit, shall be punished in accordance with the relevant provisions in the Law of the People's Republic of China on Practicing Physicians and the Regulation on the Administration of Medical Institutions.

Article 34 If an educational institution of traditional Chinese medicines violates the present regulation and is under any of the following circumstances, it shall be ordered by the department responsible for the administration of traditional Chinese medicines under the local people's government at or above the county level to make a correction within a time limit; if it fails to make a correction before the expiry of the time limit, it shall be revoked by the original approving organ:

(a) it does not meet the prescribed standards for the establishment;

(b) it has not established a clinical teaching base conforming to the prescribed standards.

Article 35 Whoever violates the present regulation, and thus causing heavy losses to the resources of traditional Chinese medicines or divulging scientific and technological secrets of the state, and the case is severe, and a crime is constituted, he shall be investigated for criminal liabilities in accordance with the law; if the consequences are not serious enough for criminal punishment, he shall be ordered by the department responsible for the administration of traditional Chinese medicines under the local people's government at or above the county level to make a correction, and the liable persons in charge and other directly liable persons shall be imposed upon disciplinary sanctions in accordance with the law.

Article 36 Whoever violates the present regulation by damaging or destroying the literatures of traditional Chinese medicines shall be ordered by the department responsible for the administration of traditional Chinese medicines under the local people's government at or above the county level to make a correction, and the liable persons in charge and other directly liable persons shall be imposed upon disciplinary sanctions in accordance with the law; whoever damages or destroys the literatures of traditional Chinese medicines which belong to cultural relics under protection of the state, and the case is severe, and a crime is constituted, he shall be investigated for criminal liabilities in accordance with the law.

Article 37 If any medical institution of traditional Chinese medicines alters the approved contents in an advertisement of traditional Chinese medical treatment, its registered document of approval for advertisements shall be revoked by the original approving department, and its application for approval of advertisements shall not be accepted within 1 year.

The department responsible for the administration of traditional Chinese medicines shall, after revoking the registered document of approval for advertising traditional Chinese medical treatment, notify the

supervisory and administrative organ for advertisements within 5 working days as of the date when it makes the decision on administrative disposal. The supervisory and administrative organ for advertisements shall, within 15 working days as of the receipt of the notification from the department responsible for the administration of traditional Chinese medicines, investigate and deal with the matter in accordance with the relevant provisions in the Advertising Law of the People's Republic of China.

Chapter VI Supplementary Provisions

Article 38 The medical institutions of traditional Chinese medicines mentioned in the present regulation shall mean the hospitals and clinics of traditional Chinese medicines or those of traditional Chinese medicines in combination with Western medicines, which have obtained the practicing permit of medical institution in accordance with the law.

The administration of national minorities medicines shall be implemented with reference to the present regulation.

Article 39 The present regulation shall come into force on October 1, 2003.

Comparison of Chinese traditional medicine legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

This legislation is not a good fit with the common provisions. Its purpose appears to relate to the regulation of accepted and entrenched traditional medical practices, ensuring that they are properly accredited and carried out. Some provisions bear some relation to the common provisions as noted below.

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	Article 1 The present regulation is enacted with a view to inheriting and developing the traditional Chinese pharmacology, guaranteeing and promoting the development of the undertaking of traditional Chinese medicines, and protecting the health of human bodies.	
2. definition of terms- key terms used in the draft		
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Article 2 The entities or individuals engaging in the services of traditional Chinese medical treatment, prevention, care and recovery, the education, scientific research and foreign exchanges on traditional Chinese medicine exchanges on traditional Chinese medicines, and in the administrative activities of the undertaking of traditional Chinese medicines inside the territory of the People's Republic of China, shall abide by the present regulation. The research and development, production, operation, use, supervision and administration of traditional Chinese medicines shall be in compliance with the Pharmaceutical Administration Law of the People's Republic of China.</p> <p>Article 3 The state protects, supports and develops the undertaking of traditional Chinese medicines, implements the guideline of stressing both traditional Chinese medicine and Western medicine, encourages the mutual study and supplements as well as the common improvement of traditional Chinese medicine and Western medicine, urges the organic combination of traditional Chinese medical science and Western medical science, and completely develops China's undertaking of traditional Chinese medicines.</p>	

	Article 4 For the development of the undertaking of traditional Chinese medicines, we shall comply with the principle of combining succession with innovations, maintain and carry forward the characteristics and advantages of traditional Chinese medicines, actively make use of modern science and technology, promote the development of the theories and practices of traditional Chinese medicines, and enhance the modernization of traditional Chinese medicines.	
4. beneficiaries- who should benefit	Article 7 The people's governments at or above the county level shall grant awards to the entities and individuals who have made remarkable contributions to the succession and development of the undertaking of traditional Chinese medicines or have made prominent achievements in their work of traditional Chinese medicines in remote regions.	
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable		
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	Article 23 Those who donate diagnostic and treatment methods of traditional Chinese medicines as well as literatures, esoteric recipes and proved recipes of traditional Chinese medicines, which are of great significance to the scientific and technological development of traditional Chinese medicines, shall be granted awards with reference to the Regulation on Scientific and Technological Awards of the State.	
7. Sanctions and remedies- dealing with breaches		
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>Article 5 The people's governments at or above the county level shall include the undertaking of traditional Chinese medicines into the plans of national economic and social development, and harmonize the development of the undertaking of traditional Chinese medicines with the economy and society.</p> <p>The local people's government at or above the county level shall, when making the regional sanitation planning, arrange the overall establishment and distribution of medical institutions of traditional Chinese medicines as well as improve the network of urban and rural services of traditional Chinese medicines in light of the situation of social and economic development in this region and the residents' needs in medical treatment.</p> <p>Article 6 The administrative department for traditional Chinese medicines under the State Council shall be responsible for the administration of traditional Chinese medicines nationwide.</p> <p>The relevant departments under the State Council shall, within the scope of their respective duties, be responsible for the work related to traditional Chinese medicines.</p> <p>The department for traditional Chinese medicines under the local people's government at or above the county level shall be responsible for the administration of traditional Chinese medicines within its own administrative division. The relevant departments under the local people's government at or above the county level shall, within the scope of their respective duties, be responsible for the work related to traditional Chinese medicines.</p>	

	<p>Article 28 The people's governments at or above the county level shall take measures to strengthen the collection, neatening, research and protection of the literatures of traditional Chinese medicines.</p> <p>The relevant entities and medical institutions of traditional Chinese medicines shall strengthen the management, protection and utilization of important literatures of traditional Chinese medicines.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws-avoiding conflict with other laws		
13. recognition of requirements of other nations-mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

7. Costa Rica

BIODIVERSITY LAW THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA DECREE:

CHAPTER I GENERAL RULES

ARTICLE 1.- Object

The object of the present law is the conservation of biodiversity and the sustainable use of the resources as well as to distribute in an equitable manner the benefits and derived costs.

ARTICLE 2.- Sovereignty

The state will exercise total and exclusive sovereignty over the components of biodiversity.

ARTICLE 3.- Area of application

This law will apply to the components of biodiversity that are found under the sovereignty of the State, as well as to the processes and activities carried out under its jurisdiction or control, independently from those effects which manifest themselves inside or outside the zones subject to national jurisdiction. This law will regulate specifically the use, management, associated knowledge and equitable distribution of the benefits and derived costs of the use of the components of biodiversity.

ARTICLE 4.- Exclusions

This law will not apply to access to biochemical or genetic material of human origin, which will continue to be regulated by the General Health Law, No. 5395, of the 30th of October 1973, and by the connected laws. Neither will these rules apply to the exchange of biochemical or genetic resources among the indigenous people and local communities, nor to the associated knowledge resulting from their non-profit making practices, uses or customs. The arrangements of this law do not affect university autonomy in the matter of teaching or research in the field of biodiversity, except if the research has commercial purposes.

TRANSITORY.- Public universities, in accordance with the National Council Of Rectors will have a period of one year from when this law becomes valid to establish in their internal rules, the controls and regulations applicable exclusively to academic activity and research that is carried out, when it implies access to biodiversity for non-profit making purposes. Universities, which do not define adequate controls during the indicated period, will be subject to the ordinary regulations of this law.

ARTICLE 5.- Framework for Interpretation

This legislation will serve as the framework for the interpretation of the rest of the rules that regulate the subject matter of this law.

ARTICLE 6.- The Public Domain

The biochemical and genetic properties of the components of biodiversity, wild or domesticated, belong to the public domain. The State will authorise the exploration, research, bioprospecting and use of the components of biodiversity which constitute part of the public domain, as well as the utilization of all the genetic and biochemical resources, by means of the rules of access established in chapter V of this law.

ARTICLE 7.- Definitions

This law should be interpreted in accordance with the following definitions:

- 1.- Access to biochemical and genetic components: Action to obtain samples of components of biodiversity, wild or domesticated, in situ or ex situ conditions, or to obtain associated knowledge, with basic aims of research, bioprospecting or commercial use.
- 2.- Biodiversity: Variability of living organisms from any source, whether they are found in terrestrial, air or marine or aquatic ecosystems or in other ecological complexes. This includes the diversity within each species, as well as between species and between the ecosystems that they form part of. For the purposes of this law, intangible components, which are included within the term biodiversity, are: the knowledge, innovations and practices, be they traditional, individual or collective, with real or potential value associated with biochemical or genetic resources, whether these are protected or not by systems of intellectual property or by sui generis registration systems.
- 3.- Bioprospecting: The systematic search, classification and research for commercial purposes of new sources of chemical compounds, genes, proteins, and micro-organisms, with real or potential economic value, which are found in biodiversity.
- 4.- Biotechnology: Any technological application which uses biological systems, living organisms or their derivatives to make or modify products or processes for a specific use.
- 5.- Natural Collections: Any systematic collections of specimens, living or dead, representative of plants, animals or micro-organisms.
- 6.- Knowledge: Dynamic product generated by society over time and by different means, including that which is produced in the traditional manner, and that generated by scientific practice.
- 7.- Ex situ conservation: Maintenance of the components of biodiversity outside of their natural habitat, including collections of biological material.
- 8.- In situ conservation: Maintenance of the components of biodiversity in ecosystems and natural habitats, including the maintenance and recovery of viable populations of species in their natural surroundings; in the case of domesticated or cultivated species, in the surroundings in which they have developed their specific properties.
- 9.- Prior informed consent: Procedure through which the State, private owners or the local or indigenous communities, as the case may be, properly supplied with all the required information, allow access to their biological resources or to intangible components associated to them, under mutually agreed conditions.
- 10.- Diversity of species: Variety of species, wild or domesticated, in a specific space.
- 11.- Genetic diversity: Frequency and diversity of the genes or genomes which provide the diversity of species.
- 12.- Ecosystem: Dynamic complex of communities of plants, animals, fungi and microorganisms and their physical media, interacting as a functional unit.
- 13.- Biochemical element: Any material derived from plants, animals, fungi or microorganisms, which contain specific characteristics, special molecules or elements to design them.
- 14.- Genetic components: Any material derived from plants, animals, fungi or microorganisms, which contains functional units of heredity.
- 15.- Species: Whole group of organisms capable of reproduction among themselves.
- 16.- Domesticated or cultivated species: Species selected by humans to be voluntarily reproduced.
- 17.- Exotic species: Species of flora, fauna or micro-organisms, whose natural area of geographic dispersion does not correspond to the national territory and is found in the country, be it a product of voluntary human activity or the activity of the species or not.
- 18.- Environmental impact assessment: Scientific and technical procedure which permits the identification of the effects which an action or specific project will have on the environment, as well as quantifying and considering them in order to take decisions. Includes the specific effects, their overall

evaluation, the alternatives for greater environmental benefit, a program for control and minimisation of the negative effects, a monitoring program, a recovery program, as well as the guarantee of proper environmental execution.

19.- Habitat: Place or environment where an organism or a population naturally exists.

20.- Fungi: Single cell or multicellular organism devoid of chlorophyll and belonging to the “fungi” phylum.

21.- Innovation: Any knowledge which adds an improved use or value to the technology, properties, values and processes of any biological resource.

22.- Genetic manipulation: Use of genetic engineering to produce genetically modified organisms.

23.- Micro-organism: Single cell or multicellular organism capable of carrying out their vital processes, independently of other organisms.

24.- Genetically modified organisms: Any organism altered by means of deliberate insertion, deletion, rearrangement or other manipulation of deoxyribonucleic acid, by techniques of genetic engineering.

25.- Country of origin of genetic resources: To be understood as the country which possesses these resources in in situ conditions.

26.- Country providing genetic resources: Country which supplies genetic resources obtained from in situ sources, including populations of wild or domesticated species, or from ex situ sources, which could originate or not from that country.

27.- Permission for access: Authorisation granted by the State of Costa Rica for basic research in bioprospecting, obtaining or commercialising genetic materials or biochemical extracts of components of biodiversity, as well as their associated knowledge, to people or institutions, national or foreign, requested by means of the procedure, given the rules in this legislation, whether it concern permission, contracts, agreements or concessions.

28.- Natural resource : Any biotic or abiotic component of nature which may be exploited, commercially or not.

29.- Transgenic resource: Natural biotic resource which has been subjected to manipulation by genetic engineering which alters its original genetic constitution.

30.- Restoration of biological diversity: Any activity directed to the recovery of structural and functional characteristics of the original diversity of a determined area, for conservation purposes.

ARTICLE 8.- Environmental function of real state property

As a part of the economic and social function, real state properties have to fulfil an environmental function.

ARTICLE 9.- General principles

The general principles which constitute for the purposes of the application of this law, are, among others, the following:

1.- Respect for all forms of life. All the living things have the right to live, independently of actual or potential economic value.

2.- The components of biodiversity are valuable. They have decisive and strategic importance for the development of the country and are indispensable for the domestic, economic, social, cultural and aesthetic use of its inhabitants.

3.- Respect for cultural diversity. The diversity of cultural practices and associated knowledge of the components of biodiversity should be respected and promoted, in conformity with national and international legal standards, particularly in the case of the peasant communities, the indigenous people and other cultural groups.

4.- Intra and inter-generational equity. The State and private individuals will watch over the sustainable utilization of the components of biodiversity to ensure that the possibilities, opportunities and benefits

of their use will be guaranteed in an equitable manner for all sectors of society and will satisfy the needs of future generations.

ARTICLE 10.- Objectives

This law will endeavour to achieve the following objectives:

- 1.- To integrate the conservation and use of the components of biodiversity in the development of socio-cultural, economic and environmental policies.
- 2.- To promote the active participation of all sectors of society in the conservation and ecological use of biodiversity, in the pursuit of social, economical and cultural sustainability.
- 3.- To promote education and public awareness about the conservation and use of biodiversity.
- 4.- To regulate access and in so doing make possible the equitable distribution of the environmental, economic and social benefits to all sectors of society, paying special attention to local communities and indigenous peoples.
- 5.- To improve administration for effective management of the components of biodiversity.
- 6.- To recognise and provide compensation for the knowledge, practices and innovations of indigenous peoples and local communities in the conservation and sustainable ecological use of the components of biodiversity.
- 7.- To recognise the rights deriving from the contribution of scientific knowledge to the conservation and sustainable ecological use of the components of biodiversity.
- 8.- To ensure environmental safety to all citizens as a guarantee of social, economic and cultural sustainability.
- 9.- To not limit the participation of any sector in the sustainable use of the components of biodiversity or in the development of research and technology.
- 10.- To promote access to the components of biodiversity and the associated transfer of technology.
- 11.- To promote international and regional co-operation to achieve the conservation, ecologically sustainable use and the distribution of benefits derived from biodiversity, especially in frontier areas or from shared resources.
- 12.- To promote the adoption of incentives and the reward of environmental services for conservation, the sustainable use and the components of biodiversity.
- 13.- To establish a system of conservation of biodiversity, that will achieve co-ordination between the private sector, the citizens and the State, to guarantee the application of this law.

ARTICLE 11.- Criteria for applying this law.

The criteria for applying this law are:

- 1.- Preventive criterion: It is recognised that it is of vital importance to anticipate, prevent and attack the causes of the loss of, or threats to, biodiversity.
- 2.- Precautionary criterion: When danger or threats of grave or imminent damage to the components of biodiversity and its associated knowledge exist, the absence of scientific certainty should not be used as a reason to disregard the adoption of effective measures of protection.
- 3.- Criterion of environmental public interest: The use of the components of biodiversity should guarantee development options for future generations, food security, the conservation of the ecosystems, the protection of human health and the improvement of the citizens' quality of life.
- 4.- Criterion of integration: The conservation and sustainable use of biodiversity should incorporate the plans, programs, activities and sectoral and intersectoral strategies whose effects contribute to the process of development.

ARTICLE 12.- International Co-operation

The State should promote, plan and orient national activities, foreign relations and cooperation with national neighbours with respect to the conservation, use and exchange of components of biodiversity present in the national territory and in the transfrontier ecosystems of common interest. Likewise, it should regulate the entry to and exit from the country of biotic resources.

CHAPTER II

ADMINISTRATIVE ORGANIZATION

ARTICLE 13.- Organization

To fulfil the objectives of the present law, the Minister of the Environment and Energy will co-ordinate the administrative organization in charge of the management of biodiversity, composed of:

- a) The National Commission for the Management of Biodiversity.
- b) National System of Conservation Areas.

SECTION I

NATIONAL COMMISSION FOR THE MANAGEMENT OF BIODIVERSITY

ARTICLE 14.- Concerning the National Commission for the Management of Biodiversity

The National Commission for the Management of Biodiversity, with instrumental legal identity as a decentralised organ of the Ministry of Environment and Energy is created. It will have the following functions:

- 1.- To formulate national policies relating to the conservation, sustainable ecological use and restoration of biodiversity, in accordance with conventions concerning biological diversity and other internationally corresponding agreements and treaties, as well as relating to national interests.
- 2.- To formulate the policies and responsibilities established in chapters IV, V, and VI of this law, and to co-ordinate them with the different agencies responsible for these matters.
- 3.- To formulate and co-ordinate the policies for access to the components of biodiversity and associated knowledge in order to ensure adequate scientific and technical transfer and the proper distribution of the benefits which, for the purposes of title V of this law, will be called general rules.
- 4.- To formulate and pursue the national strategy for biodiversity.
- 5.- To co-ordinate and facilitate the carrying out of an extensive educational process about policies for the conservation, sustainable ecological use and restoration of biodiversity, involving all political, economic and social sectors of the country,
- 6.- To revoke the resolutions of the Technical Office of the Commission and the Phytosanitary Protection Service as regards access to the components of biodiversity; in this matter the administrative process shall be exhausted.
- 7.- To advise other organs of Executive Power, autonomous institutions and private organizations, in order to regulate actions for the ecologically sustainable use of the components of biodiversity.
- 8.- To watch over public and private actions relating to the management of the components of biodiversity covered by the policies established through this Commission.
- 9.- To name the Secretary of the Commission, who will also be Executive Director of the Technical Office of this same organ.
- 10.- To propose to the Minister of the Environment and Energy, with criteria of identity, the country's representatives before international meetings relating to biodiversity.

ARTICLE 15.- Membership

The Commission will consist of:

- a) The Minister of the Environment and Energy or his representative. He/she will also be the President of the Commission and responsible for its good operation.
- b) The Minister of Agriculture or his representative.
- c) The Minister of Health or his representative.
- d) The Executive Director of the National System of Conservation Areas.
- e) A representative of the Costa Rican Institute of Fishing and Agriculture.
- f) A representative of the Minister of Foreign Trade.
- g) A representative of the National Small Farmers Board.
- h) A representative of National Indigenous Peoples Board.
- i) A representative of the National Council of Rectors.
- j) A representative of the Costa Rican Federation for the Conservation of the Environment.
- k) A representative of the Costa Rican Union of Chambers of Commerce.

Each sector will independently name, for a period of three years, its representative and a deputy. Moreover, it could extend the appointments and vouch for them by means of direct communication with the Minister for the Environment and Energy, who will install them. The Commission will meet, ordinarily, once a month, or in unusual circumstances, when summoned by its president or at least six of its members, and should endeavour to provide the necessary facilities for its members to participate effectively.

ARTICLE 16.- Organization and internal structure.

The Commission will perform its agreements and resolutions and instruct its procedures by means of the Executive Director of the Technical Office. For issues which are complex to resolution or which require specialised knowledge, the Commission could name ad hoc committees of experts with the function of advisers.

ARTICLE 17.- Technical Office

The Technical Office of support to the Commission will be composed of an Executive Director and the personnel indicated in the regulations of this law. To fulfil its functions, it could designate ad hoc committees of experts as advisers. The functions of the Technical Office will be:

- 1.- To negotiate, approve, reject and control applications for access to biodiversity resources.
- 2.- To co-ordinate anything related to access with the Conservation Areas, the private sector, indigenous peoples and peasant communities.
- 3.- To organize and maintain an updated register of applications for access to the components of biodiversity.
- 4.- To compile and update the rules referring to the fulfilment of the agreements and directives in the matter of biodiversity.

ARTICLE 18.- Executive Director

The Executive Director of the Technical Office of the Commission should be a suitable professional designated, through public contest, by the Commission itself for a renewable period of five years. He/she will have the following functions:

- 1.- Be the Secretary of the Commission, the executor of its agreements and resolutions, and the person responsible for their pursuit.
- 2.- Represent the Commission to the National Council of Conservation Areas.
- 3.- Keep the records of the Commission updated.
- 4.- Direct and keep updated the register indicated in clause c) of article 17.

- 5.- Provide the Commission quarterly reports about the operation of the Technical Office and in special circumstances about the decisions taken with respect to the applications for access to the components of biodiversity.
- 6.- Co-ordinate administratively with the officials from the Ministry of Environment and Energy or from other public institutions, to execute the tasks which are indispensable to the fulfilment of the functions of the Commission.
- 7.- Participate in all sessions of the Commission, with a voice, but without a vote.

ARTICLE 19.- Financing of the Commission and the Technical Office

The Commission and its Technical Office will be provided with the following resources:

- 1.- Consignments which are assigned annually to the ordinary and the extraordinary budgets of the Republic.
- 2.- Legacies and donations of physical or legal persons, national or international organizations, private or public, and the contributions of the State or its institutions.
- 3.- Contributions from registrations and transactions of applications and inspections.
- 4.- Income from fines owed for the failure to fulfil contracts acquired in the execution of access activities.
- 5.- A percentage of the benefits which are established through the permits and concessions related to biodiversity.
- 6.- Ten percent of the entrance fees to National Parks.

ARTICLE 20.- Financial Administration.

Finances collected according to the previous article will be destined exclusively to the operation of the Commission and its Technical Office of support. It will be administered by the Executive Director, by means of a trust fund or by other financial mechanisms which are established in the regulations of this law.

ARTICLE 21.- Obligatory Consultation.

The Commission will act as an organ of consultation of the Executive Power and the autonomous institutions in matters related to biodiversity, which will be able to consult the Commission before authorising national or international agreements or before establishing or ratifying actions or policies that affect the conservation and use of biodiversity.

SECTION II

NATIONAL SYSTEM OF CONSERVATION AREAS

ARTICLE 22.- National System of Conservation Areas

The National System of Conservation Areas, referred to below as the System, is created and will have the its own legal identity. It will be a decentralised and participatory system of management and institutional co-ordination, bringing together responsibilities in matters of forest, wildlife, protected areas and the Ministry of Environment and Energy, with the aim of laying down policies, planning and executing processes aimed at achieving sustainability in the management of the natural resources of Costa Rica. To conform with the above, the General Directorate of Wildlife, the State Forestry Administration and the National Parks Service will exercise their functions and responsibilities as a single organ, by means of the administrative structure of the System, without prejudice to the objectives for which they were established. The protection and conservation of the use of deep hydrographic valleys and hydric systems are included among the responsibilities of the System.

ARTICLE 23.- Administrative organization of the System

The system will consist of the following organs:

- 1.- National Council of Conservation Areas.
- 2.- The Executive Secretary .
- 3.- The administrative structures of the Conservation Areas.
- 4.- The regional councils of Conservation Areas.
- 5.- The local councils.

TRANSITORY.- In a period of six months from when this law becomes valid, the System will take up all responsibilities concerning hydrology. From then on, it will have the administrative organization necessary for such effect.

ARTICLE 24.- Membership in the National Council

The National Council of Conservation Areas will consist of:

- 1.- The Minister of the Environment and Energy, who will act as president.
- 2.- The Executive Director of the System, who will act as secretary of the council.
- 3.- The Executive Director of the Technical Office of the Commission.
- 4.- The directors of each Conservation Area.
- 5.- A representative of each regional council of the Conservation Areas, designated by each Council.

ARTICLE 25.- Functions of the National Council.

The functions of this Council will be to:

- 1.- Define the execution of the strategies and policies of the consolidation and development of the National System of Conservation Areas, and to supervise their execution.
- 2.- Supervise and control the correct technical management and administration of the Conservation Areas.
- 3.- Co-ordinate, together with the Commission, the elaboration and updating of the national strategy for the conservation and sustainable use of biodiversity, which should be done with full consultation of civil society and coordinated with the public sector, within the framework of each Conservation Area.
- 4.- Define strategies and related policies for the consolidation and development of national protected areas, as well as to supervise their management.
- 5.- Approve the strategies, the structure of the administrative organs of the protected areas and the plans and annual budgets of the Conservation Areas.
- 6.- Recommend the creation of new protected areas which increase their category of protection.
- 7.- Carry out technical and administrative audits for the supervision of good management of the Conservation Areas and their protected areas.
- 8.- Establish the guidelines and directives for current structures, administrative mechanisms and regulations for the Conservation Areas.
- 9.- Name the directors of the Conservation Areas from a list of three candidates proposed by the regional councils.
- 10.- Approve the requests for concession indicated in article 39 of this law.
- 11.- Other functions necessary to fulfil the objectives of this and other laws related to the functions of the System.

ARTICLE 26.- Functions of the Executive Director The Executive Director of the System will be responsible for the execution of the guidelines and decisions of the National Council of Conservation Areas and will act under their supervision. He/she will be appointed by the Minister of the Environment

and Energy for a period of four years, and his/her appointment could be extended. His/ her responsibilities will include informing the Council and the country, about the application of this legislation and other laws whose application corresponds with the System; likewise, he/she should supervise and pursue the fulfilment of the regulations, the policies and the guidelines concerning the matter. He/she will also represent the National Council of Conservation Areas to the Commission.

ARTICLE 27.- Administrative structure of the Conservation Areas

The Conservation Areas will consist of the following administrative units:

- a) The Regional Council of the Conservation Area.
- b) The Regional Directorate of the Conservation Area.
- c) The Scientific Technical Committee.
- d) The organ of Financial Administration of protected areas.

ARTICLE 28.- Conservation Areas

The System will consist of designated territorial conservation areas under the general supervision of the Ministry of Environment and Energy, by means of the National Council of Conservation Areas, with power in all national territory whether they be wild protected areas, highly fragile areas or private areas of commercial exploitation. Each Conservation Area is a territorial unit of the country, administratively delimited, managed by the same strategy of development and administration duly co-ordinated with the rest of the public sector. In each one, private as well as national activities interrelate without discrediting the protected areas. The Conservation Areas will be in charge of the application of current laws in the area of national resources, within their geographic demarcation. They should execute the policies, strategies and programs approved by the National Council of Conservation Areas, in the matter of protected areas. Also, it will have the responsibility to apply other laws which control the matter, such as the Law on Wildlife Conservation, N. 7317

of the 30 th of October, 1992, the Forest Law No. 7575 of the 13 th of February, 1996, organic law No. 7554 of the 4 th of October, 1995, and Law Creating the Service of National Parks No. 6084 of the 24 th of August, 1977. Based on the recommendations of the Council, the Ministry of Environment and Energy will define the territorial division which is technically more advisable for the Conservation Areas of the country, as well as its modifications.

ARTICLE 29.- Regional Council of Conservation Area.

The System will exercise the administration of the Conservation Areas, by means of a regional council, the composition of which will be decided by means of a public meeting, which will be called for by the regional representation of the System, to all the nongovernmental organizations and interested communal parties, the municipalities and the public institutions present in the area. It will be formed by the public official responsible for the protected area and will consist of a minimum of five members representing different sectors of the area, chosen by the assembly of the organizations and institutions called to meeting for this reason; a municipal representative should always be chosen by it. In certain districts where the indicated organizations to form the council do not exist, it will be the responsibility of the municipalities to designate them in co-ordination with the representative of the System. These councils will have an organizational structure under the regulations of this law, which will consist of, at least, a President, a Secretary, a Treasurer and two committee members, all elected by the Council itself, as well as a representative of the System, who will act as Executive Secretary. In the Conservation Areas where this is necessary because of their complexity, local councils could be created in accordance with the regional council of the Conservation Areas, whose constitution will be defined at their creation. Each regional council will establish its own regulations within the boundaries of valid

legislation, and should ask the National Council for final approval. In this regulation, the percentage of total economic income of the Conservation Areas needed for its operation will be established.

ARTICLE 30.- Functions of the Regional Council

The council will have the following functions:

- 1.- To watch over the application of the policies in the matter.
- 2.- To watch over the integration of the communal necessities in the plans and activities in the Conservation Area.
- 3.- To encourage the participation of the different sectors of the area in the analysis, discussion and the search for solutions to the regional problems related to natural resources and the environment.
- 4.- To present to the National Council the proposal for the appointment of the Director of the area, by means of a shortlist of three.
- 5.- To approve the strategies, policies, guidelines, plans and specific budgets for the Conservation Area, at the proposal of the Director of the Area and the scientific technical committee.
- 6.- To define specific matters for the management of their protected areas, and present them to the National Council for their approval.
- 7.- To recommend to the National Council of the Conservation Areas the creation, modification or change of category of each protected wild area.
- 8.- To supervise the work of the Director and of the organ of financial administration.
- 9.- To approve at the first request anything referring to the concessions and contracts of services established in article 39.
- 10.- Any other function assigned by national legislation or by the National Council .

ARTICLE 31.- Director of conservation area

Each conservation area will be the responsibility of a Director, who will be in charge of applying the present law and other laws which control the matter, as well as to implement national policies and carry out the directives of the regional Council of his/her conservation area or those of the Ministry of Environment and Energy, to whom he/she will report. He/she should watch over the integration and good operation of the technical committee and the organ of financial administration, as well as the training, supervision and welfare of the personnel.

ARTICLE 32.- Scientific technical committees

Each conservation area should rely on a scientific technical committee whose function will be to assess the Council and the Director in the technical aspects of management of the area. This committee will be formed by those people responsible for the area's programs, as well as other officials and people outside the area designated by the Director. This committee is a permanent forum whose function is to be the maximum organ of assessment to analyse, discuss and formulate plans and strategies which will be executed in the Conservation Areas.

ARTICLE 33.- Organ of financial administration

The National Council of Conservation Areas will be responsible for defining the general guidelines to shape the mechanisms and instruments of financial administration for the regional councils of each conservation area, to assure that they fulfil the following principles and criteria:

- 1.- It should assure the integrity of the System.
- 2.- Its structure should be clear and highly participatory in all aspects with efficiency and agility.
- 3.- It should assure that national policies for the tasks and funds assigned to its responsibility are followed and fulfilled.
- 4.- It should include permanent mechanisms of appropriate and updated information, as much for the organs of the System, as for the rest of the public sector and society.

ARTICLE 34.- Commissioners of Conservation Areas

The profile of Commissioner of the conservation area is created; it will be an ad honorem responsibility and should be carried out by people with recognised prestige and track record in the field of natural resources; more-over, they should have sound moral character and manifest interest. The post will have among its functions to supervise the good operation of the area, to ask for and suggest the corrective measures to fulfil its objectives, especially in matters concerning protected wild areas, as well as to support the area in the attainment of its aims and resources. Each conservation area will have at least one commissioner. The commissioners will be appointed by the National Council, by recommendation of the regional councils.

ARTICLE 35.- Finance

The National System of Conservation Areas will design financial mechanisms that allow it to exercise its mandates with agility and efficiency. These mechanisms will include transfers from the State budget, or from any person or legal person, as well as its own funds generated from the protected areas, including entrance tariffs, the payment of environmental services, debt swaps, rents established by law, payments for activities carried out inside the protected areas and donations.

ARTICLE 36.- Financial instruments

For the purposes of the previous article, the System will be authorized to administer the funds which enter the System by any concept by means of trust funds or other instruments, whether they are for the entire System or specifically for each conservation area. The National Park Fund, created by the law of creation of the National Parks Service, No. 6084, of the 24 th of August, 1977, will transform into the trust fund for the protected areas, dedicated exclusively to the aims for which it was created, from now including the finance of activities of protection and consolidation in the other categories of protected areas of national property.

ARTICLE 37.- Payment of environmental services

In virtue of programs or projects for sustainable use approved by the National Council of Conservation Areas and the Regulatory Authority of Public Services, on the part of the institutions or suitable public organizations to offer a real or potential water or energy service, which depend strictly on the protection or integrity of a Conservation Area, the Regulatory Authority of Public Services could authorize to charge the users, by means of a relevant tariff, a percentage equivalent to the cost of the service offered and to the dimension of the program or the approved project. Every three months, the entity responsible for collecting said payment should carry out the transfers or the payments of the total amount collected to the trust fund of protected areas, which in turn should carry out, with the same timeframe, the respective payments to the owners, possessors or administrators of the affected properties, and direct them to the following exclusive aims:

- 1.- Payment of services for protection of recharge zones to proprietors and private owners of the properties, which include strategic areas defined together by the regional council of the Conservation Areas and the institutions and aforementioned organizations.
- 2.- Payment of services for protection of recharge zones to proprietors and private owners, who want to subject their properties in a voluntary way to the conservation and protection of the areas, properties which will be previously defined by the regional council of the Conservation Areas.
- 3.- Purchase or cancellation of private properties situated in national protected areas, that have not been bought or paid for.
- 4.- Payment of the operative and administrative costs necessary for the maintenance of national protected areas.

5.- Financing of rural aqueducts, prior to the presentation of the environmental impact assessment showing the sustainability of the water resource. For the fulfilment of this article, the respective conservation area should establish a program which executes these actions.

ARTICLE 38.- Self-financing

The system will use in the Conservation Areas for this operation, all the funds which its activities generate, such as entrance tariffs to protected areas or concessions of non-essential services. These will be administrated by means of the Trust Funds of protected areas. The funds generated by the protected areas will be exclusively for their protection and development, in this order of priority. The National Council of the Conservation Areas will be the organ which defines the annual budgets, in a way which strengthens the integrity of the System.

ARTICLE 39.- Concessions and contracts

The National Council of Conservation Areas is authorized to approve the contracts, concessions of services and non-essential activities inside national protected wild areas. Excluded are the responsibilities which this and other laws entrust exclusively to the Executive Power through the Ministry of Environment and Energy, such as the establishment, strategic development, plans and the budgets of the Conservation Areas. These concessions and contracts in no case could include the authorization of access to components of biodiversity in favour of third parties, or the construction of private buildings. The non-essential services and activities will be: parking places, sanitary places, the administration of physical installations, services, shops, the constructions and administrations of paths, administration of visits and others will be defined by regional council of Conservation Area. These concessions or contracts could be given to legal people or their current legal identity that are non-profit making organizations and have objectives of supporting the conservation of natural resources. Priority will be given to regional organizations. The holders of licenses or permits should present satisfactory external audits, carried out in the last year; all at the discretion of the regional council of the Conservation Area.

ARTICLE 40.- Adaptation of plans and strategies

The concessions and contracts authorized in the previous article should be based on the strategies and plans approved by the Regional Council in a way defined by the National Council of Conservation Areas, according to the laws and established policies. The formulation of strategies and plans of the protected areas in no case will be affected by considerations that are not strictly technical.

ARTICLE 41.- Funds and existing resources

For the faithful fulfilment of the aims and objectives of the law of Conservation of Wildlife No. 7317, of the 30 th of October 1992; Forest Law, No. 7575 of the 13 th of July 1976; the law of creation of the National Park Service, No. 6084 of 24 th of August 1977, and the organic Law of the Environment, No. 7554 of 4 th October 1995, to attend the costs that derive from them, the System will count the contributions of the budget of the Republic and the resources of the funds already existing in the system, which could be administered by a trust fund or with the financial instruments that they define.

ARTICLE 42.- Tariffs

The System is authorized to charge different prices to residents and non-residents in the country, by the concept of entrance tariffs to all national protected areas, as well as for the provision of services in the areas. Likewise, it is authorizes to charge different tariffs according to the protected area and the

services that it offers. The System will set the tariffs according to the operating costs of each protected zone and the costs of services provided. Also, it will revise them each year in order to adjust them in accordance with the consumer price index.

ARTICLE 43.- National park stamps

From the funds collected by means of the National pro-park stamps, established in article seven of the law creating the National Park Service, of the 17 th of August 1977, in future ten percent (10%) will be destined to the Commission. The value of the stamp is brought up to date in the following way:

- 1.- A stamp equivalent to two percent of the income from tax on municipal patents in any class.
 - 2.- A stamp for two hundred and fifty colones (250,00), in all passports and safe conduct passes which are granted to exit the country.
 - 3.- A stamp for five hundred colones (500,00) which must figure on all documents of transfer and registration of automotive vehicles.
 - 4.- A stamp of five hundred colones (500,00) which should figure on the authentication of signatures carried out by the Ministry of Foreign Affairs.
 - 5.- A stamp for five thousand colones which should be paid for annually, by all social clubs, dancehalls, bars, liquor stores, casinos and any place where alcoholic beverages are sold or consumed.
- Of what is collected through the concept of the stamp, whose collection will be the responsibility of the municipalities according to clauses 1 and 5 above, thirty percent (30%) will be destined for the municipality of the formulation and implementation of local strategies of sustainable development and seventy percent (70%) for the protected areas of the respective Conservation Area.

CHAPTER III

GUARANTEES OF ENVIRONMENTAL SAFETY

ARTICLE 44.- Establishment of mechanisms of procedures for biosafety To avoid and prevent damage, present and future, to human, animal or plant health, or to the integrity of the ecosystems, the mechanisms and procedures for access to the components of biodiversity with aims of research, development, production, application, liberation or introduction of exotic or genetically modified organisms will be established in the regulations of this law.

ARTICLE 45.- Responsibility in the matter of environmental safety

The State has the obligation to avoid any risk or danger which threatens the permanence of ecosystems. Also, it should prevent, reduce or restore environmental damage which threatens life or deteriorates its quality. The civil liability of title holders or people responsible for the management of the genetically modified organisms and any damage caused, is set in the organic Law of the Environment, the Civil Code and other applicable laws. The penal responsibility is set in the existing legal regulations.

ARTICLE 46.- Registration and permits regarding genetically modified organisms

Any person or legal person who proposes to import, export, experiment, mobilize, release into the environment, multiply, commercialize or use for research, genetically modified organisms in the field of agriculture and fishing, created inside or outside Costa Rica, should obtain prior permission from the Phytosanitary Protection Service. Each three months it will report to the Commission. Obligatorily, the aforementioned people should ask the National Technical Commission on Biosafety for a report which will act as a link and determine the necessary measures for risk assessment and management. All physical or legal persons, national or foreign, that carry out genetic manipulation are obliged to register with the Technical Office of the Commission.

ARTICLE 47.- Founded opposition

Any person can be part of the process of the permit procedure and can give observations and documents in writing. Also, they can request the repeal or revision of any given permit. The Technical Office of the Commission will reject any manifestly unfounded conduct. The regulations of this law will define the corresponding period and procedure.

ARTICLE 48.- Repeal of permits for genetic manipulation

Base on technical, scientific or security criteria, the Technical Office can modify or repeal any given permit in accordance with the previous article. In face of imminent danger, unforeseeable situations or failure to comply with official arrangements, the Office can retain, confiscate, destroy or send back the genetically modified or any other type of organisms; moreover, it can prohibit its transfer, experimentation, release into the environment, multiplication or commercialization to protect human health and the environment.

CHAPTER IV

CONSERVATION AND SUSTAINABLE USE OF ECOSYSTEMS AND SPECIES

ARTICLE 49.- Maintenance of ecological processes

The maintenance of ecological processes is an obligation of the State and the citizens. For such effect, the Ministry of Environment and Energy, and other relevant public organizations, taking into account specific applicable legislation, will set out the adequate technical rules and will use mechanisms for its conservation, such as environmental regulations and assessments, evaluations of impact and environmental audits, prohibitions, permits, environmental licenses and incentives, among others.

ARTICLE 50.- Scientific technical rules

Human activities should adjust to the scientific technical rules established by the Ministry and the other competent public organizations for the maintenance of vital ecological processes, inside or outside the protected areas; this especially concerns activities related to human settlements, agriculture, tourism and industry, or others which affect the said processes.

ARTICLE 51.- Identification of ecosystems

For the purposes of this law, the Ministry of Environment and Energy in collaboration with other public and private organizations will prepare a system of parameters which allow the identification of ecosystems and their components to take the appropriate measures, including mitigation, control, restoration, recuperation and rehabilitation.

ARTICLE 52.- Territorial regulations

The plans or the authorization for the use of mineral resources, land, flora, fauna, water or other natural resources as well as the location of human settlements and industrial or agricultural developments, given out by any public organization, be it of the central government, autonomous or municipal institutions, will consider in particular in their elaboration, approval and implementation, the sustainable conservation and use of, especially when it concerns plans or permits which affect biodiversity of the wild protected areas.

ARTICLE 53.- Restoration, recuperation and rehabilitation

The restoration, recuperation and rehabilitation of ecosystems, the species and the environmental services which they offer, should be encouraged by the Ministry of Environment and Energy and other

public organizations, by means of measures which deal with a system of incentives, in accordance with this and any other relevant laws.

ARTICLE 54.- Environmental damage

When environmental damage exists in the ecosystem, the State can take measures to repair, restore, recuperate and rehabilitate it. To do so, it can make all kind of contracts with institutes of higher education, national or international, with the aim of restoring the damaged components of biodiversity. In protected areas of national property, this decision should come from the National System of Conservation Areas of the Ministry of Environment and Energy. For restoration in private terrains it will proceed according to articles 51, 52 and 56 of this law.

ARTICLE 55.- Species threatened with extinction

For the development of conservation programs, the State will give priority to the species threatened with extinction, taking into account:

- 1.- The national lists, international red lists and international agreements such as CITES on international trade in threatened species of wild flora and fauna.
- 2.- When a communal cultural or subsistence use exists, according to the conservation and sustainable use included in these lists, the State will promote the technical assistance and research necessary to assure the conservation of the species for a long period of time, while respecting the cultural practice.
- 3.- Actions of conservation for the species important for local consumption (food, raw material, traditional medicines), even when they are not on the lists of species in danger of extinction

ARTICLE 56.- In situ conservation of species

These will be the priorities for in situ conservation of species:

- 1.- Species, populations, races or varieties, with reduced population or in danger of extinction.
- 2.- Species whose populations are highly fragmented.
- 3.- Species of flowers whose flowering is not always in synchrony.
- 4.- Species, races, varieties or populations of singular strategic, scientific or economic value, actual or potential.
- 5.- Species, populations, races or varieties of plants or animals with particular religious, cultural or cosmogenic significance.
- 6.- Wild species related to species or stocks, cultivated or domesticated, which can be used for breeding.

ARTICLE 57.- Ex situ conservation of species

These will be the priorities of ex situ conservation:

- 1.- Species, populations, races or varieties with reduced populations or in danger of extinction.
- 2.- Species, or genetic material of singular strategic, scientific or economic value, actual or potential.
- 3.- Species, populations, races or varieties and the genetic material, appropriate for cultivation, domestication or breeding, or that have the object of improvement, selection, cultivation or domestication.
- 4.- Species, populations, races or varieties with very valuable uses linked to socio-economic and cultural necessities, local or national.
- 5.- Animal or plant species with particular religious, cultural or cosmogenic significance.
- 6.- Species which fulfil a key function in food chains and the natural control of populations.

ARTICLE 58.- Protected wild areas

Wild protected areas are delimited geographic zones, constituted by terrains, swamps and sections of the sea. They have been declared as such to represent special significance for their ecosystems, the existence of threatened species, repercussions in reproduction and other necessities, and for their historic and cultural significance. These areas will be dedicated to conservation and to protecting biodiversity, the land, hydric resources, cultural resources and the services of the ecosystem in general. The objectives, classification, requirements and mechanisms for establishing or reducing these areas are determined in the Organic Law of the Environment, No. 7554, of the 4 th of October, 1995. The prohibitions that affect people or legal persons inside national parks and biological reserves are determined in the Law of the Creation of the National Park Service, No. 6084 of 24 th of August, 1977. During the process of fulfilment of requirements to establish national protected wild areas, the respective technical reports should include the recommendations and relevant justifications to determine the most appropriate category of management to which the proposed area should answer to. In each case, the establishment of areas and categories will be taken with a great regard for the previously obtained rights of indigenous peoples or small farmers and other people or legal persons, underlying or adjacent to them.

ARTICLE 59.- Change of category

The National System of Conservation Areas could recommend the elevation of the category of existing protected areas, for which it will follow what it is established in the Organic Law of the Environment.

ARTICLE 60.- Property of wild protected areas

Wild protected areas, besides those of the State, can be municipal, mixed or private property. For the great responsibility that they have to assure the conservation and the sustainable use of biodiversity of the country, the Ministry of Environment and Energy and all public organizations, will encourage their creation, besides supervising and helping with their management.

ARTICLE 61.- Protection of wild protected areas

The State has to give priority attention to the protection and consolidation of national wild protected areas that are found in Conservation Areas. For these effects, the Ministry of Environment and Energy in co-ordination with the Treasury should include in the Republic's budget the respective transfer to the trust fund or the financial mechanisms of the protected areas to assure, at least, the personnel and resources necessary, that the national System of Conservation Areas determines, for the operation and integrity of the wild protected areas of national property and the permanent protection of national parks, biological reserves and other wild protected areas that are property of the State.

CHAPTER V

ACCESS TO GENETIC COMPONENTS AND BIOCHEMICALS AND PROTECTION OF ASSOCIATED KNOWLEDGE

SECTION I

GENERALE RULES

ARTICLE 62.- Competence

It is a duty of the Commission to propose access policies concerning genetic components and biochemicals of in situ and ex situ biodiversity. It will act as an organ of obligatory consultation in procedures of request for protection of intellectual rights concerning biodiversity. The provisions concerning this matter will constitute the general rules for access to genetic components and

biochemicals and for the protection of intellectual rights concerning biodiversity. The administration and interested parties should comply with these provisions which should be previously published in the Official Journal in order to be effective for third parties.

ARTICLE 63.- Basic requirements for access

The basic requirements for access will be:

- 1.- Prior informed consent of the representatives of the place where the access will occur, be they the regional councils of Conservation Areas, the owners of farms or the indigenous authorities, when it is in their territories.
- 2.- Approval of the prior informed consent by the Technical Office of the Commission.
- 3.- The terms of technology transfer and equitable distribution of benefits, when there are any, as agreed in the permits, agreements and concessions, as well as the type of protection of associated knowledge demanded by the representatives of the place where the access will occur.
- 4.- The definition of the ways in which the said activities will contribute to the conservation of species and ecosystems.
- 5.- The designation of a legal representative resident in the country, when it concerns people or legal persons living outside the country.

ARTICLE 64.- Procedure

By means of procedures formally registered in official records, the Technical Office of the Commission will manage all processes under its responsibilities indicated in this law. When the finalisation of a procedure could grant rights to people over components of biodiversity which are in the public domain or could cause serious damage to individuals, be it imposed obligations, abolished or refused subjective rights, or for any other form of serious or direct damage to legitimate rights, the matter will be dealt with by means of ordinary procedure under the General Law of Public Administration, except as regards resources, in which the arrangements in clause f) of article 14 of this law will apply. The same shall apply during the proceedings should there arise contradictions or a conflict of interests facing the Administration. For all remaining cases, the Technical Office will follow a summary procedure.

ARTICLE 65.- Prior informed consent

The Technical Office should inform interested parties that, in relation to an application for whichever type of access to components of biodiversity, they should attach the prior informed consent, given by the proprietor of the landed estate where the activity will take place or by the authority of the indigenous community when it is in their territories and the director of the Conservation Area.

ARTICLE 66.- Right to cultural objection

The right of local communities and indigenous peoples to oppose any access to their resources and associated knowledge, be it for cultural, spiritual, social, economic or other motives, is recognised.

ARTICLE 67.- Registration of rights of access to genetic components and biochemicals

The Technical Office of the Commission will organize and maintain permanently updated a Register of rights of access to genetic components and biochemicals. The director of the Technical Office of the Commission will also act as Director of the register and the responsible official for the custody and authenticity of the registered information. The registered information will be publicly available, except for trade secrets, which should be protected by the Register, unless biosafety considerations oblige them to be publicised.

ARTICLE 68.- General rule of interpretation

Without prejudice to compliance with the provisions related to trade in species of flora and fauna in danger of extinction, or the application of sanitary and phytosanitary measures, technical rules or biosafety, the rules laid down in this chapter shall not constitute any hidden restriction nor trade barrier. Any interpretation otherwise shall be declared null and void by the administrative or legal authority, depending on the situation.

SECTION II

ACCESS PERMITS FOR COMPONENTS OF BIODIVERSITY

ARTICLE 69.- Access permit for research or bioprospecting All research programs or bioprospecting related to genetic material or biochemicals of biodiversity meant to be carried out in Costa Rican territory require an access permit. For duly registered ex situ collections, the regulations of this law will set the procedure for authorization of the respective permit.

ARTICLE 70.- Validity, personal limits, components and territory

The access permit indicated in the previous article will have a maximum validity of three years, renewable at the discretion of the Technical Office of the Commission. Such a permit is granted to a researcher or to a research centre. It is personal and nontransferrable. It is materially limited to the authorized genetic components or biochemicals, and can only be used in the area or territory expressly indicated in it.

ARTICLE 71.- Characteristics and conditions

An access permit for research or bioprospecting does not grant nor delegate rights. It only allows such activities to be carried out on previously agreed components of biodiversity. In it will be clearly stipulated: the certificate of origin, the possibility or prohibition to take out or export samples, or in its absence, their duplication and deposit; the periodic reports, the verification and control, the publicity and property of the results, as well as any other

condition that, given the applicable rules of science and the technique, are necessary as per the discretion of the Technical Office of the Commission.

These requirements will be determined in a different way for non-profit making and commercial research; in the case of the former, it should be reliably verified that there are no profit motives.

ARTICLE 72.- Requirements of the solicitude

All applications should be directed to the Technical Office of the Commission and should contain the following requirements:

- 1.- Name and complete identification of the interested manager. If it is not the self-same interested party, it should indicate the identification data of the official and the power which he/she holds.
 - 2.- Name and complete identification of the responsible professional or researcher.
 - 3.- Exact location of the place and the components which will be the subject of research, with indication of the owner, administrator or the possessor of the property.
 - 4.- A descriptive chronogram of the extent of the scope of the research and its possible environmental impact.
 - 5.- Objectives and purpose being pursued.
 - 6.- Manifestation of the fact that the previous declaration has been made under oath.
 - 7.- Place for notifications in the perimeter of the residence of the Technical Office of the Commission.
- The application should be accompanied by the prior informed consent, given by the corresponding person, according to the previous article 65.

ARTICLE 73.- Voluntary registration of people or legal persons in bioprospecting activities

The people or legal persons who wish to carry out bioprospecting activities should previously enrol in the register of the Commission. This act does not give rights to carry out specific acts of bioprospecting.

ARTICLE 74.- Authorization of agreements and contracts

The Technical Office of the Commission will authorize the agreements and subscribed contracts between individuals, nationals or foreigners, or between them and the institutions registered for the effect, if they deal with access to the use of genetic components and biochemicals of Costa Rican biodiversity. To process and approve them, they should comply with what is stipulated in articles 69, 70 and 71. Public universities and other properly registered centres could periodically subscribe framework agreements with the Commission, to process the access permits and reports of operations. In such cases, the legal representatives of the universities or institutions that take advantage of this benefit, will be penally and civilly responsible for the use that it gives them.

ARTICLE 75.- Concession

When the Technical Office authorizes the constant utilization of genetic material or biochemical extracts for commercial purposes, it will require that the interested party obtain a concession to exploit them, for which the General Rules which the Commission sets shall apply.

ARTICLE 76.- General rules for access

In addition to the specified special requirements in the previous articles, in the respective resolution the Technical Office, in conformity with the General Rules of the Commission, will establish the obligation of the interested party to deposit up to ten percent (10%) of the research budget and up to fifty percent (50%) of the bonuses which it collects, in favour of the National System of Conservation Areas, the indigenous territory or the private owner providing access to the components. Moreover, it will determine the amount which in each case should be paid by the interested parties for administrative costs, as well as any other benefit or technology transfer which forms part of the prior informed consent.

SECTION III

PROTECTION OF INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

ARTICLE 77- Recognition of the forms of innovation.

The State recognises the existence and validity of forms of knowledge and innovation and the necessity to protect them by means of the use of legal mechanisms appropriate for each specific case.

ARTICLE 78- Form of and limits to protection

The State shall grant the protection indicated in the previous article, among other ways, by means of patents, trade secrets, plant breeders' rights, sui generis community intellectual rights, copyrights and farmers' rights. These rights shall not apply to:

- 1.- Sequences of deoxyribonucleic acid per se.
- 2.- Plants and animals.
- 3.- Non genetically modified micro-organisms.
- 4.- Essentially biological processes for the production of plants and animals.
- 5.- Natural processes or cycles as such.
- 6.- Inventions essentially derived from knowledge which is associated with traditional or cultural biological practices in the public domain.

7.- Inventions which, to be commercially exploited through a monopoly, can affect farming or fishing processes or products which are considered basic for the food and health of the inhabitants of the country.

ARTICLE 79- Congruence of the intellectual property system.

The intellectual property rights indicated in the first paragraph of the previous article will be regulated by specific legislation of each institute. However, decisions taken in the realm of intellectual property protection related to biodiversity must be congruous with the objectives of this law, in application of the principal of integration.

ARTICLE 80- Obligated prior consultation.

Both the National Seed Office and the Registers of Intellectual and Industrial Property are obliged to consult with the Technical Office of the Commission before granting protection of intellectual or industrial property to innovations involving components of biodiversity. They must always provide the certificate of origin issued by the Technical Office of the Commission and the prior informed consent. Justified opposition from the Technical Office will prohibit registration of a patent or protection of the innovation.

ARTICLE 81- Licenses.

The individual beneficiaries of intellectual or industrial property protection related to biodiversity will cede, in favour of the State, a compulsory legal license which will allow it, in cases of declared national emergency, to use such rights for the collective good, with the sole purpose of resolving the emergency, without need to pay privileges or compensation.

ARTICLE 82- Sui generis community intellectual rights.

The State expressly recognises and protects, under the common denomination of sui generis community intellectual rights, the knowledge, practices and innovations of indigenous peoples and local communities related to the use of components of biodiversity and associated knowledge. This right exists and is legally recognised by the mere existence of the cultural practice or knowledge related to genetic resources and biochemicals; it does not require prior declaration, explicit recognition nor official registration; therefore it can include practices which in the future acquire such status. This recognition implies that no form of intellectual or industrial property rights protection regulated in this chapter, in special laws and in international law shall affect such historic practices.

ARTICLE 83- Participatory process to determine the nature and scope of sui generis community intellectual rights.

Within eighteen months following the entry into force of this law, the Commission, by means of its Technical Office and in association with the Indigenous Peoples Board and the Small Farmers Board, shall define a participatory process with indigenous and small farmer communities to determine the nature, scope and requirements of these rights for their definitive regulation. The Commission and the organizations involved shall prepare the form, methodology and basic elements of the participatory process.

ARTICLE 84- Determination and registration of sui generis community intellectual rights.

By means of the procedure indicated in the previous article, an inventory will be made of specific sui generis community intellectual rights that communities ask to be protected, and the possibility shall be

kept open that, in the future, other ones with the same characteristics will be registered and recognised.

The recognition of these rights in the register of the Technical Office of the Commission is voluntary and free. It should be done unofficially or at the demand of the interested parties, without being subjected to any formality. The existence of such recognition in the register will oblige the Technical Office to respond negatively to any consultation concerning the recognition of intellectual or industrial rights over the same component or knowledge. Such rejection, always properly justified, can be made for the same motive even when the sui generis right is not officially registered.

ARTICLE 85- Use of sui generis community intellectual rights.

By means of the participatory process, the way in which sui generis community intellectual rights will be used and who will be the title holder, shall be determined. Also, who the benefits should accrue to shall be identified.

CHAPTER VII

EDUCATION AND PUBLIC AND PUBLIC AWARENESS, RESEARCH AND TECHNOLOGY TRANSFER

ARTICLE 86- Education on biodiversity.

Biological education should be integrated in the educational plans of all anticipated levels, to achieve understanding of the value of biodiversity and the way in which it plays a part in the life and aspirations of every human being. The Ministry of Education, in accordance with public and private organizations competent in the matter, especially the Ministry of Environment and Energy, should design policies and programs of formal education which integrate the knowledge of the importance and the value of biodiversity and associated knowledge, the forces which threaten it and which reduce the sustainable use of its components, in order to facilitate the learning process and valuation of biodiversity that surrounds each community and to demonstrate its potential to improve the quality of life of the population.

ARTICLE 87- Incorporation of the educational variable in projects.

The State will watch over each project developed by public institutions in the environmental field which includes an educational and public awareness raising component regarding the sustainable conservation and use of biodiversity, specifically in the zone where the project is developed.

ARTICLE 88- Research and technology transfer related to biological diversity.

In the application of articles 16, 17 and 18 of the Convention on Biological Diversity, the State, by means of the Commission, will set forth the general rules that guarantee the country and its inhabitants that they are the ones to whom information and scientific technical cooperation in the matter of biodiversity are destined, as well as having access to technology by means of adequate policies for their transfer, including that of biotechnology and associated knowledge. By means of the same General Rules, the State will guarantee the fulfilment of obligations established in the same agreements, allowing access to technologies relevant to the conservation and sustainable use of biodiversity without prejudice to intellectual or industrial property rights or to collective sui generis intellectual rights.

ARTICLE 89- Encouragement of research programs, education and information.

The Ministry of Environment and Energy and other public and private institutions will encourage the development of research programs related to biological diversity.

ARTICLE 90- National Program for Science and Technology.

The objectives of this law in the matter of biodiversity should be considered part of the National Program for Science and Technology.

ARTICLE 91- Rescue and maintenance of traditional technology.

The State will encourage the rescue, maintenance and diffusion of technology and traditional practices useful for the conservation and sustainable use of biodiversity.

CHAPTER VII

ENVIRONMENT IMPACT ASSESSMENT

ARTICLE 92- Presentation of environmental impact assessment.

At the discretion of the Technical Office of the Commission, an environmental impact assessment of proposed projects shall be requested when it considers that they could affect biodiversity. The assessment will conform with article 17 of the Organic Law of the Environment.

ARTICLE 93- Guides for the environmental impact assessment.

The National Technical Secretary should include in the guidelines for evaluating environmental impact, changes in biodiversity, be they natural or man-made, and the identification of the processes or activities which impact on the conservation and use of biodiversity.

ARTICLE 94- Stages of environmental impact assessment.

An environmental impact assessment in the field of biodiversity should be carried out in its totality, even when the project is scheduled to be carried out in stages.

ARTICLE 95- Public hearings.

When necessary, the National Technical Secretary should carry out public hearings of information and analysis about the actual project and its impact. The cost of publication will be paid for by the interested party.

ARTICLE 96- Environmental hearing.

For projects requiring an environmental impact assessment, in conformity with the previous article 92, the National Technical Secretary and the Technical Office of the Commission will co-ordinate the corresponding environmental hearing.

ARTICLE 97- International notification.

To conform with the Convention on Biological Diversity and international environmental law, the National Technical Secretary will be in charge of implementing clauses c) and d) of article 14 of the Convention.

CHAPTER VIII

INCENTIVES

ARTICLE 98- Promotion of investment.

The Ministry of Environment and Energy and other public organizations, in co-operation with the private sector and including civil society organizations, will promote investment for the conservation and sustainable use of biodiversity.

ARTICLE 99- Establishing training programs.

The establishment of scientific, technical and technological training programs, as well as research projects which encourage the conservation and sustainable use of biodiversity, will be supported by means of the incentives arranged in this law, in others or by interpretations of them.

ARTICLE 100- Plan of incentives.

The Ministry of Environment and Energy and the other public authorities will apply specific incentives be they fiscal, scientific-technological or other kinds, in favour of the activities or programs carried out by people or legal nationals, who contribute to achieving the objectives of the present law. The incentives will be constituted by, among others, the following:

- 1.- Exoneration from all taxes on equipment and materials, which regulations of this law define as indispensable and necessary for the development, research and transfer of appropriate technology for the conservation and sustainable use of biodiversity, except automobiles of any class. The exoneration will be given by means of authorization from the Ministry of the Treasury, and prior approval of the respective study by the Ministry of Environment and Energy.
- 2.- Public recognition like the distinctive Ecological Flag.
- 3.- National and local prizes for those who emphasise in their actions the conservation and sustainable use of biodiversity.
- 4.- Payment of environmental services.
- 5.- Favourable credit for micro-businesses as concerns mortgages.
- 6.- Anything else applicable in the Law of Promotion of Scientific and Technological Development, No. 7169, of the 26th of June, 1990, and other laws, which permit the attainment of the objectives arranged in this law.

ARTICLE 101- Incentives for community participation.

The participation of communities in the conservation and sustainable use of the biological diversity shall be promoted by means of technical assistance and special incentives in this law and its regulation, especially in areas harboring species which are rare, endemic or in danger of extinction.

ARTICLE 102- Finance and assistance for community management.

The Ministry of Environment and Energy, in co-ordination with the competent public authorities and civil society, will give priority to forms of financial and technical support or any other form, for the projects of community management of biodiversity.

ARTICLE 103- Removing negative incentives.

The Ministry of Environment and Energy and remaining public authorities, taking into consideration public interest, should revise existing legislation and propose or carry out changes necessary to eliminate or reduce incentives which are negative for the conservation of biodiversity and its sustainable use and propose appropriate disincentives.

ARTICLE 104- Promotion of traditional breeding.

The Ministry of Environment and Energy, and other public authorities, will promote the conservation and sustainable use of biological and genetic resources that have been the subject of breeding or selection by local communities or indigenous peoples, especially those which are threatened or are in danger of extinction and need to be restored, recuperated or rehabilitated. The Ministry will give the technical assistance or finance necessary to fulfil this obligation.

CHAPTER IX
PROCEDURES, PROCESSES AND AGREEMENTS IN GENERAL

ARTICLE 105- Popular Action.

Every person will be authorized to act in administrative or jurisdictional headquarters for the defence and protection of biodiversity.

ARTICLE 106- Administrative procedure.

Except for what is specifically regulated in a different way to this law, all the administrative procedure required for the management of biodiversity will follow the ordinary or summary procedure regulated by the General Law of Public Administration, to which it corresponds.

ARTICLE 107- Resources.

Except what is regulated in clause f) of article 14 and 64 of this law, in the matter of resources, what is laid down in the General Law of Administration will apply.

ARTICLE 108- Jurisdictional Competence.

In the matter of biodiversity, and in so far as an environmental jurisdiction does not exist, any controversy will be the exclusive responsibility of the contentious administrative jurisdiction. As exceptions to the previous rule, offences against biodiversity will be judged by the penal jurisdiction. In the same way, controversies which arise between individuals, where there is no administrative act nor public domain, will be the responsibility of the agricultural jurisdiction.

ARTICLE 109- Burden of proof.

The burden of proof, of absence of contamination or prohibited degradation or affectation, lies with the one who requests an approval, permit or access to biodiversity or who is accused of having caused environmental damage.

ARTICLE 110- Civil Responsibility.

Civil responsibility for damage caused to the components of biodiversity is defined in article 99 and the following articles of the Organic Law of the Environment and the remaining relevant dispositions of the legal regulation.

ARTICLE 111- General penal responsibility.

Except the illicit situations typified in this law, penal responsibility will be that as prescribed in the Penal Code and special laws. To deal with offences committed by public officials or professionals in the exercising of their responsibilities or professions, the legal authority could impose the penalty of special disqualification for a maximum of up to five years, in accordance with the general criteria of the imposition of fines.

ARTICLE 112- Unauthorized access to the components of biodiversity.

Whoever carries out exploration, bioprospecting or has access to biodiversity without authorization from the Technical Office of the Commission, when it is necessary in terms of this law or because of deviation from the terms granted in the permit, will be imposed a fine varying between the equivalent of one and twelve salaries, as established in article 2 of Law No. 7337.

ARTICLE 113- Administrative measures.

For the purposes of this law, administrative faults and their correlative sanctions are understood as those established by the Organic Law of the Environment, the Law of Wildlife, Forest Law and in other applicable legislation.

CHAPTER X

FINAL DISPOSITIONS AND TRANSITIONAL PROVISIONS

ARTICLE 114- The following dispositions of the Forest Law, No. 7575, of the 13th of February, 1996 are revised:

1.- Clauses l) and m) of article 3, whose texts will read:

“Article 3.-

[...]

l) areas of aquifer charge: Surfaces in which infiltration occurs which supports the aquifer and the riverbeds according to the delimitation established by the Ministry of Environment and Energy, by its own initiative or at the request of interested organizations, previously consulted with the Costa Rican Institute of Aqueducts and Drains, the national Service of Subterranean Waters, Irrigation and Drainage or other organizations technically competent in the matters of waters.

m) Activities of national convenience:

Activities carried out by the central offices of the State, autonomous institutions or private businesses, whose social benefits are greater than the socio-environmental costs. The balance will be made by means of the appropriate instruments”

2.- Clause c) of article 72, whose text will read:

“Article 72.- Modifications

[...]

c) Article 37.-Faculties of executive power.

The particular forms affected according to what is arranged by this article, to be found in national parks, biological reserves, wildlife refuges, forest reserves and protected zones, will stay in the national protected areas only after they have paid or expropriated legally, except when they submit to the Forest Rules voluntarily. In the case of forest reserves, protected reserves and wildlife refuges and in the case where payment of expropriation has not been made and while it is being made, the areas will stay subject to a plan of environmental regulation which includes environmental impact assessment, and subsequently, the plan of management, recuperation and replacement of the resources.

3.- Article 41, whose text will read:

“Article 41.- Management of resources

The forest fund remains authorized to carry out any legal non-speculative negotiation required for the correct administration of the resources of its inheritance, including the constitution of trust funds. The financial administration and accounting of the Fund could be contracted to one or various banks of the National Bank System. The General Controller of the Republic will be the subsequent controller for this administration. The treasury will make, every three months, the transfers or payments of all resources collected for the Forest Fund. In the case of non-fulfilment of what is arranged in the previous paragraph, the Ministry of Environment and Energy will require the National treasury or its supervisor, to fulfil this disposition. If the official does not proceed, it will apply what is arranged in the Penal Code. The procedures related to the opening and the way of carrying out the accounting and general operation of the said account, will be indicated in the operating regulations of the Fund that will be approved by the Executive Director of the National System of Conservation Areas. Revision and control will be the responsibility of the General controller of the Republic.

ARTICLE 115- Article 11 of the Law of Conservation of Wildlife, No. 7317, of the 21st of October, 1992, is revised. The text will say:

“Article 11.-

With the aim of fulfilling the purposes of this law and supporting the costs which are derived from it, the National System of Conservation Areas of the Ministry of Environment and Energy and the commission will receive fifty percent (50%) of the resources of the Wildlife Fund, which will be constituted by:

- 1.- The amount resulting from the Wildlife Stamp.
- 2.- The amount received through the concept of permits and licenses.
- 3.- The legacies and donations of people and legal persons, national or international organizations, private or public, and the contributions of the State or its institutions.
- 4.- The amount of the fines will conform with the present law.

ARTICLE 116- Authentic Interpretation.

To be interpreted authentically, article 67 of the Law of Promotion of Scientific and Technological Development, No. 7169, where it says: “for exportation”, it should be read, “for importation.”

ARTICLE 117- Regulation.

The Executive Power will regulate this law within three months following its publication It will be in effect upon its publication.

TRANSITORY DISPOSITIONS 1.- In the six months following the entry into force of this law, all the permits, contracts or agreements on bioprospecting or access to biodiversity, should be authorized by the register established in the present chapter.

TRANSITORY 2.- The access permits, contracts and agreements granted prior to this law, whose expiry date is after 1 January 2003 or which do not have a stated period of validity, shall expire by legal disposition on 31 December 2002. The negotiation of their extension or reissuance shall be adjusted to the contents of this law.

LEGISLATIVE ASSEMBLY.- San Jose, on this twenty-third day of this month of April of nineteen hundred and ninety-eight.

COMMUNICATED TO THE EXECUTIVE POWER

Saúl Weisleder Weisleder

PRESIDENT

Mario Alvarez González Carmen Valverde Acosta

FIRST SECRETARY SECOND PRO-SECRETARY

(Unofficial translation)

Comparison of Costa Rica Biodiversity Law with common provisions under the Nagoya Protocol and WIPO draft agreements

This instrument deals fairly comprehensively with the common provisions. It lacks provisions dealing with recognition of other laws, definition of beneficiaries, dealings with multiple owners and provision for databases.

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	<p>ARTICLE 1.- Object</p> <p>The object of the present law is the conservation of biodiversity and the sustainable use of the resources as well as to distribute in an equitable manner the benefits and derived costs.</p> <p>ARTICLE 8.- Environmental function of real state property</p> <p>As a part of the economic and social function, real state properties have to fulfil an environmental function.</p> <p>ARTICLE 9.- General principles</p> <p>The general principles which constitute for the purposes of the application of this law, are, among others, the following:</p> <ol style="list-style-type: none"> 1.- Respect for all forms of life. All the living things have the right to live, independently of actual or potential economic value. 2.- The components of biodiversity are valuable. They have decisive and strategic importance for the development of the country and are indispensable for the domestic, economic, social, cultural and aesthetic use of its inhabitants. 3.- Respect for cultural diversity. The diversity of cultural practices and associated knowledge of the components of biodiversity should be respected and promoted, in conformity with national and international legal standards, particularly in the case of the peasant communities, the indigenous people and other cultural groups. 4.- Intra and inter-generational equity. The State and private individuals will watch over the sustainable utilization of the components of biodiversity to ensure that the possibilities, opportunities and benefits of their use will be guaranteed in an equitable manner for all sectors of society and will satisfy the needs of future generations. <p>ARTICLE 10.- Objectives</p> <p>This law will endeavour to achieve the following objectives:</p> <ol style="list-style-type: none"> 1.- To integrate the conservation and use of the components of biodiversity in the development of socio-cultural, economic and environmental policies. 2.- To promote the active participation of all sectors of society in the conservation and ecological use of biodiversity, in the pursuit of social, economical and cultural sustainability. 3.- To promote education and public awareness about the conservation and use of biodiversity. 4.- To regulate access and in so doing make possible the equitable distribution of the environmental, economic and social benefits to all sectors of society, paying special attention to local communities and indigenous peoples. 5.- To improve administration for effective management of the components of biodiversity. 6.- To recognise and provide compensation for the knowledge, practices and innovations of indigenous peoples and local communities in the conservation and sustainable ecological use of the components of biodiversity. 7.- To recognise the rights deriving from the contribution of scientific knowledge to the conservation and sustainable ecological use of the components of biodiversity. 8.- To ensure environmental safety to all citizens as a guarantee of social, economic and cultural sustainability. 9.- To not limit the participation of any sector in the sustainable use of the components of biodiversity or in the development of research and technology. 10.- To promote access to the components of biodiversity and the associated transfer of technology. 11.- To promote international and regional co-operation to achieve the conservation, ecologically sustainable use and the distribution of benefits derived from biodiversity, especially in frontier areas or from shared resources. 12.- To promote the adoption of incentives and the reward of environmental services for conservation, the sustainable use and the components of biodiversity. 	

	13.- To establish a system of conservation of biodiversity, that will achieve co-ordination between the private sector, the citizens and the State, to guarantee the application of this law.	
2. definition of terms- key terms used in the draft	<p>ARTICLE 7.- Definitions</p> <p>This law should be interpreted in accordance with the following definitions:</p> <p>1.- Access to biochemical and genetic components: Action to obtain samples of components of biodiversity, wild or domesticated, in in situ or ex situ conditions, or to obtain associated knowledge, with basic aims of research, bioprospecting or commercial use.</p> <p>2.- Biodiversity: Variability of living organisms from any source, whether they are found in terrestrial, air or marine or aquatic ecosystems or in other ecological complexes. This includes the diversity within each species, as well as between species and between the ecosystems that they form part of.</p> <p>For the purposes of this law, intangible components, which are included within the term biodiversity, are: the knowledge, innovations and practices, be they traditional, individual or collective, with real or potential value associated with biochemical or genetic resources, whether these are protected or not by systems of intellectual property or by sui generis registration systems.</p> <p>3.- Bioprospecting: The systematic search, classification and research for commercial purposes of new sources of chemical compounds, genes, proteins, and micro-organisms, with real or potential economic value, which are found in biodiversity.</p> <p>4.- Biotechnology: Any technological application which uses biological systems, living organisms or their derivatives to make or modify products or processes for a specific use.</p> <p>5.- Natural Collections: Any systematic collections of specimens, living or dead, representative of plants, animals or micro-organisms.</p> <p>6.- Knowledge: Dynamic product generated by society over time and by different means, including that which is produced in the traditional manner, and that generated by scientific practice.</p> <p>7.- Ex situ conservation: Maintenance of the components of biodiversity outside of their natural habitat, including collections of biological material.</p> <p>8.- In situ conservation: Maintenance of the components of biodiversity in ecosystems and natural habitats, including the maintenance and recovery of viable populations of species in their natural surroundings; in the case of domesticated or cultivated species, in the surroundings in which they have developed their specific properties.</p> <p>9.- Prior informed consent: Procedure through which the State, private owners or the local or indigenous communities, as the case may be, properly supplied with all the required information, allow access to their biological resources or to intangible components associated to them, under mutually agreed conditions.</p> <p>10.- Diversity of species: Variety of species, wild or domesticated, in a specific space.</p> <p>11.- Genetic diversity: Frequency and diversity of the genes or genomes which provide the diversity of species.</p> <p>12.- Ecosystem: Dynamic complex of communities of plants, animals, fungi and microorganisms and their physical media, interacting as a functional unit.</p> <p>13.- Biochemical element: Any material derived from plants, animals, fungi or microorganisms, which contain specific characteristics, special molecules or elements to design them.</p> <p>14.- Genetic components: Any material derived from plants, animals, fungi or microorganisms, which contains functional units of heredity.</p> <p>15.- Species: Whole group of organisms capable of reproduction among themselves.</p> <p>16.- Domesticated or cultivated species: Species selected by humans to be voluntarily reproduced.</p> <p>17.- Exotic species: Species of flora, fauna or micro-organisms, whose natural area of geographic dispersion does not correspond to the national territory and is found in the country, be it a product of voluntary human activity or the activity of the species or not.</p> <p>18.- Environmental impact assessment: Scientific and technical procedure which permits the identification of the effects which an action or specific project will have on the environment, as well as quantifying and considering them in order to take decisions. Includes the specific effects, their overall evaluation, the alternatives for greater environmental benefit, a program for control and minimisation of the negative effects, a monitoring program, a recovery program, as well as the guarantee of proper environmental execution.</p> <p>19.- Habitat: Place or environment where an organism or a population naturally exists.</p> <p>20.- Fungi: Single cell or multicellular organism devoid of chlorophyll and belonging to the "fungi" phylum.</p> <p>21.- Innovation: Any knowledge which adds an improved use or value to the technology, properties, values and processes of any biological resource.</p> <p>22.- Genetic manipulation: Use of genetic engineering to produce genetically modified organisms.</p>	

	<p>23.- Micro-organism: Single cell or multicellular organism capable of carrying out their vital processes, independently of other organisms.</p> <p>24.- Genetically modified organisms: Any organism altered by means of deliberate insertion, deletion, rearrangement or other manipulation of deoxyribonucleic acid, by techniques of genetic engineering.</p> <p>25.- Country of origin of genetic resources: To be understood as the country which possesses these resources in in situ conditions.</p> <p>26.- Country providing genetic resources: Country which supplies genetic resources obtained from in situ sources , including populations of wild or domesticated species, or from ex situ sources, which could originate or not from that country.</p> <p>27.- Permission for access: Authorisation granted by the State of Costa Rica for basic research in bioprospecting, obtaining or commercialising genetic materials or biochemical extracts of components of biodiversity, as well as their associated knowledge, to people or institutions, national or foreign, requested by means of the procedure, given the rules in this legislation, whether it concern permission, contracts, agreements or concessions.</p> <p>28.- Natural resource : Any biotic or abiotic component of nature which may be exploited, commercially or not.</p> <p>29.- Transgenic resource: Natural biotic resource which has been subjected to manipulation by genetic engineering which alters its original genetic constitution.</p> <p>30.- Restoration of biological diversity: Any activity directed to the recovery of structural and functional characteristics of the original diversity of a determined area, for conservation purposes.</p>	
<p>3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights</p>	<p>ARTICLE 2.- Sovereignty The state will exercise total and exclusive sovereignty over the components of biodiversity.</p> <p>ARTICLE 3.- Area of application This law will apply to the components of biodiversity that are found under the sovereignty of the State, as well as to the processes and activities carried out under its jurisdiction or control, independently from those effects which manifest themselves inside or outside the zones subject to national jurisdiction. This law will regulate specifically the use, management, associated knowledge and equitable distribution of the benefits and derived costs of the use of the components of biodiversity.</p> <p>ARTICLE 5.- Framework for Interpretation This legislation will serve as the framework for the interpretation of the rest of the rules that regulate the subject matter of this law.</p> <p>ARTICLE 6.- The Public Domain The biochemical and genetic properties of the components of biodiversity, wild or domesticated, belong to the public domain. The State will authorise the exploration, research, bioprospecting and use of the components of biodiversity which constitute part of the public domain, as well as the utilization of all the genetic and biochemical resources, by means of the rules of access established in chapter V of this law.</p> <p>ARTICLE 11.- Criteria for applying this law The criteria for applying this law are:</p> <p>1.- Preventive criterion: It is recognised that it is of vital importance to anticipate, prevent and attack the causes of the loss of, or threats to, biodiversity.</p> <p>2.- Precautionary criterion: When danger or threats of grave or imminent damage to the components of biodiversity and its associated knowledge exist, the absence of scientific certainty should not be used as a reason to disregard the adoption of effective measures of protection.</p> <p>3.- Criterion of environmental public interest: The use of the components of biodiversity should guarantee development options for future generations, food security, the conservation of the ecosystems, the protection of human health and the improvement of the citizens' quality of life.</p> <p>4.- Criterion of integration: The conservation and sustainable use of biodiversity should incorporate the plans, programs, activities and sectoral and intersectoral strategies whose effects contribute to the process of development.</p> <p>ARTICLE 82- Sui generis community intellectual rights. The State expressly recognises and protects, under the common denomination of sui generis community intellectual rights, the knowledge, practices and innovations of indigenous peoples and local communities related to the use of components of biodiversity and associated knowledge. This right exists and is legally recognised by the mere existence of the cultural practice or knowledge related to genetic resources and biochemical; it does not require prior declaration, explicit recognition nor official registration; therefore it can include practices which in the future acquire such status. This recognition implies that no form of intellectual or industrial property rights protection regulated in this chapter, in special laws and in international law shall affect such historic practices.</p> <p>ARTICLE 83- Participatory process to determine the nature and scope of sui generis</p>	

	<p>community intellectual rights.</p> <p>Within eighteen months following the entry into force of this law, the Commission, by means of its Technical Office and in association with the Indigenous Peoples Board and the Small Farmers Board, shall define a participatory process with indigenous and small farmer communities to determine the nature, scope and requirements of these rights for their definitive regulation. The Commission and the organizations involved shall prepare the form, methodology and basic elements of the participatory process.</p> <p>ARTICLE 84- Determination and registration of sui generis community intellectual rights.</p> <p>By means of the procedure indicated in the previous article, an inventory will be made of specific sui generis community intellectual rights that communities ask to be protected, and the possibility shall be kept open that, in the future, other ones with the same characteristics will be registered and recognised.</p> <p>The recognition of these rights in the register of the Technical Office of the Commission is voluntary and free. It should be done unofficially or at the demand of the interested parties, without being subjected to any formality. The existence of such recognition in the register will oblige the Technical Office to respond negatively to any consultation concerning the recognition of intellectual or industrial rights over the same component or knowledge. Such rejection, always properly justified, can be made for the same motive even when the sui generis right is not officially registered.</p> <p>ARTICLE 85- Use of sui generis community intellectual rights.</p> <p>By means of the participatory process, the way in which sui generis community intellectual rights will be used and who will be the title holder, shall be determined. Also, who the benefits should accrue to shall be identified.</p> <p>ARTICLE 91- Rescue and maintenance of traditional technology.</p> <p>The State will encourage the rescue, maintenance and diffusion of technology and traditional practices useful for the conservation and sustainable use of biodiversity.</p>	
4. beneficiaries- who should benefit		
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>	<p>ARTICLE 62.- Competence</p> <p>It is a duty of the Commission to propose access policies concerning genetic components and biochemicals of in situ and ex situ biodiversity. It will act as an organ of obligatory consultation in procedures of request for protection of intellectual rights concerning biodiversity. The provisions concerning this matter will constitute the general rules for access to genetic components and biochemicals and for the protection of intellectual rights concerning biodiversity. The administration and interested parties should comply with these provisions which should be previously published in the Official Journal in order to be effective for third parties.</p> <p>ARTICLE 63.- Basic requirements for access</p> <p>The basic requirements for access will be:</p> <p>1.- Prior informed consent of the representatives of the place where the access will occur, be they the regional councils of Conservation Areas, the owners of farms or the indigenous authorities, when it is in their territories.</p> <p>2.- Approval of the prior informed consent by the Technical Office of the Commission.</p> <p>3.- The terms of technology transfer and equitable distribution of benefits, when there are any, as agreed in the permits, agreements and concessions, as well as the type of protection of associated knowledge demanded by the representatives of the place where the access will occur.</p> <p>4.- The definition of the ways in which the said activities will contribute to the conservation of species and ecosystems.</p> <p>5.- The designation of a legal representative resident in the country, when it concerns people or legal persons living outside the country.</p> <p>ARTICLE 64.- Procedure</p> <p>By means of procedures formally registered in official records, the Technical Office of the Commission will manage all processes under its responsibilities indicated in this law. When the finalisation of a procedure could grant rights to people over components of biodiversity which are in the public domain or could cause serious damage to individuals, be it imposed obligations, abolished or refused subjective rights, or for any other form of serious or direct damage to legitimate rights, the matter will be dealt with by means of ordinary procedure under the General Law of Public Administration, except as regards resources, in which the arrangements in clause f) of article 14 of this law will apply. The same shall apply during the proceedings should there arise contradictions or a conflict of interests facing the Administration. For all remaining cases, the Technical Office will follow a summary procedure.</p> <p>ARTICLE 65.- Prior informed consent</p> <p>The Technical Office should inform interested parties that, in relation to an application for whichever type of access to components of biodiversity, they should attach the prior</p>	

	<p>informed consent, given by the proprietor of the landed estate where the activity will take place or by the authority of the indigenous community when it is in their territories and the director of the Conservation Area.</p> <p>ARTICLE 68.- General rule of interpretation</p> <p>Without prejudice to compliance with the provisions related to trade in species of flora and fauna in danger of extinction, or the application of sanitary and phytosanitary measures, technical rules or biosafety, the rules laid down in this chapter shall not constitute any hidden restriction nor trade barrier. Any interpretation otherwise shall be declared null and void by the administrative or legal authority, depending on the situation.</p> <p>ARTICLE 69.- Access permit for research or bioprospecting All research programs or bioprospecting related to genetic material or biochemicals of biodiversity meant to be carried out in Costa Rican territory require an access permit. For duly registered ex situ collections, the regulations of this law will set the procedure for authorization of the respective permit.</p> <p>ARTICLE 70.- Validity, personal limits, components and territory</p> <p>The access permit indicated in the previous article will have a maximum validity of three years, renewable at the discretion of the Technical Office of the Commission. Such a permit is granted to a researcher or to a research centre. It is personal and nontransferrable. It is materially limited to the authorized genetic components or biochemicals, and can only be used in the area or territory expressly indicated in it.</p> <p>ARTICLE 71.- Characteristics and conditions</p> <p>An access permit for research or bioprospecting does not grant nor delegate rights. It only allows such activities to be carried out on previously agreed components of biodiversity. In it will be clearly stipulated: the certificate of origin, the possibility or prohibition to take out or export samples, or in its absence, their duplication and deposit; the periodic reports, the verification and control, the publicity and property of the results, as well as any other condition that, given the applicable rules of science and the technique, are necessary as per the discretion of the Technical Office of the Commission.</p> <p>These requirements will be determined in a different way for non-profit making and commercial research; in the case of the former, it should be reliably verified that there are no profit motives.</p> <p>ARTICLE 72.- Requirements of the solicitude</p> <p>All applications should be directed to the Technical Office of the Commission and should contain the following requirements:</p> <ol style="list-style-type: none"> 1.- Name and complete identification of the interested manager. If it is not the self-same interested party, it should indicate the identification data of the official and the power which he/she holds. 2.- Name and complete identification of the responsible professional or researcher. 3.- Exact location of the place and the components which will be the subject of research, with indication of the owner, administrator or the possessor of the property. 4.- A descriptive chronogram of the extent of the scope of the research and its possible environmental impact. 5.- Objectives and purpose being pursued. 6.- Manifestation of the fact that the previous declaration has been made under oath. 7.- Place for notifications in the perimeter of the residence of the Technical Office of the Commission. <p>The application should be accompanied by the prior informed consent, given by the corresponding person, according to the previous article 65.</p> <p>ARTICLE 73.- Voluntary registration of people or legal persons in bioprospecting activities</p> <p>The people or legal persons who wish to carry out bioprospecting activities should previously enrol in the register of the Commission. This act does not give rights to carry out specific acts of bioprospecting.</p> <p>ARTICLE 74.- Authorization of agreements and contracts</p> <p>The Technical Office of the Commission will authorize the agreements and subscribed contracts between individuals, nationals or foreigners, or between them and the institutions registered for the effect, if they deal with access to the use of genetic components and biochemicals of Costa Rican biodiversity. To process and approve them, they should comply with what is stipulated in articles 69, 70 and 71. Public universities and other properly registered centres could periodically subscribe framework agreements with the Commission, to process the access permits and reports of operations. In such cases, the legal representatives of the universities or institutions that take advantage of this benefit, will be penally and civilly responsible for the use that it gives them.</p> <p>ARTICLE 75.- Concession</p> <p>When the Technical Office authorizes the constant utilization of genetic material or biochemical extracts for commercial purposes, it will require that the interested party obtain a concession to exploit them, for which the General Rules which the Commission sets</p>	
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	<p>shall apply.</p> <p>ARTICLE 76.- General rules for access</p> <p>In addition to the specified special requirements in the previous articles, in the respective resolution the Technical Office, in conformity with the General Rules of the Commission, will establish the obligation of the interested party to deposit up to ten percent (10%) of the research budget and up to fifty percent (50%) of the bonuses which it collects, in favour of the National System of Conservation Areas, the indigenous territory or the private owner providing access to the components. Moreover, it will determine the amount which in each case should be paid by the interested parties for administrative costs, as well as any other benefit or technology transfer which forms part of the prior informed consent.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>ARTICLE 98- Promotion of investment.</p> <p>The Ministry of Environment and Energy and other public organizations, in co-operation with the private sector and including civil society organizations, will promote investment for the conservation and sustainable use of biodiversity.</p> <p>ARTICLE 99- Establishing training programs.</p> <p>The establishment of scientific, technical and technological training programs, as well as research projects which encourage the conservation and sustainable use of biodiversity, will be supported by means of the incentives arranged in this law, in others or by interpretations of them.</p> <p>ARTICLE 100- Plan of incentives.</p> <p>The Ministry of Environment and Energy and the other public authorities will apply specific incentives be they fiscal, scientific-technological or other kinds, in favour of the activities or programs carried out by people or legal nationals, who contribute to achieving the objectives of the present law. The incentives will be constituted by, among others, the following:</p> <ol style="list-style-type: none"> 1.- Exoneration from all taxes on equipment and materials, which regulations of this law define as indispensable and necessary for the development, research and transfer of appropriate technology for the conservation and sustainable use of biodiversity, except automobiles of any class. The exoneration will be given by means of authorization from the Ministry of the Treasury, and prior approval of the respective study by the Ministry of Environment and Energy. 2.- Public recognition like the distinctive Ecological Flag. 3.- National and local prizes for those who emphasise in their actions the conservation and sustainable use of biodiversity. 4.- Payment of environmental services. 5.- Favourable credit for micro-businesses as concerns mortgages. 6.- Anything else applicable in the Law of Promotion of Scientific and Technological Development, No. 7169, of the 26th of June, 1990, and other laws, which permit the attainment of the objectives arranged in this law. <p>ARTICLE 101- Incentives for community participation.</p> <p>The participation of communities in the conservation and sustainable use of the biological diversity shall be promoted by means of technical assistance and special incentives in this law and its regulation, especially in areas harboring species which are rare, endemic or in danger of extinction.</p> <p>ARTICLE 102- Finance and assistance for community management.</p> <p>The Ministry of Environment and Energy, in co-ordination with the competent public authorities and civil society, will give priority to forms of financial and technical support or any other form, for the projects of community management of biodiversity.</p> <p>ARTICLE 103- Removing negative incentives.</p> <p>The Ministry of Environment and Energy and remaining public authorities, taking into consideration public interest, should revise existing legislation and propose or carry out changes necessary to eliminate or reduce incentives which are negative for the conservation of biodiversity and its sustainable use and propose appropriate disincentives.</p> <p>ARTICLE 104- Promotion of traditional breeding.</p> <p>The Ministry of Environment and Energy, and other public authorities, will promote the conservation and sustainable use of biological and genetic resources that have been the subject of breeding or selection by local communities or indigenous peoples, especially those which are threatened or are in danger of extinction and need to be restored, recuperated or rehabilitated. The Ministry will give the technical assistance or finance necessary to fulfil this obligation.</p>	
7. Sanctions and remedies- dealing with breaches	<p>ARTICLE 46.- Registration and permits regarding genetically modified organisms</p> <p>Any person or legal person who proposes to import, export, experiment, mobilize, release into the environment, multiply, commercialize or use for research, genetically modified organisms in the field of agriculture and fishing, created inside or outside Costa Rica, should obtain prior permission from the Phytosanitary Protection Service. Each three months it will report to the Commission. Obligatorily, the aforementioned people should ask the National</p>	

	<p>Technical Commission on Biosafety for a report which will act as a link and determine the necessary measures for risk assessment and management.</p> <p>All physical or legal persons, national or foreign, that carry out genetic manipulation are obliged to register with the Technical Office of the Commission.</p> <p>ARTICLE 50.- Scientific technical rules</p> <p>Human activities should adjust to the scientific technical rules established by the Ministry and the other competent public organizations for the maintenance of vital ecological processes, inside or outside the protected areas; this especially concerns activities related to human settlements, agriculture, tourism and industry, or others which affect the said processes.</p> <p>ARTICLE 77- Recognition of the forms of innovation.</p> <p>The State recognises the existence and validity of forms of knowledge and innovation and the necessity to protect them by means of the use of legal mechanisms appropriate for each specific case.</p> <p>ARTICLE 78- Form of and limits to protection</p> <p>The State shall grant the protection indicated in the previous article, among other ways, by means of patents, trade secrets, plant breeders' rights, sui generis community intellectual rights, copyrights and farmers' rights. These rights shall not apply to:</p> <ol style="list-style-type: none"> 1.- Sequences of deoxyribonucleic acid per se. 2.- Plants and animals. 3.- Non genetically modified micro-organisms. 4.- Essentially biological processes for the production of plants and animals. 5.- Natural processes or cycles as such. 6.- Inventions essentially derived from knowledge which is associated with traditional or cultural biological practices in the public domain. 7.- Inventions which, to be commercially exploited through a monopoly, can affect farming or fishing processes or products which are considered basic for the food and health of the inhabitants of the country. <p>ARTICLE 79- Congruence of the intellectual property system.</p> <p>The intellectual property rights indicated in the first paragraph of the previous article will be regulated by specific legislation of each institute. However, decisions taken in the realm of intellectual property protection related to biodiversity must be congruous with the objectives of this law, in application of the principal of integration.</p> <p>ARTICLE 80- Obligated prior consultation.</p> <p>Both the National Seed Office and the Registers of Intellectual and Industrial Property are obliged to consult with the Technical Office of the Commission before granting protection of intellectual or industrial property to innovations involving components of biodiversity. They must always provide the certificate of origin issued by the Technical Office of the Commission and the prior informed consent. Justified opposition from the Technical Office will prohibit registration of a patent or protection of the innovation.</p> <p>ARTICLE 81- Licenses.</p> <p>The individual beneficiaries of intellectual or industrial property protection related to biodiversity will cede, in favour of the State, a compulsory legal license which will allow it, in cases of declared national emergency, to use such rights for the collective good, with the sole purpose of resolving the emergency, without need to pay privileges or compensation.</p> <p>ARTICLE 88- Research and technology transfer related to biological diversity.</p> <p>In the application of articles 16, 17 and 18 of the Convention on Biological Diversity, the State, by means of the Commission, will set forth the general rules that guarantee the country and its inhabitants that they are the ones to whom information and scientific technical cooperation in the matter of biodiversity are destined, as well as having access to technology by means of adequate policies for their transfer, including that of biotechnology and associated knowledge. By means of the same General Rules, the State will guarantee the fulfilment of obligations established in the same agreements, allowing access to technologies relevant to the conservation and sustainable use of biodiversity without prejudice to intellectual or industrial property rights or to collective sui generis intellectual rights.</p> <p>ARTICLE 89- Encouragement of research programs, education and information.</p> <p>The Ministry of Environment and Energy and other public and private institutions will encourage the development of research programs related to biological diversity.</p> <p>ARTICLE 90- National Program for Science and Technology.</p> <p>The objectives of this law in the matter of biodiversity should be considered part of the National Program for Science and Technology.</p>	
8. competent authority- establishment of a body to administer	<p>ARTICLE 13.- Organization</p> <p>To fulfil the objectives of the present law, the Minister of the Environment and Energy will co-ordinate the administrative organization in charge of the management of biodiversity, composed of:</p>	

<p>the legislation, deal with education, model clauses, codes of conduct, databases</p>	<p>a) The National Commission for the Management of Biodiversity. b) National System of Conservation Areas.</p> <p>ARTICLE 14.- Concerning the National Commission for the Management of Biodiversity The National Commission for the Management of Biodiversity, with instrumental legal identity as a decentralised organ of the Ministry of Environment and Energy is created. It will have the following functions:</p> <p>1.- To formulate national policies relating to the conservation, sustainable ecological use and restoration of biodiversity, in accordance with conventions concerning biological diversity and other internationally corresponding agreements and treaties, as well as relating to national interests.</p> <p>2.- To formulate the policies and responsibilities established in chapters IV, V, and VI of this law, and to co-ordinate them with the different agencies responsible for these matters.</p> <p>3.- To formulate and co-ordinate the policies for access to the components of biodiversity and associated knowledge in order to ensure adequate scientific and technical transfer and the proper distribution of the benefits which, for the purposes of title V of this law, will be called general rules.</p> <p>4.- To formulate and pursue the national strategy for biodiversity.</p> <p>5.- To co-ordinate and facilitate the carrying out of an extensive educational process about policies for the conservation, sustainable ecological use and restoration of biodiversity, involving all political, economic and social sectors of the country,</p> <p>6.- To revoke the resolutions of the Technical Office of the Commission and the Phytosanitary Protection Service as regards access to the components of biodiversity; in this matter the administrative process shall be exhausted.</p> <p>7.- To advise other organs of Executive Power, autonomous institutions and private organizations, in order to regulate actions for the ecologically sustainable use of the components of biodiversity.</p> <p>8.- To watch over public and private actions relating to the management of the components of biodiversity covered by the policies established through this Commission.</p> <p>9.- To name the Secretary of the Commission, who will also be Executive Director of the Technical Office of this same organ.</p> <p>10.- To propose to the Minister of the Environment and Energy, with criteria of identity, the country's representatives before international meetings relating to biodiversity.</p> <p>ARTICLE 15.- Membership The Commission will consist of:</p> <p>a) The Minister of the Environment and Energy or his representative. He/she will also be the President of the Commission and responsible for its good operation.</p> <p>b) The Minister of Agriculture or his representative.</p> <p>c) The Minister of Health or his representative.</p> <p>d) The Executive Director of the National System of Conservation Areas.</p> <p>e) A representative of the Costa Rican Institute of Fishing and Agriculture.</p> <p>f) A representative of the Minister of Foreign Trade.</p> <p>g) A representative of the National Small Farmers Board.</p> <p>h) A representative of National Indigenous Peoples Board.</p> <p>i) A representative of the National Council of Rectors.</p> <p>j) A representative of the Costa Rican Federation for the Conservation of the Environment.</p> <p>k) A representative of the Costa Rican Union of Chambers of Commerce.</p> <p>Each sector will independently name, for a period of three years, its representative and a deputy. Moreover, it could extend the appointments and vouch for them by means of direct communication with the Minister for the Environment and Energy, who will install them.</p> <p>The Commission will meet, ordinarily, once a month, or in unusual circumstances, when summoned by its president or at least six of its members, and should endeavour to provide the necessary facilities for its members to participate effectively.</p> <p>ARTICLE 16.- Organization and internal structure. The Commission will perform its agreements and resolutions and instruct its procedures by means of the Executive Director of the Technical Office. For issues which are complex to resolution or which require specialised knowledge, the Commission could name ad hoc committees of experts with the function of advisers.</p> <p>ARTICLE 17.- Technical Office The Technical Office of support to the Commission will be composed of an Executive Director and the personnel indicated in the regulations of this law. To fulfil its functions, it could designate ad hoc committees of experts as advisers. The functions of the Technical Office will be:</p> <p>1.- To negotiate, approve, reject and control applications for access to biodiversity resources.</p> <p>2.- To co-ordinate anything related to access with the Conservation Areas, the private sector, indigenous peoples and peasant communities.</p>	
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	<p>1.- The Minister of the Environment and Energy, who will act as president.</p> <p>2.- The Executive Director of the System, who will act as secretary of the council.</p> <p>3.- The Executive Director of the Technical Office of the Commission.</p> <p>4.- The directors of each Conservation Area.</p> <p>5.- A representative of each regional council of the Conservation Areas, designated by each Council.</p> <p>ARTICLE 25.- Functions of the National Council.</p> <p>The functions of this Council will be to:</p> <p>1.- Define the execution of the strategies and policies of the consolidation and development of the National System of Conservation Areas, and to supervise their execution.</p> <p>2.- Supervise and control the correct technical management and administration of the Conservation Areas.</p> <p>3.- Co-ordinate, together with the Commission, the elaboration and updating of the national strategy for the conservation and sustainable use of biodiversity, which should be done with full consultation of civil society and coordinated with the public sector, within the framework of each Conservation Area.</p> <p>4.- Define strategies and related policies for the consolidation and development of national protected areas, as well as to supervise their management.</p> <p>5.- Approve the strategies, the structure of the administrative organs of the protected areas and the plans and annual budgets of the Conservation Areas.</p> <p>6.- Recommend the creation of new protected areas which increase their category of protection.</p> <p>7.- Carry out technical and administrative audits for the supervision of good management of the Conservation Areas and their protected areas.</p> <p>8.- Establish the guidelines and directives for current structures, administrative mechanisms and regulations for the Conservation Areas.</p> <p>9.- Name the directors of the Conservation Areas from a list of three candidates proposed by the regional councils.</p> <p>10.- Approve the requests for concession indicated in article 39 of this law.</p> <p>11.- Other functions necessary to fulfil the objectives of this and other laws related to the functions of the System.</p> <p>ARTICLE 26.- Functions of the Executive Director The Executive Director of the System will be responsible for the execution of the guidelines and decisions of the National Council of Conservation Areas and will act under their supervision. He/she will be appointed by the Minister of the Environment and Energy for a period of four years, and his/her appointment could be extended. His/ her responsibilities will include informing the Council and the country, about the application of this legislation and other laws whose application corresponds with the System; likewise, he/she should supervise and pursue the fulfilment of the regulations, the policies and the guidelines concerning the matter. He/she will also represent the National Council of Conservation Areas to the Commission.</p> <p>ARTICLE 27.- Administrative structure of the Conservation Areas</p> <p>The Conservation Areas will consist of the following administrative units:</p> <p>a) The Regional Council of the Conservation Area.</p> <p>b) The Regional Directorate of the Conservation Area.</p> <p>c) The Scientific Technical Committee.</p> <p>d) The organ of Financial Administration of protected areas.</p> <p>ARTICLE 28.- Conservation Areas</p> <p>The System will consist of designated territorial conservation areas under the general supervision of the Ministry of Environment and Energy, by means of the National Council of Conservation Areas, with power in all national territory whether they be wild protected areas, highly fragile areas or private areas of commercial exploitation. Each Conservation Area is a territorial unit of the country, administratively delimited, managed by the same strategy of development and administration duly co-ordinated with the rest of the public sector. In each one, private as well as national activities interrelate without discrediting the protected areas. The Conservation Areas will be in charge of the application of current laws in the area of national resources, within their geographic demarcation. They should execute the policies, strategies and programs approved by the National Council of Conservation Areas, in the matter of protected areas. Also, it will have the responsibility to apply other laws which control the matter, such as the Law on Wildlife Conservation, N. 7317 of the 30 th of October, 1992, the Forest Law No. 7575 of the 13 th of February, 1996, organic law No. 7554 of the 4 th of October, 1995, and Law Creating the Service of National Parks No. 6084 of the 24 th of August, 1977. Based on the recommendations of the Council, the Ministry of Environment and Energy will define the territorial division which is technically more advisable for the Conservation Areas of the country, as well as its modifications.</p> <p>ARTICLE 29.- Regional Council of Conservation Area.</p> <p>The System will exercise the administration of the Conservation Areas, by means of a</p>	
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	<p>regional council, the composition of which will be decided by means of a public meeting, which will be called for by the regional representation of the System, to all the nongovernmental organizations and interested communal parties, the municipalities and the public institutions present in the area. It will be formed by the public official responsible for the protected area and will consist of a minimum of five members representing different sectors of the area, chosen by the assembly of the organizations and institutions called to meeting for this reason; a municipal representative should always be chosen by it. In certain districts where the indicated organizations to form the council do not exist, it will be the responsibility of the municipalities to designate them in co-ordination with the representative of the System.</p> <p>These councils will have an organizational structure under the regulations of this law, which will consist of, at least, a President, a Secretary, a Treasurer and two committee members, all elected by the Council itself, as well as a representative of the System, who will act as Executive Secretary. In the Conservation Areas where this is necessary because of their complexity, local councils could be created in accordance with the regional council of the Conservation Areas, whose constitution will be defined at their creation. Each regional council will establish its own regulations within the boundaries of valid legislation, and should ask the National Council for final approval. In this regulation, the percentage of total economic income of the Conservation Areas needed for its operation will be established.</p> <p>ARTICLE 30.- Functions of the Regional Council</p> <p>The council will have the following functions:</p> <ol style="list-style-type: none"> 1.- To watch over the application of the policies in the matter. 2.- To watch over the integration of the communal necessities in the plans and activities in the Conservation Area. 3.- To encourage the participation of the different sectors of the area in the analysis, discussion and the search for solutions to the regional problems related to natural resources and the environment. 4.- To present to the National Council the proposal for the appointment of the Director of the area, by means of a shortlist of three. 5.- To approve the strategies, policies, guidelines, plans and specific budgets for the Conservation Area, at the proposal of the Director of the Area and the scientific technical committee. 6.- To define specific matters for the management of their protected areas, and present them to the National Council for their approval. 7.- To recommend to the National Council of the Conservation Areas the creation, modification or change of category of each protected wild area. 8.- To supervise the work of the Director and of the organ of financial administration. 9.- To approve at the first request anything referring to the concessions and contracts of services established in article 39. 10.- Any other function assigned by national legislation or by the National Council . <p>ARTICLE 31.- Director of conservation area</p> <p>Each conservation area will be the responsibility of a Director, who will be in charge of applying the present law and other laws which control the matter, as well as to implement national policies and carry out the directives of the regional Council of his/her conservation area or those of the Ministry of Environment and Energy, to whom he/she will report. He/she should watch over the integration and good operation of the technical committee and the organ of financial administration, as well as the training, supervision and welfare of the personnel.</p> <p>ARTICLE 32.- Scientific technical committees</p> <p>Each conservation area should rely on a scientific technical committee whose function will be to assess the Council and the Director in the technical aspects of management of the area. This committee will be formed by those people responsible for the area's programs, as well as other officials and people outside the area designated by the Director. This committee is a permanent forum whose function is to be the maximum organ of assessment to analyse, discuss and formulate plans and strategies which will be executed in the Conservation Areas.</p> <p>ARTICLE 33.- Organ of financial administration</p> <p>The National Council of Conservation Areas will be responsible for defining the general guidelines to shape the mechanisms and instruments of financial administration for the regional councils of each conservation area, to assure that they fulfil the following principles and criteria:</p> <ol style="list-style-type: none"> 1.- It should assure the integrity of the System. 2.- Its structure should be clear and highly participatory in all aspects with efficiency and agility. 3.- It should assure that national policies for the tasks and funds assigned to its responsibility are followed and fulfilled. 	
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	<p>4.- It should include permanent mechanisms of appropriate and updated information, as much for the organs of the System, as for the rest of the public sector and society.</p> <p>ARTICLE 34.- Commissioners of Conservation Areas The profile of Commissioner of the conservation area is created; it will be an ad honorem responsibility and should be carried out by people with recognised prestige and track record in the field of natural resources; more-over, they should have sound moral character and manifest interest. The post will have among its functions to supervise the good operation of the area, to ask for and suggest the corrective measures to fulfil its objectives, especially in matters concerning protected wild areas, as well as to support the area in the attainment of its aims and resources. Each conservation area will have at least one commissioner. The commissioners will be appointed by the National Council, by recommendation of the regional councils.</p> <p>ARTICLE 35.- Finance The National System of Conservation Areas will design financial mechanisms that allow it to exercise its mandates with agility and efficiency. These mechanisms will include transfers from the State budget, or from any person or legal person, as well as its own funds generated from the protected areas, including entrance tariffs, the payment of environmental services, debt swaps, rents established by law, payments for activities carried out inside the protected areas and donations.</p> <p>ARTICLE 36.- Financial instruments For the purposes of the previous article, the System will be authorized to administer the funds which enter the System by any concept by means of trust funds or other instruments, whether they are for the entire System or specifically for each conservation area. The National Park Fund, created by the law of creation of the National Parks Service, No. 6084, of the 24 th of August, 1977, will transform into the trust fund for the protected areas, dedicated exclusively to the aims for which it was created, from now including the finance of activities of protection and consolidation in the other categories of protected areas of national property.</p> <p>ARTICLE 37.- Payment of environmental services In virtue of programs or projects for sustainable use approved by the National Council of Conservation Areas and the Regulatory Authority of Public Services, on the part of the institutions or suitable public organizations to offer a real or potential water or energy service, which depend strictly on the protection or integrity of a Conservation Area, the Regulatory Authority of Public Services could authorize to charge the users, by means of a relevant tariff, a percentage equivalent to the cost of the service offered and to the dimension of the program or the approved project. Every three months, the entity responsible for collecting said payment should carry out the transfers or the payments of the total amount collected to the trust fund of protected areas, which in turn should carry out, with the same timeframe, the respective payments to the owners, possessors or administrators of the affected properties, and direct them to the following exclusive aims:</p> <ol style="list-style-type: none"> 1.- Payment of services for protection of recharge zones to proprietors and private owners of the properties, which include strategic areas defined together by the regional council of the Conservation Areas and the institutions and aforementioned organizations. 2.- Payment of services for protection of recharge zones to proprietors and private owners, who want to subject their properties in a voluntary way to the conservation and protection of the areas, properties which will be previously defined by the regional council of the Conservation Areas. 3.- Purchase or cancellation of private properties situated in national protected areas, that have not been bought or paid for. 4.- Payment of the operative and administrative costs necessary for the maintenance of national protected areas. 5.- Financing of rural aqueducts, prior to the presentation of the environmental impact assessment showing the sustainability of the water resource. For the fulfilment of this article, the respective conservation area should establish a program which executes these actions. <p>ARTICLE 38.- Self-financing The system will use in the Conservation Areas for this operation, all the funds which its activities generate, such as entrance tariffs to protected areas or concessions of non-essential services. These will be administrated by means of the Trust Funds of protected areas. The funds generated by the protected areas will be exclusively for their protection and development, in this order of priority. The National Council of the Conservation Areas will be the organ which defines the annual budgets, in a way which strengthens the integrity of the System.</p> <p>ARTICLE 39.- Concessions and contracts The National Council of Conservation Areas is authorized to approve the contracts,</p>	
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	<p>concessions of services and non-essential activities inside national protected wild areas. Excluded are the responsibilities which this and other laws entrust exclusively to the Executive Power through the Ministry of Environment and Energy, such as the establishment, strategic development, plans and the budgets of the Conservation Areas. These concessions and contracts in no case could include the authorization of access to components of biodiversity in favour of third parties, or the construction of private buildings. The non-essential services and activities will be: parking places, sanitary places, the administration of physical installations, services, shops, the constructions and administrations of paths, administration of visits and others will be defined by regional council of Conservation Area. These concessions or contracts could be given to legal people or their current legal identity that are non-profit making organizations and have objectives of supporting the conservation of natural resources. Priority will be given to regional organizations. The holders of licenses or permits should present satisfactory external audits, carried out in the last year; all at the discretion of the regional council of the Conservation Area.</p> <p>ARTICLE 40.- Adaptation of plans and strategies The concessions and contracts authorized in the previous article should be based on the strategies and plans approved by the Regional Council in a way defined by the National Council of Conservation Areas, according to the laws and established policies. The formulation of strategies and plans of the protected areas in no case will be affected by considerations that are not strictly technical.</p> <p>ARTICLE 41.- Funds and existing resources For the faithful fulfilment of the aims and objectives of the law of Conservation of Wildlife No. 7317, of the 30 th of October 1992; Forest Law, No. 7575 of the 13 th of July 1976; the law of creation of the National Park Service, No. 6084 of 24 th of August 1977, and the organic Law of the Environment, No. 7554 of 4 th October 1995, to attend the costs that derive from them, the System will count the contributions of the budget of the Republic and the resources of the funds already existing in the system, which could be administered by a trust fund or with the financial instruments that they define.</p> <p>ARTICLE 42.- Tariffs The System is authorized to charge different prices to residents and non-residents in the country, by the concept of entrance tariffs to all national protected areas, as well as for the provision of services in the areas. Likewise, it is authorizes to charge different tariffs according to the protected area and the services that it offers. The System will set the tariffs according to the operating costs of each protected zone and the costs of services provided. Also, it will revise them each year in order to adjust them in accordance with the consumer price index.</p> <p>ARTICLE 43.- National park stamps From the funds collected by means of the National pro-park stamps, established in article seven of the law creating the National Park Service, of the 17 th of August 1977, in future ten percent (10%) will be destined to the Commission. The value of the stamp is brought up to date in the following way:</p> <ol style="list-style-type: none"> 1.- A stamp equivalent to two percent of the income from tax on municipal patents in any class. 2.- A stamp for two hundred and fifty colones (250,00), in all passports and safe conduct passes which are granted to exit the country. 3.- A stamp for five hundred colones (500,00) which must figure on all documents of transfer and registration of automotive vehicles. 4.- A stamp of five hundred colones (500,00) which should figure on the authentication of signatures carried out by the Ministry of Foreign Affairs. 5.- A stamp for five thousand colones which should be paid for annually, by all social clubs, dancehalls, bars, liquor stores, casinos and any place where alcoholic beverages are sold or consumed. <p>Of what is collected through the concept of the stamp, whose collection will be the responsibility of the municipalities according to clauses 1 and 5 above, thirty percent (30%) will be destined for the municipality of the formulation and implementation of local strategies of sustainable development and seventy percent (70%) for the protected areas of the respective Conservation Area.</p> <p>ARTICLE 97- International notification. To conform with the Convention on Biological Diversity and international environmental law, the National Technical Secretary will be in charge of implementing clauses c) and d) of article 14 of the Convention.</p> <p>ARTICLE 86- Education on biodiversity. Biological education should be integrated in the educational plans of all anticipated levels, to achieve understanding of the value of biodiversity and the way in which it plays a part in the life and aspirations of every human being. The Ministry of Education, in accordance with</p>	
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	<p>public and private organizations competent in the matter, especially the Ministry of Environment and Energy, should design policies and programs of formal education which integrate the knowledge of the importance and the value of biodiversity and associated knowledge, the forces which threaten it and which reduce the sustainable use of its components, in order to facilitate the learning process and valuation of biodiversity that surrounds each community and to demonstrate its potential to improve the quality of life of the population.</p> <p>ARTICLE 87- Incorporation of the educational variable in projects.</p> <p>The State will watch over each project developed by public institutions in the environmental field which includes an educational and public awareness raising component regarding the sustainable conservation and use of biodiversity, specifically in the zone where the project is developed.</p>	
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p>ARTICLE 4.- Exclusions</p> <p>This law will not apply to access to biochemical or genetic material of human origin, which will continue to be regulated by the General Health Law, No. 5395, of the 30th of October 1973, and by the connected laws. Neither will these rules apply to the exchange of biochemical or genetic resources among the indigenous people and local communities, nor to the associated knowledge resulting from their non-profit making practices, uses or customs. The arrangements of this law do not affect university autonomy in the matter of teaching or research in the field of biodiversity, except if the research has commercial purposes.</p> <p>ARTICLE 44.- Establishment of mechanisms of procedures for biosafety To avoid and prevent damage, present and future, to human, animal or plant health, or to the integrity of the ecosystems, the mechanisms and procedures for access to the components of biodiversity with aims of research, development, production, application, liberation or introduction of exotic or genetically modified organisms will be established in the regulations of this law.</p> <p>ARTICLE 45.- Responsibility in the matter of environmental safety</p> <p>The State has the obligation to avoid any risk or danger which threatens the permanence of ecosystems. Also, it should prevent, reduce or restore environmental damage which threatens life or deteriorates its quality. The civil liability of title holders or people responsible for the management of the genetically modified organisms and any damage caused, is set in the organic Law of the Environment, the Civil Code and other applicable laws. The penal responsibility is set in the existing legal regulations.</p> <p>ARTICLE 49.- Maintenance of ecological processes</p> <p>The maintenance of ecological processes is an obligation of the State and the citizens. For such effect, the Ministry of Environment and Energy, and other relevant public organizations, taking into account specific applicable legislation, will set out the adequate technical rules and will use mechanisms for its conservation, such as environmental regulations and assessments, evaluations of impact and environmental audits, prohibitions, permits, environmental licenses and incentives, among others.</p> <p>ARTICLE 51.- Identification of ecosystems</p> <p>For the purposes of this law, the Ministry of Environment and Energy in collaboration with other public and private organizations will prepare a system of parameters which allow the identification of ecosystems and their components to take the appropriate measures, including mitigation, control, restoration, recuperation and rehabilitation.</p> <p>ARTICLE 52.- Territorial regulations</p> <p>The plans or the authorization for the use of mineral resources, land, flora, fauna, water or other natural resources as well as the location of human settlements and industrial or agricultural developments, given out by any public organization, be it of the central government, autonomous or municipal institutions, will consider in particular in their elaboration, approval and implementation, the sustainable conservation and use of, especially when it concerns plans or permits which affect biodiversity of the wild protected areas.</p> <p>ARTICLE 53.- Restoration, recuperation and rehabilitation</p> <p>The restoration, recuperation and rehabilitation of ecosystems, the species and the environmental services which they offer, should be encouraged by the Ministry of Environment and Energy and other public organizations, by means of measures which deal</p>	

	<p>with a system of incentives, in accordance with this and any other relevant laws.</p> <p>ARTICLE 54.- Environmental damage When environmental damage exists in the ecosystem, the State can take measures to repair, restore, recuperate and rehabilitate it. To do so, it can make all kind of contracts with institutes of higher education, national or international, with the aim of restoring the damaged components of biodiversity. In protected areas of national property, this decision should come from the National System of Conservation Areas of the Ministry of Environment and Energy. For restoration in private terrains it will proceed according to articles 51, 52 and 56 of this law.</p> <p>ARTICLE 55.- Species threatened with extinction For the development of conservation programs, the State will give priority to the species threatened with extinction, taking into account:</p> <ol style="list-style-type: none"> 1.- The national lists, international red lists and international agreements such as CITES on international trade in threatened species of wild flora and fauna. 2.- When a communal cultural or subsistence use exists, according to the conservation and sustainable use included in these lists, the State will promote the technical assistance and research necessary to assure the conservation of the species for a long period of time, while respecting the cultural practice. 3.- Actions of conservation for the species important for local consumption (food, raw material, traditional medicines), even when they are not on the lists of species in danger of extinction <p>ARTICLE 56.- In situ conservation of species These will be the priorities for in situ conservation of species:</p> <ol style="list-style-type: none"> 1.- Species, populations, races or varieties, with reduced population or in danger of extinction. 2.- Species whose populations are highly fragmented. 3.- Species of flowers whose flowering is not always in synchrony. 4.- Species, races, varieties or populations of singular strategic, scientific or economic value, actual or potential. 5.- Species, populations, races or varieties of plants or animals with particular religious, cultural or cosmogenic significance. 6.- Wild species related to species or stocks, cultivated or domesticated, which can be used for breeding. <p>ARTICLE 57.- Ex situ conservation of species These will be the priorities of ex situ conservation:</p> <ol style="list-style-type: none"> 1.- Species, populations, races or varieties with reduced populations or in danger of extinction. 2.- Species, or genetic material of singular strategic, scientific or economic value, actual or potential. 3.- Species, populations, races or varieties and the genetic material, appropriate for cultivation, domestication or breeding, or that have the object of improvement, selection, cultivation or domestication. 4.- Species, populations, races or varieties with very valuable uses linked to socio-economic and cultural necessities, local or national. 5.- Animal or plant species with particular religious, cultural or cosmogenic significance. 6.- Species which fulfil a key function in food chains and the natural control of populations. <p>ARTICLE 58.- Protected wild areas Wild protected areas are delimited geographic zones, constituted by terrains, swamps and sections of the sea. They have been declared as such to represent special significance for their ecosystems, the existence of threatened species, repercussions in reproduction and other necessities, and for their historic and cultural significance. These areas will be dedicated to conservation and to protecting biodiversity, the land, hydric resources, cultural resources and the services of the ecosystem in general. The objectives, classification, requirements and mechanisms for establishing or reducing these areas are determined in the Organic Law of the Environment, No. 7554, of the 4 th of October, 1995. The prohibitions that affect people or legal persons inside national parks and biological reserves are determined in the Law of the Creation of the National Park Service, No. 6084 of 24 th of August, 1977. During the process of fulfilment of requirements to establish national protected wild areas, the respective technical reports should include the recommendations and relevant justifications to determine the most appropriate category of management to which the proposed area should answer to. In each case, the establishment of areas and categories will be taken with a great regard for the previously obtained rights of indigenous peoples or small farmers and other people or legal persons, underlying or adjacent to them.</p> <p>ARTICLE 59.- Change of category</p>	
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	<p>The National System of Conservation Areas could recommend the elevation of the category of existing protected areas, for which it will follow what it is established in the Organic Law of the Environment.</p> <p>ARTICLE 60.- Property of wild protected areas Wild protected areas, besides those of the State, can be municipal, mixed or private property. For the great responsibility that they have to assure the conservation and the sustainable use of biodiversity of the country, the Ministry of Environment and Energy and all public organizations, will encourage their creation, besides supervising and helping with their management.</p> <p>ARTICLE 61.- Protection of wild protected areas The State has to give priority attention to the protection and consolidation of national wild protected areas that are found in Conservation Areas. For these effects, the Ministry of Environment and Energy in co-ordination with the Treasury should include in the Republic's budget the respective transfer to the trust fund or the financial mechanisms of the protected areas to assure, at least, the personnel and resources necessary, that the national System of Conservation Areas determines, for the operation and integrity of the wild protected areas of national property and the permanent protection of national parks, biological reserves and other wild protected areas that are property of the State</p> <p>ARTICLE 67.- Registration of rights of access to genetic components and biochemical The Technical Office of the Commission will organize and maintain permanently updated a Register of rights of access to genetic components and biochemicals. The director of the Technical Office of the Commission will also act as Director of the register and the responsible official for the custody and authenticity of the registered information. The registered information will be publicly available, except for trade secrets, which should be protected by the Register, unless biosafety considerations oblige them to be publicised.</p> <p>ARTICLE 92- Presentation of environmental impact assessment. At the discretion of the Technical Office of the Commission, an environmental impact assessment of proposed projects shall be requested when it considers that they could affect biodiversity. The assessment will conform with article 17 of the Organic Law of the Environment.</p> <p>ARTICLE 93- Guides for the environmental impact assessment. The National Technical Secretary should include in the guidelines for evaluating environmental impact, changes in biodiversity, be they natural or man-made, and the identification of the processes or activities which impact on the conservation and use of biodiversity.</p> <p>ARTICLE 94- Stages of environmental impact assessment. An environmental impact assessment in the field of biodiversity should be carried out in its totality, even when the project is scheduled to be carried out in stages.</p> <p>ARTICLE 95- Public hearings. When necessary, the National Technical Secretary should carry out public hearings of information and analysis about the actual project and its impact. The cost of publication will be paid for by the interested party.</p> <p>ARTICLE 96- Environmental hearing. For projects requiring an environmental impact assessment, in conformity with the previous article 92, the National Technical Secretary and the Technical Office of the Commission will co-ordinate the corresponding environmental hearing</p>	
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws-avoiding conflict with other laws	<p>ARTICLE 12.- International Co-operation The State should promote, plan and orient national activities, foreign relations and cooperation with national neighbours with respect to the conservation, use and exchange of components of biodiversity present in the national territory and in the transfrontier ecosystems of common interest. Likewise, it should regulate the entry to and exit from the country of biotic resources.</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		

14. transitional provisions- existing uses	TRANSITORY.- Public universities, in accordance with the National Council Of Rectors will have a period of one year from when this law becomes valid to establish in their internal rules, the controls and regulations applicable exclusively to academic activity and research that is carried out, when it implies access to biodiversity for non-profit making purposes. Universities, which do not define adequate controls during the indicated period, will be subject to the ordinary regulations of this law.	
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8. Cuba

Law on the Protection of the Cultural Heritage (Law No. 1 of 1976)

TK TCE Spanish text only

9. Ecuador

This is a general intellectual property instrument that has limited provision with respect to TK TCE and genetic resources.

INTELLECTUAL PROPERTY LAW Courtesy translation provided by WIPO © 2012

CODIFICATION NO. 2006-013

HONORABLE NATIONAL CONGRESS

THE LEGISLATION AND CODIFICATION COMMISSION

Hereby decides:

TO ISSUE THE FOLLOWING CODIFICATION OF THE INTELLECTUAL PROPERTY LAW

Preliminary Title

Art. 1. – The State shall recognize, regulate and safeguard intellectual property acquired in accordance with the law, the decisions of the Commission of the Andean Community and the international conventions in force in Ecuador.

Intellectual property shall include:

1. copyright and related rights;
2. industrial property, which shall include, inter alia, the following:
 - a. inventions;
 - b. industrial designs;
 - c. layout-designs (topographies) of integrated circuits;
 - d. undisclosed information and business and manufacturing secrets;
 - e. factory marks, trademarks, service marks and commercial slogans;
 - f. the distinctive appearance of businesses and commercial establishments;
 - g. trade names;
 - h. geographical indications; and
 - i. any other intellectual creation intended for agricultural, industrial or

commercial use;

3. plant varieties.

The provisions of this Law shall not limit or impinge upon the rights set out in the Convention on Biological Diversity or in relevant laws promulgated by Ecuador.

Art. 2. – The rights conferred by this Law shall apply equally to Ecuadorian nationals and foreigners, whether or not they are resident in Ecuador.

Art. 3. - The Ecuadorian Intellectual Property Institute (IEPI) shall be the competent administrative body for encouraging, promoting, fostering, safeguarding, protecting and defending, on behalf of the Ecuadorian State, the intellectual property rights conferred under the present Law and under international treaties and conventions, without prejudice to the relevant civil and criminal proceedings, which shall be heard by the Judiciary.

Book I

Title I COPYRIGHT AND RELATED RIGHTS

Chapter I COPYRIGHT

Section I GENERAL PROVISIONS

Art. 4. – The rights of authors and the rights of other right holders in their works shall be recognized and safeguarded.

Art. 5. – Copyright shall derive from and be protected on account of the sole fact that the work is created, regardless of its merit, purpose or mode of expression.

All works, performances, productions or radio broadcasts, whatever the country of origin of the work or the nationality or domicile of the author or right holder, shall be protected. Such protection shall also be conferred regardless of the place of publication or disclosure.

Conferral of copyright and related rights shall not be dependent on registration, deposit or the fulfillment of any formality.

A related right shall derive from the need to protect the rights of performers and producers of phonograms.

Art. 6. – Copyright shall be independent of and compatible with and may be combined with:

(a) ownership of, and other rights in, the physical medium in which the work is embodied;

(b) such industrial property rights as may subsist in the work; and

(c) other intellectual property rights conferred by law.

Art. 7. – For the purposes of this Title, the terms set out below shall have the following meanings:

author: natural person who makes an intellectual creation;

performer: person who presents, sings, reads, recites or in any way performs a work;

domestic environment: the context of family gatherings held in the dwelling house

that serves as the natural location of the home;

database: compilation of works, facts or data in printed form, in the storage unit of a

computer or in any other form;

successor in title: natural or legal person who or which, in any capacity, has acquired rights conferred under this Title;

collection: set of items, generally of the same class or type;

compilation: the grouping, in a single scientific or literary volume, of individual laws, news or subjects;

copy: physical medium in which a work or production is embodied, including both as

a result of the original fixation and as a result of an act of reproduction;

related rights: economic rights of communication to the public held by performers,

producers of phonograms and broadcasting organizations;

distribution: the making available to the public of the original or copies of a work, by sale, rental, public lending, or any other means, known or as yet unknown, of transferring the ownership, possession or holding of such original or copy;

disclosure: the act of making a work accessible to the public for the first time, with the author's consent, by any means or process known or as yet unknown;

publisher: natural or legal person who or which, under a written contract with the author or his successor in title, is obliged to publish and disclose a work at his own expense;

transmission: the diffusion of sounds and/or images, by any means or process known or as yet unknown, with or without the use of satellites, over a distance for reception by the public. Transmission shall also include the sending of signals from a ground station to a broadcasting or telecommunications satellite;

expressions of folklore: productions of characteristic elements of traditional cultural heritage that consist of all literary and artistic works created in the national territory by unknown or unidentified authors presumed to be nationals of the country or members of its ethnic communities and that are passed from generation to generation in such a way as to reflect the traditional artistic or literary aspirations of a community;

fixation: embodiment of signs, sounds or images or the digital representation thereof in a physical medium that enables them to be read, perceived, reproduced, communicated or used;

phonogram: any exclusively aural fixation of sounds of a performance or of other sounds or of digital representations thereof. Phonographic, magnetic and digital recordings shall be considered copies of phonograms;

ephemeral recording: temporary aural or audiovisual fixation of a performance or broadcast made by a broadcasting organization by means of its own facilities and used in its own broadcasts;

license: authorization or permit, granted by the right holder to the user of a work or other protected production, to use the work in the specified form and in accordance with the terms agreed in the contract. This shall not transfer ownership of the rights;

work: any original intellectual creation that can be disclosed or reproduced in any form known or as yet unknown;

anonymous work: a work in which the identity of the author is not mentioned, in accordance with his wishes;

audiovisual work: any creation expressed by a series of linked images, with or without the incorporation of sound, that is intended essentially to be shown by means of projection apparatus or any other means of communicating images and sounds, regardless of the characteristics of the physical medium in which said work is embodied;

work of applied art: an artistic creation with utilitarian functions or embodied in a useful article, whether a work of handicraft or one produced on an industrial scale;

work of joint authorship: a work produced jointly by two or more natural persons;

collective work: a work created by two or more authors, on the initiative and under the responsibility of a natural or legal person who or which publishes or discloses the work in his own name, and in which it is not possible to identify the authors or to distinguish their contributions from each other;

commissioned work: the result of a contract for the creation of a specified work, where there is no employment or work relationship between the author and the person commissioning the work;

unpublished work: a work that has not been disclosed, with the consent of the author or his successors in title;

work of three-dimensional art or work of fine art: an artistic creation intended to appeal to the aesthetic sense of the person perceiving it, such as paintings, drawings, engravings or lithograph. This definition shall not, for the purposes of the present Law, include photographs, architectural works or audiovisual works;

posthumous work: in addition to works not published during the author's lifetime, works that have been published during his lifetime if, at the time of his death, the same author leaves them revised, supplemented, annotated or corrected in such a manner that they are worthy of being considered new works;

broadcasting organization: natural or legal person who or which makes decisions on broadcasts and determines the terms of transmission of radio or television broadcasts;

producer: natural or legal person who or which takes the initiative for, coordination of and responsibility for the production of a work, for instance an audiovisual work or a computer program;

producer of phonograms: natural or legal person on whose initiative and under whose responsibility and coordination the sounds of a performance or other sounds, or digital representations thereof, are first fixed;

computer program (software): any sequence of instructions or guidelines intended to be used, directly or indirectly, in an automated reading device, computer or electronic or similar device capable of processing information in order to perform a function or task or to obtain a particular result, whatever

the form of expression or fixation thereof. "Computer program" shall also include preparatory documentation, plans and designs, technical documentation and user manuals;

publication: production of copies which are made available to the public with the consent of the holder of the relevant right, provided that the supply of such copies is such as to meet the reasonable needs of the public, due account being taken of the nature of the work;

broadcasting: communication to the public by wireless transmission. Broadcasting shall include that effected by satellite, from the transmission of the signal, including both the uplink and the downlink in the transmission, until the program contained in the signal is made available to the public;

reproduction: the fixation of a work in any medium or by any process known or as yet unknown, including the temporary or permanent digital storage thereof and the making of copies of all or part of the work;

retransmission: the relaying of a signal or program received from another source, effected by the distribution of signs, sounds or images, whether by wireless means or by cable, wire, optic fiber or any other medium known or as yet unknown;

ownership: the status, conferred on a natural or legal person, of holder of rights conferred under the present Book;

fair use: use that does not interfere with the normal exploitation of the work or prejudice the legitimate interests of the author;

videogram: fixation of an audiovisual work.

Section II SUBJECT MATTER OF COPYRIGHT

Art. 8. – Copyright protection shall apply to all intellectual works in the literary or artistic field, whatever their type, form of expression, merit or purpose. The rights conferred under the present Title shall be independent of ownership of the physical medium in which a work is embodied, and the enjoyment or exercise thereof shall not be subject to a registration requirement or the fulfillment of any other formality.

Protected works shall include, inter alia, the following:

- (a) books, pamphlets, printed matter, letters, articles, novels, tales, poems, chronicles, reviews, essays, correspondence, scripts for the theater, cinema or television, lectures, speeches, lessons, sermons, legal arguments, memoirs and other works of a similar nature, expressed in any form;
- (b) collections of works, such as anthologies or compilations and databases of any kind, which by reason of the selection or arrangement of their contents constitute intellectual creations, without prejudice to the copyright in the material or data;
- (c) dramatic and dramatico-musical works, choreography, entertainments in dumb show and theatrical works in general;
- (d) musical compositions with or without lyrics;
- (e) cinematographic works and any other audiovisual works;
- (f) sculptures and works of painting, drawing, engraving and lithography, cartoon strips and comics, and also trial versions or sketches thereof and other three-dimensional works;

- (g) projects, plans, models and designs of works of architecture and engineering;
- (h) illustrations, diagrams, maps and designs relative to geography, topography and science in general;
- (i) photographic works and those expressed by processes analogous to photography;
- (j) works of applied art, even if their artistic value cannot be dissociated from the industrial nature of the media in which they are embodied;
- (k) computer programs; and
- (l) adaptations, translations, arrangements, amendments, updates and annotations; compendiums, summaries and extracts; and other alterations of a work carried out with the express authorization of the authors of the original works and without prejudice to their rights.

Without prejudice to industrial property rights, the titles of radio or television programs and news bulletins, and of newspapers, magazines and other periodical publications, shall be protected for one year after the release of the last issue or the communication to the public of the last program, except in the case of annual publications or productions, where the term of protection shall be extended to three years.

Art. 9. – Without prejudice to the rights in the original work and the relevant authorization, the following shall also be protected as derivative works, provided that they have characteristics of originality:

- (a) translations and adaptations;
- (b) amendments, updates and annotations;
- (c) summaries and extracts;
- (d) musical arrangements; and
- (e) other alterations of a literary or artistic work.

Creations or adaptations that are based on tradition as expressed in a group of individuals and that reflect expressions of the community, its identity, its values transmitted orally, by imitation or by other means, whether they use literary language, music, games, mythology, rituals, customs, handicrafts, architecture or other arts, shall respect the rights of communities in accordance with the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the instruments concluded under the auspices of the World Intellectual Property Organization (WIPO) for the protection of expressions against illicit exploitation.

Art. 10. – Copyright shall also protect the form of expression in which the author's ideas are described, explained, illustrated or incorporated in works.

The following shall not be protected:

- (a) the ideas contained in works; procedures, methods of operation or mathematical concepts as such; systems or the ideological or technical content of scientific works or the industrial or commercial exploitation thereof;

and

(b) legal and regulatory provisions, judicial decisions, and instruments, agreements, liberations and rulings of public bodies, and also the official translations thereof.

Section III RIGHT HOLDERS

Art. 11. – Only a natural person may be an author. Legal persons may be copyright holders, in accordance with the present Book. Ownership shall be determined pursuant to the law of the country of origin of the work, in accordance with the criteria set out in the Berne Convention, Paris Act of 1971.

Art. 12. – In the absence of proof to the contrary, the person whose name, pseudonym, initials, abbreviated name or any other sign identifying him appears on the work shall be presumed to be the author of or holder of rights in the work.

Art. 13. - In the case of works of joint authorship that are divisible, each joint author shall be the holder of the rights in the part of which he is the author, unless otherwise agreed.

In the case of works of joint authorship that are indivisible, the rights shall accrue jointly pro indiviso to the joint authors, unless they have agreed otherwise.

Art. 14. – Copyright shall not form part of a communal marital estate and may be administered freely by the spouse who is the author or the author's successor in title.

However, the economic benefits deriving from the exploitation of the work shall form part of the communal marital estate or joint property, as the case may be.

Art. 15. – Unless otherwise agreed, the natural or legal person who or which has organized, coordinated and directed a collective work shall be deemed to be the holder of copyright in the work and may exercise the moral rights to exploit the work in his own name.

It shall be presumed that the holder of rights in a collective work is the natural or legal person whose name appears as such on the work.

Art. 16. – Unless otherwise agreed or specially provided in the present Book, ownership of copyright in works created in the context of an employment relationship shall accrue to the employer, who shall be authorized to exercise the moral rights to exploit the work.

In the case of commissioned works, ownership shall accrue non-exclusively to the commissioning party; the author shall therefore retain the right to exploit them in ways other than those covered by the contract, provided that this does not entail unfair competition.

Art. 17. – In the case of an anonymous work, the publisher whose name appears on the work shall be deemed to represent the author and shall be authorized to exercise and enforce his moral and economic rights until the author reveals his identity and proves his authorship of the work.

Section IV CONTENT OF COPYRIGHT

Part One MORAL RIGHTS

Art. 18. – An author shall have unrenounceable, inalienable, unattachable and imprescriptible rights to:

- (a) claim authorship of his work;
- (b) keep the work unpublished or anonymous or require that his name or pseudonym be mentioned whenever the work is used;
- (c) object to any distortion, mutilation, alteration or other modification of the work that may be prejudicial to his honor or professional reputation;
- (d) access a single or rare copy of the work that is in a third party's possession, with a view to exercising the right of disclosure or any other right accruing to him; and
- (e) where any of the rights set out in the foregoing subparagraphs is infringed, compensation for injury shall be due, regardless of other proceedings provided for in this Law.

The author may not, as a result of this right, require the work to be moved, and the work shall be accessed in the place and manner that cause least inconvenience to the owner, who shall be compensated, where appropriate, for any injury caused to him.

On the author's death, the exercise of the rights referred to in subparagraphs (a) and (c) shall pass, without any time limit, to his successors in title.

Successors in title may exercise the right set out in subparagraph (b) for a period of 70 years after the author's death.

Part Two ECONOMIC RIGHTS

Art. 19. – The author shall enjoy the exclusive right to exploit his work in any manner and to obtain profits therefrom, subject to the limitations set out in the present Book.

Art. 20. – The exclusive right to exploit the work shall include, in particular, entitlement to carry out, authorize or prohibit:

- (a) the reproduction of the work in any manner or form;
- (b) the communication of the work to the public by any means of disseminating words, signs, sounds or images;
- (c) the distribution of copies of the work to the public by sale, rental or hiring;
- (d) importation; and
- (e) the translation, adaptation, arrangement or other alteration of the work.

The exploitation of the work in any form, and especially through any of the acts listed in this Article, shall be unlawful without the express authorization of the copyright holder, subject to the exceptions provided for in this Law.

Art. 21. – Reproduction shall consist in the fixation or replication of a work by any means or process known or as yet unknown, including the temporary or permanent digital storage thereof, in such a way that it can be perceived or communicated or copies of all or part of it can be made.

Art. 22. – "Communication to the public" means any act by which two or more persons, whether or not they are gathered together in the same place, may have access to the work at a time individually chosen by them, without the prior distribution of copies to each one of them, such as the following:

(a) stage presentations, recitals, dissertations and public performances of dramatic, dramatico-musical, literary and musical works by any means or process;

(b) the public projection or showing of cinematographic and other audiovisual works;

(c) the broadcasting or communication to the public of any works by any means of wireless dissemination of signs, sounds or images or the digital representation thereof, whether simultaneous or not.

The transmission of encrypted program-carrying signals shall also be an act of communication to the public, provided that means of decoding are made available to the public by the broadcasting organization or with its consent.

For the purposes of the above two sub-subparagraphs, "satellite" means any satellite that operates in frequency bands reserved under telecommunications law for the sending of signals for reception by the public or for individual non-public communication, provided that, in the latter case, the circumstances in which individual reception of signals occurs are comparable to those that are applied in the former case;

(d) the transmission of works to the public by wire, cable, optic fiber or other analogous process, whether free or on subscription;

(e) the retransmission, by wire or wireless means, of a work broadcast on radio, television or any other medium, where such retransmission is carried out by an organization other than the originating organization;

(f) the emission, transmission or reception, in or to a place accessible to the public and by means of any appropriate apparatus, of a broadcast work;

(g) public presentation and display;

(h) public access to computer databases by means of telecommunication, where they incorporate or constitute protected works; and

(i) lastly, the dissemination, by any process, known or as yet unknown, of signs, words, sounds or images representing the works or other forms of expression of said works.

Any communication beyond the strictly domestic environment shall be considered public.

Art. 23. – Pursuant to the right of distribution, the copyright holder shall be entitled to make available to the public the original or copies of the work by sale, rental or public lending or in any other way.

"Rental" means the making available of originals and copies of a work for use for a limited time and with a direct or indirect economic or commercial benefit. For the purposes of this provision, the concept of rental shall exclude the making available of a work for the purpose of display or for consultation in situ.

"Lending" means the making available of originals and copies of a work through establishments accessible to the public for use for a limited time without direct or indirect economic or commercial benefit. The exclusions set out in the foregoing paragraph shall also apply to public lending.

The right of distribution by sale shall be exhausted with the first sale and solely with respect to subsequent resales within Ecuador, but the exclusive right to authorize or prohibit the rental and public lending of copies sold shall not be exhausted or affected.

The author of an architectural work or a work of applied art may not object to the owner's renting out the work or construction.

Art. 24. – The right of importation shall confer on the copyright holder entitlement to prohibit the original or copies of protected works from being brought into Ecuadorian territory, including by analog and digital transmission, without prejudice to obtaining the same prohibition in respect of unlawful copies. This right may be exercised both for the purpose of suspending the entry at the borders of the original and copies and for the purpose of ensuring the withdrawal or suspending the circulation of copies that have already entered the country. This right shall not affect copies contained in personal luggage.

Art. 25. – The copyright holder shall be entitled to apply or require the application of such technical protection measures as he deems appropriate, through the incorporation of facilities or devices, the encryption of signals or other tangible or intangible protection systems, with a view to impeding or preventing an infringement of his rights. The acts of importation, manufacture, sale, rental, offering of services, placing in circulation or any other manner of supplying apparatus or facilities intended for deciphering or decoding encrypted signals or in any other way circumventing or breaking the protection facilities applied by the copyright holder, where they are carried out without the author's consent, shall be assimilated to an infringement of copyright for the purposes of civil proceedings and for the implementation of appropriate precautionary measures, without prejudice to any penalties that may be applicable for the offense.

Art. 26. – The following acts shall also constitute an infringement of the rights set out in this Book:

- (a) removing or altering, without the relevant authorization, electronic rights management information; and
- (b) distributing, importing or communicating to the public the original or copies of a work, in the knowledge that electronic rights management information has been removed or altered without authorization.

"Electronic information" means that which is included in copies of works or which appears in relation to a communication to the public of a work, which identifies the work, the author, the holders of any copyright or related right, or information about the terms and conditions of use of the work, and also any numbers and codes that represent such information.

Art. 27. – The exclusive right of exploitation, or any mode of exploitation individually, and, in general, any instrument or contract that is provided for in this Law or that may exist under civil law shall be transferable. In the event of transfer on any basis, the acquirer shall enjoy and exercise the ownership of rights. The transfer document shall specify the modes of exploitation covered, in such a way that assignment of the right of reproduction shall not imply assignment of the right of communication to the public and vice versa, unless expressly provided.

Sale of the physical medium in which a work is embodied shall not imply any assignment or authorization in respect of copyright in the work.

Transfer of the right of exploitation in future works shall be valid, where they are specified individually or generically, but in such cases the contract may not last more than five years.

Section V SPECIAL PROVISIONS FOR CERTAIN WORKS

Part One COMPUTER PROGRAMS

Art. 28. – Computer programs shall be considered literary works and shall be protected as such. Said protection shall be granted regardless of whether they are incorporated in a computer and whatever the form in which they are expressed, either human-readable (source code) or machine-readable (object code), whether they are operating programs or application programs, including flow diagrams, plans, user manuals and, in general, those elements that form the structure, sequence and organization of the program.

Art. 29. – The holder of rights in a computer program shall be the producer, that is, the natural or legal person who or which takes the initiative and responsibility for making the work. In the absence of proof to the contrary, the person whose name appears on the work or on copies thereof in the usual manner shall be considered the right holder.

Said right holder shall also be entitled to exercise the moral rights in the work in his own name, including the right to decide whether or not to disclose it.

The producer shall have the exclusive right to carry out, authorize or prohibit the making of subsequent modifications to or versions of the program and of programs derived therefrom.

The provisions of the present Article may be amended by agreement between the authors and the producer.

Art. 30. – Acquisition of a copy of a computer program that has been circulated lawfully shall authorize the owner thereof exclusively to:

- (a) make a copy of the machine-readable (object-code) version of the program for security or backup purposes;
- (b) store the program in the internal memory of the equipment, whether or not such stored program disappears when the equipment is switched off, for the sole purpose of and to the extent necessary for using the program; and
- (c) unless expressly prohibited, adapt the program for his exclusive personal use, provided that this is limited to the normal use provided for in the license.

The acquirer may not under any circumstances transfer the medium in which such adapted program is embodied and may not use it in any other way without express authorization, in accordance with the general rules.

The authorization of the right holder shall be required for any other use, including reproduction for the purpose of personal use or the use of the program by two or more persons through networks or other comparable systems, known or as yet unknown.

Art. 31. – A computer program shall not be considered rented where it is not the essential subject matter of the contract concerned. The program shall be considered the essential subject matter where the functionality of the subject matter of the contract is directly dependent on the computer program

supplied with it, for example where a computer is rented with computer programs already installed on it.

Art. 32. – The exceptions to copyright set out in Articles 30 and 31 of this Law shall be the only ones applicable to computer programs.

The rules set out in the present Part shall be interpreted in such a way that the application thereof does not prejudice the normal exploitation of the work or the legitimate interests of the right holder.

Part Two AUDIOVISUAL WORKS

Art. 33. – Unless otherwise agreed, it shall be presumed that the following are joint authors of an audiovisual work:

- (a) the director or producer;
- (b) the authors of the plot, the adaptation, the screenplay and dialogues;
- (c) the author of the music composed especially for the work; and
- (d) the artist, in the case of an animation.

Art. 34. – Without prejudice to copyright in pre-existing works that may have been adapted or reproduced, an audiovisual work shall be protected as an original work.

The authors of pre-existing works may exploit their contribution in a different genre, but the right to exploit the joint work, and to exploit works especially created for the audiovisual work, shall accrue exclusively to the right holder, in accordance with the following Article.

Art. 35. – The producer, that is, the natural or legal person who or which takes the initiative and responsibility for making an audiovisual work, shall be deemed to be the holder of the rights in the work. In the absence of proof to the contrary, the natural or legal person whose name appears on said work in the usual manner shall be considered the producer.

Said right holder shall also be entitled to exercise the moral rights in the work in his own name, including the right to decide whether or not to disclose it.

All of the above shall be understood without prejudice to express provisions and reservations agreed between the authors and the producer.

Part Three ARCHITECTURAL WORKS

Art. 36. – An author of architectural works may object to modifications that aesthetically or fundamentally alter his work.

Modifications that are necessary during or after the construction process shall require merely the authorization of the architect who is the author of the plan, who may not refuse to grant such authorization unless he considers that the proposed modification aesthetically or fundamentally alters his work.

Acquisition of an architectural plan shall confer on the acquirer the right to carry out the planned work, but the author's written consent shall be required in order to use the plan in other works, under the terms stipulated by him and in accordance with the Law on the Professional Practice of Architecture.

Part Four WORKS OF THREE-DIMENSIONAL ART AND OTHER WORKS

Art. 37. – The acquirer of a physical object embodying a work of art shall, unless otherwise agreed, have the right to display the work publicly in any connection.

Art. 38. – Where the original of a work of three-dimensional art or an original manuscript of a writer or a composer is resold at a public auction, or where a dealer in such works is directly or indirectly involved in such resale as a buyer, seller or agent, the seller shall pay the author or his heirs, as appropriate, a share equivalent to five per cent of the sale price, unless otherwise agreed. This right shall be unrenounceable and inalienable.

Art. 39. – Managers of commercial establishments, the dealer or any other person involved in a resale shall be jointly responsible with the seller for paying such royalty and shall notify the relevant management society of the resale or, in the absence thereof, the author or his successors in title within three months, and shall also supply the documentation relating to the settlement of the payment.

Art. 40. – A portrait or bust of a person may not be placed on the market without the consent of the person himself and, after his death, of his successors in title.

However, the publication of a portrait shall be free where it is connected solely with scientific, educational or cultural purposes or with matters or events that are of public interest or that have occurred in public.

Art. 41. – The author of a photographic work relating to a person, or the maker of a mere photograph of a person, shall obtain the authorization of the person photographed and, on his death, of his successors in title, in order to exercise his copyright or related rights, as the case may be. The authorization shall be in writing and shall refer specifically to the type of use of the image that is authorized.

However, the use of the image shall be lawful where the image has been made in the usual course of public events and serves cultural or information purposes, or where such use is carried out in connection with matters or events that are of public interest.

The exceptions set out in the foregoing paragraph shall not affect the copyright in the work embodying the image.

Section VI TRANSFER OF RIGHTS

Part One TRANSFER MORTIS CAUSA

Art. 42. – Copyright shall be transferred to heirs and legatees in accordance with the provisions of the Civil Code.

Art. 43. – The consent of the majority of the heirs shall be required in order to authorize any exploitation of the work using any medium.

Where the majority uses or exploits the work, the costs incurred shall be deducted from the total economic yield and the appropriate share shall be delivered to those who were not able to express their consent.

Part Two CONTRACTS FOR EXPLOITATION OF WORKS

One GENERAL PROVISIONS ON CONTRACTS

Art. 44. – Contracts authorizing the use or exploitation of works by third parties shall be in writing, shall be onerous and shall last for the time specified in the contract; however, they may be renewed indefinitely by mutual agreement between the parties.

Art. 45. – The various forms of exploitation of a work shall be independent of each other and, as such, contracts shall be considered to be limited to the forms of exploitation expressly referred to and the territorial scope mentioned in the contract.

All rights that are not the subject of express provisions shall be considered reserved and, in the absence of provisions on territorial scope, said scope shall be the territory of the country in which the contract was concluded.

Assignment of the right of reproduction shall imply assignment of the right of distribution by sale of copies the reproduction of which has been authorized, where this is naturally inferred from the contract or is essential for it to be fulfilled.

Art. 46. – Exclusive assignment of copyright shall confer on the assignee the right of exclusive exploitation of the work, enforceable against third parties and against the author himself. It shall also confer on the assignee the right to grant assignments or licenses to third parties and to conclude any other instrument or contract for exploitation of the work, without prejudice to the relevant moral rights.

In the case of non-exclusive assignment, the assignee shall be authorized to exploit the work in the manner provided for in the contract.

Art. 47. – Without prejudice to provisions relating to works created in the context of an employment relationship, the assignment of economic rights in all works that the author may create in the future shall be null and void, unless such works are clearly specified in the contract and the duration of the contract does not exceed five years.

Any provision pursuant to which the author undertakes not to create any work in the future shall also be null and void.

Art. 48. – The copyright holder may also grant non-exclusive and non-transferable licenses for use to third parties. Acquisition of copies of works that are marketed together with the relevant license shall imply the consent of the acquirer to the terms of such licenses.

Art. 49. – A natural or legal person who or which has commissioned newspaper articles, studies, photographs, diagrams or other works that may be published in newspapers, magazines or other public communication media shall have the right to publish such works in the communication medium provided for in the commission and also to authorize or prohibit the use of the work in media similar or equivalent to those in which it was originally published. The author's rights of exploitation in other communication media that do not entail competition with the original publication shall be unaffected.

Where such works are made in the context of an employment relationship, the author shall retain the right to make an independent edition in the form of a collection.

The provisions of the present Article may be amended by agreement between the parties.

Two PUBLISHING CONTRACTS

Art. 50. – A publishing contract shall be a contract under which the author or his successors in title grant to another person, known as the publisher, the right to publish and distribute the work at his own expense and risk, subject to agreed terms.

Art. 51. – Where an author has already concluded a publishing contract in respect of the same work, or where the work has been published with his authorization or knowledge, he shall make these circumstances known to the publisher before concluding the contract. Where he fails to do so, he shall be liable for any injury caused.

Art. 52. – A publisher may not publish a work with abridgments, additions or deletions or any other modifications without the written consent of the author.

Art. 53. – The author shall retain the right to make such corrections, amendments, additions or improvements as he deems appropriate before the work is printed.

Where such modifications increase the cost of publication, the author shall be obliged to compensate for the costs so occasioned, unless otherwise agreed.

Where the modifications involve fundamental changes in the content or form of the work and are not accepted by the publisher, the work shall be considered withdrawn, in which case the author shall compensate for any injury caused to third parties.

Art. 54. – Where there is no agreement with regard to the sale price of each copy, the publisher shall be entitled to determine it.

Art. 55. – Where a publishing contract has a set termination date and where, on expiry thereof, the publisher still has unsold copies of the work, the author may buy them at cost price plus 10 per cent. This right may be exercised within 30 days of expiry of the contract term, after which the publisher may continue to sell them on the same terms.

Art. 56. – A publishing contract shall be terminated, regardless of the stipulated duration thereof, when the edition is out of print.

Art. 57. - The right to publish separately one or more works by the same author shall not entitle the publisher to publish them together. Similarly, the right to publish an author's works together shall not entitle the publisher to publish them separately.

Art. 58. – Any person that publishes a work shall be obliged to indicate in a visible place on all copies at least the following information:

(a) the title of the work and the name or pseudonym of the author, or a statement that the work is anonymous, and the name of the compiler, adapter or author of the version, where applicable;

(b) reference to the reservation of copyright, with a statement of the name of the copyright holder and, where he so requires, the acronym of the management society that represents him and the year and place of first publication;

(c) the name and address of the publisher and the printer; and

(d) the International Standard Book Number (ISBN), in accordance with Article 7 of the Law on Book Promotion.

Art. 59. – The publisher shall be prohibited from publishing more copies than agreed with the author; where he publishes a greater number, the author may demand payment for the additional copies actually published, without prejudice to any penalties and compensation that may be applicable.

Art. 60. – The publisher shall make appropriate payments to the author or his representative subject to the terms of the contract. In any event, the author or his representative shall have the right to examine the sales records and receipts of those that publish, distribute or sell said printed works; publishers, distributors and sellers shall be obliged to furnish such information.

Art. 61. – Bankruptcy on the part of the publisher shall not cause the contract to be terminated, except where printing of the work has not yet begun. The rights of a bankrupt publisher may not be assigned where this would cause injury to the author or prejudice the dissemination of his work.

Art. 62. – The foregoing provisions shall apply to contracts for publication of musical works, unless the nature of the exploitation of the work precludes such application.

Art. 63. – Unless expressly agreed otherwise, the publisher, sub-publishers or licensees, as the case may be, shall be entitled to authorize or prohibit the inclusion of a work in phonograms, the synchronization thereof for advertising purposes, or any other form of exploitation similar to those authorized under the publishing contract, without prejudice to copyright and to the obligation to pay the author the remuneration agreed in the contract, after deduction of the publisher's share.

Art. 64. – The author shall be obliged to guarantee the authorship and originality of the work.

Three CONTRACTS FOR INCLUSION IN A PHONOGRAM

Art. 65. – A contract for inclusion in a phonogram shall be a contract under which the author of a musical work or his representative, the publisher or the relevant collective management society authorizes a producer of phonograms, in exchange for remuneration, to record or fix a work in order to reproduce it on a phonograph disc, a magnetic tape, a digital medium or any other analogous device or mechanism, for the purpose of reproducing and selling copies.

Art. 66. – Unless otherwise agreed, the author's remuneration shall be proportional to the value of the copies sold and shall be paid periodically.

Art. 67. – Producers of phonograms shall indicate the following information on the physical medium of the phonograms:

(a) the title of the work and the names or pseudonyms of the authors and of the author of the version, where applicable;

- (b) the names of the performers. Orchestral or choral ensembles shall be referred to by their name or by the name of their director, as appropriate;
- (c) reference to the reservation of copyright with the symbol P (the letter "P" inscribed in a circle), followed by the year of first publication;
- (d) the trade name of the phonogram producer or the trademark that identifies him;
- (e) the statement "All rights of the author and the phonogram producer are reserved. Reproduction, rental or public lending, or any form of communication of the phonogram to the public, is hereby prohibited"; and
- (f) the serial number shall, as a matter of course, be printed on the phonogram.

Any information that cannot be indicated on the labels of the copies owing to lack of adequate space shall be printed on the jacket, cover or accompanying leaflet.

Art. 68. – The provisions set out in Articles 64 and 66 of this Law shall apply, where relevant, to a literary work that is used as a text for a musical work or as a declamation or reading for fixation in a phonogram, for the purposes of reproduction and sale.

Four PERFORMANCE CONTRACTS

Art. 69. – A performance contract shall be a contract under which the holder of rights in an intellectual creation authorizes a natural or legal person, or assigns that person the right, to perform the work on agreed terms.

Such contracts may be concluded for a specified period or for a specified number of public performances.

The provisions relating to performance contracts shall apply to other modes of communication to the public, where relevant.

Art. 70. – Where the author's share has not been specified contractually, he shall receive at least 10 per cent of the total value of ticket sales for each show, and 20 per cent in the case of the premiere.

Art. 71. – Where the promoter does not pay the relevant share to the author, the competent authority, at the request of the right holder or his representative, shall order the suspension of performances of the work or the attachment of the proceeds from ticket sales.

Where the same promoter represents other works of different authors, the authority shall order the attachment of excess amounts collected, after paying the authors' fees for such works and the relevant costs, until the total sum owed to the unpaid author is covered. In any event, the author shall be entitled to terminate the contract and to withdraw the work from the promoter's authority, and also to bring other proceedings, as appropriate.

Art. 72. – In the absence of contractual provisions, it shall be presumed that the promoter acquires the exclusive right to perform the work for six months from the premiere thereof, and non-exclusively for a further six months.

Art. 73. – The promoter may deem the contract terminated, losing any advances he may have made to the author, where performances of the work are discontinued because of poor public reception during the first three shows or owing to a chance event, force majeure or any other circumstance beyond the control of the promoter.

Art. 74. – The competent public officials shall not permit public concerts and shows unless the authorization of the holders of rights in the works is submitted.

Five BROADCASTING CONTRACTS

Art. 75. – A broadcasting contract shall be a contract under which the holder of the rights in an intellectual creation authorizes a broadcasting organization to broadcast his work.

These provisions shall also apply to broadcasts by wire, cable, optic fiber or other analogous medium.

Art. 76. – Authorization to broadcast a work shall not include the right to rebroadcast it or to exploit it publicly, unless otherwise agreed.

The express authorization of the right holders shall be required in order to broadcast a work in or to other countries.

Six

CONTRACTS RELATING TO AUDIOVISUAL WORKS

Art. 77. – In order to exploit an audiovisual work on video cassettes, in the cinema, on television, by broadcasting or by any other medium, prior agreement with the authors or the performers shall be required or, where appropriate, an agreement concluded with the relevant management societies.

Art. 78. – The distribution or projection of an audiovisual work may not be negotiated unless an agreement that fully guarantees payment of the relevant projection fees

has already been concluded with the collective management societies and the performers.

Seven ADVERTISING CONTRACTS

Art. 79. – Advertising contracts shall be contracts the purpose of which is the exploitation of works for advertising purposes or the identification of advertisements or promotional material through any communication medium.

Without prejudice to any terms stipulated by the parties, the contract shall authorize the dissemination of advertisements or promotional material for up to a maximum period of six months from the first communication; each additional period of six months shall be paid for separately.

With regard to the right of reproduction, the contract shall specify the physical medium in which the work shall be reproduced and also the number of copies to be included in the print run, where appropriate. Each additional print run shall require an express agreement.

Such contracts shall also be subject to the provisions relating to contracts for publication, inclusion in a phonogram and audiovisual production.

Section VII LIMITATIONS OF AND EXCEPTIONS TO AN AUTHOR'S ECONOMIC RIGHTS

Part One DURATION

Art. 80. – Economic rights shall last throughout the author's lifetime and for 70 years after his death, regardless of the country of origin of the work.

In the case of works of joint authorship, the period of protection shall commence on the death of the last joint author.

In the case of posthumous works, the period of 70 years shall commence on the date of the author's death.

An anonymous work the author of which does not make himself known within 70 years of the date of first publication shall enter the public domain. Where the author's name is revealed before that period has expired, the provisions of the first paragraph of this Article shall apply.

Where the identity of the author of a work published under a pseudonym is not known, the work shall be considered anonymous.

Where a collective work is disclosed in parts, the period of protection shall commence on the date of publication of the last supplement, part or volume.

Art. 81. – Where the holder of rights in a work from the time of creation of the work is a legal person, the period of protection shall be 70 years from the making, disclosure or publication of the work, whichever is the later.

Part Two THE PUBLIC DOMAIN

Art. 82. – On expiry of the periods of protection provided for in this Section, works shall enter the public domain and may consequently be exploited by any person, provided that the relevant moral rights are respected.

Part Three EXCEPTIONS

Art. 83. – Provided that fair use is respected and normal exploitation of the work is not adversely affected or injury caused to the right holder, exclusively the following acts, which shall not require the authorization of the right holder or be subject to any remuneration, shall be lawful:

(a) the inclusion in a given work of fragments of other works by other people in written, aural or audiovisual form, and also that of individual three-dimensional, photographic, figurative or analogous works, provided that the works concerned have already been disclosed and that the inclusion thereof is by way of quotation or for the purpose of analysis, comment or critical assessment. Such use may take place only for teaching or research purposes, to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work used shall be stated;

(b) the performance of musical works at official functions of State institutions or religious ceremonies, admission to which is free of charge, provided that the participants in the communication do not receive specific remuneration for their involvement in the function;

(c) the reproduction, distribution and communication to the public of articles and comment on current events of collective interest, disseminated through

mass communication media, provided that the source and the name of the author are mentioned, if the original article states them, and that the rights therein have not been reserved at the outset;

(d) the dissemination in the press or by broadcasting, for information purposes, of lectures, speeches and similar works disclosed at assemblies, public meetings or public debates on matters of general interest;

(e) the reproduction of news of the day or of miscellaneous facts having the character of mere items of press information, published in the press or broadcast, provided that the origin thereof is stated;

(f) the reproduction, communication and distribution of works that are permanently located in public places, by means of photography, painting, drawing or any other audiovisual process, provided that the name of the author of the original work and the place where it is located are specified, and that the purpose is strictly to disseminate art, science and culture;

(g) the reproduction of a single copy of a work that is in the permanent collection of a library or archive, for the exclusive purpose of replacing it where necessary, provided that said work is not available on the market;

(h) ephemeral recordings that are destroyed immediately after they have been broadcast;

(i) the reproduction or communication of a work that is disclosed for judicial or administrative proceedings;

(j) the parodying of a disclosed work, provided that there is no risk of confusion with the work and that it is not prejudicial to the work or the reputation of the author or performer, as the case may be; and

(k) lessons and lectures given at universities, polytechnic schools and higher technical and technological institutes, colleges, schools, and teaching and training centers in general, which may be annotated and collected by those to whom they are addressed for their personal use.

Art. 84. – Physical ownership of a letter shall accrue to the person to whom or to which it has been addressed, but the author thereof shall retain all the intellectual

rights therein. Where the persons to whom or to which such letters are addressed have not obtained the authorization of the author or his heirs or successors in title after making reasonable efforts to do so, they may seek authorization from a judge to disclose them in the form and to the extent necessary to defend their personal honor.

Chapter II RELATED RIGHTS

Part One GENERAL PROVISIONS

Art. 85. – The protection of related rights shall in no way affect the protection of copyright, nor may it be interpreted as diminishing such protection.

Art. 86. – Holders of related rights may, for the protection of the rights conferred under this section, invoke all the provisions in this Book, except for those the nature of which rules out such application or in respect of which this section contains an express provision.

Part Two PERFORMERS

Art. 87. – Irrespective of economic rights and even after the transfer thereof, performers shall, in respect of their live performances or performances fixed in phonograms, enjoy the right to be identified as such, unless omission is dictated by the way in which the performance is used, and also the right to object to any distortion, mutilation or other modification of their performance, insofar as such acts may be prejudicial to their reputation. These moral rights shall not be extinguished on the death of the holder thereof.

Art. 88. – Performers shall have the right to authorize or prohibit the communication of their live performances to the public and also the fixation of their performances and the reproduction of such performances by any means or process.

Art. 89. – Notwithstanding the provisions of the foregoing Article, performers may not object to the communication to the public of their performances, where they are in themselves broadcast performances or are made from a fixation made with their prior consent and published for commercial purposes.

Without prejudice to their exclusive right under the foregoing Article, performers shall, in the cases set out in the foregoing paragraph, have the right to receive remuneration for the communication to the public of a phonogram in which their performances are embodied.

Unless otherwise agreed, the remuneration collected under the foregoing paragraph shall be shared equitably among the phonogram producers and the performers, irrespective of the economic rights of the author already provided for in the articles concerning the economic rights of authors, in accordance with international conventions.

Art. 90. – Performers who participate collectively in the same performance shall appoint a representative for the exercise of the rights conferred under the present Part. In the absence of such appointment, they shall be represented by the director of the vocal or instrumental group that has participated in the performance.

Art. 91. – The rights of performers shall be protected for a period of 70 years from January 1 of the year following that in which the performance took place or the fixation thereof was made, as the case may be.

Part Three PRODUCERS OF PHONOGRAMS

Art. 92. – Producers of phonograms shall hold the exclusive right to carry out, authorize or prohibit:

- (a) the direct or indirect reproduction of their phonograms by any means or in any way;
- (b) distribution to the public; and
- (c) the importation by any means of reproductions of phonograms, lawful and unlawful.

Art. 93. – Exclusive licenses granted by a phonogram producer shall specify the rights which the licensee is authorized to exercise, in order to prove the legitimacy of the licensee's dealings with the relevant administrative and judicial authorities.

Art. 94. – Phonogram producers shall also have the exclusive right to carry out, authorize or prohibit communication to the public by wire or wireless means.

Art. 95. – A common management society may be established to collect remuneration owed to authors, phonogram producers and performers for the communication to the public of their works, performances and phonograms respectively.

Art. 96. – The rights of a phonogram producer shall be protected for a period of 70 years from January 1 of the year following the date of first publication of the phonogram.

Part Four BROADCASTING ORGANIZATIONS

Art. 97. – Broadcasting organizations shall hold the exclusive right to carry out, authorize or prohibit:

(a) the retransmission of their broadcasts by any means or process;

(b) the fixation and reproduction of their broadcasts, including that of any individual image, where such image has been made available to the public for the first time through the broadcast; and

(c) the communication to the public of their broadcasts, where such communication is effected in places accessible to the public against payment of an admission fee.

Art. 98. – The broadcasts referred to in the foregoing Article shall include the production of program-carrying signals intended for a broadcasting satellite, and also dissemination to the public, by an organization that broadcasts or disseminates transmissions, of other transmissions received by means of such a satellite.

Art. 99. – Without the authorization of the relevant broadcasting organization, it shall be unlawful to decode program-carrying satellite signals, to receive them for profit-making purposes or to disseminate them, or to import, distribute, sell, rent or make available to the public in any way apparatus or systems capable of decoding such signals.

Art. 100. – For the purpose of the enjoyment and exercise of the rights provided for

in this Part, comparable protection shall be afforded, as appropriate, to stations that broadcast programs to the public by wire, cable, optic fiber or other similar medium.

Art. 101. – The rights of broadcasting organizations shall be protected for a period of 70 years from the first day of the year following the date of a broadcast or transmission.

Part Five OTHER RELATED RIGHTS

Art. 102. – A producer of moving images, with or without sound, that are not creations capable of being classified as audiovisual works, shall have the exclusive right to carry out, authorize or prohibit reproduction, communication to the public or distribution, including of photographs made in the process of producing the audiovisual recording. This right shall last for 70 years from the first day of the year following the date of the making, disclosure or publication of the recording, as appropriate.

"Audiovisual recordings" means fixations of moving images, with or without sound, that cannot be classified as audiovisual works.

Art. 103. – Anyone who makes a mere photograph or other fixation obtained by an analogous process that does not have the character of a photographic work shall enjoy the exclusive right to carry out, authorize or prohibit the reproduction, distribution and communication to the public thereof, on the same terms as the authors of photographic works. This right shall last for 25 years from the first day of the year following the date of the making, disclosure or publication thereof, as appropriate.

Art. 104. – Anyone who publishes for the first time an unpublished work that is in the public domain shall have in that work the same rights of exploitation as the author would have had, for a period of 25 years from the first day of the year following publication.

Part Six REMUNERATION FOR PRIVATE COPYING

Art. 105. - The private copying of works fixed in phonograms or videograms, and also the reprographic reproduction of printed literary works, shall be subject to compensatory remuneration in accordance with the provisions of this Part. This remuneration shall be payable in connection with the distribution of physical media capable of embodying an aural or audiovisual fixation, or of equipment for the reproduction of phonograms or videograms, or of equipment for reprographic reproduction.

Remuneration shall accrue in equal parts to the authors, performers and phonogram producers in the case of phonograms and videograms, and shall likewise accrue in equal parts to the authors and publishers in the case of literary works.

Compensatory remuneration for the private copying of phonograms and videograms shall be collected by a single collecting agency common to authors, performers and phonogram and videogram producers, the sole corporate purpose of which shall be the collection on their behalf of compensatory remuneration for private copying. The collection of compensatory fees for reprographic reproduction shall also be carried out by a single collecting agency common to authors and publishers.

These management bodies shall be authorized by IEPI and shall abide by the provisions of this Law.

Art. 106. - The compensatory remuneration provided for in the foregoing Article shall be paid by the manufacturer or importer at the time of placing on the national market:

- (a) tapes or other material carriers capable of embodying an aural or audiovisual fixation; and
- (b) reproduction equipment.

The percentage rate of compensatory remuneration for private copying shall be calculated on the basis of the price of the reproduction media or equipment, and shall be determined and laid down by the IEPI Board of Directors.

Art. 107. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, Official Register (RO) No. 544-S, March 9, 2009). - A natural or legal person who or which offers media capable of embodying an aural or audiovisual fixation or

reproduction equipment to the public without having paid compensatory remuneration may not place said goods in circulation and shall be jointly liable with the manufacturer or importer for the payment of said remuneration, without prejudice to the right of IEPI or of the competent courts, as the case may be, to withdraw the goods concerned from the market until said remuneration has been paid.

Non-payment of compensatory remuneration shall be punished with a fine equivalent to 300 per cent of the amount that should have been paid.

Producers of phonograms or the holders of rights in the works to which this Part relates, or the licensees thereof, shall not be liable for this remuneration in respect of imports that they carry out.

Art. 108. – "Private copying" means the domestic copying of phonograms or videograms, or reprographic reproduction in a single copy, carried out by the original

acquirer, of a lawfully circulating phonogram or videogram or literary work, to be used exclusively for non-profit-making purposes by the natural person who carries it out.

Such copies may not be used in a manner contrary to fair use.

Private copying carried out using media or reproduction equipment for which compensatory remuneration has not been paid shall constitute an infringement of copyright and of the relevant related rights.

Chapter III COLLECTIVE MANAGEMENT SOCIETIES

Art. 109. – Collective management societies shall be legal persons under private law that are not for profit-making purposes, the corporate objective of which is the collective management of economic copyright or related rights or both.

Membership of a collective management society on the part of holders of copyright or related rights shall be voluntary.

Art. 110. – Collective management societies shall be obliged to administer the rights entrusted to them and shall be entitled to exercise them on the terms set out in their own statutes, in the mandates granted to them and in the contracts that they

conclude with foreign organizations, as the case may be.

Representation under the foregoing paragraph shall not diminish the entitlement of right holders to exercise directly the rights conferred on them under this Book.

Art. 111. – Where two or more collective management societies exist for a given type of work, a single collecting agency shall be established, the corporate purpose of which shall be exclusively the collection of royalties on behalf of its members. Where the management societies do not agree on the establishment, organization and representation of a collecting agency, the National Copyright Directorate shall appoint one and shall determine its form.

Art. 112. - Collective management societies shall be authorized by the National Copyright Directorate and shall be subject to the Directorate's monitoring, control and intervention. The National Copyright Directorate may, ex officio or at the request of a party, intervene in a collective management society, where the society fails to comply with the provisions of this Chapter and of the Regulations. Where such intervention has taken place, instruments and contracts shall be authorized by the National Copyright Director in order to be valid. In order for collective management societies to be authorized to operate, the following requirements shall be met:

(a) the applicant society's statutes shall meet the requirements set out in this Chapter; and

(b) data submitted and information provided shall make it clear that the applicant society meets the required conditions for ensuring the efficient administration of the rights that it will be responsible for managing.

Art. 113. – Without prejudice to the applicable legal provisions, the statutes of a management society shall, in particular:

(a) set out the membership requirements for right holders that apply for membership and that prove their status of right holder; and

(b) provide that the general assembly, made up of the society's members, shall be the supreme governing body and shall have prior authorization to approve tariff regulations and to decide what percentage is to be allocated to administrative costs. This percentage may not, under any circumstances,

exceed 30 per cent of the amounts collected, and the difference shall be distributed equitably among the various right holders in proportion to the actual exploitation of the works, performances or phonograms concerned, as the case may be.

Art. 114. – Collective management societies shall be obliged to publish their financial statements annually in a communication medium of wide national circulation.

Art. 115. – Where a management society fails to fulfill its objectives or to comply with the provisions of this Chapter, the National Copyright Directorate may suspend its operating license, in which case the management society shall retain its legal personality only for the purpose of remedying said failure. Where the society fails to rectify the failure within a maximum period of six months, the Directorate shall revoke the society's operating license.

Without prejudice to the foregoing, in all cases of suspension of an operating license, the society may, under the supervision of the National Copyright Directorate, collect the royalties of authors represented by the society.

The proceeds of collections shall be deposited in a separate account in the name of the National Copyright Directorate and shall be returned to the society once a decision has been issued authorizing it to operate once again.

Art. 116. – Collective management societies shall establish tariffs relating to licenses for use of the works or productions in their catalog. The tariffs established by collective management societies shall be published in the Official Register on the orders of the National Copyright Directorate, provided that the formal requirements set out in the statutes and in this Chapter for the adoption of tariffs have been met.

Art. 117. – Collective management societies may negotiate with users' organizations and conclude contracts establishing tariffs with them. Any interested party may avail himself of these tariffs by written request to the relevant management society.

Art. 118. – All broadcasting organizations and, in general, any party that habitually performs any act of communication to the public shall keep catalogs, registers or monthly lists in which shall be recorded, in order of broadcasting, the titles of works

broadcast and the names of the relevant authors or holders of copyright or related rights, and shall submit them to each management society and to the sole society that collects royalties for communication to the public, for the purposes set out in this Law.

Administrative, police or municipal authorities that in each case perform monitoring and inspection duties in the course of which they identify activities that may give rise to the remuneration referred to in the foregoing Article shall be obliged to inform the management societies concerned.

Art. 119. - Anyone who exploits a work or production without having been assigned the relevant right or granted the relevant license for use shall pay, as compensation, a surcharge of 50 per cent on the tariff, which shall be calculated for the entire time during which the exploitation took place.

The same provision shall apply to collective management societies where they have granted licenses in respect of works that they do not represent; in any event the licensee shall be guaranteed use and peaceful enjoyment of the relevant rights.

Book II INDUSTRIAL PROPERTY

Chapter I PROTECTION OF INVENTIONS

Art. 120. – Inventions in all fields of technology shall be protected by the granting of patents for inventions and utility models.

All industrial property protection shall guarantee the protection of the country's biological and genetic heritage; as such, the granting of patents for inventions or processes that relate to elements of said heritage shall be conditional on those elements having been acquired lawfully.

Chapter II PATENTS FOR INVENTIONS

Section I PATENTABILITY REQUIREMENTS

Art. 121. – Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are industrially applicable.

Art. 122. – An invention shall be new where it is not included in the prior art.

Prior art shall consist of everything that has been made available to the public by means of written or oral description, use or any other means prior to the filing date of the patent application or, where appropriate, the recognized priority date.

Solely for the purpose of determining novelty, the content of a patent application pending before the National Directorate of Industrial Property and having a filing date or priority date earlier than the priority date of the patent application under examination shall likewise be considered part of the prior art.

For the purpose of determining patentability, no account shall be taken of any disclosure of the content of the patent during the year preceding the filing date of the application in Ecuador or during the year preceding the date of priority, if claimed, where such disclosure is attributable to:

- (a) the inventor or his successor in title;
- (b) an office responsible for granting patents in any country that, in infringement of the applicable legal provisions, publishes the content of a patent application filed by the inventor or his successor in title;
- (c) a third party, including public officials or State bodies, that obtained the information directly or indirectly from the inventor or his successor in title;
- (d) an official order;
- (e) an obvious violation committed against the inventor or his successor in title; or
- (f) the fact that the applicant or his successor in title has displayed the invention at officially recognized exhibitions or fairs or where, for academic or research purposes, it was necessary to make it public in order to continue with development. In this case, the interested party shall, at the time of filing his application, provide a declaration in which he shall state that the invention has actually been displayed and shall file the relevant certificate.

A pending patent application that has not been published shall be regarded as undisclosed information and shall be protected as such in accordance with this Law.

Art. 123. - An invention shall be regarded as involving an inventive step if it would

not have been obvious, or obviously derived from prior art, to a person skilled in the technical field concerned.

Art. 124. - An invention shall be regarded as industrially applicable where its subject matter may be produced or used in any productive activity, including services.

Art. 125. - The following shall not be considered inventions:

- (a) discoveries, principles and scientific theories, and mathematical methods;
- (b) materials already existing in nature;
- (c) literary and artistic works or any other aesthetic creation;
- (d) plans, rules and methods for the pursuit of intellectual activities, the playing of games, or economic and business activities, and also computer programs or software, where they do not form part of an industrially applicable invention; and
- (e) methods of presenting information.

Art. 126. - The following shall be expressly excluded from patentability:

- (a) inventions, the prevention of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment or ecosystem;
- (b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
- (c) plants and animal breeds, and also essentially biological processes for the production of plants or animals.

For the purposes of subparagraph a), the following shall be considered contrary to morality and shall therefore not be patentable:

- (a) processes for cloning human beings;
- (b) the human body and its genetic identity;
- (c) the use of human embryos for industrial or commercial purposes; and
- (d) processes for modifying the genetic identity of animals that cause them suffering without any substantial medical benefit being obtained for human beings or animals.

Section II PATENT OWNERS

Art. 127. – The right in a patent shall accrue to the inventor. This right may be transferred by inter vivos instrument or mortis causa.

Patent owners may be natural or legal persons.

Where two or more persons make an invention jointly, the relevant right shall accrue jointly to all of them or to their successors in title. Anyone who merely assisted in carrying out the invention, without contributing an inventive step, shall not be considered an inventor or a joint inventor.

Where two or more persons make the same invention independently of each other, the patent shall be granted to the person that is the first to file an application or that claims the earliest priority date, or to his successor in title.

Art. 128. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Anyone with a legitimate interest may claim the status of true owner of a patent application before the National Directorate of Industrial Property, in accordance with the procedure established for objections and, before the competent judge, at any time up to three years after the patent has been granted.

Art. 129. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The right in a patent for an invention developed in fulfillment of a contract shall accrue to the principal or to the employer, unless otherwise stipulated.

The same provision shall apply where an employee is not required by his employment contract to engage in an inventive activity, but has made an invention using information or facilities made available to him by reason of his employment. In the case provided for in the foregoing paragraph, an employee-inventor shall have the right to a single equitable remuneration that takes into account the information and facilities provided by the company and the personal contribution of the employee, and also the industrial and commercial importance of the patented invention, which, in the absence of agreement between the parties, shall be determined by the competent judge on the basis of a report from IEPI. In the

circumstances referred to in the first paragraph of this Article, an employee-inventor shall have a similar right where the invention is of exceptional importance and goes beyond the implicit or explicit object of the employment contract. The right to remuneration provided for in this paragraph shall be unrenounceable.

In the absence of a contractual provision or of an agreement between the parties regarding the amount of said remuneration, it shall be determined by the competent judge on the basis of a report from IEPI. Such remuneration shall be unrenounceable.

Where inventions have been made in the course of or in connection with the academic activities of universities, polytechnic schools, higher technical and technological institutes or teaching centers, or using their facilities or under their direction, ownership of the patent shall accrue to the university, polytechnic school, higher technical and technological institute or teaching centers, unless otherwise stipulated. Anyone who has directed research shall be entitled to the remuneration provided for in the foregoing paragraphs.

In the case of inventions made in the context of an employment relationship, where the employer is a legal person in the public sector, that employer may assign part of the profits from the innovations to the employee-inventors in order to promote research activity. Entities receiving public-sector funding for their research shall reinvest part of the royalties received in the marketing of those inventions with a view to generating a continuing supply of research funds and encouraging researchers by giving them a share of the proceeds from the innovations.

Art. 130. - An inventor shall have the right to be mentioned as such in the patent or to object to being so mentioned.

Section III GRANTING OF PATENTS

Art. 131. - The first patent application validly filed in a country that is a member of the World Trade Organization or the Andean Community or a party to the Paris Convention for the Protection of Industrial Property or another treaty or convention to which Ecuador is a party and which confers a right of priority with the same effects as

provided for in the Paris Convention, or in another country that accords reciprocal treatment to applications from member countries of the Andean Community, shall confer on the applicant or his successor in title the right of priority in applying for a patent for the same invention in Ecuador for a period of one year from the date of such application.

An application filed in Ecuador may not claim priorities in respect of subject matter that is not included in the priority application, although the specification and claims need not necessarily correspond.

Art. 132. – Patent applications shall be filed with the National Directorate of Industrial Property and shall meet the requirements set out in the Regulations.

Art. 133. – Applications shall be accompanied by:

(a) the title or name of the invention with a description thereof, an abstract, one or more claims and the necessary plans and drawings.

Where the invention refers to biological material that cannot be properly detailed in the description, said material shall be deposited at a depositary institution authorized by IEPI;

(b) proof of payment of the relevant fee;

(c) a copy of any patent application filed abroad, where priority is claimed;

and

(d) any other information required under the Regulations.

Art. 134. – Provided that the application is accompanied by the documentation referred to in subparagraphs a) and b) of the foregoing Article, the National Directorate of Industrial Property shall, at the time of receipt, certify the date and time of filing of the application and assign it a serial number, which shall be from a consecutive and continuous series. In the absence of said documentation, the application shall not be accepted for processing and no filing date shall be granted.

Art. 135. – The description shall be sufficiently clear and complete for a person skilled in the art to carry it out.

Art. 136. – A patent application may relate to one invention only or to a group of inventions so linked as to form a single inventive concept.

Art. 137. – Before publication, as referred to in Article 141 of this Law, an applicant may divide, modify, elaborate on or correct the application, but may not change the subject matter of the invention or expand the nationally disclosed content.

Where an application is divided, each part shall keep the filing date and, where applicable, the priority date of the divided application.

Art. 138. – The National Directorate of Industrial Property or an applicant for an invention patent may suggest that the application be converted into an application for a utility model patent, or vice versa.

A converted application shall keep the filing date of the initial application and shall be subject to the relevant procedure for the new type of patent applied for.

Art. 139. – Where the application is withdrawn before publication, the file shall be kept in reserve.

Art. 140. – The National Directorate of Industrial Property shall examine applications within 15 working days of the filing thereof, as to whether they comply with the formalities mentioned in this Chapter.

Where the examination shows that the application does not meet these requirements, the National Directorate of Industrial Property shall notify the applicant so that he may complete the application within a period of 30 days following the date of notification. This period may be extended once, for a further period of equal length, without loss of priority. Where said period expires without a response from the applicant, the National Directorate of Industrial Property shall declare the application abandoned.

Art. 141. – An extract from the application shall be published in the Intellectual Property Gazette in the month following that in which the application has been completed, unless the applicant requests that publication be deferred for up to 18 months.

Until publication takes place, the file shall be reserved and may be examined by third parties only with the applicant's consent or where the applicant has instituted judicial or administrative proceedings against third parties on the basis of the application.

Art. 142. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO

No. 544-S, March 9, 2009). – Within a period of 30 working days following the date of publication, anyone with a legitimate interest may, on one occasion only, file reasoned objections that may nullify the patentability or ownership of the invention. The period mentioned in the foregoing paragraph may be extended for a further period of equal length at the request of a party that has an interest in filing an objection, where it is clear that the description, claims and supporting documentation for the application need to be examined.

Anyone who files an unreasoned objection shall be liable for any damages that may be sought before the competent judge.

Art. 143. – Where objections are filed within the period referred to in the foregoing Article, the National Directorate of Industrial Property shall notify the applicant so that he may, within 30 working days of notification - a period that may be extended once for a further period of equal length - present his arguments, file documents or rewrite the claims or the description of the invention, as he sees fit.

Art. 144. – The National Directorate of Industrial Property shall be obliged to carry out an examination of the patentability of an invention within a period of 60 days of expiry of the periods referred to in Articles 142 and 143 of this Law. For such examination, it may request reports from such experts or scientific or technological bodies as it deems appropriate, so as to obtain their opinion on whether the invention is new, involves an inventive step and is industrially applicable. It may also, as it sees fit, request reports from competent national offices of other countries. All information shall be made known to the applicant with a view to guaranteeing his right to be heard on the terms set out in the Regulations.

The National Directorate of Industrial Property may accept the results of such examinations as a technical ruling for the purpose of certifying that the conditions for patentability of the invention have been met.

Technical rulings issued by the competent offices of other countries or international organizations with which IEPI has signed cooperation and technical assistance agreements shall be accepted by the National Directorate of Industrial Property for the purpose of granting patents.

Art. 145. – Where the final examination is favorable, a patent title shall be granted. Where it is partially unfavorable, a patent shall be granted only in respect of those claims that have been accepted, by means of a duly reasoned decision. Where it is entirely unfavorable, the patent shall be refused, also by means of a reasoned decision.

Art. 146. – Patents shall have a term of 20 years from the filing date of the application.

Art. 147. – The International Patent Classification established by the Strasbourg Agreement of March 24, 1971, as updated and amended, shall be used for the organization and classification of patents.

The class or classes to which a given invention belongs shall be determined by the National Directorate of Industrial Property in the patent title, without prejudice to any indication that the applicant may have given.

Section IV RIGHTS CONFERRED BY THE PATENT

Art. 148. - The scope of the protection conferred by a patent shall be determined by the wording of the claims. The description and drawings or plans, and any other elements filed with the National Directorate of Industrial Property, shall be used to interpret the claims.

Where the subject matter of the patent is a process, the protection conferred by the patent shall extend to products obtained directly through said process.

Art. 149. – A patent shall confer on its owner the right to exploit the invention exclusively and to prevent third persons from carrying out any of the following acts without his consent:

- (a) making the patented product;
- (b) offering for sale, selling or using the patented product, or importing or storing it for any of those purposes;
- (c) using the patented process;
- (d) carrying out any of the acts referred to in subparagraphs a) and b) in respect of a product obtained directly through the patented process;

(e) supplying or offering means of putting the patented invention into practice;
and

(f) any other act or deed likely to make all or part of the patented invention or the effects thereof available to the public.

Art. 150. – A patent owner may not exercise the right referred to in the foregoing Article in any of the following cases:

(a) where use takes place in the private sphere and not on a commercial scale;

(b) where use is for non-profit-making purposes, exclusively in an experimental, academic or scientific context; or

(c) where a patented product that has been placed on the market in any other country is imported, with the consent of a license holder or of any other person so authorized.

Section V NULLITY OF PATENTS

Art. 151. – By means of judicial review, the IEPI Intellectual Property Committee may, ex officio or at the request of a party, declare a patent registration to be null and void in the following cases:

(a) where the subject matter of the patent does not constitute an invention under the present Chapter;

(b) where the patent was granted for a non-patentable invention;

(c) where the patent was granted to a person that is not the inventor;

(d) where a third party, in good faith, before the filing date of the patent application or the claimed priority date, was making the product or using the process in question for commercial purposes in Ecuador or had made serious preparations to make the product or use the process for such purposes; and

(e) where the patent was granted through any other infringement of the law that was a substantial cause of its being granted, or where it was obtained on the basis of erroneous or false data, information or description.

Art. 152. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO

No. 544-S, March 9, 2009). – The competent judge may declare a patent null and void in any of the cases referred to in the foregoing Article, where a claim is filed after expiry of the period established by law for the institution of a judicial review and before 10 years have elapsed since the date on which the patent was granted, unless a judicial review has previously been instituted and has been finally rejected.

Section VI FORFEITURE OF PATENTS

Art. 153. – In order to keep a patent in force or to maintain a pending patent application, as the case may be, the fees established in accordance with this Law shall be paid.

Before declaring the forfeiture of a patent, the National Directorate of Industrial Property shall grant the interested party a period of six months in which to pay the fees referred to in the foregoing paragraph.

Section VII THE COMPULSORY LICENSE REGIME

Art. 154. – Following a declaration by the President of the Republic of the existence of public interest, emergency or national security considerations, and only for as long as those considerations subsist, the State may subject a patent to compulsory licensing at any time; in such a case, the National Directorate of Industrial Property may grant licenses for which applications are filed, without prejudice to the rights of the patent owner to be remunerated in accordance with this Section. The patent owner shall be notified prior to the granting of the license, so that he may assert his rights.

A decision to grant a compulsory license shall specify the scope or coverage thereof, and in particular shall specify the period for which it is granted, the subject matter of the license, the amount of royalties and the terms of payment thereof, without prejudice to Article 156 of this Law.

The granting of a compulsory license on public interest grounds shall not diminish the right of the patent owner to continue exploiting the patent.

Art. 155. – At the request of a party and on the basis of a judicial decision, the

National Directorate of Industrial Property may grant compulsory licenses in the event of practices that have been declared detrimental to free competition by the courts, in particular where they constitute an abuse by the patent owner of a dominant position in the market.

Art. 156. – The granting of compulsory licenses shall in any event be subject to the following:

- (a) a potential licensee shall prove that he has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have met with no response or a negative response within a period of not less than six months from a formal request setting out such terms and conditions in such a manner as to allow the patent owner to make a decision;
- (b) a compulsory license shall be non-exclusive, shall not be transferable and may not be sub-licensed, except with that part of the enterprise that permits the industrial exploitation thereof and with the consent of the patent owner; evidence thereof shall be provided in writing and registered with the National Directorate of Industrial Property;
- (c) a compulsory license shall be granted predominantly for the supply of the domestic market, where the items concerned are not produced on the domestic market or imported into the country or into the territory of a member country of the Andean Community or of any other country with which Ecuador has entered into a customs union or other agreement with equivalent effect;
- (d) a licensee shall give the patent owner the royalties for non-exclusive exploitation of the patent, on the same commercial terms that would have applied to a voluntary license. These terms may not be less favorable than those proposed by the potential licensee under subparagraph a) of this Article and, in the absence of agreement between the parties, shall be determined by the National Directorate of Industrial Property once notice has been given of its decision to grant the license;
- (e) a license shall be revoked immediately where the licensee fails to make

payments and fulfill other obligations; and

(f) a compulsory license shall be revoked, ex officio or on the basis of a reasoned request from the patent owner, where the circumstances that gave rise to it cease to obtain, without prejudice to adequate protection of the licensee's legitimate interests.

Art. 157. – At the request of the patent owner or the licensee, the license terms may be modified by the National Directorate of Industrial Property, where this is justified on the basis of new facts and, in particular, where the patent owner grants another license on more favorable terms than those on which the compulsory license was granted.

Art. 158. – Licenses that do not comply with the provisions of this Section shall have no effect.

The provisions of Book III, Section V, of this Law - Instruments and contracts relating to industrial property and plant varieties - shall apply to voluntary licenses.

Chapter III UTILITY MODELS

Art. 159. – A utility model patent shall be granted for any new shape, configuration or arrangement of components of any device, tool, implement, mechanism or other object or any part thereof that permits improved or different operation, use or manufacture of the object in which it is embodied or that gives it any utility, advantage or technical effect that it did not previously have, and also any other new industrially applicable creation that does not involve a sufficiently inventive step to allow a patent to be granted.

Art. 160. – Processes and subject matter excluded from patent protection for inventions may not be patented as utility models. Sculptures, architectural works, paintings, engravings, patterns or any other object of a purely aesthetic nature shall also not be considered utility models.

Art. 161. – The provisions relating to invention patents shall apply, where relevant, to utility models.

Art. 162. – The period of protection of utility models shall be 10 years from the filing

date of the patent application.

Chapter IV CERTIFICATES OF PROTECTION

Art. 163. – Any inventor who has an invention project under development and who needs to experiment or to construct a mechanism that obliges him to make his idea public may apply for a certificate of protection, which shall be conferred on him directly by the National Directorate of Industrial Property for a period of one year prior to the filing date of the patent application.

The holder of a certificate of protection shall enjoy the right of priority in filing a patent application within one year of the date on which the certificate is granted.

Art. 164. – Applications shall be filed with the National Directorate of Industrial Property and shall meet the requirements specified in the Regulations. Applications shall be accompanied by a description of the invention project and other documentation needed in order to interpret it.

Provided that the application meets the relevant requirements, the National Directorate of Industrial Property shall grant a certificate of protection on the filing date.

Chapter V INDUSTRIAL DESIGNS

Art. 165. – New industrial designs shall be registrable.

Any combination of lines, shapes or colors shall be considered an industrial drawing, and any three-dimensional form, whether or not combined with lines or colors, that serves as a pattern for the manufacture of an industrial or handicraft product and that is distinguished from similar shapes by its own configuration shall be considered an industrial model.

Industrial designs the appearance of which is dictated entirely by technical or functional considerations and that do not incorporate any contribution by the designer to give them a special appearance without changing their use or purpose shall not be eligible for registration.

Art. 166. – Industrial designs shall not be new where, before the application date or

validly claimed priority date, they have been made accessible to the public by means of a description, use or in any other way.

Designs shall not be new merely because they embody secondary differences in relation to earlier creations or because they are intended for a different purpose.

Art. 167. – An application to register an industrial design shall meet the requirements specified in the Regulations and shall be accompanied by a graphic or photographic reproduction of the industrial design and other documentation specified in the Regulations.

The procedure for registering industrial designs shall be that specified in this Law for the granting of patents, where applicable. A novelty examination shall be carried out only in the event that objections are filed.

Art. 168. – The National Directorate of Industrial Property shall grant a certificate of registration of an industrial design. Such registration shall last for a term of 10 years from the filing date of the application.

Art. 169. – The International Classification established by the Locarno Agreement of October 8, 1968, as amended and updated, shall be used for organizing and classifying industrial designs.

Art. 170. – The first application validly filed in a country that is a member of the World Trade Organization or the Andean Community or a party to the Paris Convention for the Protection of Industrial Property or another treaty or convention to which Ecuador is a party and which confers a right of priority with the same effects as provided for in the Paris Convention, or in another country that accords reciprocal treatment to applications from member countries of the Andean Community, shall confer on the applicant or his successor in title the right of priority in filing a registration application in Ecuador for a period of six months from the date of such application.

Art. 171. – Registration of an industrial design shall confer on the owner the right to prevent third parties from using and exploiting the design concerned. The owner of the registration shall have the right to prevent third parties that do not have his consent from manufacturing, importing, offering for sale, selling, placing on the

market or using commercially products that reproduce the industrial design, or producing or marketing articles based on industrial designs that embody secondary differences in relation to the protected design or that are similar in appearance.

Art. 172. - By means of judicial review, the IEPI Intellectual Property Committee may, ex officio or at the request of a party, declare the grant of a registration of an industrial design to be null and void in the following cases:

(a) where the subject matter of the registration does not constitute an industrial design under the present Law; or

(b) where the registration was granted in infringement of the requirements set out in this Law.

Art. 173. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The competent judge may declare an industrial design null and void in any of the cases referred to in the foregoing Article, where a claim is filed after expiry of the period established by law for the institution of a judicial review and before five years have elapsed since the date on which the registration in question was granted, unless a judicial review has previously been instituted and has been finally rejected.

Chapter VI LAYOUT-DESIGNS (TOPOGRAPHIES) OF SEMI-CONDUCTOR CIRCUITS

Art. 174. – Integrated circuits and layout-designs (topographies) shall be protected under the terms of the present Chapter. For that purpose, the following definitions shall apply:

(a) "integrated circuit" means a product, including a semi-conductor product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and any or all of the interconnections form an integral part of the body or surface of a piece of material, and which is intended to perform an electronic function;

(b) "layout-design (topography)" means the three-dimensional arrangement, expressed in any form, of the elements, at least one of which is an active element, and some or all of the interconnections of an integrated circuit, or

such a three-dimensional arrangement designed for an integrated circuit intended for manufacture; and

(c) a layout-design (topography) is considered "fixed" in an integrated circuit where the incorporation thereof in the product is sufficiently permanent or stable to permit the layout-design to be perceived or reproduced for a period of more than transitory duration.

Art. 175. – Exclusive intellectual property rights shall apply in respect of layout-designs (topographies) that are original in that they are the result of the creator's own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation.

A layout-design (topography) consisting of a combination of elements or interconnections that are commonplace shall also be protected where the combination, taken as a whole, meets the requirements referred to in the foregoing paragraph.

Layout-designs (topographies) the design of which is dictated exclusively by the functions of the circuit to which it applies shall not be protected.

The protection conferred by this Chapter shall not extend to ideas, procedures, systems, methods of operation, algorithms or concepts.

The right of the right holder in respect of an integrated circuit shall apply regardless of whether the integrated circuit is incorporated in a product.

Art. 176. – The natural or legal person on whose initiative and under whose responsibility a layout-design (topography) is created or developed shall be entitled to the protection conferred under this Chapter. Right holders shall be protected from the time of creation.

Art. 177. – Layout-designs (topographies) may be registered with the National Directorate of Industrial Property. Such registration shall be of a declaratory nature and shall constitute a presumption of ownership for the person that obtains the registration.

Where a layout-design has not been registered, the burden of proving ownership shall be on the person that claims it.

Art. 178. – Once a registration application has been filed, the National Industrial Property Director shall analyze whether it meets the formal requirements specified in the Regulations and, in particular, whether the information provided is sufficient to identify the layout-design (topography) and shall grant the relevant registration certificate without further procedure.

Art. 179. – Whether or not a layout-design (topography) has been registered, protection shall apply retroactively from the date of creation thereof.

The term of the protection conferred under this Chapter in respect of layout-designs (topographies) shall be 10 years from the date of the first commercial exploitation thereof in any part of the world. However, the term of such protection shall not be less than 15 years from the date of creation of the layout-design (topography).

Art. 180. – The holder of a registration of a layout-design (topography) shall have the exclusive right to carry out, authorize or prohibit:

(a) the reproduction, by optical, electronic or any other means known or as yet unknown, of the layout-design (topography) or of any of the parts thereof that meet the requirement of originality set out in this Chapter;

(b) any kind of exploitation, including importation, distribution and sale, of the protected layout-design or of an integrated circuit incorporating the protected layout-design (topography), or an article incorporating said integrated circuit insofar as said integrated circuit contains an unlawfully reproduced layout-design; and

(c) any other form of exploitation, for commercial or profit-making purposes, of integrated circuits and layout-designs (topographies).

The acts referred to above shall be considered unlawful where they are carried out without the prior written consent of the right holder.

Art. 181. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The following acts, carried out without the authorization of the right holder, shall not be considered unlawful:

(a) reproduction of a layout-design (topography) carried out by a third party for the sole purpose of research or teaching, or evaluation and analysis of

concepts and techniques, or a flow or organizational chart of elements incorporated in the layout-design (topography) in the course of preparing a layout-design (topography) that itself is original;

(b) incorporation by a third party of an integrated circuit in a layout-design (topography) or the carrying out of any of the acts referred to in the foregoing Article, where the third party, on the basis of evaluation or analysis of the first layout-design (topography) develops a second layout-design (topography) that meets the requirement of originality set out in this Chapter;

(c) importation or distribution of semi-conductor products or integrated circuits incorporating a layout-design (topography), where such objects are sold or otherwise lawfully placed on the market by the holder of rights in the protected layout-design or with his written consent; and

(d) importation, distribution or sale of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) or of any article incorporating such integrated circuit where the person performing or ordering such acts did not know or had no reasonable grounds to believe, when acquiring the integrated circuit or article incorporating such integrated circuit, that it incorporated an unlawfully reproduced layout-design (topography).

This exception shall cease to apply from the time when the person referred to in this subparagraph receives from the right holder or his representative written notification of the unlawful origin of the incorporated item, in which case he may use the object that he has incorporated in the layout-design (topography), with the obligation to pay the right holder a reasonable royalty which, in the absence of an agreement, shall be determined by the competent judge.

Art. 182. – A holder of rights in a layout-design (topography) may transfer it, assign it or grant licenses, in accordance with the provisions of this Law.

For the purposes of this Book, the sale, distribution or importation of a product incorporating an integrated circuit shall constitute an act of sale, distribution or

importation of such integrated circuit, where it contains an unauthorized reproduction of a protected layout-design (topography).

Chapter VII UNDISCLOSED INFORMATION

Art. 183. – Undisclosed information relating to trade or industrial secrets or any other type of confidential information shall be protected against acquisition, use or disclosure not authorized by the owner, where:

- (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information concerned;
- (b) it has commercial value, actual or potential, because it is secret; and
- (c) the person lawfully in control of the information has taken reasonable steps, under the given circumstances, to keep it secret.

Undisclosed information may relate, in particular, to the nature, characteristics or purposes of products; production methods or processes; or means or forms of distribution or marketing of products or rendering of services.

Technological knowledge consisting of manufacturing and production processes in general, and knowledge relating to the use and application of industrial techniques resulting from knowledge, experience or intellectual ability that a person keeps confidential and that allows him to maintain or obtain a competitive or economic advantage over third parties, shall also be protected as undisclosed information.

A natural or legal person who or which has lawful control of undisclosed information shall be considered the owner thereof for the purposes of this Chapter.

Art. 184. – An owner may institute proceedings pursuant to this Law in order to prevent undisclosed information from being made public, acquired or used by third parties; in order to stop acts that are currently leading or will imminently lead to such disclosure, acquisition or use; and in order to obtain appropriate compensation for such unauthorized disclosure, acquisition or use.

Art. 185. – Without prejudice to other means that are contrary to honest uses or practices, the disclosure, acquisition or use of undisclosed information in a manner contrary to this Law may result, in particular, from:

- (a) industrial or commercial espionage;
- (b) failure to fulfill a contractual or legal obligation;
- (c) breach of trust;
- (d) inducement to commit any of the acts referred to in subparagraphs a), b) and c); and
- (e) acquisition of undisclosed information by a third party that knew, or through negligence did not know, that the acquisition involved one of the acts referred to in subparagraphs a), b), c) and d).

Art. 186. – Liability for the unauthorized disclosure, acquisition or use of undisclosed information in a manner contrary to honest and lawful uses and practices shall be borne not only by those that carry out those acts directly, but also by anyone who benefits from such acts or practices.

Art. 187. – The protection of undisclosed information provided for in Article 183 of this Law shall last as long as the conditions set out in that Article obtain.

Art. 188. – Information provided to any authority by a person in possession of it, where that person provides it for the purpose of obtaining licenses, permits, authorizations, registrations or any other official instruments, shall not be regarded as entering the public domain or as being disclosed by legal provision.

The relevant authority shall be obliged to preserve the secrecy of such information and to take steps to guarantee the protection thereof against any unfair use.

Art. 189. – Anyone who has undisclosed information in his possession may transfer it to or authorize its use by a third party. An authorized user shall be obliged not to disclose it by any means, unless otherwise agreed with the person that transferred or authorized the use of said secret.

Art. 190. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Any person with access to undisclosed information by reason of his work, employment, function or post, the practice of his profession or the

conduct of business relations, shall refrain from using it and disclosing it without just cause, as determined by the competent judge, and without the consent of the owner, even where his employment relationship, the practice of his profession or the conduct of business relations has come to an end.

Art. 191. - Where the submission of test data or other undisclosed information, the origination of which involves a considerable effort, is required as a condition of approving the marketing of pharmaceutical or of agricultural chemical products that utilize new chemical-producing chemical entities, the authorities shall protect such data against any unfair use, except where necessary to protect the public and where the necessary steps are taken to ensure that the data are protected against any unfair use.

A person applying for marketing approval may state what data or information the authorities may not disclose.

No person other than the person that submitted the data referred to in the foregoing paragraph may, without the authorization of that person, rely on such data in support of an application for approval of a product, where the information has the characteristics set out in this Chapter.

Art. 192. – For the purposes set out in the foregoing Article, the competent public authorities shall refrain from requiring undisclosed information where the product or compound has already been registered or certified for marketing in another country.

Art. 193. – Undisclosed information may be deposited, in a stamped and sealed envelope, with a notary public, who shall notify IEPI of the receipt thereof.

Such deposit shall not, however, constitute evidence against the owner of the undisclosed information where the information was taken from the owner in any form by the person that carried out the deposit or where said information was provided to that person by the owner under any contractual relationship.

Chapter VIII TRADEMARKS

Section I REGISTRATION REQUIREMENTS

Art. 194. – "Trademark" means any sign that is capable of distinguishing goods or services on the market.

Signs that are sufficiently distinctive and that are capable of graphic representation may be registered as trademarks.

Commercial slogans may also be registered as trademarks, provided that they do not contain references to similar products or trademarks or expressions that may be damaging to such products or trademarks.

Legally established associations of producers, manufacturers, service providers, organizations or groups of persons may register collective trademarks in order to distinguish in the market the goods or services of their members.

Art. 195. – Signs may not be registered as trademarks where they:

- (a) fail to constitute a trademark under Article 194 of this Law;
- (b) consist of the everyday shape of goods or their packaging, or of shapes or characteristics dictated by the nature or function of the good or service concerned;
- (c) consist of shapes that attribute a functional or technical advantage to the good or service to which they are applied;
- (d) consist exclusively of a sign or statement that may serve in trade to classify or describe a characteristic of the good or service concerned, including expressions of praise for those goods or services;
- (e) consist exclusively of a sign or statement that is the generic or technical name of the good or service concerned, or that is the common or usual designation for the good or service in everyday language or in commercial use in Ecuador;
- (f) consist of an isolated color, without any demarcation to give it a specific shape, except that it can be shown to have acquired distinctiveness for identifying the goods or services for which it is used;
- (g) are contrary to the law, morality or ordre public;
- (h) may cause confusion in business circles or among the public as to the nature, source, manufacturing process or characteristics of the goods or

services concerned, or their suitability for use;

(i) reproduce or imitate a protected appellation of origin or consist of an Ecuadorian or foreign geographical indication likely to cause confusion with regard to the goods or services to which they are applied or which, when used, may mislead the public as to the origin, source, qualities or characteristics of the goods for which the marks are used;

(j) reproduce or imitate the name, armorial bearings, flags and other emblems, acronyms, denominations or abbreviated denominations of any officially recognized State or international organization, without the permission of the competent authority of the State or international organization concerned. However, such signs may be registered where they do not cause confusion as to the existence of a link between the sign and the State or organization concerned;

(k) reproduce or imitate official signs, seals or hallmarks indicating control or warranty, except where the registration thereof is applied for by the competent organization;

(l) reproduce coins or notes that are legal tender in the territory of Ecuador or of any country, securities and other commercial documents, seals, stamps or revenue stamps in general; or

(m) consist of the denomination of a plant variety that is protected in Ecuador or abroad, or of a denomination essentially derived therefrom, except where the application is filed by the owner himself.

Where signs are not inherently capable of distinguishing the relevant goods or services, the National Directorate of Industrial Property may make registration depend on distinctiveness acquired through use for the purpose of identifying the applicant's goods or services.

Art. 196. – Signs that infringe the rights of third parties may also not be registered as trademarks, for example signs that:

(a) are identical or similar, in such a way that they may cause confusion among consumers, to a trademark already filed for registration or registered

by a third party to protect the same goods or services, or goods or services in respect of which use of the trademark may cause confusion or association with the trademark, or may cause injury to the owner thereof by weakening its distinctive force or commercial value, or cause unfair advantage to be taken of the prestige of the trademark or of its owner;

(b) are identical or similar to a protected trade name, in such a way that they may cause confusion among consumers;

(c) are identical or similar to a commercial slogan already filed for registration or registered by a third party, in such a way that they may cause confusion among consumers;

(d) constitute a total or partial reproduction, imitation, translation, transliteration or transcription of a sign that is well known in Ecuador or abroad, regardless of the goods or services to which it is applied, where the use thereof is likely to cause confusion or association with that sign, to cause unfair advantage to be taken of the fact that it is well known, or to lead to the weakening of its distinctive force or commercial value.

A sign shall be considered well known where it is identified by the relevant consumer sector in Ecuador or internationally.

This provision shall not apply where the applicant is the lawful owner of the well-known mark;

(e) are identical or similar to a sign of high renown, regardless of the goods or services for which registration is sought.

A sign shall be considered of high renown where it is known by the general public in Ecuador or internationally.

This provision shall not apply where the applicant is the lawful owner of the mark of high renown;

(f) consist of the full name, pseudonym, signature, title, nickname, caricature, image or portrait of a natural person who is not the applicant or who is identified by the relevant sector of the public as being a different person, unless the consent of that person or his heirs is proved;

(g) consist of a sign that involves an infringement of copyright, unless the holder of such rights has given consent; or

(h) consist of, incorporate or reproduce medals, prizes, diplomas or other awards, except where filed by those that present them.

Art. 197. – In order to determine whether a mark is well known, the following criteria, inter alia, shall be taken into account:

(a) the extent to which it is known by the relevant sector of the public as a distinctive sign for the goods or services for which it is used;

(b) the scale and scope of dissemination and advertising or promotion of the mark;

(c) the age of the mark and whether it has been in constant use; and

(d) analysis of production and marketing of the goods or services that lend the mark distinctiveness.

Art. 198. – In order to determine whether a mark is of high renown, the same criteria, inter alia, as under the foregoing Article shall be taken into account, but the mark shall be known by the general public.

Art. 199. – Where the mark consists of a geographical name, the good may not be marketed or the service rendered unless the place of manufacture of the good or origin of the service is indicated in visible and clearly legible form.

Art. 200. – The first trademark registration application validly filed in a country that is a member of the World Trade Organization or the Andean Community or a party to the Paris Convention for the Protection of Industrial Property or another treaty or convention to which Ecuador is a party and which confers a right of priority with the same effects as provided for in the Paris Convention, or in another country that accords reciprocal treatment to applications from member countries of the Andean Community, shall confer on the applicant or his successor in title the right of priority in filing a registration application for the same mark in Ecuador for a period of six months from the date of such application. Said application may not refer to goods or services different from or additional to those set out in the first application.

The same right of priority shall exist for the use of a trademark at an officially recognized exhibition held in Ecuador. The period of six months shall begin on the date on which the goods or services bearing the mark concerned were first exhibited, which shall be certified by the competent authority responsible for the exhibition.

Section II REGISTRATION PROCEDURE

Art. 201. – Trademark registration applications shall be filed with the National Directorate of Industrial Property, shall consist of a single international class of goods or services, and shall meet the requirements specified in the Regulations.

Art. 202. – Applications shall be accompanied by:

- (a) proof of payment of the relevant fee;
- (b) a copy of the first trademark registration application filed abroad, where priority is claimed; and
- (c) other documents specified in the Regulations.

Art. 203. – A registration application for a collective trademark shall also be accompanied by the following:

- (a) a copy of the statutes of the association, organization or group of persons applying for registration of the collective mark;
- (b) a copy of the rules used by the applicant seeking the collective mark to exercise control over goods or services;
- (c) a statement of the conditions for use of the collective mark and the form in which it is to be used; and
- (d) a list of members.

Once a collective mark has been registered, the association, organization or group of persons shall inform the National Directorate of Industrial Property of any change that is made.

Art. 204. – Provided that the application is accompanied by the documentation referred to in Article 202(a) of this Law, the National Directorate of Industrial Property shall, at the time of receipt, certify the date and time of filing of the application and assign it a serial number, which shall be from a consecutive and continuous series.

In the absence of the documentation referred to in Article 202(a) of this Law, the application shall not be accepted for processing and no filing date shall be granted.

Art. 205. A trademark registration applicant may modify his initial application at any stage of processing before it is published, solely with respect to secondary elements. He may also eliminate or restrict the goods or services specified. He may also add to the goods or services within the same international class, until the application is published pursuant to Article 207 of this Law.

The National Directorate of Industrial Property may, at any time during processing, require the applicant to modify the application. Such required modification shall be processed in accordance with the following Article.

Under no circumstances may the application be modified by changing the sign.

Art. 206. – Once an application has been accepted, the National Directorate of Industrial Property shall examine, within 15 working days of the filing thereof, whether it meets the formal requirements set out in this Chapter.

Where the examination reveals that the application does not meet the formal requirements, the National Directorate of Industrial Property shall notify the applicant so that he may remedy the irregularities within a period of 30 days following notification.

Where the irregularities have not been remedied within the specified period, the application shall be rejected.

Art. 207. Where a registration application meets the formal requirements, the National Directorate of Industrial Property shall order it to be published on one occasion only in the Intellectual Property Gazette.

Art. 208. – Within 30 working days of publication, any person with a legitimate interest may file a duly reasoned objection to a registration application. Anyone who claims to have a legitimate interest in filing an objection may apply for an extension of 30 working days in which to file the objection.

Art. 209. – The National Directorate of Industrial Property shall not process objections that:

(a) are filed outside the prescribed time period;

(b) are based exclusively on an application the filing date or validly claimed priority date of which is later than the date of the trademark registration application that is being opposed; or

(c) are based on the registration of a trademark that has coexisted with the mark for which registration is sought, provided that the registration application was filed by the person that was its last owner, during the six months following expiry of the grace period, for the purpose of applying for renewal of the trademark registration.

Art. 210. – The National Directorate of Industrial Property shall notify the applicant so that he may, within 30 working days of notification, present his arguments, as he sees fit.

On expiry of the period referred to in this Article, the National Directorate of Industrial Property shall rule on the objections and on whether registration of the trademark is granted or refused, which shall be recorded in a duly reasoned decision.

At any time before the decision is issued, the parties may reach a settlement agreement, which shall be binding on the National Directorate of Industrial Property. However, where the parties consent to the coexistence of identical signs to protect the same goods or services, the National Directorate of Industrial Property may object where it considers that the general interests of consumers are affected.

Art. 211. – Where the period referred to in Article 208 of this Law expires without any objections being filed, the National Directorate of Industrial Property shall carry out an examination of registrability and shall grant or refuse registration of the trademark. The relevant decision shall be duly reasoned.

Art. 212. – A trademark shall be registered for a period of 10 years from the date on which it is granted and may be renewed for successive periods of 10 years.

Art. 213. – Applications for renewal of a trademark shall be filed with the National Directorate of Industrial Property within the six months prior to the expiry of the registration. Nonetheless, the trademark owner shall have a grace period of six months from the date of expiry of the registration in which to apply for the renewal thereof. During that period, the trademark registration shall retain its full validity.

For renewal, it shall be sufficient to file the relevant application and renewal shall be granted without further procedure, on the same terms as the original registration.

Art. 214. – A trademark registration shall lapse automatically where the owner does not apply for renewal within the legal time limit, including the grace period.

Art. 215. – The International Classification set out in the Nice Agreement of June 15, 1957, as updated and amended, shall be used to determine the international classes for trademark registrations.

The International Classification referred to in the foregoing paragraph shall not determine whether goods or services are similar to or different from each other.

Section III RIGHTS CONFERRED BY A TRADEMARK

Art. 216. – The right to exclusive use of a trademark shall be acquired through registration with the National Directorate of Industrial Property.

Trademarks shall be used as registered. Variations shall be accepted only where they involve secondary modifications or alterations of the registered sign.

Art. 217. – Registration of a trademark shall confer on the owner thereof the right to bring proceedings against any third party that uses it without his consent and in particular carries out any of the following acts in relation to goods or services that are identical or similar to those for which the mark has been registered:

(a) using for commercial purposes a sign identical or similar to the registered trademark in relation to goods or services that are identical or similar to those for which the mark has been registered, where the use of said sign may create confusion or cause economic or commercial harm to the owner thereof, or result in a weakening of its distinctive force.

It shall be presumed that there is a possibility of confusion where an identical sign is used to distinguish identical goods or services;

(b) selling, offering, storing or placing on the market goods bearing the mark or offering services bearing the mark;

(c) importing or exporting goods bearing the mark; and

(d) any other act which, by its nature or purpose, may be considered

analogous or assimilable to those referred to in the foregoing subparagraphs.

The owner of a trademark may prevent all the acts listed in the present Article, regardless of whether they are carried out through digital communication networks or through other channels of communication known or as yet unknown.

Art. 218. - Provided that it is done in good faith and does not constitute use as a trademark, third parties may, without the consent of the owner of a registered trademark, make use in the market of their own names, addresses or pseudonyms, a geographical name, or any other precise indication concerning the kind, quality, amount, purpose, value, place of origin or time of production of their goods or of the rendering of their services or other characteristics thereof, provided that such use is limited to identification or information purposes and is not likely to mislead the public as to the source of the goods or services.

Trademark registration shall not confer on the owner thereof the right to prohibit a third party from using the mark to announce, offer for sale or advertise the existence or availability of lawfully trademarked goods or services, or from using the mark to advertise the compatibility or suitability of spare parts or accessories that can be used with goods bearing the registered trademark, provided that such use is in good faith, is limited to the purpose of informing the public for sale and is not likely to mislead or cause confusion as to the corporate origin of the goods concerned.

Art. 219. – The right conferred by a trademark registration shall not entitle the owner thereof to prohibit the entry into the country of goods trademarked by said owner, his licensee or any other person so authorized, where they have been sold or otherwise lawfully placed on the national market of any country.

Section IV CANCELLATION OF REGISTRATION

Art. 220. - A trademark registration shall be canceled at the request of any interested party where, without valid reasons, the trademark has not been used by the owner or licensee thereof in at least one of the member countries of the Andean Community, or in any other country with which Ecuador has relevant agreements in force, for three consecutive years prior to the date on which cancellation proceedings begin.

Cancellation of a registration owing to non-use of the trademark may also be requested as a defense in infringement, opposition or nullity proceedings instituted on the grounds of non-use of the trademark.

The following shall be considered evidence of use of a trademark:

- (a) commercial invoices that demonstrate the regular nature and amount of trade prior to the start of cancellation proceedings brought for non-use of the trademark;
- (b) inventories of goods identified by the trademark, the existence of which is certified by a firm of auditors that shows regular production or sales prior to the date on which cancellation proceedings for non-use of the mark begin;
- and
- (c) any other appropriate evidence of use of the mark.

Proof of use of the mark shall be provided by the owner of the registration.

Registration may not be canceled where the owner of the trademark shows that non-use is due to force majeure, a fortuitous event, import restrictions or other official requirements that have a restrictive effect on the goods and services protected by the mark.

Art. 221. – A trademark registration shall not be canceled where it is used only in respect of one or some of the goods or services protected by the registration concerned.

Art. 222. – A trademark registration shall also be canceled at the request of the lawful owner, where it is identical or similar to a mark that was well known or of high renown at the time of the application for registration.

Art. 223. – On receipt of a request for cancellation, the owner of a registered trademark shall be notified so that he may, within a period of 30 working days from notification, present his arguments and file documents, as he sees fit, with a view to proving the use of the mark.

On expiry of the period referred to in this Article, a duly reasoned decision shall be issued on whether or not the trademark registration is to be canceled.

Art. 224. - A trademark shall be considered in use where the goods or services

distinguished by it have been placed in circulation or are available on the market under that trademark, in the form and amounts that are normal, due account being taken of the nature of the goods or services and the methods used for the marketing thereof.

Subject to the provisions of the foregoing paragraph, a trademark shall also be considered in use in the following cases:

(a) where it is used to distinguish goods or services intended exclusively for export;

(b) where it is used by a duly authorized third party, even if such authorization or license has not been registered; and

(c) where genuine goods bearing the registered trademark are placed and distributed on the market by persons other than the registration owner.

Use of a trademark in a form that differs from the registered form only in respect of details or features that do not alter its original distinctive character shall not constitute grounds for cancellation of the trademark registration.

Art. 225. – A person that secures the cancellation of a trademark shall have a preferential right to register it, where he applies for such registration within three months of the date on which the decision ordering such cancellation becomes enforceable or final, as the case may be.

Art. 226. – The owner of a trademark registration may renounce all or some of his rights. Where he renounces all his rights, the registration shall be canceled. Where he renounces only some of his rights, the registration shall be limited to the goods or services to which the renunciation does not apply.

Renunciation shall not be permitted where rights in the trademark are registered to third parties, unless the holders of those rights have given their express consent.

Renunciation of a trademark shall have effect with respect to third parties only where a note of the renunciation has been made in the margin of the original registration.

Section V NULLITY OF REGISTRATION

Art. 227. – By means of judicial review, the IEPI Intellectual Property Committee may

declare a trademark registration to be null and void in the following cases:

(a) where registration was granted on the basis of false data or documents that were essential to the granting of the registration;

(b) where registration was granted in contravention of Articles 194 and 195 of this Law;

(c) where registration was granted in contravention of Article 196 of this Law;

(d) where registration was obtained in bad faith. The following, inter alia, shall be considered cases of bad faith:

1. where a representative, distributor or user connected to the owner of a trademark that is registered abroad applies for and obtains registration in his name of that trademark or another that could be confused with it, without the express consent of the owner of the foreign trademark; and

2. where the registration application was filed or the registration obtained by a person that habitually registers trademarks for marketing purposes; and

(e) where registration was obtained in violation of established procedure or through any other infringement of the law that substantially influenced the granting of the registration.

Art. 228. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The competent judge may declare a trademark registration null and void in the cases referred to in subparagraphs a), c), d) and e) of the foregoing Article, where a claim is filed after expiry of the period established by law for the institution of a judicial review and before 10 years have elapsed since the date on which the trademark registration was granted, unless a judicial review has previously been instituted and has been finally rejected.

In the case referred to in subparagraph b) of the foregoing Article, a claim may be filed at any time after expiry of the period established by law for the institution of a judicial review and provided that such application has not been finally rejected. In such cases, a claim of nullity may be filed by any person.

Where a registration is declared null and void, the National Directorate of Industrial Property shall be notified so that it may make a note accordingly in the margin of the registration.

Chapter IX TRADE NAMES

Art. 229. – "Trade name" means a sign or denomination that identifies a business or economic activity of a natural or legal person.

Art. 230. – Trade names shall be protected without the obligation of registration.

The right to exclusive use of a trade name shall derive from the public and continuous use thereof in good faith in trade for at least six months.

Trade names may be registered with the National Directorate of Industrial Property, but the right to the exclusive use thereof shall be acquired solely on the terms set out in the foregoing paragraph. However, such registration shall constitute a presumption of ownership in favor of the holder thereof.

Art. 231. – No sign or denomination may be adopted as a trade name where it could be confused with another previously used by another person or with a registered trademark.

Art. 232. – The procedure for registration of a trade name shall be that established for the registration of trademarks, but the registration period shall be indefinite.

Art. 233. – The owners of trade names shall have the right to prevent third parties from using, adopting or registering, without their consent, identical or similar trade names or signs that could create a risk of confusion or association.

Art. 234. – The provisions of this Law relating to trademarks shall apply, where relevant, to trade names. The rules on trademarks that are well known or of high renown shall apply to trade names that are similarly well known or of similarly high renown.

Chapter X DISTINCTIVE APPEARANCE

Art. 235. – Any series of colors, shapes, get-up, structures and designs characteristic of and particular to a commercial establishment that identifies it and distinguishes it in the rendering of services or sale of goods shall be considered a distinctive appearance.

Art. 236. – Distinctive appearances shall be protected in the same way as trade names.

Chapter XI GEOGRAPHICAL INDICATIONS

Art. 237. – "Geographical indication" means an indication that identifies a good as originating in the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin, including both natural and human factors.

Art. 238. – The use of geographical indications with respect to natural, agricultural, handicraft or industrial goods shall be reserved exclusively for producers, manufacturers and craftsmen who have their production or manufacturing establishments in the locality or region designated in or evoked by said indication or denomination.

Art. 239. – The right of exclusive use of Ecuadorian geographical indications shall be conferred from the time of a declaration to that effect issued by the National Directorate of Industrial Property. The use thereof by unauthorized persons shall be considered an act of unfair competition, including where they are accompanied by expressions such as "kind", "class", "type", "style", "imitation" and other similar terms that also create confusion among consumers.

Art. 240. – The following may not be declared geographical indications:

- (a) those that do not conform to the definition contained in Article 237 of this Law;
- (b) those that are contrary to good manners or ordre public or that may mislead the public as to the source, nature, manufacturing process, or characteristics or qualities of the goods concerned; and
- (c) common or generic terms for distinguishing the good concerned, where they are regarded as such by persons with knowledge of the subject

concerned or by the general public.

Art. 241. - A declaration of protection of a geographical indication shall be made ex officio or at the request of persons that demonstrate a legitimate interest, such being natural or legal persons directly engaged in the extraction, production or processing of the good or goods to be covered by the geographical indication. The central or local public administrative authorities shall likewise be considered interested parties where geographical indications relate to their own areas of concern.

Art. 242. – Applications for a declaration of protection of a geographical indication shall be filed with the National Directorate of Industrial Property and shall meet the requirements specified in the Regulations.

Art. 243. – Once an application has been accepted for processing, the procedure specified for the registration of trademarks shall apply.

Art. 244. – The validity of a declaration conferring exclusive rights to use a geographical indication shall be subject to the continuing existence of the conditions on which it was based. The National Directorate of Industrial Property may revoke said declaration in the event of a change to the conditions on which it was based. Interested parties may reapply for such declaration where they consider that the conditions on which protection was based have been re-established.

Art. 245. – An application to use a geographical indication shall be filed with the National Directorate of Industrial Property by persons that are directly engaged in the extraction, production or processing of the goods identified by the geographical indication and that carry out said activity within the territory specified in the declaration.

Art. 246. – The National Industrial Property Director, ex officio or at the request of a party, shall cancel an authorization for the use of a geographical indication, after hearing the person that obtained it, where it was granted without the requirements specified in this Chapter being met or where they have ceased to be met.

Art. 247. – The National Directorate of Industrial Property may declare protection for geographical indications of other countries, where an application is filed by their producers, extractors, manufacturers or craftsmen who have a legitimate interest, or

by the public authorities of those countries. Geographical indications must have been declared as such in their countries of origin.

Geographical indications protected in other countries shall not be considered common or generic for distinguishing any good for as long as that protection subsists.

Book III PLANT VARIETIES

Section I DEFINITIONS AND REQUIREMENTS

Art. 248. – All cultivated plant genera and species that involve the genetic improvement of plants shall be protected through the granting of breeders' certificates, provided that such cultivation and improvement are not prohibited for reasons of human, animal or plant health.

No protection shall be granted for wild species that have not been improved by humans.

The provisions relating to protection of the country's biological and genetic heritage set out in the second paragraph of Article 120 of this Law shall be observed for the purpose of protecting plant varieties.

Art. 249. – For the purposes of this Book, the terms set out below shall have the following meanings:

BREEDER: the person who bred, or discovered and developed, a variety; the employer of the aforementioned person or the person that has commissioned the aforementioned person's work; or the successor in title of the first or second aforementioned person, as the case may be. "Breeding" means the production of a new variety by the application of scientific knowledge to the genetic improvement of plants.

DISCOVERY: the application of the human intellect to any activity the purpose of which is to make known characteristics or properties of a new variety or an essentially derived variety insofar as such variety meets the requirements of novelty, distinctness, uniformity and stability. This shall not include mere finding. Species that have not been planted or improved by humans shall not be protected.

LIVE SAMPLE: a sample of the variety supplied by a person applying for a breeder's certificate, which sample shall be used for the testing of novelty, distinctness, uniformity and stability.

VARIETY: set of cultivated botanical individuals that are distinguished by specific morphological, physiological, cytological and chemical characteristics and can be perpetuated by reproduction, multiplication or propagation.

ESSENTIALLY DERIVED VARIETY: a variety shall be deemed to be essentially derived from an initial variety where it originates from that variety or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety and which, although clearly distinguishable from the initial variety, nevertheless conforms to it in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, except for the differences that result from the derivation process.

MATERIAL: propagating plant material of any kind; harvested material, including entire plants and parts of plants; and any product made directly from the harvested material.

Art. 250. – The National Directorate of Plant Varieties shall grant breeder's certificates, where varieties are new, distinct, uniform and stable and have been given a denomination that constitutes their generic designation.

Art. 251. – A variety shall be deemed to be new if the propagating or harvested material of the variety has not been sold or otherwise lawfully disposed of to third parties, by or with the consent of the breeder or his successor in title, for the purpose of commercial exploitation of the variety.

Novelty shall be lost in the following cases:

(a) where exploitation in the national territory began more than one year prior to the filing date of the application or the date of any priority claimed;

(b) where exploitation abroad began more than four years prior to the filing date of the application or the date of any priority claimed; and

(c) in the case of trees and grapevines, where exploitation abroad began at least six years prior to the filing date of the application or the date of any priority claimed.

Art. 252. – Novelty shall not be lost through sale or disposal of the variety to third parties, inter alia, where those acts:

- (a) are the result of a violation committed against the breeder or his successor in title;
- (b) form part of an agreement for the transfer of rights in the variety;
- (c) form part of an agreement under which a third party multiplied propagating material on behalf of the breeder, provided that property in the propagated material reverts to the breeder or his successor in title and that said material is not used for the production of another variety;
- (d) form part of an agreement under which a third party undertakes field or laboratory tests, or small-scale processing tests, with a view to evaluating the variety;
- (e) involve harvested material that has been obtained as a by-product or a surplus product of the variety or of the activities referred to in subparagraphs c) and d) of this Article, provided that said material is sold or disposed of anonymously;
- (f) are carried out in fulfillment of a statutory obligation, in particular concerning biosafety or the entry of varieties in an official register of varieties admitted to trade; or
- (g) are carried out in any unlawful manner.

Art. 253. – A variety shall be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application or the claimed priority date.

The filing of an application for the granting of a breeder's right in any country shall render that variety a matter of common knowledge from that date, provided that said act leads to the granting of the right or the registration of the variety, as the case may be.

Common knowledge of the existence of another variety may be established by reference to various factors, such as: exploitation of the variety already in progress; entry of the variety in a register of varieties kept by a recognized professional association; or inclusion of the variety in a reference collection.

Art. 254. - A variety shall be uniform if, subject to the variations that may be expected from the manner of its reproduction or propagation, it is sufficiently uniform in its essential characteristics.

Art. 255. – A variety shall be stable if its essential characteristics remain unchanged from generation to generation and at the end of each particular cycle of reproduction or propagation.

Art. 256. - No rights in the designation registered as the denomination of a variety shall hamper the free use thereof, even after the expiration of the breeder's certificate.

The designation adopted may not be registered as a trademark and shall be sufficiently distinctive in relation to other denominations registered previously.

The requirements for registration of designations shall be specified in the Regulations.

Art. 257. – The right to apply for a breeder's certificate shall accrue to the breeder or his successor in title, whether natural or legal persons, Ecuadorian or foreign nationals. Where two or more persons have bred and developed a variety jointly, entitlement to protection shall accrue to them jointly. Subject to any agreement to the contrary between the joint breeders, they shall have equal shares.

Where the breeder is an employee, the right to apply for a breeder's certificate shall be governed by the employment contract under which the variety was bred and developed. In the absence of a contractual provision, Article 129 of the present Law shall apply, where relevant.

Art. 258. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Anyone with a legitimate interest may claim the status of true owner of an application for a plant variety with the National Directorate of

Plant Varieties, in accordance with the procedure established for objections, before the competent judge at any time up to 10 years after the breeder's certificate has been granted.

Section II REGISTRATION PROCEDURE

Art. 259. – Applications for the granting of a breeder's certificate for a new plant variety shall be filed with the National Directorate of Plant Varieties and shall meet the requirements specified in the Regulations.

Art. 260. – Applications shall be accompanied by:

- (a) proof of payment of the relevant fee;
- (b) an exhaustive description of the process of breeding the variety;
- (c) a statement of the place where live samples of the variety are found, such that the National Directorate of Plant Varieties may verify them at a time of its choosing, or a document certifying the deposit thereof with a competent national authority of a member country of the International Union for the Protection of New Varieties of Plants (UPOV); and
- (d) other documents specified in the Regulations.

The National Directorate of Plant Varieties shall not require the deposit of a live sample where such deposit with a competent national authority of a member country of UPOV is attested, except where necessary to rule on an objection or where required as evidence of visibility, uniformity and stability.

Art. 261. – On receiving an application, the National Directorate of Plant Varieties shall certify the date and time of filing thereof and shall assign it a serial number, which shall be from a consecutive and continuous series. In the absence of the documents referred to in subparagraphs a) and b) of the foregoing Article, the application shall not be accepted for processing and no filing date shall be granted.

Art. 262. – When an application has been accepted, the National Directorate of Plant Varieties shall examine, within 15 working days of the filing thereof, whether it meets the formal requirements set out in this Book.

Where the examination reveals that the application does not meet the requirements referred to, the National Directorate of Plant Varieties shall make appropriate observations so that the applicant may respond to them or provide additional supporting documentation within a period of three months following the date of notification.

Art. 263. - A breeder shall enjoy provisional protection during the period between the filing of an application and the granting of a certificate. Consequently, an applicant shall be entitled to institute appropriate legal proceedings with a view to preventing or stopping acts that constitute an infringement or violation of his rights, except for proceedings for damages, which may not be instituted until the relevant breeder's certificate has been obtained. Any damages specified may cover injury caused by the defendant after he became aware of the application. The application shall automatically be presumed to be known once it has been published.

Art. 264. – The owner of an application for the granting of a breeder's certificate filed in a member country of UPOV, a member country of the Andean Community or another country that accords reciprocal treatment to applications from member countries of the Andean Community shall enjoy a right of priority for a period of 12 months in applying for protection of the same variety in Ecuador. This period shall commence on the filing date of the first application.

In order to benefit from the right of priority, the breeder shall, in the application, claim the priority of the first application. The National Directorate of Plant Varieties may require that a copy of the first application be supplied within a period of three months from the filing date of the second application.

Art. 265. – Where a registration application meets the formal requirements, the National Directorate of Plant Varieties shall order it to be published on one occasion only in the Intellectual Property Gazette.

Until publication takes place, the file shall be reserved and may be examined by third parties only with the applicant's consent or where the applicant has instituted judicial or administrative proceedings against third parties on the basis of the application.

Within a period of 30 working days following the date of publication, anyone with a

legitimate interest may file reasoned objections relating to the granting of a breeder's certificate.

The period mentioned in the foregoing paragraph may be extended for a further period of equal length at the request of a party that has an interest in filing an objection, where it is clear that the supporting documentation for the application needs to be examined.

Objections shall be substantiated in accordance with the relevant provisions of Book II, Chapter II, Section III, of this Law, where relevant.

Objections may be based on questions of novelty, distinctness, uniformity or stability, questions as to whether or not the applicant is entitled to protection, and also on considerations of biosafety, ordre public or morality, the protection of human, animal or plant life or health, or in order to avoid serious damage to the environment.

Art. 266. – The National Directorate of Plant Varieties shall issue a technical opinion on novelty, distinctness, uniformity and stability in all cases. Where objections are filed, the National Directorate of Plant Varieties shall also carry out a technical examination of the plant variety. The National Directorate of Plant Varieties may request reports from such experts or public or private scientific or technological bodies as it deems appropriate, so that they may carry out such examination relating to the requirements of distinctness, uniformity and stability of the plant variety. It may also, as it sees fit, request reports from competent national offices of other countries. All information shall be made known to the applicant with a view to guaranteeing his right to be heard.

The requirements of distinctness, uniformity and stability shall be essentially of a technical nature and shall be evaluated on the basis of internationally recognized criteria for each plant species.

Art. 267. – Where the requirements set out in the present Book are met, the National Directorate of Plant Varieties shall either grant or refuse a breeder's certificate.

Art. 268. - The term of a breeder's certificate shall be 25 years in the case of vines, forest trees and fruit trees, including their rootstocks; and 20 years for other species, from the filing date of the application.

For those varieties that have not yet been marketed in Ecuador, the term of a breeder's certificate initially registered in the country of origin shall be the remainder of the period of validity of the first registration in that country.

Section III BREEDER'S OBLIGATIONS AND RIGHTS

Art. 269. – The owner of a registered variety shall be obliged to maintain or reconstitute a deposit effected during the term of the breeder's certificate.

Art. 270. – Without prejudice to the provisions of Article 263 of this Law, a breeder's certificate shall confer on the owner thereof the right to institute administrative or judicial proceedings, as provided for in this Law, with a view to preventing or stopping acts that constitute an infringement or violation of his right and securing appropriate forms of compensation or indemnification.

In particular, the owner shall have the right to prevent third parties from engaging without his consent in the following acts in respect of reproduction or propagating material of the protected variety:

- (a) production reproduction or propagation;
- (b) preparation for the purpose of reproduction or propagation;
- (c) sale, offering for sale or any other act that entails placing reproductive or propagating material on the market for commercial purposes;
- (d) export or import;
- (e) possession for any of the purposes mentioned in the foregoing subparagraphs;
- (f) performance of the acts mentioned in the foregoing subparagraphs in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of reproductive or propagating material of the protected variety, unless the owner has had reasonable opportunity to exercise his exclusive right in relation to said reproductive or propagating material; and
- (g) commercial use of ornamental plants or parts of plants as propagating material for the production of ornamental and fruit plants or parts thereof, or

cut flowers.

Art. 271. – The provisions of the foregoing Article shall also apply to:

- (a) varieties that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety; and
- (b) varieties the production of which requires the repeated use of the protected variety.

Art. 272. – Anyone who stores and sows for his own use, or sells as a raw material or food, the product of his cultivation of the protected variety shall not be thereby infringing the breeder's right. This Article shall not apply to the commercial use of reproductive or propagating material, including entire plants and parts of plants, of fruit, ornamental and forest species.

Art. 273. – A breeder's certificate shall not confer on the owner thereof the right to prevent third parties from using the protected variety where such use is made:

- (a) in the private sphere, for non-commercial purposes;
- (b) for experimental purposes; or
- (c) for the breeding and exploitation of a new variety, except in the case of a variety essentially derived from a protected variety.

Art. 274. - The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by Article 272 of this Law, that has been sold or otherwise marketed in the national territory by the owner or with his consent, or any material derived from said material, unless such acts:

- (a) involve further propagation of the variety in question; or
- (b) involve an export of material of the variety that enables the propagation of the variety into a country that does not protect varieties of the genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

For the purposes of this Article, "material" means, in relation to a variety:

1. propagating plant material of any kind;
2. harvested material, including entire plants and parts of plants; and
3. any product made directly from the harvested material.

Art. 275. - With a view to ensuring appropriate exploitation of the protected variety, in exceptional circumstances affecting national security or the public interest, the National Government may declare said variety freely available, subject to equitable compensation of the breeder.

The competent national authority shall determine the amount of compensation, after hearing the parties and taking expert advice, on the basis of the scale of exploitation of the licensed variety.

Section IV NULLITY AND CANCELLATION

Art. 276. - By means of judicial review, the IEPI Intellectual Property Committee may, ex officio or at the request of a party, declare a breeder's certificate to be null and void in the following cases:

- (a) where the variety did not meet the requirements of novelty, distinctness, stability and uniformity at the time of granting of the breeder's certificate;
- (b) where the breeder's certificate was conferred on a person that is not the breeder; and
- (c) where it was granted through any other infringement of the law that was a substantial cause of its being granted, or where it was obtained on the basis of erroneous or false data, documents, information or description.

Art. 277. – The IEPI Intellectual Property Committee shall declare a breeder's certificate canceled in the following cases:

- (a) where it is established that the protected variety has ceased to meet the requirements of novelty, uniformity, distinctness and stability; and
- (b) where the breeder does not provide the information or documents necessary to demonstrate the maintenance or reconstitution of the registered variety.

Art. 278. – The State shall recognize farmers' rights arising from past, present and future contributions in conserving, improving and making available plant genetic resources. These rights shall include the right to maintain their traditional practices, to save, improve and exchange seeds, to access technology, credit and the market,

and to be rewarded for the use of seeds that they have developed.

To that end, a special law shall govern cases in which this principle is to be applied.

Section V INSTRUMENTS AND CONTRACTS RELATING TO INDUSTRIAL PROPERTY AND PLANT VARIETIES

Art. 279. – Industrial property rights and plant variety rights may be transferred by inter vivos instrument or mortis causa, before or after they are registered or granted.

Art. 280. – Holders of industrial property rights and plant variety rights may grant licenses to third parties for the exploitation or use thereof, by means of written contracts. Such contracts may not contain clauses that restrict trade or create unfair competition.

Sub-licenses shall require the express authorization of the right holder.

Art. 281. – Transfers, licenses, amendments and other instruments that affect industrial property rights and plant variety rights shall be entered in the relevant registers on the same date as the application in question is filed. Entry in the register shall have retroactive effect from the filing date. Such instruments shall have effect with respect to third parties from the time of entry in the register. However, failure to enter an instrument or contract in the register shall not invalidate that instrument or contract.

Art. 282. Rights in a trademark or trade name may be transferred with or without the business identified by it.

A collective trademark may be transferred subject to the authorization of the association, organization or group of persons that applied for it or registered it and of the National Directorate of Industrial Property. In any event, the use thereof shall be reserved for members of the association, organization or group of persons.

A collective mark may not be licensed to persons other than those authorized to use it, in accordance with the regulations for the use thereof.

No entry in the register shall be required where the instruments or contracts in question refer to an industrial property right that is not subject to compulsory registration.

Art. 283. – Industrial property rights and plant variety rights shall be considered

movable property exclusively for tax purposes. However, a prohibition on the disposal of such rights, and also the seizure and public auction thereof, may be decreed subject to the provisions of the Code of Civil Procedure.

Book IV UNFAIR COMPETITION

Art. 284. – Any deed, act or practice contrary to honest practices in the conduct of economic activities shall be considered unfair competition.

The expression "economic activities" shall be understood in a broad sense to include the activities of professionals such as lawyers, doctors, engineers, and other fields in the practice of any profession, trade or craft.

"Honest practices" shall be defined in accordance with criteria for national trade; regardless of whether the acts or practices in question are carried out in the context of international operations or have connections with more than one country, the criteria for honest practices in international trade shall be met.

Art. 285. – The following, inter alia, shall be considered acts of unfair competition: those that are of such a nature as to create confusion, regardless of the means used, with the establishment, the goods, the services or the commercial or industrial activities of a competitor; false allegations in the course of trade of such a nature as to discredit the establishment, the goods or services, or the commercial or industrial activities of a competitor, and also any other act likely to harm or weaken the intangible assets or reputation of the company in question; indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quality of the goods or the provision of services; and the disclosure, acquisition or use of secret information without the consent of the person that controls it.

These acts may relate, inter alia, to trademarks, whether registered or not; trade names; business identifiers; the appearance of goods or establishments; the get-up of goods or services; celebrities or well-known fictional characters; manufacturing processes of goods; the suitability of goods or services for specific purposes; qualities, quantities or other characteristics of goods or services; the geographical origin of goods or services; the terms on which goods or services are offered or

supplied; advertising that imitates, is disrespectful to or insults a competitor or his products or services, and unverifiable comparative advertising; and boycotts.

"Weakening of an intangible asset" means lessening the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a good or the get-up of goods or services, or a celebrity or well-known fictional character.

Art. 286. – Any act or practice that takes place in the course of economic activities shall also be considered an act of unfair competition, regardless of any infringement proceedings that may be appropriate in respect of undisclosed information, where it consists or results in:

- (a) unfair commercial use of undisclosed test data or other secret data, the origination of which involves a considerable effort and which have been submitted to a competent authority for the purpose of obtaining approval of the marketing of pharmaceutical products or chemical, agricultural or industrial products;
- (b) the disclosure of such data, except where necessary to protect the public and where steps are taken to ensure that the data are protected against any unfair commercial use; and
- (c) the unauthorized extraction of data, the origination of which involves a considerable effort, for commercial use in an unfair manner.

Art. 287. – Without prejudice to other legal proceedings that may be applicable, any injured natural or legal person may institute the proceedings provided for in this Law, including with regard to preventive or precautionary measures.

The measures referred to in the foregoing paragraph may also be requested by trade unions or professional associations with a legitimate interest in protecting their members against acts of unfair competition.

Title I PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Chapter I GENERAL PRINCIPLES

Art. 288. – The infringement of any of the intellectual property rights set out in this

Law shall give rise to the institution of civil and administrative proceedings, without prejudice to such criminal proceedings as may be appropriate where the act is classified as an offense.

The administrative protection of intellectual property rights shall be governed by Book V of the present Law.

Art. 289. – In the event of infringement of the rights conferred under this Law, the following may be requested:

- (a) cessation of the infringing acts;
- (b) permanent seizure of the goods or other objects resulting from the infringement, or permanent removal from the channels of commerce of the infringing goods, and also the destruction thereof;
- (c) permanent seizure of apparatus and equipment used to commit the infringement;
- (d) permanent seizure of apparatus and equipment for the storage of copies;
- (e) compensation for injury;
- (f) any other form of reparation for the consequences of the infringement of the right; and
- (g) total court costs.

The rights set out in international conventions in force in Ecuador may also be asserted, in particular those set out in the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Art. 290. – In order for a holder of copyright and related rights conferred under this Law to be accepted as such before any judicial or administrative authority, it shall be sufficient for the name or pseudonym, or any other denomination that leaves no doubt as to the identity of the natural or legal person in question, to appear on the work, performance, production or broadcast, in the usual manner.

Art. 291. – No authority or natural or legal person may authorize the use of a work, performance, phonographic production or broadcast or any other subject matter protected by this Law, or lend support to such use, if the user does not have the express prior authorization of the right holder or his representative. In the event of

non-compliance, such authority or person shall bear joint and several liability.

Art. 292. – Where rights are infringed through digital communication networks, joint and several liability shall be borne by the operator or any other natural or legal person in control of a computer system connected to such network that allows, induces or facilitates communication, reproduction, transmission or any other act that

infringes the rights provided for in this Law, where such person is aware or has been warned of the possibility of an infringement, or could not have been unaware of it without serious negligence on his part.

He shall be deemed to have been warned of the possibility of an infringement where he has been given duly substantiated notice thereof.

The operators or other natural or legal persons referred to in this provision shall be exempt from liability for acts and technical measures that they carry out with a view to preventing the infringement from occurring or continuing.

Art. 293. – Where the holder of a right in a trademark, trade name or plant variety establishes that the Superintendency of Companies or of Banks and Insurance has approved the adoption by companies under its control of a denomination that includes a sign identical to said trademark, trade name or plant variety, he may, through the relevant proceedings, request that IEPI suspend the use of the denomination or trade name in question so as to eliminate any risk of confusion or improper use of the protected sign.

IEPI shall notify the parties and the Superintendency of Companies or of Banks and Insurance by means of the relevant decision; the company shall have a period of 90 days from notification of the IEPI decision in which to adopt another denomination or trade name. This period may be extended once only for a further period of equal length, provided that there is just cause.

Where no new denomination or trade name is adopted within the period referred to in the foregoing paragraph, the Superintendency shall dissolve or liquidate the company.

Chapter II INTELLECTUAL PROPERTY PROCEEDINGS

Section I HEARINGS

Art. 294. - (Amended by Amending Provision Five, para. 1, of unnumbered Law, RO No. 544-S, March 9, 2009). – In the first instance, administrative litigation judges in the defendant's area of residence shall be competent to hear disputes on these matters and, in the second instance, the relevant provincial court division that specializes in such matters.

Judicial review proceedings instituted in respect of these matters shall be heard by the Special Division for Administrative Litigation of the National Court of Justice.

Note:

Amending Provision Five, para. 1, of the Judiciary Organization Code (unnumbered Law, RO No. 544-S, March 9, 2009) provides that the phrase "District Intellectual Property Judges and, in the second instance, District Intellectual Property Tribunals" shall be replaced by the phrase "administrative litigation judges in the defendant's area of residence shall be competent to hear disputes on these matters and, in the second instance, the relevant provincial court division that specializes in such matters"; however, this provision was the subject of a partial veto by the President of the Republic, which changed the organizational structure of the administrative litigation courts by establishing the specialized Provincial Court division as the sole competent instance for hearing such cases.

Art. 295. – (Repealed by Amending Provision Five, para. 2, of unnumbered Law, RO No. 544-S, March 9, 2009).

Art. 296. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Competence in intellectual property matters shall be determined in accordance with the rules set out in Articles 26, 27, 28 and 29 of the Code of Civil Procedure and in the present Article.

Judges whose jurisdiction covers the place where an infringement was committed shall also be competent to hear such cases.

In the case of transmissions by satellite, the infringement shall be considered to have been committed either in the place where said transmission originated or in the place

where the signal is predominantly made accessible to the public.

Infringements committed through digital communication networks shall be considered to have been committed either in the place where the computer systems referred to in Article 292 of this Law are situated or in the place where the transmission is predominantly made accessible to the public.

Art. 297. – Claims relating to intellectual property shall be heard in oral summary proceedings, subject to the modifications set out in the present Chapter.

Art. 298. – In proceedings concerning these matters, related counterclaims shall be admissible and shall be ruled on in a judgment that shall not affect the progress of the proceedings. Such counterclaim shall be filed in a conciliation hearing after the claim has been answered. In the hearing, the applicant shall answer the counterclaim. Failure to do so shall be taken as an outright rejection of the factual and legal grounds.

Art. 299. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where, during the evidence period, a request is made for the hearing of testimonial evidence, the judge shall give a date and time for an oral hearing of such evidence, in which the party that requested the evidence shall prepare questions and the other party may cross-examine.

Art. 300. - (Amended by Amending Provision Five, para. 4, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where experts are needed, one shall be appointed for each party to the proceedings, unless the parties agree to appoint a single expert. Without prejudice to the submission of a written report by one or both experts, either of the parties may request the judge to summon them to a hearing so that they may provide information orally on the questions put to them by the parties.

Infringement of the mandate set out in this provision, as well as other infringements referred to in the law, shall be grounds for the dismissal of administrative litigation judges.

Art. 301. – All evidence requested within the relevant period shall be submitted within 30 days of the end of that period, unless the parties request an extension by mutual consent.

Art. 302. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – A judge shall have the authority to order the submission of evidence that is under the control or in the possession of the opposing party, to which end he shall indicate the date, time and place for such submission. Where the requested party fails to submit the evidence, the judge may, in order to make a ruling, rely on the information provided by the party that requested the evidence.

Where either of the parties fails to provide information or access codes or in any way obstructs the verification of implements, equipment or other media in which unauthorized reproductions may be stored, these instruments, equipment or media shall be presumed to infringe intellectual property rights.

Where the case relates to infringement of an invention patent for processes, the defendant shall bear the burden of proof regarding the lawfulness of the process used to manufacture the product.

Art. 303. – Compensation for injury shall cover losses suffered and the loss of income resulting from the infringement. The amount of income lost shall be determined, inter alia, in accordance with the following criteria:

- (a) the profits that the right holder would have obtained if the infringement had not occurred;
- (b) the profits obtained by the infringer as a result of the infringement;
- (c) the price, remuneration or royalty that the infringer would have had to pay to the right holder for the lawful exploitation of the infringed rights; and
- (d) reasonable costs, including professional fees incurred by the right holder in connection with the dispute.

Art. 304. – Sentences in civil proceedings for infringement of intellectual property rights shall also impose on the infringer a fine of three to five times the total value of copies of works, performances, productions or broadcasts, or of the royalties that the right holder would otherwise have received for lawful exploitation of these or other forms of intellectual property.

Where fines are collected pursuant to this provision, one third shall be paid to IEPI

and one third to the holder of the infringed right; the remaining third shall be distributed among the following:

- (a) the Budget of the Judiciary;
- (b) the Solidarity Fund; and
- (c) the Promotion of Science and Technology through IEPI.

Section II PREVENTIVE AND PRECAUTIONARY MEASURES

Art. 305. – Preventive and precautionary measures relating to intellectual property shall be processed in accordance with Section 27, Title Two, Book Two, of the Code of Civil Procedure, as amended pursuant to this Section.

Art. 306. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – A judge shall order a measure on being seized of a claim, where there is specific and consistent evidence giving rise to a reasonable presumption that the intellectual property rights conferred under this Law are being infringed or that such infringement is imminent, or information giving rise to a reasonable and well-founded fear that they are being infringed or that such infringement is imminent, taking account of the preventive or precautionary nature of the measure and the infringement that may be involved.

The judge shall verify whether the applicant is the right holder, to which end account shall be taken of the presumptions set out in this Law. Where no information creating a presumption of ownership is provided with the claim, the sworn statement to that effect enclosed with the claim shall suffice.

Art. 307. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – The judge, taking due account of the circumstances, shall require the applicant to provide a security or assurance sufficient to protect the defendant and to prevent abuse.

Art. 308. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – With a view to preventing the occurrence or continuation of an infringement of any of the rights conferred under the present Law, preventing the entry into the channels of commerce of goods, including imported

goods, or preserving relevant evidence in regard to the alleged infringement, judges shall have the authority to order, at the request of a party, such precautionary or preliminary measures as may be necessary, depending on the circumstances, for the urgent protection of such rights, and in particular:

- (a) immediate cessation of the unlawful activity;
- (b) suspension of activity consisting of use, exploitation, sale, offering for sale, import or export, reproduction, communication or distribution, as the case may be; and
- (c) any other measure to prevent the continued infringement of rights.

Confiscation may be ordered in respect of income obtained from the infringing activity, property used as security against the payment of compensation, products or goods that infringe an intellectual property right, and also equipment, apparatus and media used to commit the infringement, and original copies that have been used for reproduction or communication.

Detention shall be ordered in respect of assets owed for exploitation or remuneration.

A prohibition on leaving the country shall be ordered where the defendant has no permanent residence or establishment in Ecuador.

Art. 309. – Immediate cessation of unlawful activity may include:

- (a) suspension of an infringing activity or prohibition of the resumption thereof by the infringer, or both;
- (b) temporary closure of the premises or establishment, which shall be compulsory where the infringing goods or unlawful copies form a substantial part of the infringer's usual trade;
- (c) removal of goods, unlawful copies or infringing objects from the channels of commerce and deposit thereof with the courts; and
- (d) any other measure necessary for the urgent protection of intellectual property rights, taking account of the nature and circumstances of the infringement.

Art. 310. – (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where the applicant so requests, measures shall be

executed in the presence of a judge, who may take advice from the necessary experts or from IEPI officials, whose opinion on the proceedings shall be set out in the appropriate record and shall be used for execution. An order issued by a judge pursuant to the foregoing Article shall mean that no further formality or additional ruling is required in order to take any practical steps necessary for the full execution of a precautionary measure, including the breaking of locks, without prejudice to the judge's authority to order, at the time of the proceedings, any other precautionary measure necessary for the urgent protection of rights, either ex officio or at the verbal request of a party.

Art. 311. – Requests for precautionary measures, and also the related rulings, shall be classed as confidential, and the defendant shall not be notified thereof until after they have been executed.

Art. 312. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Where the applicant states that a prior judicial inspection is necessary in order to prove an infringement of rights, the judge shall order such inspection without notifying the opposing party and may order appropriate precautionary measures in the course of the inspection. To that end he shall coordinate with the officials who are to carry out such measures.

Article 313. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – In the case of works that are fixed electronically in digital data devices or using analogous processes, or the seizure of which would be difficult or could cause serious injury to the defendant, the judge, subject to the applicant's consent and where he sees fit, may order that confiscated property remain in the custody of the defendant after being identified, itemized and inventoried, without prejudice to the confiscation of fixations in removable media. The judge shall place seals on identified, itemized and inventoried property.

Art. 314. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Once a precautionary measure has been carried out, the defendant shall be notified of the claim and the judge shall order the commencement of the evidence period provided for in Article 902 of the Code of Civil

Procedure.

Precautionary measures shall lapse where the merits of the claim are not filed within a period of 15 days of execution of the measures.

Where provisional measures are revoked or where they lapse owing to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the competent judge shall order the applicant, upon request of the defendant, to provide compensation for injury.

Art. 315. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Judges who do not comply with the provisions of Article 69 of the Code of Civil Procedure within 48 hours of receipt of the claim or who unjustifiably reject the adoption of a precautionary measure shall be liable to the right holder for any injury caused, without prejudice to appropriate criminal proceedings.

Art. 316. - (Amended by Amending Provision Five, para. 5, of unnumbered Law, RO No. 544-S, March 9, 2009). – With a view to protecting trade secrets or confidential information in the course of executing precautionary measures under this Law, only the judge and the appointed experts shall have access to information, codes or other elements, to the extent necessary in order to implement the measure. For the defendant, persons delegated by him may be present, and for the applicant, his judicial attorney. All those that have access in this way to such information shall be obliged to maintain total confidentiality and shall be subject to the proceedings provided for in this Law and other laws for the protection of trade secrets and confidential information.

Art. 317. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – In the implementation of precautionary measures or the hearing of evidence, officials appointed by IEPI may testify as experts. The judge shall be obliged to request the expert testimony of such officials where a party so requests.

Art. 318. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO

No. 544-S, March 9, 2009). – Judges shall also comply with the procedures and measures provided for in international conventions or treaties on intellectual property that are in force in Ecuador, where applicable. Judges shall be exempt from liability under the terms of Article 48, paragraph 2, of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Chapter III OFFENSES AND PENALTIES

Art. 319. - A prison term of three months to three years and a fine of one thousand three hundred and fourteen United States dollars and 45/100 (1,314.45) to thirteen thousand one hundred and forty-four United States dollars and 50/100 (13,144.50), taking into consideration the degree of financial injury caused, shall be incurred by anyone who stores, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports any of the following in violation of intellectual property rights:

- (a) a product covered by an invention patent or utility model obtained in Ecuador;
- (b) a product manufactured using a process covered by an invention patent obtained in Ecuador;
- (c) a product covered by an industrial design registered in Ecuador;
- (d) a plant variety registered in Ecuador, and also the reproductive or propagating material thereof;
- (e) a layout-design (topography) registered in Ecuador, a semi-conductor circuit incorporating said layout-design (topography) or an article incorporating such semi-conductor circuit;
- (f) a good or service that uses an unregistered trademark identical or similar to a mark registered in Ecuador or abroad that is well known or of high renown;
- (g) a good or service that uses an unregistered trademark identical or similar to a mark registered in Ecuador; and
- (h) a good or service that uses an unregistered trademark or geographical indication identical or similar to a geographical indication registered in

Ecuador.

In the cases referred to in subparagraphs (g) and (h), goods or services that use an unregistered sign shall be identical or similar to goods or services protected by trademarks or geographical indications registered in Ecuador.

Art. 320. – The same penalty as indicated in the foregoing Article shall be incurred by anyone who, in violation of intellectual property rights:

1. discloses, acquires or uses trade or industrial secrets or confidential information;
2. uses, in respect of goods or services or commercial transactions, trademarks or geographical indications not registered in Ecuador that imitate distinctive signs registered in Ecuador or abroad that are well known or of high renown and that may reasonably be confused with the original; or
3. uses, in respect of goods or services or commercial transactions, trademarks or geographical indications that imitate distinctive signs registered in Ecuador that may reasonably be confused with the original, in order to distinguish goods or services that could supplant the protected goods or services.

Art. 321. - A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and 22/100 (657.22) to six thousand five hundred and seventy-two United States dollars and 25/100 (6,572.25) shall be incurred by anyone who, in violation of intellectual property rights, uses trade names in which he has not acquired rights that are identical to trade names that are publicly well known in Ecuador, or trademarks registered in Ecuador, or trademarks registered in Ecuador or abroad that are well known or of high renown, taking into consideration the degree of financial injury caused.

The same penalty as indicated in the foregoing paragraph shall also be incurred by anyone who, in violation of intellectual property rights, uses a distinctive appearance identical or similar to a distinctive appearance that is publicly well known in Ecuador.

Art. 322. – A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and 22/100 (657.22) to six thousand five hundred

and seventy-two United States dollars and 25/100 (6,572.25), taking into consideration the degree of financial injury caused, shall be incurred by anyone who, in violation of intellectual property rights:

(a) manufactures, markets or stores labels, seals or packaging bearing trademarks registered in Ecuador or abroad that are of high renown or well known;

(b) manufactures, markets or stores labels, seals or packaging bearing trademarks or appellations of origin registered in Ecuador; or

(c) detaches, removes, replaces or uses labels, seals or packaging bearing lawful trademarks, so as to use them on goods of a different origin.

The same penalty shall be incurred by anyone who stores, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports articles bearing false statements about the nature, source, manufacturing process, quality, characteristics or suitability for use of the goods or services concerned, or bearing false information regarding prizes or other distinctions.

Art. 323. - A prison term of three months to three years and a fine of one thousand three hundred and fourteen United States dollars and 45/100 (1,314.45) to thirteen thousand one hundred and forty-four United States dollars and 50/100 (13,144.50), taking into consideration the degree of financial injury caused, shall be incurred by anyone who stores, manufactures, uses for commercial purposes, offers for sale, sells, imports or exports counterfeit goods identified with trademarks registered in Ecuador or abroad that are of high renown or well known, or with trademarks registered in Ecuador.

The same penalty as indicated in the foregoing paragraph shall also be incurred by anyone who places spurious goods inside packaging identified with another's trademark.

Art. 324. - A prison term of three months to three years and a fine of one thousand three hundred and fourteen United States dollars and 45/100 (1,314.45) to thirteen thousand one hundred and forty-four United States dollars and 50/100 (13,144.50), taking into consideration the degree of financial injury caused, shall be incurred by

anyone who, in violation of copyright or related rights:

- (a) alters or mutilates a work, including through the removal or alteration of applicable electronic rights management information;
- (b) registers, publishes, distributes, communicates or reproduces, in whole or in part, another's work as if it were his own;
- (c) reproduces a work;
- (d) communicates works, videograms or phonograms, in whole or in part, to the public;
- (e) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties unlawful reproductions of works;
- (f) reproduces a phonogram or videogram or any protected work in general, and also the performances of performers, in whole or in part, whether or not they are imitating the outward characteristics of the original, and also anyone who brings into the country, stores, distributes, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties such unlawful reproductions; or
- (g) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties reproductions of works, phonograms or videograms on which the applicable rights management information has been altered or removed.

Art. 325. - A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and 22/100 (657.22) to six thousand five hundred and seventy-two United States dollars and 25/100 (6,572.25), taking into consideration the degree of financial injury caused, shall be incurred by anyone who, in violation of copyright or related rights:

- (a) reproduces a greater number of copies of a work than that authorized by the right holder;
- (b) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties reproductions of works in numbers exceeding those authorized by the right holder;

(c) retransmits by any means the transmissions of broadcasting organizations; and

(d) brings into the country, stores, offers for sale, sells, rents or in any other way places in circulation or makes available to third parties apparatus or other facilities intended for deciphering or decoding encrypted signals or in any other way circumventing or breaking the technical protection facilities applied by the copyright holder.

Art. 326. - A prison term of one month to two years and a fine of six hundred and fifty-seven United States dollars and 22/100 (657.22) to six thousand five hundred and seventy-two United States dollars and 25/100 (6,572.25) shall be incurred by anyone who unlawfully obstructs, fails to comply with or prevents the execution of a preventive or precautionary measure.

Art. 327. – The following shall be aggravating circumstances, in addition to those set out in the Penal Code:

(a) where the infringer has received a warning regarding the infringement of a right;

(b) where the infringing goods are a potential health hazard; and

(c) where the infringements are committed in respect of unpublished works.

Art. 328. – The infringements set out in this Chapter shall be prosecutable publicly and by the State.

Art. 329. – Civil and criminal proceedings shall be subject to the statute of limitations, in accordance with the Civil Code and the Penal Code respectively, except for proceedings for infringement of moral rights, to which the statute of limitations shall not apply.

In the absence of proof to the contrary and for the purposes of the statute of limitations on proceedings, the date on which an infringement was committed shall be the first day of the year following the latest edition, reissue, reproduction, communication or other use of a work, performance, production or broadcast.

Art. 330. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – In all the cases covered in this Chapter, the seizure of

all objects used directly or indirectly in the commission of the offense shall be ordered; the confiscation thereof may be ordered by the judge in the case and shall be compulsory when a committal order is issued.

Art. 331. – The proceeds of the fines specified in this Chapter shall be divided equally between the Judiciary and IEPI, which shall use at least 50 per cent thereof for training and education programs on intellectual property.

Book V ADMINISTRATIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Art. 332. – Enforcement of and compliance with intellectual property rights shall be a matter of public interest. The State, through the Ecuadorian Intellectual Property Institute (IEPI), shall exercise the administrative protection of intellectual property rights and shall ensure that they are complied with and enforced.

Art. 333. – IEPI, through the National Directorates, shall, ex officio or at the request of a party, carry out inspections and monitoring and impose penalties with a view to preventing and punishing infringements of intellectual property rights.

Art. 334. – Any person affected by an infringement or possible infringement of intellectual property rights may request IEPI to take the following measures:

- (a) inspections;
- (b) requests for information; and
- (c) imposition of penalties for infringement of intellectual property rights.

Art. 335. – Inspections shall be carried out by the National Directors or their delegates in the manner specified in the Regulations. At the time of an inspection, and as a requirement for the conduct thereof to be valid, a copy of the administrative instrument ordering the inspection shall be provided and, where applicable, the request from the affected party.

Applications for precautionary measures shall remain confidential until after the measures have been executed, and even thereafter the authorities shall take the measures necessary in order to preserve the confidentiality of undisclosed information that has had to be provided during the proceedings.

Art. 336. – Where, during proceedings, it is confirmed, or even suspected (prima

facie), that an intellectual property right has been infringed or that there are facts unequivocally indicating the imminent possibility of such infringement, a detailed inventory of property of any kind connected with such infringement shall be prepared. A record of the examination shall be made using whatever means best enable the state of the inspected items to be assessed.

Such a measure may include the immediate removal of business signs that clearly infringe intellectual property rights, without prejudice to the seizure and deposit of the goods or other items that infringe patent rights, trademarks or other forms of intellectual property.

IEPI, through the regional directorates competent in these matters, may adopt any precautionary measure for the urgent protection of the rights referred to in this Law, where the application for the precautionary measure is accompanied by the evidence referred to in Article 306 of this Law. Such measures shall be of a provisional nature and shall be subject to revocation or confirmation in accordance with Article 339 of this Law.

Art. 337. – Where an infringement of intellectual property rights is suspected, IEPI may request any information that makes it possible to establish whether or not such infringement exists. Said information shall be provided within a period of no more than 15 days from the date of notification.

Art. 338. – With the exception of provisional precautionary measures that are adopted in accordance with Article 336 of this Law, the party against which the proceedings have been brought shall be heard prior to the adoption of any decision. Where deemed appropriate, a hearing may be convened, at which the interested parties may express their positions.

Art. 339. - (Amended by Amending Provision Five, para. 6, of unnumbered Law, RO No. 544-S, March 9, 2009). – Once the investigation process has concluded, IEPI shall issue a reasoned decision. Where it is established that intellectual property rights have been infringed, the infringer shall be punished with a fine of between fifty-two United States dollars and 58/100 (52.58) and one thousand eight hundred and forty United States dollars and 23/100 (1,840.23); in addition, the adoption of any of

the precautionary measures referred to in this Law may be ordered, or those adopted on a provisional basis may be confirmed.

Where an offense is alleged to have been committed, a copy of the record of the administrative proceedings shall be sent to the Public Prosecutor's Office.

Art. 340. – IEPI shall impose the same penalty as established in the foregoing Article on anyone who obstructs or impedes the implementation of the acts, measures or inspections ordered by IEPI or who fails to send any information requested within the period given.

Art. 341. – Where the communication to the public of a legally protected work is announced or in any way becomes known without the relevant authorization having been obtained, the right holder may request that the National Directorate for Copyright and Related Rights prohibit it; this shall be ordered immediately. To that end, it shall be presumed, from the mere fact that the right holder has protested, that the organizer, promoter or user does not have the proper authorization.

Art. 342. – The Ecuadorian Customs Corporation and all those that have control over the entry or exit of goods into or from Ecuador shall be obliged to prevent the entry or export of goods that in any way infringe intellectual property rights.

Where, at the request of an interested party, they do not prevent the entry or export of such goods, they shall be considered accessories to the offense committed, without prejudice to the relevant administrative penalty.

Where, ex officio or at the request of a party, they prevent the entry or export of any good that infringes intellectual property rights, they shall bring this to the attention of the President of IEPI by means of a detailed report; he shall, within a period of five days, confirm or revoke the measure taken. Where the measure is confirmed, the goods shall be placed at the disposal of the competent prosecutor.

Where the Ecuadorian Customs Corporation or any other competent official refuses to take the required measure or does not make a statement within a period of three days, the interested party may, within the next three days, call directly on the President of IEPI to order the measure.

The person that orders the measure may require security in accordance with the

following Article.

Art. 343. – Without prejudice to the provisions of the foregoing Article, any of the National Directors, in accordance with his area of competence, may, at the request of a party, order suspension of the entry or export of any good that in any way infringes intellectual property rights.

A decision shall be issued within three days of the request. Where considered necessary or appropriate, the applicant may be ordered to provide sufficient security. Where no such security is provided within a period of five days of being requested, the measure shall be without effect.

At the request of the party affected by the suspension, the National Director of IEPI, where appropriate, shall order a hearing in order to examine the goods and, where relevant, to revoke the measure. Where he does not revoke the measure, he shall order that the entire case be referred to the competent prosecutor.

Art. 344. – Without prejudice to the provisions of this Law, the Statute of the Legal and Administrative Regime of the Executive shall be applied to administrative proceedings.

Art. 345. – The police, in particular the Criminal Investigation Service, shall be obliged to provide IEPI officials with the assistance that they request for the performance of their functions.

Book VI THE ECUADORIAN INTELLECTUAL PROPERTY INSTITUTE (IEPI)

Chapter I PURPOSES OF THE INSTITUTE

Art. 346. - The Ecuadorian Intellectual Property Institute (IEPI) is hereby established as a legal person under public law, with its own assets, administrative, economic, financial and operational autonomy, and headquarters in the city of Quito, and shall be responsible for pursuing the following objectives on behalf of the State:

(a) fostering the protection and defense of intellectual property rights conferred under national law and under international treaties and conventions;

(b) promoting and encouraging intellectual creativity, both in its literary,

artistic or scientific form and in its sphere of industrial application, and also the dissemination of technological knowledge within the cultural and production sectors; and

(c) preventing acts and deeds that may undermine intellectual property and free competition, and also ensuring compliance with and respect for the principles set out in this Law.

Chapter II ORGANIZATION AND FUNCTIONS

Section I GENERAL PROVISIONS

Art. 347. – IEPI shall have the following organs:

- the President;
- the Board of Directors;
- the Intellectual Property Committee;
- the National Directorate of Industrial Property;
- the National Directorate for Copyright and Related Rights; and
- the National Directorate of Plant Varieties.

Art. 348. – Other rules for the organization and operation of IEPI shall be set out in the Regulations under this Law and in the functional and organizational regulations thereunder.

Section II THE PRESIDENT OF IEPI

Art. 349. – The President of IEPI shall be appointed by the President of the Republic and his term of office shall last six years. He shall be the legal representative of IEPI and shall be directly responsible for technical, financial and administrative management.

In the event of withdrawal, permanent absence or any other incapacity that disqualifies him from continuing to perform his functions, the President of the Republic shall immediately appoint a replacement, whose term of office shall also last six years. In the event of temporary incapacity or absence, he shall be replaced by the National Director designated by the Board of Directors.

Art. 350. – The President of IEPI shall have a university degree and proven expertise and professional experience in aspects of intellectual property, and shall meet the other requirements set out in the Regulations.

Art. 351. – The President's duties and powers shall be as follows:

- (a) to be the legal representative of IEPI;
- (b) to ensure compliance with and implementation of laws and international conventions relating to intellectual property;
- (c) to prepare the annual IEPI budget and submit it to the Board of Directors for approval;
- (d) to appoint and dismiss National Directors, the Secretary-General and other IEPI staff;
- (e) to propose guidelines and strategies for international negotiations conducted by the national Government on intellectual property matters, and also to establish groups of negotiators on these matters, in consultation and coordination with the Ministry of Foreign Affairs;
- (f) to order border measures, as provided for in this Law;
- (g) to respond to enquiries relating to the implementation of intellectual property rules. Responses to enquiries shall be binding on IEPI in the particular case referred to. Enquiries may not relate to matters that are pending before any organ of IEPI on the date on which they are made; and
- (h) other duties and powers specified in this Law and the Regulations.

Note:

- The name "Ministry of Foreign Affairs" was replaced by "Ministry of Foreign Affairs, Trade and Integration" pursuant to Decree No. 7 (RO No. 36, March 8, 2007).

Section III THE BOARD OF DIRECTORS

Art. 352. – The Board of Directors shall be the controlling and consultative organ of the Institute and shall have the following powers:

- (a) setting and approving fees;
- (b) approving the Institute's budget;
- (c) ruling on draft amendments to this Law, the Regulations and international

conventions relating to intellectual property;

(d) proposing to the President of the Republic draft amendments to the law or regulations;

(e) appointing and dismissing members of the Intellectual Property Committee in accordance with this Law and the Regulations;

(f) issuing the necessary rules for full compliance with this Law; and

(g) other powers specified in the law and regulations.

Art. 353. – The Board of Directors shall consist of:

(a) the President of the Ecuadorian Intellectual Property Institute, who shall chair the Board;

(b) the Minister of Foreign Trade, Industrialization, Fisheries and Competitiveness, or his delegate;

(c) the Minister of Foreign Affairs or his delegate;

(d) the Minister of Education and Culture or his delegate;

(e) a representative of the Council of Production Chambers and Associations or his alternate;

(f) a representative of the collective management societies and of the trade unions concerned with copyright or related rights or his alternate;

and

(g) a representative appointed by the National Higher Education Council (CONESUP) or his alternate.

Decisions of the Board of Directors shall be adopted by a favorable vote of at least five of its members.

Note:

- The current name of the Ministry of Education and Culture is the Ministry of Education, owing to the establishment of the Ministry of Culture pursuant to Decree No. 5 (RO No. 22, February 14, 2007).

- The name "Ministry of Foreign Affairs" was replaced by "Ministry of Foreign Affairs, Trade and Integration" pursuant to Decree No. 7 (RO No. 36, March 8, 2007).

- The name "Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness" was replaced by "Ministry of Industry and Competitiveness" pursuant to Decrees No. 7 (RO No. 36, March 8, 2007) and No. 144 (RO No. 37, March 9, 2007); pursuant to Decree No. 1558 (RO No. 525, February 10, 2009), "Ministry of Industry and Competitiveness" was replaced by "Ministry of Industry"; and the Ministry was renamed once more, as "Ministry of Industry and Productivity", pursuant to Executive Decree (DE) No. 1633 (RO No. 566, April 8, 2009).
- The text in bold type was declared unconstitutional pursuant to Resolution (Res.) No. 0004-2008-TC (RO No. 441-S, October 7, 2008).

Section IV THE NATIONAL DIRECTORATES

Art. 354. – The National Directors shall exercise the leadership of the respective National Directorates. They shall be appointed for a period of six years and may be re-elected indefinitely. In the event of temporary incapacity or absence of a National Director, the President of IEPI shall appoint an official to replace him.

Art. 355. – In order to be a National Director, a person shall be a lawyer or a doctor of jurisprudence, shall prove that he has relevant professional experience and shall meet the other requirements set out in the relevant regulations.

Art. 356. – The National Directorates shall be responsible for the administrative implementation of the present Law and other legal provisions relating to intellectual property, within the scope of their competence.

Art. 357. - (Amended by Amending Provision Five, para. 7, of unnumbered Law, RO No. 544-S, March 9, 2009). – Final administrative instruments and those issued by the National Directors preventing the continuation of proceedings shall be subject to the following remedies:

- remedy of reconsideration, before the same official that issued the instrument;
- remedy of appeal, before the Intellectual Property Committee; and
- remedy of judicial review, before the Intellectual Property Committee.

It shall not be essential to apply for these remedies in order to exhaust the administrative route, and the proceedings provided for in the Law on Jurisdiction for Administrative Litigation may therefore be instituted directly against final administrative instruments or those issued by the National Directors preventing the continuation of proceedings.

These remedies shall be granted with suspensive and devolutive effect within the administrative jurisdiction.

Administrative litigation judges may, ex officio or at the request of a party, suspend enforcement of an instrument that has been appealed, where said enforcement may cause injury for which it is difficult or impossible to provide redress.

Art. 358. – The National Directorate for Copyright and Related Rights shall have the following powers:

- (a) to organize and administer the National Register of Copyright and Related Rights;
- (b) to oversee the administrative procedures relating to copyright and related rights set out in this Law;
- (c) to approve the statutes of societies for collective management of copyright and related rights, to issue or suspend their operating licenses, and to carry out monitoring, inspection and control of such societies, with intervention where necessary; and
- (d) to exercise other powers relating to copyright and related rights set out in this Law and in the Regulations.

Art. 359. – The National Directorate of Industrial Property shall have the following powers:

- (a) to administer the procedures for granting, registration or deposit, as the case may be, of patents for inventions, utility models, industrial designs, trademarks, slogans, trade names, distinctive appearances, geographical indications, layout-designs (topographies) of semi-conductor circuits and other forms of industrial property provided for in the relevant legislation;
- (b) to rule on the granting or refusal of registrations;

- (c) to process and rule on objections that are filed;
- (d) to oversee the other administrative procedures relating to industrial property set out in this Law; and
- (e) to exercise the other powers relating to industrial property set out in this Law and in the Regulations.

There shall be a single industrial property register and it shall confer a nationally applicable right. The National Directorate of Industrial Property shall therefore be the sole competent authority for deciding whether to grant or refuse industrial property registrations at the national level.

Art. 360. – The National Directorate of Plant Varieties shall have the following powers:

- (a) to administer the procedures for deposit of, and conferral of rights in, new plant varieties;
- (b) to rule on the granting or refusal of registrations;
- (c) to process and rule on objections that are filed;
- (d) to oversee the other administrative procedures relating to plant varieties set out in this Law;
- (e) to organize and maintain a national center for deposit of plant varieties or to delegate that activity to the private sector; and
- (f) to exercise other powers relating to plant varieties set out in this Law and in the Regulations.

Art. 361. – The Board of Directors may distribute competence among the National Directorates according to subject matter and the different forms of intellectual property, and alter their names accordingly.

In addition, with a view to ensuring the exercise of administrative protection by IEPI, the Board of Directors may establish regional sub-directorates and determine the limits of their administrative competence.

The National Directors, in accordance with their areas of competence, may order border measures pursuant to Article 351 of this Law.

Section V THE INTELLECTUAL PROPERTY, INDUSTRIAL PROPERTY AND PLANT VARIETIES, AND COPYRIGHT COMMITTEES

Art. 362. - The Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees shall each consist of three members appointed by the IEPI Board of Directors.

The members of these Committees shall have a term of office of six years and shall meet the same requirements as for a high court judge.

The Board of Directors shall also appoint the relevant alternate members, who shall replace the principal members in the event of temporary or permanent absence.

Art. 363. – At the request of the President of IEPI, the Board of Directors may divide the Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees into special divisions according to subject matter and, consequently, increase the number of members of the Committees.

Art. 364. – The Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees shall have the following powers:

- (a) to process and rule on opinions issued by the National Directors in respect of objections filed against any application for granting or registration of intellectual property rights;
- (b) to process and rule on applications for appeal and judicial review;
- (c) to process and rule on applications for cancellation of the granting or registration of intellectual property rights, with the exception of the cases provided for in Article 277 of this Law; and
- (d) other powers specified in this Law.

Decisions of the Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees shall be adopted by a majority of votes; dissenting votes, if any, shall be recorded.

Art. 365. – No administrative remedy may be sought against decisions of the Intellectual Property, Industrial Property and Plant Varieties, and Copyright Committees, except for the remedy of reconsideration, applications for which shall be heard by the Committee itself that issued the decision, but shall not be essential in

order to exhaust the administrative route. The proceedings provided for in the Law on Jurisdiction for Administrative Litigation may be instituted against decisions of the Committees.

Section VI FINANCIAL RESOURCES AND FEES

Art. 366. – IEPI shall be financially self-sufficient. All authorities shall be prohibited from diverting for other purposes funds collected by IEPI or set aside for its operation.

Art. 367. – The following shall constitute the assets and resources of IEPI:

- (a) property acquired by it on any grounds;
- (b) the proceeds of the collection of fees provided for in this Law;
- (c) the proceeds of fines, as provided for in this Law;
- (d) the proceeds of any sales of the Intellectual Property Gazette or other publications; and
- (e) other assets and resources specified in the law.

Art. 368. – Fees shall be established for the following acts and services:

- (a) the filing of applications for registration, recording or granting of rights;
- (b) the filing of applications for renewal or modification of registrations;
- (c) the registration of contracts;
- (d) the issuing of certificates of the granting or registration of rights;
- (e) the granting of certified copies of any document or administrative instrument;
- (f) the granting of official search certificates requested of IEPI;
- (g) examinations prior to the granting of patents for inventions or utility models and the registration of plant varieties;
- (h) expert work carried out by IEPI;
- (i) procedures carried out for the exercise of administrative protection;
- (j) the filing of objections;
- (k) applications for administrative remedies;
- (l) applications for cancellation;

(m) provision of information on magnetic media;

(n) maintenance of registers;

(o) maintenance of live samples; and

(p) use of technological information.

Art. 369. – The fees provided for in the foregoing Article shall be set by the IEPI Board of Directors as a multiple of the general minimum living wage, due account being taken of the proportionality of the fee to the cost and efficiency of the service. Fees shall be collected and administered by IEPI.

Final Title GENERAL PROVISIONS

Art. 370. – In cases where the present Law provides for the possibility of lengthening or extending a period or deadline, such extension shall be considered granted by the competent administrative authority where the interested party applies for it.

Where the expiry date of a given period is a public holiday, that period shall expire on the first subsequent working day.

Art. 371. – Legalization or authentication of pending documents or applications for registration of any form of intellectual property shall not be required where priority is claimed.

Art. 372. – Without prejudice to the provisions of the present Law, the provisions of international conventions or agreements on intellectual property that are in force in Ecuador shall apply.

In the implementation and interpretation of intellectual property rules, those that grant greater protection shall prevail. Consequently, no provision of national law or of an international convention may be invoked or interpreted in such a way as to diminish, limit, prejudice, affect or reduce the level of protection conferred on the holders of intellectual property rights.

Art. 373. – IEPI shall have a coercive procedure for the collection of the fines and fees provided for in this Law.

Art. 374. – Any dispute relating to intellectual property may be referred for arbitration or mediation, in accordance with the Law on Arbitration and Mediation, published in Official Register No. 145 of September 4, 1997.

To that end, IEPI shall be authorized to sign the relevant arbitration agreement without the need to consult the Public Prosecutor, except in the cases provided for by law.

Art. 375. - (Repealed by Amending Provision Five, para. 8, of unnumbered Law, RO No. 544-S, March 9, 2009).

Art. 376. – In order to ensure the protection of the country's biological and genetic heritage, as provided for in the Constitution and in this Law, acquisition shall be considered lawful where it meets the requirements for access to biological and genetic resources set out in the Constitution and this Law, decisions of the Andean Community, and international treaties and conventions.

COLLECTIVE RIGHTS

Art. 377. - A sui generis system of collective intellectual rights of local ethnic groups and communities is hereby established.

The protection, evaluation mechanisms and application thereof shall be subject to a special law that shall be issued for that purpose.

REPEALING PROVISIONS

Art. 378. - All legal or regulatory provisions that conflict with the present Law are hereby repealed, and expressly the following instruments:

1. the Copyright Law, published in Official Register No. 149 of August 14, 1976;

a. Supreme Decree No. 2821, published in Official Register No. 735 of December 20, 1978, and also the amendments thereto set out in Law No. 161, published in Official Register No. 984 of July 22, 1992; and

b. the Regulations under the Copyright Law, published in Official Register No. 495 of December 30, 1977; and also all other related executive decrees or ministerial agreements that in any way conflict or are incompatible with the provisions of this Law;

2. the Law on Factory Marks, published in Official Register No. 194 of

October 18, 1976;

3. the Law on Patents for Exclusive Exploitation of Inventions, published in Official Register No. 195 of October 19, 1976; and

4. Article 5 of Supreme Decree No. 2241 of October 6, 1964, published in Official Register No. 360 of October 26, 1964.

TRANSITIONAL PROVISIONS

ONE. – Until the relevant regulations are issued, the regulations under the decisions of the Commission of the Andean Community shall continue to apply, provided that they are not incompatible with the provisions of the present Law.

TWO. – Until the IEPI Board of Directors issues the relevant decision, the fees for services regulated by Ministerial Agreement No. 0144 of February 19, 1998, which was published in Official Register No. 264 of February 26, 1998, shall apply. Said fees shall be collected directly by IEPI from the date of entry into force of this Law and shall be used for the operation of IEPI.

Revenue generated by the implementation of the Ministerial Agreement referred to in the foregoing paragraph, or from the fees set by the IEPI Board of Directors through publication in the Intellectual Property Gazette, shall be distributed in the proportion of 60 per cent to IEPI and 40 per cent to the Ministry of Foreign Trade, Industrialization, Fisheries and Competitiveness (MICIP) for the purposes of Executive Decree No. 386 of June 10, 1997, published in Official Register No. 89 of June 18, 1997.

THREE. – This Law shall apply to all works, performances, productions, broadcasts or other subject matter of copyright or related rights, and to the layout-designs of semi-conductor circuits referred to in this Law, that are created prior to its entry into force, provided that they have not entered the public domain. The date on which they shall enter the public domain, once this Law has been promulgated, shall be determined by reference to the periods of protection provided for in this Law.

Decisions on pending applications shall be made in accordance with this Law.

FOUR. – Any industrial property right validly conferred under legislation existing prior to the entry into force of the present Law shall subsist for the time for which it

was conferred.

Decisions on applications pending before the National Directorate of Industrial Property shall be made in accordance with this Law, without prejudice to Article 372 of this Law.

FIVE. - (Amended by Amending Provision Five, para. 3, of unnumbered Law, RO No. 544-S, March 9, 2009). – Until district intellectual property courts and tribunals are established, district administrative litigation tribunals shall hear cases relating to these matters, in accordance with the provisions of this Law and the jurisdiction granted thereunder, with the exception of precautionary measures, applications for which shall be heard by civil judges.

Note:

The Organization Code of the Judiciary (RO No. 544-S, March 9, 2009) changed the organizational structure of the judiciary, transferring the jurisdiction of the district administrative litigation tribunals to administrative litigation divisions of the provincial courts; however, the tribunals shall continue performing their functions until the Council of the Judiciary has established those divisions.

siX. – Irrespective of the collection of royalties by the relevant management society, the collection of royalties for the communication to the public, effected through any medium, of musical works with or without words and dramatico-musical works shall be the responsibility of a sole entity consisting of the Society of Ecuadorian Authors and Composers (SAYCE) and the Association of Phonogram Producers of Ecuador (ASOTEC), the sole entity that shall carry out collections as part of collective management.

Until the sole collecting entity commences operation, SAYCE shall continue to collect these fees.

The sole collecting entity shall be established within 60 days of the establishment of the IEPI Board of Directors.

SEVEN. – Exploitation of plant varieties carried out prior to the entry into force of this Law shall be subject to agreed terms and shall give rise to the collection of royalties.

In the absence of a written contract, the following shall be observed:

- (a) the value of royalties specified in contracts for the same variety and species during the preceding three years; and
- (b) any royalties pending payment shall be settled within 180 days of the entry into force of this Law.

EIGHT. – Breeder's rights conferred in accordance with legislation existing prior to the date of entry into force of the present Law shall subsist for the time for which they were conferred. The provisions of the present Law shall apply to the use and enjoyment thereof, the rights therein and the obligations, licenses and royalties pertaining thereto.

Decisions on pending applications for the breeding of plant varieties shall be made in accordance with this Law.

NINE. – For decentralization and devolution to be effective, it shall be essential for the National Directorate and the regional sub-directorates to be provided with all the budgetary, technological and human resources necessary for the efficient administration of processes, especially with regard to access by means of telecommunication to the National Directorate's database and the possibility of recording the exact filing times of applications online. Regional sub-directorates may not operate until the installation of such computer and technological resources as will allow applications to be entered in the National Directorate's database at the same time as they are filed.

FINAL PROVISIONS

1. By virtue of its special nature, the present Law shall prevail over any other conflicting law.
2. The provisions of this Law, the amendments thereto and the repealing provisions thereof shall be in force from the relevant dates of publication in the Official Register.

Hereafter the new numbering shall be cited.

This Codification was drafted by the Legislation and Codification Commission, in accordance with Art. 139, paragraph 2 (120, para. 6), of the Political Constitution of the Republic.

Once the requirements of Art. 160 of the Political Constitution of the Republic have been met, it shall be published in the Official Register.

Quito, November 29, 2006.

10. Egypt

General IP law- limited provisions dealing with folklore, traditional knowledge

Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights

The People's Assembly has passed the following law, and it is hereby promulgated:

Article One

The protection of intellectual property rights shall be governed by the attached law.

Article Two

The following laws shall hereby be repealed

A) Law # 57 of 1939 pertaining to Trademarks and Commercial Data.

B) Law # 132 of 1949 pertaining to Patents of Invention and Industrial Drawings and Designs; with the exception of the provisions of patents of inventions regarding foodstuff - related chemicals and pharmaceutical chemicals, which shall be repealed as of January 1st, 2005

C) Law # 354 of 1954 pertaining to Copyright Protection.

Any provisions that contradict with the provisions of the attached law shall be hereby repealed.

Article Three

Upon recommendation of the competent Ministers, the Cabinet shall issue the implementing regulations, within a term not exceeding one month as from the date of enactment of the law herein. The competent Ministers shall issue, according to their jurisdiction, the decisions required for implementing the provisions of the attached law.

The Ministers, according to their jurisdiction, shall adopt measures necessary to protect the public health and nutrition; or to promote sectors of vital importance to the socio-economic and technological development; within the limits specified by the provisions of the attached law.

The Ministers, according to their jurisdiction, may undertake the procedures necessary, within the limits of the law herein, to prevent the misuse of intellectual property rights by right holders or to resort to practices, which unreasonably restrain trade or adversely affect the international transfer of technology, in accordance with the attached law.

Article Four

This law shall be published in the Official Gazette and shall come into force as from the date following the publication date.

However provisions for patents of inventions concerning foodstuff - related chemicals, pharmaceutical chemicals and microorganisms and products that were not previously subject to protection, before the issuance of the law herein, shall come into force as from January 1st, 2005; without prejudice to articles 44 and 45 of the attached law.

The law herein shall hold the seal of the State, and shall come into force as one of the laws thereof.

Issued in the Presidency of the Republic on Rabia'a 1st 21, 1423 H (concurrent with June 2; 2002 A.D.)

Hosni Mubarak

LAW ON THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

BOOK ONE Patents and Utility Models, Layout-Designs for Integrated Circuits, and Undisclosed Information

PART I PATENTS AND UTILITY MODELS

Article 1

A patent shall be granted, in accordance with the provisions of this Law, to any industrially applicable invention, which is new, involves an inventive step, whether connected with new industrial products, new industrial processes, or a new application of known industrial processes. The patent is also granted, independently, for any modification, improvement or addition to a previously patented invention, which meets the criteria of being new, inventive and industrially applicable, as stated in the preceding paragraph; in which case the patent shall be granted, under the provisions of this Law, to the owner of the modification, improvement or addition.

Article 2

Patents shall not be granted for:

- (1) Inventions whose exploitation is likely to be contrary to public order or morality, or prejudicial to the environment, human, animal or plant life and health.
- (2) Discoveries, scientific theories, mathematical methods, programs and schemes.
- (3) Diagnostic, therapeutic and surgical methods for humans and animals.
- (4) Plants and animals, regardless of their rarity or peculiarity, and essentially biological processes for the production of plants or animals, other than micro-organisms, non-biological and microbiological processes for the production of plants or animals.
- (5) Organs, tissues, live cells, natural biological substances, nuclear acid and genome.

Article 3

An invention shall not be considered wholly or partly new:

- (i) if, before the filing date of the patent application, a patent application has been filed for the same invention or a patent was already issued in or outside Egypt for the invention or part thereof;
- (ii) if, before the filing date of the patent application, the invention was used publicly in; or outside Egypt, or the description of which was disclosed in a manner *so as* a person having expertise in the art is able to exploit it.

According to the provisions of the preceding Article, disclosure shall not include displaying the invention in national or international exhibitions within the six months before the date on which the application was filed.

The Regulations shall specify the conditions and the procedures for the disclosure of a patent.

Article 4

Without prejudice to the international conventions in force in Egypt, any natural person or legal entity, Egyptian or foreign, belonging to, domiciled or active in a country or an entity that is a member of the World Trade Organisation or that applies reciprocity to Egypt, shall have the right to apply for a patent at the Egyptian Patent Office, and enjoy whatever rights derived therefrom, in conformity with the provisions of this Law.

Nationals of all member countries of the World Trade Organisation shall benefit from any advantage, preference, privilege or immunity granted by any other law to nationals of any state in connection with the rights provided for in this Chapter, unless such advantage, preference or immunity derives from:

- (1) agreements on judicial assistance or agreement on law enforcement of general nature;
- (2) agreements in connection with the protection of intellectual property rights, which came into force prior to the 1st of January 1995.

Article 5

The Patent Office shall establish a special register to record patent applications, utility models

and all related data, exploitation and application thereof, in conformity with the provisions of this Law, as set out in its Regulations.

Article 6

The right to the patent shall belong to the inventor or his successor in title.

If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly and equally, unless they have agreed otherwise.

If more than one person have made the same invention independently, the right to the patent shall belong to the person who was first to apply for a patent.

Article 7

If a person commissions another to make a specific invention, all rights derived from such an invention shall belong to the former. Likewise, the employer shall have all the rights derived from the inventions discovered by the worker or the employee during the period of work relationship or employment, insofar as the invention falls within the scope of the work contract, relationship or employment.

The name of the inventor shall be mentioned in the patent, and he shall be remunerated in all cases. If such remuneration was not agreed on, he shall be entitled to a fair compensation from the person who requested the invention, or from the employer.

In cases other than the preceding, where the invention is part of the activities of the public or private establishment to which the inventor is attached, the employer shall have the choice either to exploit the invention, or to acquire the patent against a fair compensation paid to the inventor, provided the choice is made within three months from the date of notifying the grant of the patent. In all cases, the invention shall be attributed to the inventor.

Article 8

The application for patent filed by an inventor within one year from the termination of his employment in a private or public establishment, shall be considered as filed during the work or employment contract. Both the inventor and the employer shall be entitled to all the rights stipulated in the preceding article, as appropriate.

Such a period shall extend to three years if the said worker establishes or joins a competing establishment and the invention is the direct result of that worker's activity and previous experience in the establishment in which he was working.

Article 9

The protection period for a patent shall be 20 years as of the date of filing the application in Egypt.

Article 10

A patent shall confer on its owner the right to prevent a third party from exploiting the invention by any means.

The right of a patent owner to prevent a third party from importing, using, selling or distributing a product shall lapse when he commercialises the product in any country or authorises a third party to do so.

The following shall not be considered as infringements of that right when carried out by third parties:

(1) Activities carried out for scientific research purposes.

(2) Where a third party proceeded, in Egypt, in good faith, with the making of a product or use of a process or made serious preparations for such activities prior to the date of an application for patent by another person for the same product or process. The former shall, notwithstanding the grant of patent, have the right to continue with such activities only within his enterprise and without extending the scope of those activities. Such right shall not be assigned or transferred without the other elements of the enterprise.

(3) Indirect uses of the production process, subject of the invention, in order to obtain other products.

(4) Use of the invention on a land vehicle, vessel or aircraft belonging to a country or entity member of the World Trade Organisation, or a country that applies reciprocity to Egypt, when such a land vehicle, vessel or aircraft is temporarily or accidentally present in Egypt.

(5) Where a third party proceeds, during the protection period of a product, with its manufacturing, assembly, use or sale, with a view to obtain a marketing license, provided that, the marketing starts after the expiry of such a protection period.

(6) Any other acts by third parties, provided that they shall not unreasonably hamper the normal exploitation of the patent, and shall not be unreasonably prejudicial to the legitimate interests of the patent owner taking into consideration the legitimate interests of others.

Article 11

A fee shall be paid on filing a patent application. A progressive annual fee shall also be paid as of the second year until the expiration of the patent protection period.

The amount of such fees to be determined in the Regulations shall not exceed 2,000 pounds for the initial application or 1,000 pounds for the annual fee.

Cases for the reduction or waiver of these fees shall also be prescribed in the Regulations.

The patent applicant shall pay the fees of experts called upon by the Patent Office as well as examination costs.

Article 12

The patent application shall be filed by the inventor or his successor in title with the Patent Office, in accordance with the terms and conditions prescribed by the Regulations. An application may not contain more than one invention. A group of inventions so linked as to form an integrated inventive concept shall be considered as one invention.

Article 13

The patent application shall be accompanied by a detailed description of the invention, including a full statement of the subject matter and of the best way to enable a person of expertise to execute it, and of each product or method for which protection is sought.

The description shall also include in a clear manner the new elements for which the applicant seeks protection accompanied, where necessary, by an illustrative drawing of the invention.

Where the invention involves biological, plant or animal product, or traditional medicinal, agricultural, industrial or handicraft knowledge, cultural or environmental heritage, the inventor should have acquired the sources in a legitimate manner.

Where the invention involves micro-organisms, the applicant shall disclose the identity of such organisms and deposit a live culture thereof with the authority designated in the Regulations.

Without prejudice to the provisions of Article 38 of this Law, the applicant shall, in all cases, provide full data and information on any applications relating to the same invention or its subject matter, that he previously filed abroad, as well as the outcome of such applications.

The Regulations shall determine the required annexes to be attached to the patent application, the time limits for their submission and as well as the conditions justifying its refusal.

Article 14

The Patent Office may, as stipulated in the Regulations, require the applicant to make any amendments or complements which it shall deem necessary to comply with the provisions of Article 13. If the applicant fails to comply within three months of notification, he shall be considered as having withdrawn his application.

The applicant may, within 30 days and in accordance with the conditions stipulated in the Regulations, appeal such request by the Patent Office before the Committee provided for in article 36.

Article 15

The applicant may, at any time, before the publication of application acceptance, present a request to amend the description or the drawing of the invention, with an indication as to the nature of and reasons for such an amendment, provided that such amendment shall not effect the substance of the invention. In this connection, the same procedure as that for patent application shall apply.

Article 16

The Patent Office shall examine the patent application and its annexes in order to ascertain that the invention is new, involves an inventive step and is industrially applicable, in conformity with the provisions of Articles 1,2 and 3 of this Law.

Where the invention satisfies the aforementioned conditions, and where the conditions provided for in Articles 12 and 13 are fulfilled in the patent application, the Patent Office shall publish the application acceptance, in the Patent Gazette, in the manner prescribed in the Regulations.

Any concerned party may submit to the Patent Office, within 60 days from the publication of the application acceptance in the Patent Gazette, and according to the procedure prescribed by the Regulations, a written notice to oppose the granting the patent, stating the reasons therefor. Such an opposition shall be subject to the payment of a fee, to be fixed by the Regulations, of not less than 100 pounds and not more than 1,000 pounds, which will be reimbursed in case the opposition is accepted.

Oppositions shall be examined by the Committee established under Article 36, in accordance with the conditions and procedures stipulated in the Regulations.

Article 17

The Patent Office shall send to the Ministry of Defence, the Ministry of Military Production, the Ministry of Interior or the Ministry of Health, as required, copies of patent applications, with their annexes, that relate to defence, military production, security matters or that have a military, security or health significance, within 10 days from the examination of the application, notifying the applicant thereof within 7 days. The Minister of Defence, the Minister of Military Production, the Minister of Interior or the Minister of Health, as might be the case, may, within 90 days from the date of notification, oppose the publication of the application acceptance.

Where the acceptance of the application is made public, the competent Minister may oppose the procedure to grant a patent within 90 days from the date of the publication, in the Patent Gazette, of the decision to accept the patent application, if it appears that the application relates to defence, military production, security or is of military, security or health significance.

Opposition in the aforementioned cases shall stop the procedure of granting the patent.

Article 18

A Drug Price Stability Fund, having a legal entity and reporting to the Minister of Health and Population, shall be established to maintain stability in the prices of drugs -other than export drugs -with a view to achieve health development and to guarantee that drug prices are not affected by incidental changes. The organisation and resources of the fund shall be determined by a decree to be issued by the President of the Republic. Such resources shall include contributions from donor states and intergovernmental and non-governmental organisations, as agreed by the State.

Article 19

The grant of a patent is published after one year from the date of filing the application and remains confidential during this period.

The patent is granted by a decision of the competent Minister or his delegated official and shall be published in the Patent Gazette in accordance with the provisions prescribed by the Regulations.

Article 20

After the publication of the acceptance of the patent application, any person may consult the application and its supporting documents, and any entries thereon in the patent register; and may obtain copies of the above documents against the payment of a fee prescribed by the Regulations, not exceeding 1,000 pounds, and according to the conditions and procedures prescribed therein.

Article 21

The ownership of a patent may be transferred wholly or partly, with or without compensation. It may also be subject to mortgage or right of disposal.

Without prejudice to the provisions pertaining to the sale and mortgage of commercial establishments, the ownership of a patent may not be transferred, mortgaged or disposed of to a third party before the date on which such transfer, mortgage or disposal is recorded in the patent register. The publication of the transfer of ownership, mortgage or usufruct shall be made according to the conditions prescribed by the Regulations.

Article 22

A creditor may seize patents belonging to his debtor in conformity with the provisions concerning seizure of movable garnished assets. The Patent Office shall be exempt from the provisions relating to the declaration by the garnishee of the amount in his possession, due to the garnisher.

The creditor shall notify the Patent Office of the seizure and the results of the public auction to be recorded in the register. The said seizure and results of the public auction shall not be invoked against a third party before the date of its being duly recorded.

The seizure shall be published in the manner prescribed by the Regulations.

Article 23

The Patent Office may, subject to the approval of a ministerial committee to be established by a decision of the Prime Minister, grant non-voluntary licenses for the exploitation of an invention. The committee decides the financial rights of the patent owner when such licenses are issued, in any of the following cases:

(1) Where the competent Minister finds - under the circumstance - that the exploitation of the patent will benefit the following:

(a) Public non-commercial interest. This includes the preservation of national security, health, environment and food safety.

(b) Cases of emergency or circumstances of extreme urgency.

A non-voluntary license to counter the conditions mentioned in items 1 and 2 is granted without prior negotiations with the patent owner or after a certain period of negotiations with the patent owner or offering reasonable conditions to acquire his agreement to the exploitation.

(c) Support of national efforts in vital sectors for economic, social and technological development, without unreasonable prejudice to the rights of the patent owner and taking into consideration the legitimate interests of third parties.

In cases stated in items 1 and 3, the owner of the patent shall be notified promptly of the decision of non-voluntary exploitation, and as soon as reasonably practicable in cases stated in item 2.

(2) Upon the request of the Minister of Health, when the quantity of patented medicine, made available fail to adequately meet the national needs, due to their poor quality or if they are offered at a prohibitive price, or if the patent is related to medicines addressing critical cases, incurable or endemic diseases or products used in the prevention of these diseases, or where the invention is related to the medicines, their manufacturing process, the raw materials necessary for their preparation or the process of manufacturing of those materials.

In all these cases, the decision of granting non-voluntary license shall be notified promptly to the owner of the patent.

(3) Where the patent owner refuses to grant license to a third party seeking the exploitation of the invention, whatever the purpose of the exploitation, and despite the offer of suitable terms and the lapse of reasonable negotiation time

In this case, the party requesting the non-voluntary license shall provide evidence that he has made serious efforts to obtain a voluntary license from the patent owner.

(4) If the owner of the patent fails to exploit the invention in Egypt, himself or through his consent; or if the patent was not sufficiently exploited after the lapse of four years since the date of the application or three years since the grant of the patent, whichever comes later; or if the patent owner suspended, without a valid reason, the exploitation of the patent for more than one year. The exploitation of a patent shall be through the manufacturing of the patented product or the use of the patented process in Egypt.

Nevertheless, where the Patent Office finds that, despite the expiration of either of the above mentioned time limits, failure to exploit the invention was due to legal, technical or economic reasons beyond the power of the owner of the patent, it may decide to allow him a sufficient period of grace for the exploitation of the invention. .

(5) If it is determined that the patent owner has abused of or exercised the rights conferred by the patent in a manner that is contrary to fair competition, such as:

(a) Fixing exorbitant prices for the patented products or preferential treatment of agents with regards to prices and sales conditions.

(b) Failure to supply the local market with the patented product, or supplying it under prohibitive terms.

(c) Stopping the production of the patented item or its production in a disproportionate manner, given the production capacity and the market needs.

(d) Undertaking acts or practices which have adverse effect on the free competition, according to the prescribed legal norms.

(e) Exercising of the rights conferred by this Law in a manner that adversely affects the transfer of technology.

In all above cases, the non-voluntary license is granted without recourse to negotiation or the expiry of a time limit thereto, even if the non-voluntary license is not intended to satisfy the needs of the domestic market.

The Patent Office may refuse to terminate the non-voluntary license, where the conditions that called for it are likely to remain or to reoccur.

The compensation due to the owner of the patent shall take into account the prejudice caused by his arbitrary or unfair competition practices.

The Patent Office may revoke the patent if, two years after the grant of a non-voluntary license, it became clear that the grant, of that license was not adequate to remedy the adverse effects caused to the national economy by the patent owner's abuse of his rights or his unfair competition practices.

Any concerned party may challenge the revocation of a patent before the Committee provided for in Article 36, and in accordance with the conditions and procedures prescribed in the Regulations.

(6) Where the exploitation of an invention by the legitimate patent holder requires inevitably the use of another invention, underlying concrete technical advance as well as technical and economical significance compared to the other, he shall be entitled to obtain a non-voluntary license for the exploitation of the other invention, in which case the other patent holder shall equally have the same right.

The licensed exploitation of one patent may not be assigned without the corresponding assignment of the other.

(7) The grant of a non-voluntary license in the field of semi-conductor technology shall be authorised for public non-commercial purposes only, or to remedy the consequences of any unfair competition practices.

The grant of non-voluntary licenses in the cases provided for in this Article, shall be in accordance with the rules and procedures prescribed in the Regulations.

Article 24

Where a non-voluntary license is to be issued, the following elements shall be taken into account:

(1) A request for the grant of the non-voluntary license shall be considered on the merits of each case. The license shall mainly seek to satisfy the needs of the domestic market.

(2) The requesting party shall prove that he has made serious attempts during a reasonable period of time to obtain a voluntary license from the patent holder against fair compensation, and that he failed.

(3) The patent owner may, within one month from his notification of the grant of the license, appeal to the Committee provided for in Article 36 and in accordance with the conditions and procedures stipulated by the Regulations, against the decision to grant the non-voluntary license to a third party.

(4) The party requesting the grant of a non-voluntary license, or the party to whom a nonvoluntary license is granted, must have the capacity to efficiently exploit the invention in Egypt.

(5) The licensee must abide by the scope, terms and period prescribed by the decision granting such a license. The Patent Office may extend the duration of the license if it expires without achieving its purpose.

(6) The use of the non-voluntary license shall be limited to the applicant; the Patent Office may however grant it to a third party.

(7) The beneficiary shall not assign the rights of a non-voluntary license to a third party except with the enterprise or the part related to the exploitation of the patent.

(8) The patent owner shall be entitled to a fair compensation for the exploitation of his invention. The amount of the compensation shall be fixed on the basis of the economic value of the invention. He shall have the right to appeal against the compensation assessment, within 30 days of being notified the decision, before the Committee provided for in Article 36, in accordance with the rules and procedures prescribed by the Regulations.

(9) The non-voluntary license shall lapse on the expiry of its duration. Nonetheless, the Patent Office may decide to terminate the non-voluntary license if the reasons which led to its grant cease to exist and are unlikely to reoccur, in which case, the procedure prescribed by the Regulations shall apply.

(10) The patent owner may request the termination of the non-voluntary license before its expiry, if the reasons, which led to its grant, cease to exist and are unlikely to reoccur.

(11) Where a non-voluntary license is terminated before its term, the legitimate interests of the licensee shall be taken into account.

(12) The non-voluntary license may be terminated or its terms amended by the Patent Office, or upon a request from any interested party, if within two years after the grant of the nonvoluntary license, the licensee fails to exploit the subject matter of the license or to meet his obligations as prescribed by the license.

Article 25

Patents may be expropriated by decision of the competent Minister - subject to the approval of the ministerial committee referred to in Article 23 - on grounds relating to national defence and in cases of emergency which the grant of a non-voluntary license is insufficient to counter.

The expropriation may be limited to the right of exploitation only to satisfy the needs of the

State.

In all cases, the expropriation shall be against a fair compensation, to be assessed by the committee provided for in Article 36 and on the basis of the economic value of the patent at the time the expropriation decision is made.

The expropriation decision shall be published in the Patent Gazette. The decision of the expropriation and that of the compensation assessment committee may be appealed before the Administrative Court, within 60 days from the date of notification of the decision to the interested party, by means of a registered letter with acknowledgement of receipt. The Court shall decide on such an appeal expeditiously.

Article 26

The rights conferred by a patent shall lapse and fall into the public domain under the following conditions:

- (1) Expiration of the protection period according to Article 9.
- (2) Relinquishment by the patent holder of his rights without prejudice to the rights of third parties.
- (3) Final decision taken revoking the patent.
- (4) Failure to pay, within one year from the due date, the annual fees or the overdue penalty of 7% of the annual fees, after notification of payment according to the procedure prescribed by the Regulations.
- (5) Where the invention is not exploited in Egypt within two years following the grant of a nonvoluntary license and upon a request by any interested party submitted to the Patent Office.
- (6) Abuse by the patent owner of his rights, where the non-voluntary license is insufficient to remedy that abuse.

Reference to patents whose owners' rights are terminated according to the previous provisions shall be published in the Patent Gazette, in the manner prescribed by the Regulations.

Article 27

The Administrative Tribunal shall be competent to consider claims relating to patent decisions.

Article 28

The Administrative Tribunal may decide, upon request from the Patent Officer or an interested party, to add any data to the Register, which could have been omitted, or to modify any data included therein which is contrary to the fact or to omit any data unlawfully inscribed therein. The Patent Office, or any interested party, may request the Tribunal to repeal patents granted in violation to Articles 2 and 3. The said Office shall revoke such patents on receipt of a final decision.

Article 29

A utility model patent shall be granted, under this Law for any new technical addition in the structure or composition of devices, tools, equipment or their components, or products, processes or means of manufacturing the above, and the like that is in current use.

The applicant may convert his application into a patent application, and the patent applicant may also convert his application to a utility model application.

In both cases the date of the original application shall prevail.

The Patent Office may, spontaneously, convert the application for a utility model to an application for a patent, when the relevant requirements are met.

Article 30

The protection period of a utility model shall be for a non-renewable period of seven years starting from the filing date of the application for the utility model with the Patent Office in Egypt.

Article 31

A fees shall be payable on filing a utility model application, and a progressive annual fee shall

be paid starting from the second year until the expiry of the protection period.

The Regulations of this Law shall fix the amount of such fees, which shall not exceed 1,000 pounds for each application, as well as the conditions for the reduction and waiver of such fees.

Article 32

Without prejudice to the provisions of Article 10, shall be subject to a fine of not less than 20,000 pounds and not more than 100,000 pounds any party who undertakes:

(1) the imitation, for commercialisation purposes, of the subject matter of an invention or a utility model for which a patent has been granted in accordance with the provisions of this Law;

(2) the sale, offer for sale or circulation, importation or possession with the intention to trade, of products known to that party as imitations, where the patent for the invention or the utility model for such products is granted and valid in Egypt;

(3) the unlawful use, on products, advertisements, trademarks, packaging or others, of indications that may lead to believe that such a party has obtained a patent for an invention or a utility model.

Repetition of the offence shall be punishable by imprisonment for a period of no more than two years and by a fine of not less than 40,000 pounds and not more than 200,000 pounds.

In all cases, the court shall order the seizure of the infringing imitated products and the implements used in the imitation. The conviction decision shall be published in one or more daily newspapers, at the expense of the convicted party.

Article 33

The holder of a patent or a utility model may request the president of the competent court, as may be the case, to order conservatory measures against products or goods that are claimed to imitate a patented product, according to the detailed description established in the patent or utility model document. The necessary conservatory measures shall be ordered to preserve such products and goods in their state.

The aforementioned order may be issued before instituting the proceedings. Such order shall lapse if the proceedings are not instituted within 8 days from the date of the injunction.

Article 34

The identical product shall be deemed to be obtained by the patented process, if the plaintiff could prove in his civil proceedings:

(1) that the identical product was made by the direct use of the patented process; or

(2) that he has exerted reasonable efforts to determine the process actually used in the production. In such a case, the court may require the defendant to provide evidence that the identical product was made by a process other than the patented process owned by the plaintiff.

In requiring the production of evidence, the court shall take into account the legitimate interest of the defendant in protecting his manufacturing and business secrets.

Article 35

The president of the competent court dealing with the merits of the case may, at the request of any interested party and on petition, order one or more of the appropriate conservatory measures to ensure the payment of the decided fines or damages. He may also order destruction of the objects in question, where necessary.

Article 36

A committee shall be established by decision of the competent minister and shall be empowered to examine appeals against decisions by the Patent Office in application of the provisions of this Law. The committee shall be composed of a chairman who shall be a consultant at the appeal courts or of a corresponding rank from the judiciary, an assistant consultant of the State

Council and three experts as members.

Fees of not more than 500 pounds shall be fixed by the Regulations for appeals brought before the committee.

The committee shall decide on an appeal within 60 days from the date of its filing. The decisions of the-committee shall be final.

Apart from revocation requests combined with an order to waive execution, no complaints against decisions of the Patent Office may be brought to court before a decision was taken on the appeal or within 60 days from filing the appeal if not decided.

The Regulations shall fix the rules of procedure of this Committee.

Article 37

The decision of the Committee, provided for in Article 36, may be the subject of an appeal by the Patent Office or any interested party before the Administrative Tribunal within 60 days from the date of notification of the Patent Office or the interested party of the decision by registered mail with acknowledgement of receipt. The Tribunal shall decide on the appeal expeditiously.

Article 38

If a patent application is filed in a country or by an entity member of the World Trade Organization or a country that applies reciprocity to Egypt, the applicant or the successor of his rights may, during the first year following the filing date of the application, file a similar application with the Patent Office in Egypt for the same subject matter and in conformity with terms and conditions provided for in this Law and its Regulations. In this case, for the purpose of determining precedence, the date of the first application in the foreign country shall prevail.

Article 39

Staff of the Patent Office may not file patent applications personally or an intermediate until at least three years from the date of termination of their employment in the Office.

Article 40

The provisions applicable to invention patents shall apply to any matter, which is not specifically provided for in relation to patents of utility models.

Article 41

Provisions of this Law shall apply to any application filed with the Patent Office and which has not been granted a patent before the entry into force of this Law. The applicant may amend his application in conformity with the provisions of this Law.

The protection period prescribed by this Law shall apply to any patent not expired on the day of its entry into force, so as to extend the protection period in conformity with the period stipulated in Article 9 of this Law.

Article 42

The Minister of Justice, in agreement with the competent minister, shall determine the persons empowered with judicial authority to enforce the, provisions contained in this Book.

Article 43

The Patent Office shall receive patent applications with regard to food-related agrochemical products and to pharmaceuticals, and shall maintain such applications, along with applications relating to the same products and filed as of 1st January 1995, pending their examination as of 1st January 2005.

In the case of a patent granted for the inventions relating to the products mentioned in the preceding paragraph, the protection shall begin from the date of granting the patent until the end of the period provided for in Article 9, calculated from the date of application.

Article 44

Without prejudice to the date set for the examination of patent applications relating to the products mentioned in Article 43, the applicant shall be entitled to request from the competent

public authority to be granted exclusive marketing rights for his product in Egypt, provided that:

- (1) the applicant has submitted an application for this product to the Patent Office in Egypt as of 1st of January 1995;
- (2) the same product was patented in a country member of the World Trade Organization on the basis of an application submitted in that country as of 1st January 1995;
- (3) the applicant has obtained the approval for the circulation of that product in the same country where he was granted the patent as of 1st January 1995;
- (4) the applicant has obtained the approval of the competent ministry for the circulation of that product within Egypt;

The Patent Office in Egypt shall grant an exclusive marketing right certificate upon the approval of a ministerial committee established for this purpose by a decision of the Prime Minister. The exclusive marketing right shall not be granted when it is clear, *prima facie*, from the papers submitted to the Patent Office to obtain the exclusive marketing right, that the patent application has been filed with the Office was already published one year prior to the date of filing the request.

Where an exclusive marketing rights have been granted by the competent public authority, the applicant shall enjoy such rights for his product until a decision is rendered by the Egyptian Patent Office on the patent application, or for a period of five years as from the date of approval to grant him such rights, whichever comes first.

A previously granted exclusive marketing right shall be revoked by a decision of the competent ministry which has approved the circulation or where the owner of such right abuses its exercise.

PART II LAYOUT DESIGNS OF INTEGRATED CIRCUITS

Article 45

For the purpose of this Law, "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed on a piece of isolating material and which is intended to perform a specific electronic function.

Layout design means also the three dimensional disposition prepared for an integrated circuit intended for manufacturing.

Article 46

Protection under this Law may be obtained for original layout designs of integrated circuits. A layout design shall be considered to be new if it is the result of its creator's own intellectual effort and is not part of the general knowledge common among professionals of the relevant industrial art.

Nevertheless, a layout design consisting of elements that are part of the general knowledge common among professionals of the relevant industrial art shall also be considered new, if the combination of its components and their interconnections are in themselves original.

Article 47

Protection shall not apply to any concept, process, technology or any coded information stored in the layout design of an integrated circuit.

Article 48

The protection period of a layout design shall be ten years from the date when the application for the registration was filed in Egypt or ten years from the date when it was first commercially exploited in Egypt or abroad, whichever comes first

In all cases, the protection of a layout design shall cease 15 years from the date of its creation.

Article 49

Application for the registration with the Patent Office of a layout design shall be filed by its owner and shall be accompanied by a picture or a drawing and a sample of each integrated circuit that has been commercially exploited along with the information illustrating the electronic function of the integrated circuit.

The applicant may, however, exclude such part or parts of the design provided that the parts submitted are sufficient to identify the layout design and its function.

The Patent Office shall maintain a register in which it shall record all applications according to the rules and procedure prescribed by the Regulations. Each application shall be subject to the payment of fees, as determined in the Regulations, not exceeding 1,000 pounds.

The application shall not be accepted if it is filed after two years from the date of its first commercial exploitation, within or outside Egypt, by the owner of the right.

Article 50

No natural person or legal entity shall perform any of the following acts without a prior written authorisation by the owner of the right to a protected layout design:

- (1) Reproducing, whether by incorporation in an integrated circuit or otherwise, the whole or any part of the protected layout design.
- (2) Importation, sale or distributions of the layout design for the purpose of trade, whether separately, as part of an integrated circuit or as a component of a product.

Article 51

Without prejudice to the protection provisions prescribed in this Chapter, a natural person or a legal entity may, without the authorisation of the right owner, undertake one or more of the following acts:

- (1) Reproduction or commercial exploitation, which includes importing, selling or distributing, of an integrated circuit that includes a protected layout design or a product in which such an integrated circuit is used, if such an act is done by a person who did not know, or was not in a position to know, at the time of the act that such an integrated circuit or product incorporate a protected layout design.

In such a case, the acquirer may, against payment of a fair compensation to the right owner, dispose of any stock or amounts ordered, upon his notification by the right owner, by a registered letter with acknowledgement of receipt, that the integrated circuit or the product in his possession contains a protected layout design.

- (2) Personal use or for the purpose of test, examination, analysis, teaching, training or scientific research of the protected layout design. Where such use leads to the creation of a new layout design, the creator shall be entitled to have it protected.

- (3) Creation of a layout design, identical with another protected layout design, as a result of independent efforts.

- (4) Importing a protected layout design or an integrated circuit which was produced using a protected layout design, whether this circuit was separate or incorporated in a product, and whether the product contains an integrated circuit containing a protected layout design, whenever any was circulated in Egypt or abroad.

Article 52

The Patent Office may decide to grant, to a third party, a non-voluntary license for the exploitation of a protected layout design according to the provisions of the non-voluntary license of patents provided for in Articles 23 and 24.

Article 53

Any violation of Article 50 shall be punishable by a fine of not less than 40,000 pounds and of not more than 100,000 pounds.

In case of repetition, the offence shall be punishable by imprisonment for a period of not more

than two years and by a fine of not more than 200,000 pounds.

Article 54

The provisions of Articles 4, 33, 35 and 42 shall apply to this Chapter.

PART III UNDISCLOSED INFORMATION

Article 55

Undisclosed information shall be protected under the provisions of this Law when they meet the following criteria:

- (1) Information which is confidential, in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known or common among those involved in the industrial art within the scope of which the information falls.
- (2) Information that has commercial value because it is confidential.
- (3) Information that depends on the effective measures taken by the person lawfully in control of it, to keep it confidential.

Article 56

Protection conferred by the provisions of this Law shall extend to undisclosed information that involved a considerable effort, submitted on request to the competent authorities for marketing of pharmaceutical or agrochemical products, which utilise new chemical components necessary for the tests undertaken to allow such marketing.

The competent authorities who receive such information shall protect it against disclosure and unfair commercial use from the date of its submission to the competent authorities until it is no longer confidential, or for a period not exceeding five years, whichever comes first.

Disclosure of information, by the competent authorities, where necessary to protect the public shall not be deemed to constitute an infringement of the information owner's rights.

Article 57

The person lawfully in control of undisclosed information shall take all appropriate measures to preserve the confidentiality of such information and prevent its circulation amongst unauthorised persons.

He shall also be liable to organise and limit the circulation of such information within the establishment to lawfully authorised persons, to preserve and prevent the leakage of such information to third parties.

The person who is lawfully in control of such information shall not be exempt from liability when others infringe the information, unless he proves that he has exerted reasonable and adequate efforts to preserve such information.

The confidentiality of information, and the attendant rights to prevent others from infringing such information, shall subsist insofar as the information is considered undisclosed according to the provision of Article 55.

The rights conferred on the person who is lawfully in control of undisclosed information shall be limited to the prevention of others from infringing such information by performing any act which is contrary to fair commercial practices, as stipulated in Article 58. The person who is lawfully in control may resort to court in case of proven perpetration by a third party of any of those acts.

Article 58

The following acts shall be deemed, in particular, to be contrary to fair commercial practices, and to constitute acts of unfair competition:

- (1) Bribery to acquire the information from employees working at the establishment which owns the information.
- (2) Incitement of employees to disclose information acquired by virtue of their employment.
- (3) Disclosure by a party in "confidential information contracts" of information thus acquired.

(4) Acquisition of information, from the place where it is preserved, through illicit means, such as theft, espionage or the like.

(5) Acquisition of information through fraudulent means.

(6) Use of information acquired by any of the previous means by a third party aware of its being confidential and that it was acquired by one of the above means.

Shall be deemed to constitute an act of infringement of undisclosed information, the consequences of the stated acts by way of disclosing, acquiring or using such information by a third party without being authorised by the lawful owner.

Article 59

The following acts shall not be deemed to be contrary to fair commercial practices:

(1) Acquisition of information from available public sources such as libraries, including patent office libraries, public government records and published research, studies and reports.

(2) Acquisition of information by exerting personal independent efforts to extract information through examination, testing and analysis of products in circulation which incorporate the undisclosed information.

(3) Acquisition of information as a result of efforts of scientific research, innovation, invention, development, modification and improvement exerted by persons independently from the owner of undisclosed information.

(4) Acquisition and use of known and available information, which circulates among those, involved in the industrial art within the scope of which the information falls.

Article 60

The person, who is lawfully in control of undisclosed information, or his successor, may assign such information to third parties, against or without compensation.

Article 61

Without prejudice to any more severe punishment stipulated under any other law, any person who uses an illegal means to disclose information protected by the provisions of this Law, acquire or use such an information while aware of its confidentiality and that it was acquired by such illegal means, shall be punishable by a fine of not less than 10,000 pounds and not more than 50,000 pounds.

In case of repetition, the punishment shall be an imprisonment for a period of not more than two years and a fine of not less than 50,000 pounds and not more than 100,000 pounds.

Article 62

The provisions of Articles 4, 33, 35 and 42 shall apply to this Chapter.

BOOK TWO MARKS, TRADENAMES, GEOGRAPHICAL INDICATIONS AND INDUSTRIAL DESIGNS

Part I MARKS, TRADENAMES AND GEOGRAPHICAL INDICATIONS

Article 63

A trademark is any sign distinguishing goods, whether products or services, and include in particular names represented in a distinctive manner, signatures, words, letters, numerals, designs, symbols, signposts, stamps, seals, drawings, engravings, a combination of distinctly formed colours and any other combination of these elements if used, or meant to be used, to distinguish the products of a particular industry, agricultural, forest or mining venture or any goods, or to indicate the origin of products or goods, or their quality, category, guarantee, preparation process, or to indicate the provision of any service.

In all cases, a trademark shall be a sign that is recognizable by sight.

Article 64

The Department of Trade Registry shall be competent to register the trademarks in the special register of such marks, in accordance with the provisions of this Law and its Regulations, without

prejudice to the provisions of Articles 3 and 4 of Law No. 115 of 1958 on correspondence and signposts imposing the use of Arabic.

Article 65

The person who has registered a trademark and who has made use of it for a period of five years as of the date of its registration shall be deemed the owner of such a trademark, unless precedence of use by a third party is proven.

A prior user of the mark may, within the said period of five years, challenge the validity of its registration.

The registration of a mark may, however, be challenged at any time, where the registration is made in bad faith.

Article 66

Without prejudice to the provisions of international conventions in force in Egypt, any natural person or legal entity, Egyptian or foreign, belonging to or having the center of his or its effective activity in a country or entity member in the World Trade Organization or who applies reciprocity to Egypt, shall have the right to apply for the registration of a trademark with the Department of Trade Registry in Egypt, with all attendant rights in conformity with the provisions of this Law.

Nationals of all member countries of the World Trade Organization shall benefit from any advantage, preference, privilege or immunity granted by any other law to nationals of any state in connection with the rights provided for in this Chapter, unless such advantage, preference or immunity derives from:

- (1) Agreements on judicial assistance or agreements on law enforcement of general nature;
- (2) Agreements in connection with the protection of intellectual property rights which came into force prior to 1st January 1995.

Article 67

The following shall not be registered as trademarks or components thereof:

- (1) Marks devoid of any distinctive character, or composed of signs or statements which only usage grants to the products, or which are the normal picture or image thereof.
- (2) Any mark which is contrary to public order or morality.
- (3) Public armorial bearings, flags and other emblems pertaining to the State or any other state, regional or international organizations, as well as any imitations thereof.
- (4) Marks which are identical with, or similar to, symbols of religious character.
- (5) Symbols of the Red Cross or Red Crescent, or any other emblem of the same character, as well as any imitations thereof.
- (6) The portrait of an individual or his armorial bearings, except with his consent.
- (7) Designations of honorary degrees which the applicant is unable to prove his right thereto.
- (8) Marks and geographical indications which are likely to mislead or confuse the public or which contain false descriptions as to the origin of products, whether goods or services, or their other qualities, as well as the signs that contain an indication of a fictitious, imitated or forged trade name.

Article 68

The owner of a well-known trademark, worldwide and in Egypt, shall have the right to enjoy the protection conferred by this Law even if such a mark is not registered in Egypt.

The Trade Registry Department shall, *ex officio*, reject any application to register any mark, which is identical with a well-known mark and is intended for products which are identical with those of the well-known mark, unless the application is submitted by the owner of the well-known mark.

The preceding provision shall apply to applications intended for products, which are not identical with those of the well-known mark, where the well-known mark is registered in a country member of the World Trade Organization and in Egypt, and where the use of the mark in relation to

those non-identical products is meant to lead people to believe that a connection exists between the owner of the well-known mark and those products, and that such a use may be prejudicial to the interests of the owner of the well-known mark.

Article 69

A collective trademark is used to distinguish a product of a group of persons who belong to a specific entity, even where such entity has no industrial or commercial enterprise of its own.

The application for registration of a collective mark shall be submitted by a representative of such entity.

Article 70

The competent minister may – in the interest of the public- authorize natural persons or legal entities involved in the control or examination of products in respect of their origin, components, method of manufacture, quality, authenticity or any other distinctive characteristic, to register a mark which shall serve to certify that such control or examination of such products is underway.

Such a mark shall not be disposed of without a special authorisation from the competent minister.

Article 71

The right of the mark owner to prevent third parties from the import, use, sale or distribution of products distinguished by such a mark shall lapse when the owner undertakes the marketing of these products in any county, or authorizes a third party to do so.

Article 72

Temporary protection is granted to marks on products displayed at national or international exhibitions. Such protection shall not benefit from the extension provided for in Article 75.

The competent minister shall issue a decision designating such exhibitions and the Regulations shall prescribe the terms, conditions and procedure for the grant of such a protection.

Article 73

The application for registration of a mark shall be filed with the Trade Registry Department in the manner and form laid down in the Regulations. The Regulations shall prescribe the fees due for the application and all procedures related to the mark. Such fees shall not exceed a total of 5,000 pounds.

Article 74

A mark shall be registered in respect of one or more of the categories of goods produced, or intended to be produced, by the applicant in accordance with the rules and conditions prescribed by the Regulations.

Its use shall be limited to the category, categories or the kinds of products for which it has been registered.

Provisions of Article 91 shall apply to the categories for which the mark has not been seriously used.

Article 75

Where an application for registration of a mark is filed in a country or an entity member in the World Trade Organisation, or a country which extends reciprocity to Egypt, the applicant, or his rightful successor, may, within six months from the date of filing the application, file with the Department in Egypt a similar application for the same mark, covering the same products included in the previous application, in accordance with the terms and conditions prescribed by this Law and its Regulations. In such a Case the priority date shall be that of the first application in the foreign country.

Article 76

Where two or more persons apply simultaneously for registration of the same mark, or similar marks for the same category of products, registration shall be suspended until such time when one of these persons shall have produced a renunciation by the other claimants or until a binding judgement has been issued in his favour.

Article 77

The Trade Registry Department may, in a motivated decision, require the applicant to undertake the necessary modifications on the subject mark in order to define and clarify the mark so as to avoid its confusion with a mark already registered, or a mark for which a registration application has already been filed.

Such decision shall, within 30 days of its issue, be communicated to the applicant in writing, by registered mail with acknowledgement of receipt.

The Department may reject the application should the applicant fail, within six months of the notification, to introduce the amendments required.

Article 78

The applicant may appeal the decision of the Department mentioned in Article 77, within 30 days from the communication of such a decision. Appeals are considered by a committee, or committees, which shall be appointed by the competent minister and be composed of three members, one of whom shall be a member of the Council of State.

The Regulations of this Law shall prescribe the rules of establishing such a committee, as well as the procedures for the submission and consideration of such appeals and the decision thereon.

Article 79

Without prejudice to the right of the applicant to appeal in conformity with the law, in case the committee referred to in the preceding article endorsed the decision to refuse the registration of the mark on the grounds that it is similar to a mark already registered for the same goods, or for one category thereof, the registration of such a mark may not be made in favour of the applicant except on the basis of an enforceable court decision.

Article 80

The Department shall have the decision of accepting the application for registration of the mark published in the Gazette of Trademarks and Industrial Designs, in the manner prescribed by the Regulations.

Any interested party may submit, in writing to the Department, within 60 days from the date of publication, and according to the conditions prescribed by the Regulations, a motivated opposition to the registration of the mark.

The Department shall then send a copy of the opposition to the applicant, within 30 days from the receipt of such a notification.

The applicant shall, within 30 days from the receipt of notification, provide the Department with his motivated written reply to the opposition, failing which he would be considered to have withdrawn his application.

The Regulations shall prescribe the rules and procedures in this regard.

Article 81

The Department shall, after hearing both parties, motivate its decision on the opposition, to accept or reject the registration. In its decision of acceptance, it may require the applicant to fulfil any requirements it may deem necessary to register the mark.

Article 82

The decision of the Department referred to in Article 81 may be appealed before the competent Administrative Court, in accordance with the procedures and time limits provided for in the law governing the Council of State.

Article 83

The registration of a mark is approved by a decision of the Department and shall be published, in the manner prescribed by the Regulations, in the Trademarks and Industrial Designs Gazette.

Registration will take effect from the date of filing the application.

Article 84

The Department shall deliver to the owner of the registered mark a certificate containing the information published in the aforementioned Gazette.

Article 85

The owner of a registered mark may request the Department, in writing, to introduce any modifications that do not essentially affect the substance of the mark. He may also request a modification by deletion without any concomitant addition to the statement of products covered by the mark.

The decision to accept or reject the request for modification shall be subject to the same conditions prescribed for the acceptance of the original application for registration.

The prescribed provisions for opposition, appeal and publication shall apply to such decisions.

Article 86

Any person may apply to consult the registered marks or obtain extracts or copies of entries in the register, according to the rules and procedures prescribed in the Regulations and against payment of a fee prescribed therein not exceeding 100 pounds.

Article 87

The transfer of the mark's ownership, its mortgage or attachment can be made independently from the commercial enterprise or exploitation project, in accordance with the rules and procedures prescribed in the Regulations.

Article 88

The transfer of the ownership of the commercial enterprise or exploitation project shall include, unless otherwise agreed, the marks registered in the name of the owner, if such marks were inherently related to the said commercial enterprise or exploitation project.

Should the commercial enterprise or exploitation project be transferred without the trademark, the owner of the mark may, unless otherwise agreed, continue to use the mark for the same kind of goods, category or categories for which such mark was registered.

Article 89

The transfer of ownership, the right of disposal or the mortgage of a mark shall not be valid towards a third party, unless such has been duly recorded in the register and published in the Official Gazette in the manner prescribed in the Regulations.

Article 90

The period of protection conferred by the registration of the mark is 10 years, renewable for an identical period or periods upon request of its owner and every time within the last year of the protection period, against payment of the fees due for the initial registration application.

The owner of the mark may request the renewal of the protection period within six months after the date of its expiry against payment of the prescribed fees and a supplement prescribed by the Regulations not exceeding 500 pounds, failing which the Department shall proceed to cancel the said mark from the register.

Article 91

The competent court may, upon request by any interested party, issue an enforceable decision to cancel the registration if it appears to the court that the mark has not been seriously used for a period of five consecutive years.

Article 92

A cancelled mark may be re-registered - in favour of its owner exclusively - within three years from the date of the cancellation, according to the prescribed conditions and same procedure of registration and against payment of a fee prescribed by the Regulations not exceeding 1,000 pounds.

After the lapse of the said period, a mark may be re-registered for the benefit of its owner or a third party, in connection with the same products, under the same conditions, procedures and fees of the initial application for registration.

However, where the cancellation is in response to an enforceable court order invalidating the registration of a mark, such a mark may be registered in favour of a third party soon after the cancellation.

Article 93

Extension, renewal, cancellation or reinstatement of the registration shall be published in the Trademark and Industrial Designs Gazette in the manner prescribed by the Regulations.

Article 94

The Department, or any interested party, may, in cases other than provided for in Article 85, submit to the competent court a request for the addition of any entry which would have been omitted, or to delete or modify any entry incorrectly inscribed therein or contrary to the truth.

Article 95

The owner of a mark may license one or more natural persons or legal entities to use his mark on all or some of the products for which the mark was registered. Such license to a third party shall not prevent the owner from using his mark, unless otherwise agreed.

The owner of a mark may not cancel or refuse the renewal of the license contract without valid reasons.

Article 96

To be recorded in the Trademarks Register, a license agreement for the use of a mark shall be certified, or the signatures thereon endorsed. It shall not be valid with respect to a third party unless recorded and published in the manner prescribed in the Regulations.

Article 97

A licensee may not, unless otherwise agreed, assign the license contract to a third party except in connection with the assignment of the commercial enterprise or exploitation project in which the mark is utilised to distinguish the products thereof.

The mortgage of or the right of disposal of a mark shall not be valid with respect to a third party, unless such has been duly recorded in the register and published in the manner prescribed in the Regulations.

Article 98

The license contract may not include any conditions, which may unnecessarily restrict the license in order to maintain the rights conferred by the registration of the mark.

The license contract may, however, include the following:

- (1) Limit of the license period for use of the mark.
- (2) Reasonable conditions which provide for the effective control by the owner of the mark of the quality of the products identified by the licensed mark; without restricting the licensee's freedom of management and production.
- (3) Commitment of the licensee to refrain from any act that might undermine the status of the products identified by the mark.

Article 99

The owner of the mark or the licensee may request the cancellation of a license contract. The Department shall notify the other party of such a request.

Such cancellation shall be in accordance with the conditions and procedures prescribed in the Regulations.

Article 100

In the application of the provisions of this Law, "trade indication" means any clarification connected directly or indirectly with the following:

- (1) Number, quantity, dimension, measure, capacity or weight of any products.
- (2) Place or country in which the products were manufactured or produced.
- (3) Method of manufacturing or producing the products.
- (4) Elements and components of which the products are composed.
- (5) Name or capacity of the producer or manufacturer.

(6) Patents or any other industrial property rights, or any commercial or industrial concessions, awards or distinctions.

(7) The name or form under which certain goods are usually known.

Article 101

Trade indications shall be factual in all aspects, whether placed on the products, packaging, invoices, correspondence, advertisements or other means used for offering the products to the public, or whether on signboards, inside the shops or in warehouses.

Article 102

No mention may be made of medals, diplomas, awards or honorary distinctions, except in relation to the products in respect of which such distinctions apply, or in relation to the persons who, or commercial names which, acquired those distinctions, or their successors. Such mention should include correct indications of the date, nature of the awards, the authority and the occasion on which they were granted.

A person who participates with others in exhibiting products may not use for his own products the distinctions granted jointly to the exhibited products, unless he indicates in a clear manner the source and nature of such distinctions.

Article 103

Where the quantity, dimension, measure, capacity, weight, origin or ingredients of a product constitute a factor in assessing its value, the competent minister may decide to prohibit the sale, marketing or importation of such products, unless they bear these indications.

The competent minister shall determine the manner in which such indications should be placed on the product in Arabic and any alternative procedures where necessary.

Article 104

Where a geographical origin has become descriptive of the quality, reputation or other characteristics of a certain product so as to be largely instrumental in its marketing, such geographical indications shall be used to indicate the place of origin of such goods in a district or part in a country member in the World Trade Organisation or a country according Egypt reciprocity.

The protection in the country of origin is required to protect such indications.

Article 105

A person residing in a place especially reputed for the production of a given product, may not affix on the products of his trade geographical indications in such a manner as to lead the public to believe that the products were produced in that place of special reputation.

Article 106

No means may be used to designate or present any products, in such a manner as to lead the public to believe that such products were produced in a geographical area other than its real place of origin.

Article 107

A person producing any products in a place especially reputed for the production of such products, may not affix the geographical indication of that place on similar products he produces in other places in such a way as to suggest that such products were produced in the reputed place.

Article 108

Where a geographical name has become descriptive, to indicate in a commercial sense the nature of any products and not their geographical place of origin, such geographical name may be used in connection with such products.

Article 109

The registration of a trademark including a geographical indication requires the continuous production, by the applicant, of the products in the reputed geographical area.

Article 110

A trademark including a geographical indication may not be registered, where such an

indication is likely to mislead the public as to the real origin of the goods.

Article 111

A trademark including a geographical indication may be registered if the right conferred by the mark was acquired in good faith before the entry into force of this Law, or before the geographical indication has been granted in the country of origin.

Article 112

Any interested party may institute normal proceedings before the competent court of first instance to order prohibiting the use of any geographical indication not included in a registered trademark, where such use is likely to mislead the public as to the real origin of the products. The competent court of first instance shall be the court having jurisdiction at the place where the geographical indication is used.

Article 113

Without prejudice to any more severe punishment under any other law, shall be punishable by imprisonment for a period of not less than two months and by a fine of not less than 5,000 pounds and not more than 20,000 pounds, or by either punishment, any person who:

- (1) counterfeits a trademark registered in accordance with the law or imitates it in a manner which is likely to mislead the public;
- (2) fraudulently uses counterfeit or imitated trademarks;
- (3) fraudulently affixes to his products a trademark belonging to a third party;
- (4) knowingly sells, offers for sale or distributes, or acquires for the purpose of sale, products bearing a counterfeit or imitated mark, or on which the mark was unlawfully affixed.

In case of repetition, the offence shall be punishable by imprisonment for a term of not less than two months and by a fine of not less than 10,000 pounds and than 50,000 pounds.

In all cases, the court shall order the confiscation of the infringing products, the revenue and the returns of such products as well as the implements used in the infringement.

The court may, when issuing a condemnation, order the closure of the enterprise used to commit his infringement, for a period not exceeding six months. In the event of repetition the enterprise shall imperatively be closed down.

Article 114

Without prejudice to any more severe punishment under any other law, shall be punishable by imprisonment for a period of not less than one month and by a fine of not less than 2,000 pounds and not more than 10,000 pounds or by either punishment any person who:

- (1) affixes a false trade indication to his products, on or inside his shops or warehouses, on signboards, packaging, invoices, correspondence, advertisements or any other means used for offering the products to the public;
- (2) fraudulently places on his marks or commercial documents an indication that leads to believe that such mark has been registered;
- (3) uses a mark that has not been registered, in the cases provided for in paragraphs 2, 3, 5, 7 and 8 of Article 67;
- (4) mentions medals, diplomas, awards or other honorary distinctions of any kind whatsoever, in relation to the products in respect of which such distinctions do not apply, or in relation to the persons or commercial names who did not acquire them;
- (5) participates with others in exhibiting products and uses for his own private products the distinctions granted to the jointly exhibited products, unless he indicates in a clear manner the source and nature of such distinctions;
- (6) affixes on the products of his own trade, in a place especially reputed for the production of a certain product, geographical indications in such a manner as to mislead the public to believe that those products were produced in that place;

(7) uses any means for the designation or exhibition of products in a manner that may mislead the public as to the production of those goods in a geographical place especially reputed rather than the real place of origin of such products;

(8) manufactures a product in a place especially reputed for its production and who affixes a geographical indication on similar products he produces in other places in such a way as to suggest that such goods were produced in the said place.

In case of repetition, such an offence shall be punishable by imprisonment for a period of not less than one month and by a fine of not less than 4,000 pounds and not more than 20,000 pounds.

Article 115

The president of the competent court considering the merits of the case may, upon a request by an interested party, and on petition, order one or more appropriate conservatory measures, and in particular:

(1) Establish the infringement of a protected right.

(2) Draw up an exhaustive inventory and detailed description of all the machines and implements used or may have been used in the infringement, as well as the products, goods, signboards of shops, packaging, invoices, correspondence, advertisements or the like, on which the mark or the geographical indication, subject of the offence, might have been affixed, as well as the products imported, on their arrival.

(3) Order the seizure of the articles stated in item (2).

In all cases, the President of the court may order the assignment of one or more experts to assist the bailiff in charge of the execution. He may order the requesting party to provide an appropriate security.

The requesting shall submit the merits of the case to the competent court, within 15 days of issuing the order, failing which such order shall cease to have effect.

Article 116

The convicted person may, within 30 days from the date of the issue or notification, appeal such an order to the president of the court. The president may confirm or revoke the order, totally or partly.

Article 117

The court may, in any civil or penal action, order the sale of the articles distrained, or to be distrained, and deduct their value from the amounts of the compensation or fines, or dispose of them by any other means the court may deem appropriate.

The court may also order the destruction of the illegal marks and, where necessary, the destruction of the products, goods, signboards, packaging, invoices, correspondence, advertisements or other items bearing these marks or bearing illegal description or geographical indications, infringing the provisions of this Book. It may also order the destruction of the machines and implements used specifically in the act of infringement.

The court may further order that its judgement be published in one or more newspapers at the expense of the convicted party.

The court may order some or all of the above measures, even in the event of acquittal.

Article 118

The Minister of Justice shall, in agreement with the competent minister, appoint persons with judiciary powers for the implementation of the provisions of this Part.

PART II INDUSTRIAL DESIGNS

Article 119

An industrial design is any composition of lines or any three-dimensional form whether or

not associated with colours provided that such composition or form gives a special appearance of novelty and is industrially applicable.

Article 120

An industrial design shall lose its novelty:

(1) If it was disclosed to the public by means of a description or by use, prior to the filing of the registration application.

Nonetheless, disclosure or description of an industrial design shall not affect its novelty if it was carried out after the application for registration in a country member in the World Trade Organization, or a country which applies reciprocity to Egypt, or if the disclosure occurred in a national or an international exhibition or a publication about the industrial design in a conference or a scientific periodical provided that all this has occurred within six months prior to the date on which the registration application was filed in Egypt.

(2) If it was not essentially different from a prior industrial design or if it was intended for another kind of products different from those of the previously registered industrial design.

Article 121

Without prejudice to international conventions in force in Egypt, any natural person or legal entity, Egyptian or foreign, belonging to, domiciled or active in a country or an entity that is a member of the World Trade Organization or that accords reciprocity to Egypt, shall have the right to file an application to register an industrial design at the Egyptian Trade Registry Department and whatever rights derived therefrom, in accordance with the provisions of this Law.

Nationals of all member countries of the World Trade Organization shall benefit of any advantage, preference, privilege or immunity granted by any other law to nationals of any state in connection with the rights provided for in this Chapter, unless such advantage, preference or immunity derives from:

(1) Agreements on judicial assistance or agreements on law enforcement of general nature.

(2) Agreements in connection with the protection of intellectual property rights, which came into force prior to 1st January 1995.

Article 122

The Trade Registry Department shall be competent to register the industrial designs in a special register.

The application may comprise a number of designs not exceeding 50, provided that all such designs form one coherent unit.

The Regulations to this Law shall prescribe for the procedure of filing an application for registration, the number of possible designs included in one application, the examination procedures, the publication of the Department's decision of the application's acceptance, procedures of opposition and other required procedures, as well as the prescribed fees for such applications, their renewal and all relevant procedures, the total of such fees not exceeding 3,000 pounds.

Article 123

Staff working in the Trade Registry Department may not file industrial designs applications, on their own behalf or by an intermediary, until at least three years have elapsed from the date of termination of their employment in the Department.

Article 124

The following industrial designs shall not be registered:

(1) Designs whose shape is basically due to the technical or functional requirements of the product.

(2) Designs that include emblems, religious symbols, stamps or flags of Egypt or other states, or the use of which may undermine public order or offend public morality.

(3) Designs, which are identical, similar or closely resemble a registered trade mark or a wellknown mark.

In all cases where the application for registration has been refused, the Department shall, within 30 days of the date of such decision, notify the applicant in writing of its motivated decision, by registered mail with acknowledgement of receipt.

This decision may be appealed within 30 days from the date of its notification.

The appeal shall be examined by a committee, established by the competent minister, composed of three members, one of whom shall be a member of the Council of State. The Committee may seek the advice of experts, as it may deem appropriate.

The Regulations to this Law shall prescribe the Committee's rules of procedure and the fees relating to the appeal, which shall not exceed 500 pounds.

The Committee shall issue its motivated decision within 90 days from the date of filing the appeal.

The decision of the appeal committee may, within 30 days from the date of its notification, be opposed before the Administrative Tribunal.

Article 125

The Department may require the applicant to introduce certain modifications or complements as it may deem appropriate to satisfy the provisions of Article 124 and as prescribed by the Regulations, failing which the applicant shall be considered as having withdrawn his application.

The applicant may, within 30 days of the notification of the decision and according to the procedure prescribed by the Regulations, appeal such a requirement to the Committee provided for in Article 124.

The applicant may, on his own initiative, submit to the Department such modifications or complements, in accordance with the Regulations.

Article 126

The protection conferred by the registration of an industrial design shall be for a period of ten years as from the date of filing the registration application in Egypt.

The protection shall be extended for a further period of five years, when the owner of the industrial design applies for renewal within the last year of the protection period, and in the manner prescribed by the Regulations.

The owner may, however, apply for renewal of the registration, within three months after the expiry of the protection period, failing which the Department shall automatically; revoke the registration.

Article 127

The registration of an industrial design shall confer on its owner the right to prohibit third parties from the use, manufacture, sale or import of products bearing or incorporating such an industrial design.

The right to prevent other parties from importing, selling or distributing such products, shall lapse where the owner undertakes to market those products in any state or license a third party to do so.

The use by a third party of a protected industrial design in any of the following shall not be deemed to constitute an infringement of such a right:

- (1) Activities relating to scientific research.
- (2) Use for teaching and training purposes.
- (3) Non-commercial activities.
- (4) Manufacture or sale of parts of such products, for the purpose of repair, against fair compensation.
- (5) Other uses that do not unreasonably conflict with the normal exploitation of the protected industrial design and that do not unreasonably compromise the legitimate interests of the owner, taking into consideration the legitimate interests of third parties.

Article 128

The ownership of an industrial design may be assigned, wholly or partly, against or without compensation. It may also be subject to a mortgage or a right of disposal.

Without prejudice to the provisions pertaining to the sale and mortgage of commercial enterprises, the transfer of ownership of an industrial design, its mortgage or disposal shall not be valid with respect to a third party unless such an act has been duly recorded in the register of industrial designs.

The Regulations shall prescribe the relevant procedures in this regard.

Article 129

The Trade Registry Department may, when public interest so requires, and subject to the approval of a ministerial committee established by a decision of the Prime Minister upon submission of the competent minister, issue a motivated decision to grant a third party non-voluntary and nonexclusive license for the exploitation of the protected industrial design, against fair compensation. The Regulations shall provide for the terms, conditions and procedures for the grant of such a license.

Article 130

The Department shall publish the decisions of registration, renewal and cancellation in the Gazette of Trademarks and Industrial Designs, accompanied, where necessary, by a copy of the design, and in the manner prescribed by the Regulations.

The provisions of Articles 80, 81, 82 and 83 shall apply to this Chapter.

Article 131

Any person may request to consult the registered industrial designs or obtain extracts or copies thereof from the register, according to the rules and procedures prescribed by the Regulations and against payment of the fee prescribed therein, which is not to exceed 100 pounds.

Article 132

Temporary protection shall be granted to industrial designs that fulfil the registration requirements, which are displayed in national or international exhibitions, as determined by a decision of the competent minister.

The Regulations shall provide for the terms, conditions and procedures for the grant of such protection.

Article 133

The Department and any interested party may file a case with the Administrative Tribunal with a view to revoke an unlawful registration of an industrial design. The Department shall revoke the registration upon receipt of a binding order to that effect.

Article 134

Without prejudice to any more severe punishment stipulated under any other law, shall be punishable by a fine of not less than 4,000 pounds and *not* more than 10,000 pounds any person who:

(1) imitates a protected industrial design registered according to the provisions of this Law;
(2) knowingly, manufactures, sells, offers for sale, acquires for trade or circulation, products bearing imitated industrial designs;

(3) unlawfully affixes on products, advertisements, trademarks, certain implements or the like, indications that may lead to believe that such a person has registered an industrial design.

In case of repetition, the punishment shall be imprisonment for a period of not less than one month and a fine of not less than 8,000 pounds and not more than 20,000 pounds.

In all cases, the court shall order the confiscation of the incriminated industrial design, the infringed products and the implements used in the infringement. The convicting order shall be published in one or more newspapers at the expense of the convicted party.

Article 135

The president of the competent court considering the merits of the case may, upon a request of any interested party, and by an order issued on the basis of a petition, order one or more appropriate conservatory measures, and in particular:

- (1) Establish the infringement of a protected right.
- (2) Draw up an exhaustive inventory and detailed description of the infringed products and the implements used or may have been used in the infringement.
- (3) Order the seizure of the articles stated in item (2).

In all cases, the president of the court may order the assignment of one or more experts to assist the bailiff in charge of the execution; and may order the requesting party to provide an appropriate security.

The requesting party shall submit the merits of the case to the competent court, within 15 days of issuing the order, failing which such order shall cease to have effect.

Article 136

The incriminated person may, within 30 days from the date of the issue or notification of the order, as may be the case, appeal [the order] to the president [of the court] who issued such an order.

The president of the court may confirm or revoke the order, totally or partly.

Article 137

The Minister of Justice shall, in agreement with the competent minister, appoint persons with judiciary powers for the implementation of the provisions of this Chapter.

BOOK THREE COPYRIGHT AND RELATED RIGHTS

Article 138

For the purposes of this Law, the following terms shall have the meaning given below:

- (1) Work: Any created literary, artistic or scientific product, whatever its type, mode of expression, significance or purpose of its creation.
- (2) Creation: The creative nature that confers originality on the work.
- (3) Author: The person who creates the work. Is considered author of the work the person whose name is indicated on, or attributed to, the published work as being its author, unless proven otherwise.

The author may publish his work anonymously or under a pseudonym, provided that the identity of the author can be established without any doubt. In case of doubt, the publisher or producer of the work, whether a natural person or legal entity, shall be the representative of the author in the exercise of his rights until the identity of the latter is disclosed.

- (4) Collective work: A work made by a group of authors under the instruction of a natural person who, or a legal entity which, undertakes to publish the work under his or its name and direction, provided that the contributions of the participants in such work are integrated in the general objective set by that person or legal entity, in such a manner that it is impossible to distinguish the individual contribution of each.

- (5) Work of joint authorship: A work which is not considered as a collective work, in the making of which more than one person participated, whether or not it is possible to distinguish the individual contribution of each in the work.

- (6) Derivative work: A work which is derived from an existing one, such as translations, musical re-arrangements, compilations of works, including readable databases, from the computer or otherwise, and collections of expressions of folklore, which by reason of the arrangement and selection of their contents, are considered as created works.

- (7) National folklore: Any expression which consists of distinctive elements reflecting the traditional popular heritage, which originated or developed in Egypt, including in particular:

- (a) Oral expressions such as folk tales, poetry and charades, and other folklore;

- (b) Musical expressions such as popular songs accompanied by music;
- (c) Motion expressions, such as popular dances, plays, artistic forms and rituals;
- (d) Tangible expressions such as:
 - Products of popular plastic art, particularly drawings with lines and colours, engravings, sculpture, ceramics, pottery, woodwork and any inlaid designs, mosaics, metal or jewellery, hand-woven bags, needlework, textiles, carpets and clothes;
 - Musical instruments;
 - Architectural forms.

(8) Public domain: Domain including all works initially excluded from protection or works in respect of which the term of protection of economic rights expires, in accordance with, the provisions of this Book.

(9) Reproduction: Making one or more exact copies of a work or a sound recording, in any, manner or form, including permanent or temporary storage of the work or sound recording in an electronic form.

(10) Publication: Any act which is liable to make available to the public, in any manner, a work, a sound recording, a broadcast program or a performance.

Works may be made available to the public subject to the consent of the author or copyright owner. Sound, recordings, broadcast programs or performances may be made available to the public subject to the consent of the producer or his successor.

(11) Producer of an audio- or an audiovisual work: A natural person who, or a legal entity which, takes the initiative to produce and to assume the responsibility for making the audio- or audiovisual work.

(12) Performers: Persons who act, sing, deliver, declaim, play, dance or otherwise perform, including expressions of folklore, in literary or artistic works protected by the provisions of this Law or belonging to the public domain.

(13) Producer of sound recordings: A natural person who, or a legal entity which, first fixes sounds for any work or performance for a performer, other than fixing of the sounds on images in preparing an audiovisual work.

(14) Broadcasting: Sound or audiovisual transmission, by wireless means for public reception, of a work, performance, sound recording or recording of a work or a performance, including transmission by satellite.

(15) Public performance: Any act which is liable to make the work available to the public in any form, such as acting, declaiming, playing or transmission so as to bring the public in direct contact with the work through performance, sound recording, visual or aural means.

(16) Communication to the public: Transmission by wire or wireless means of images, sounds, images and sounds, of a work, performance, sound recording, broadcast in such a way that, where such transmission is the only means of reception, any person other than family members and close friends can receive in any place different from where transmission originates, irrespective of time and place of reception, including time and place individually chosen by means of a computer or any other means.

(17) Broadcasting organisation: Any person who or entity which is entrusted with or responsible for aural or audiovisual broadcasting by wireless means.

(18) Competent minister: Minister of Culture; the Minister of Information shall be competent in connection with broadcasting organisations, and the Minister of Communication and Information shall be competent in connection with computer programs and databases.

(19) Competent ministry: Ministry of Culture; the Ministry of Information shall be competent in connection with broadcasting organisations, and the Ministry of Communication and Information shall be competent in connection with computer programs and databases.

Article 139

The prescribed protection of copyright and related rights covers Egyptians and foreigners,

whether natural persons or legal entities, who belong to a member country in the World Trade Organisation or having such status.

Nationals of member states comprise:

1st. with regards to copyright:

(1) Authors whose works are published for the first time in one of the member states in the Organisation, or simultaneously in a non-member and a member state. A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Shall not constitute publication the acting of a dramatic, dramatico-musical or cinematographic work, or the playing of a musical work, the public recitation of a literary work, the communication by wire or the broadcasting of a literary or artistic work, the exhibition of a work of art and the construction of a work of architecture.

(2) Producers and authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of that Organisation.

(3) Authors of works of architecture erected in a member country or of other artistic works incorporated in a building or other structure located in a member country.

2nd. with regards to related rights:

(1) Performance artists where one of the following conditions has been fulfilled:

(One) the performance has taken place in a member country of the World Trade Organization;

(Two) the performance has been transcribed in sound recordings the producer of which is a national of a member country in the World Trade Organisation, or if the first fixation of the sound has been done in a territory of a member country in the Organisation;

(Three) the performance has been transmitted through a broadcasting organisation whose headquarters is in a member country of the World Trade Organisation, provided that the radio program has been broadcast from a transmission device also existing in the member country.

(2) Producers of sound recordings if the first fixation of the sound has taken place in a member country of the Organisation.

(3) Broadcasting organisations whose headquarters are in a territory of a member country in the World Trade Organisation, provided that the radio program has been broadcast from a transmission advice also existing in a territory of a member country in the Organisation.

Nationals of all member countries of the World Trade Organisation shall benefit of any advantage, preference, privilege or immunity granted by any other law to nationals of any state in connection with the intellectual property rights provided for in this Chapter, unless such advantage, preference or immunity derives from:

(One) agreements on judicial assistance or agreements on law enforcement of general nature;

(Two) agreements in connection with the protection of intellectual property rights, which came into, force prior to 1st January 1995.

Article 140

Protection under this Law is conferred to authors of literary and artistic works and particularly the following works:

(1) Books, booklets, articles, bulletins and any other written works;

(2) Computer programs;

(3) Databases, whether readable by computer or otherwise;

(4) Lectures, speeches, sermons and any other oral works when recorded;

(5) Dramatic and dramatico-musical works, and pantomimes;

(6) Musical works with or without words;

(7) Audiovisual works;

- (8) Works of architecture;
- (9) Works of drawings with lines or colours, sculpture, lithography, printing on textile and any other similar works of fine arts;
- (10) Photographic and similar works;
- (11) Works of applied and plastic arts;
- (12) Illustrations, maps, sketches and three-dimensional works relating to geography, topography or architectural designs;
- (13) Derivative works, without prejudice to the protection prescribed for the works from which they have been derived. Protection shall cover also the title of the work if it is inventive.

Article 141

Protection shall not cover mere ideas, procedures, systems, operational methods, concepts, principles, discoveries and data, even when expressed, described, illustrated or included in a work. In addition, protection shall not cover the following:

- (1) Official documents, whatever their source or target language, such as laws, regulations, resolutions and decisions, international conventions, court decisions, award of arbitrators and decisions of administrative committees having judicial competence.
- (2) News on current events which are mere press information.

However, collections of the above shall enjoy protection if the selection of such collection is creative by virtue of its arrangement or any other personal effort deserving protection.

Article 142

National folklore shall be considered part of the public domain of the people. The competent ministry shall exercise the author's economic and moral rights and shall protect and support such folklore.

Article 143

The author and his universal successor shall enjoy over the work perpetual imprescriptible and inalienable moral rights. Such rights shall include the following:

- (1) The right to make the work available to the public for the first time.
- (2) The right to claim authorship;
- (3) The right to prevent any modification considered by the author as distortion or mutilation of the work. Modification in the course of translation shall not be considered as an infringement unless the translator fails to indicate deletion or changes or if the causes prejudice to the reputation and status of the author.

Article 144

Where serious reasons arise, the author alone shall have the right to request the court of first instance to prevent putting the work in circulation, withdraw the work from circulation or allow making substantive modification to the work, notwithstanding his disposal of the economic exploitation rights. In such a case, the author shall, within a delay fixed by the court, pay in advance a fair compensation to the person authorised to exercise the economic rights of exploitation, failing which the court decision shall have no effect.

Article 145

Any disposal of any moral rights stipulated in Articles 143 and 144 shall be considered null and avoid.

Article 146

In the absence of any heir or successor, the competent ministry shall exercise the moral rights provided for in Articles 143 and 144, after the expiration of the term of protection of the economic rights prescribed in this Law.

Article 147

The author and his universal successor shall have the exclusive right to authorise or prevent

any form of exploitation of his work, particularly through reproduction, broadcasting, rebroadcasting, public performance, public communication, translation, adaptation, rental, lending or making the work available to the public in any manner, including through computers, internet, information networks, communication networks and other means.

The exclusive right for computer program rentals shall only apply to the main rental enterprise; it shall not apply to renting audiovisual works inasmuch as the circulation of such copies does not cause material prejudice to the owner of the exclusive right in question.

The author and his successor shall also have the right to control any disposal of the original copy of the work, and shall consequently be entitled to a certain percentage of not more than 10% of the proceedings resulting from every disposal of that copy.

The right to prevent third parties from importing, using, selling or distributing his protected work, shall lapse where the copyright owner undertakes to exploit or market his work in any state or authorise a third party to do so.

Article 148

The protection of an author's copyright and the translation rights of his work into another language shall lapse with regards to the translation of that work into the Arabic Language, unless the author or the translator himself exercises this right directly or through a third party within three years of the date of first publication of the original or translated work.

Article 149

The author shall have the right to transfer to a third party all or some of his economic rights stated in this Law.

Such a transfer shall be certified in writing and contain an explicit and detailed indication of each right to be transferred with the extent and purpose of transfer and the duration and place of exploitation.

The author shall be the owner of all economic rights other than what he has explicitly signed.

Authorization by the author to exploit any of the economic rights relating to a work does not mean authorization to exploit other economic rights relating to the same work.

Without prejudice to the moral rights of the author provided for in this Law, the author shall refrain from any act that would hamper the exploitation of the rights disposed of.

Article 150

The author shall be entitled to such remuneration, in cash or in kind, as he considers fair for the transfer of one or more of the economic rights of his work to a third party, on the basis of a percentage of the revenue made as a result of exploitation, a lump sum or a combination of both.

Article 151

Where it appears that the agreement referred to in Article 150 is prejudicial to the author's rights or became so due to circumstances that arose after the agreement, the author or his successor may request the court of first instance to reconsider the value of remuneration agreed upon, without prejudice to the rights and interests of the assignee.

Article 152

Any disposal by the author of the sole original copy of his work, regardless of its form, shall not be considered as an assignment of his economic rights.

Nevertheless, the assignee may not be required to enable the author to reproduce, copy or display the original copy, unless otherwise agreed.

Article 153

Any disposal by the author of his future intellectual production shall be considered as null and void.

Article 154

The economic rights of the authors may be seized with respect to works that are published or made available for circulation. Such works may not be seized if the author dies before their publication, unless it has been proven that he intended to publish the work before his death.

Article 155

Performers and their universal successors shall enjoy a moral, perpetual, inalienable and imprescriptible right to the following:

- (i) To be identified as the performers of live or recorded performances as such.
- (ii) To prevent any modification, alteration or distortion of their performance.

The competent ministry shall exercise such moral rights, after expiration of the term of protection provided for in this Law, where there is no heir or successor.

Article 156

Performers shall enjoy the following exclusive economic rights:

- (i) Communicate their performance to the public, authorize making available to the public, renting or lending the original fixation or copies of their performances;
- (ii) Prevent any exploitation of their performances in any manner without their prior written authorization, including in particular fixation of such live performances on a medium, rental with the purpose of making direct or indirect commercial profit, or public broadcasting of such fixations;
- (iii) Rent or loan of the original or copies of their performances with the purpose of making direct or indirect commercial profit, regardless of the ownership of the original or rented copies;
- (iv) Make a fixation of a performance available to the public by broadcasting, through computers or other means in such a way as to enable the individual reception at any time or place.

The provision of this Article shall not apply to the fixations of performances included in audiovisual fixations, unless otherwise agreed.

Article 157

Producers of sound recordings shall enjoy the following exclusive economic rights:

- (1) Prevent any exploitation of their recordings in any manner, without their prior written authorization. Prohibited exploitation, in this sense, includes, in particular, reproduction, renting, broadcasting of such recordings or making them available through computers or any other means.
- (2) Making a sound recording available to the public by wire or wireless means or through computers or any other means.

Article 158

Broadcasting organisations shall enjoy the following exclusive economic rights:

- (1) Authorize the exploitation of their recordings.
- (2) Prevent any communication to the public, without their prior written authorization, of their television recordings, including, in particular, fixation, reproduction, sale, rental, rebroadcasting or communicating such works to the public through any means, including the removal or destruction of any technical protection of such programs by coding or other means.

Article 159

Provisions under this Law on the assignment by the author of his economic rights shall apply to holders of related rights.

Without prejudice to the exclusive rights of performers and broadcasting organizations provided for in this Law, they shall only have the right to a single equitable remuneration for the direct or indirect use of programs published for commercial purposes of broadcasting or communication to the public, unless otherwise agreed.

Article 160

The author's economic rights provided for in this Law shall be protected throughout the lifetime of the author and for 50 years from the date of his death.

Article 161

The economic rights relating to works of joint authorship shall be protected throughout the lives of all co-authors and for 50 years from the death of the last survivor.

Article 162

Where the copyright holder is a legal entity, the economic rights relating to authors of collective works, other than authors of works of applied art, shall be protected for 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first. Where the copyright holder is a natural person, the protection period shall be calculated according to the rule stipulated in Articles 160 and 161.

The economic rights relating to a work published for the first time after the death of the author shall expire after 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first.

Article 163

The economic rights relating to a work published anonymously or under pseudonym shall be protected for a period of 50 years from the date on which the work was published or made available to the public for the first time, whichever comes first, unless the identity of the author is known and established or revealed by the author, in which case the term of protection shall be calculated according to the rule stipulated in Article 160.

Article 164

The economic rights of the author of a work of applied art shall expire after a period of 25 years from the date on which the work was published or made available to the public for the first time, whichever comes first.

Article 165

In cases where the term of protection is calculated from the date on which the work was published or made available to the public for the first time, the term shall be calculated taking into consideration the date that comes first, regardless of any re-publication or making available to the public, unless substantial changes were made by the author in the work so that it may be considered as a new work.

Where the work consists of several parts or volumes published separately and at intervals, each part or volume shall be considered as an independent work for the purpose of calculating the term of protection.

Article 166

Performers shall enjoy an exclusive economic right for the exploitation of their performances, as stipulated in Article 156, for a period of 50 years calculated from the date on which the performance or the recording took place, as may be the case.

Article 167

Producers of sound recordings shall enjoy an exclusive economic right to exploit their recordings, as stipulated in Article 157, for a period of 50 years calculated from the date on which the recording was made or made public, whichever comes first, within the limits provided for in this Law.

Article 168

Broadcasting organizations shall enjoy an exclusive economic right to exploit their programs, for a period of 20 years calculated from the date on which the program was broadcast for the first time.

Article 169

Broadcasting organizations shall have the right to broadcast works performed in any public

place. Such organizations shall indicate in the broadcast the name of the author and the title of the work, and pay him an equitable remuneration, in cash or in kind. They shall also agree to pay any other compensation as appropriate.

Article 170

Any person may request from the competent ministry to be granted a personal license for the reproduction or translation, or both, of any work protected under this Law, without the authorization of the author and for the purposes indicated in the next paragraph, against equitable remuneration to the author or his successor, to the extent that such license is not in contradiction with the normal exploitation of the work or does not unduly prejudice the legitimate interests of the author or the copyright holders.

The license shall be granted, by a motivated decision, indicating the scope in time and place, for the purpose of meeting teaching requirements of all kinds and levels.

The Regulations shall prescribe the terms and conditions for the grant of such a license and the categories of fees due, which shall not exceed 1,000 pounds for each work.

Article 171

Without prejudice to the moral rights of the author under this Law, the author may not, after the publication of the work, prevent third parties from carrying out any of the following acts:

- (1) Perform the work in family context or student gathering within an educational institution, to the extent that no direct or indirect financial remuneration is obtained;
- (2) Make a single copy of the work for one's exclusive personal use, provided that such a copy shall not hamper the normal exploitation of the work nor cause undue prejudice to the legitimate interests of the author or copyright holders;

However, the author or his successor may, after the publication of the work, prevent third parties from carrying out any of the following acts without his authorization:

- Reproduction or copying works of fine, applied or plastic arts, unless they were displayed in a public place, or works of architecture;
- Reproduction or copying of all or a substantial part of the notes of a musical work;
- Reproduction or copying of all or a substantial part of a database or computer program.

(3) Make, with the consent of the legitimate owner of the program, a single copy or an adaptation of a computer program, even if exceeding the extent necessary for the use of the program inasmuch as it remains within the limits of the purpose for which consent was initially granted, for archiving purposes or to replace a lost, destroyed or invalid original copy. In either case, the original or adapted copy shall be destroyed upon expiration of the property title. The Regulations shall determine the terms and conditions of adaptation from the program.

(4) Make an analysis of the work, or excerpts or quotations therefrom, for the purpose of criticism, discussion or information.

(5) Reproduction from protected works for use in legal or administrative proceedings, in as much as required by such proceedings, provided that the source and the name of the author are mentioned.

(6) Reproduction of short extracts from a work for teaching purposes, by way of illustration and explanation, in a written form or through an audio, visual or audiovisual recording, provided that such reproduction is within reasonable limits and does not go beyond the desired purpose, and provided that the name of the author and the title of the work are mentioned on each copy whenever possible and practical

(7) Reproduction, if necessary for teaching purposes in educational institutes, of an article, a short work or extracts therefrom, provided that:

- reproduction is made once or at different separate occasions;

- the name of the author and the title of the work are mentioned on each copy.
- (8) Making a single copy of the work, through the intermediary of a documentation and archiving center or through a bookshop not aiming at making any direct or indirect profit, and provided that:
- where the reproduced work is a published article, a short work or an extract of a work, the aim of reproduction is to satisfy the needs of a natural person, the copy will be used only for study or research purposes, and that a single copy is made or at different occasions;
 - where the reproduction is made with the aim of preserving the original copy or, when necessary, replacing a lost, destroyed or has become invalid copy, and it was impossible to obtain such a substitute copy under reasonable conditions.
- (9) Ephemeral reproduction of a work where such reproduction is made in relay, during a digital transmission of the work or in the course of a process of reception of a digitally stored work, within the normal operation of the device used by an authorized person.

Article 172

Without prejudice to the moral rights of the author under this Law, the author or his successor may not prevent newspapers, periodicals or broadcasting organizations, in as much as justified by their aims, from doing the following:

- (1) Publishing excerpts from his works which were legally made available to the public, and his published articles on topical issues of concern to the public opinion, unless the author has prohibited such publication when publishing the work, and provided that the source, the name of the author and the title of the work were mentioned.
- (2) Publishing speeches, lectures, opinions or statements delivered in public sessions of the parliament, legislative or administrative bodies or scientific, literary, artistic, political, social or religious meetings, including statements delivered during public court proceedings. However, the author alone or his successor shall have the right to make collections of such works, for which he shall be entitled to claim authorship.
- (3) Publication of extracts of an audio, visual or audiovisual work made available to the public in the course of covering current events.

Article 173

Restrictions on the author's economic rights, under this Law, shall also apply to owners of related rights.

Article 174

Where more than one person have participated in the production of a work in such a manner that it is impossible to distinguish the contribution of each in the joint work, all participants shall be considered jointly and equally as authors of the work, unless otherwise agreed in writing.

In such a case, a co-author may not separately exercise the author's rights, without the written consent of all co-authors.

However, if the contribution of each belongs to a different category of art, each co-author shall have the right to exploit independently his part, without prejudice to the exploitation of the work of joint authorship, unless otherwise agreed in writing.

Any of the co-authors shall have the right to initiate legal proceedings in case of infringement of copyright.

Where a co-author dies without a universal or singular successor, the share of that co-author shall devolve to the other co-authors or their successors, unless otherwise agreed in writing.

Article 175

The natural person or legal entity under whose direction the joint work was created shall have alone the right to exercise the author's rights with respect to that work.

Article 176

Where a work is published anonymously or under pseudonym, the publisher shall be

presumed empowered by the author to exercise the rights provided for in this Law, unless the author has appointed another agent or revealed his identity and his capacity.

Article 177

1st Shall be considered as co-authors of an audiovisual, audio or visual work:

- (1) The author of the scenario or written idea for the program;
- (2) The person who makes an adaptation of an existing literary work for an audiovisual production;
- (3) The author of the dialogue;
- (4) The composer of the music if composed specifically for the work;
- (5) The director who positively contributes from the intellectual point of view to the making of the work.

Where the work is a vulgarization or an extract of a preexisting work the author of that preexisting work shall be considered as co-author of the new work.

2nd The author of the scenario, the person who makes an adaptation of the literary work, the author of the dialogue and the director shall jointly have the right to transmit or project the audio, visual or audiovisual work despite any opposition made by the author of the original literary work or composer of the music, without prejudice to the rights of the opposing author deriving from the co-authorship.

3rd The author of the literary portion or the musical portion shall have the right to publish his work in a manner other than the one in which the said work of co-authorship is published, unless otherwise agreed in writing.

4th Where a co-author of all audiovisual, audio or visual work fails to complete his part, the other co-authors may not be prevented from using the completed portion, without prejudice to the rights of that co-author deriving from his co-authorship.

5th Throughout the period of the agreed exploitation of the audiovisual, audio or visual work the producer shall represent the authors of that work and their successors in any agreement for the exploitation of the said work, without prejudice to the rights of the authors of the quoted or adapted literary or musical works and unless otherwise agreed in writing he producer shall be considered as the publisher of such a work and shall enjoy the publisher's rights with respect to the work and copies thereof within the limits of its commercial exploitation.

Article 178

The person who makes a picture may not publish, exhibit or distribute the original or copies of that picture without the authorization of the person or persons whose picture was taken, unless otherwise agreed. However, such a picture may be published if it concerned public events, official or public personalities, or persons of local or worldwide renown; or if the publication was authorized by public authorities in the public interest, provided that such exhibition or circulation of that picture shall not cause prejudice to the honour, reputation or dignity of that person.

The person whose picture was taken may authorize the publication of the picture in newspapers and other similar publications, even without the authorization of the author of the picture, unless otherwise agreed.

The preceding provisions shall apply whatever the process used for making the picture, such as by drawing, engraving or any other process.

Article 179

In case of infringement of any right provided for in this Book, the president of the competent court dealing with the merits of the case, upon a request made by an interested party, may order, by petition, one or more of the following conservatory measures:

- (1) Drawing up a detailed description of the work, the performance, the sound recording or the broadcast program;

- (2) Discontinuance of publication, exhibition, reproduction or manufacturing of the work, the performance, the sound recording or the broadcasting program;
- (3) Seizure of the original copy, or copies, of the work, audio recording or broadcasting program and seizure of the material used for the re-publication or reproduction of such work, performance, audio recording or broadcasting program, provided that such material could be used only for such re-publication of the work, performance, audio recording or the broadcast program;
- (4) Establishing the infringement of the protected right;
- (5) Assessing, and in all cases seizure of, the income made as a result of the exploitation of the work, the performance, the audio recording or the broadcast program.

In all cases, the president of the court may designate one or more experts to assist the bailiff in charge of the execution of such measures. The president shall require from the requesting party to submit an appropriate security.

The requesting party shall be required to submit the merits of the case to the court within 15 days following the grant of the order, otherwise such order shall cease to have effect.

Article 180

The concerned party may, within 30 days from the date of the grant or publication of that order, appeal to the president of the court who issued the order. The president may confirm or revoke the order totally or partly or designate a custodian for the re-publication, exploitation, exhibition, manufacturing or reproduction of the work, sound recording or broadcast program. The resulting income shall be deposited in the court's treasury until the dispute has been settled.

Article 181

Without prejudice to any more severe sanction under any other law, shall be punishable by imprisonment for a period of not less than one month and by a fine of not less than 5,000 pounds and not more than 10,000 pounds, or any of those sanctions, any person who commits any of the following acts:

- (1) Selling, renting or putting in circulation under any form, a work, a sound recording or a broadcast program protected under this Law, without a prior written authorization from the author or the owner of the related right;
 - (2) Knowingly imitating, selling, offering for sale, circulation or rental, a work, a sound recording or a broadcast program;
 - (3) Knowingly imitating within the country, selling, offering for sale or circulation, renting or exporting to a foreign country a work, a sound recording or a broadcast program published in a foreign country;
 - (4) Dissemination through computer networks, Internet, information networks, communication networks and other means of technology of a work, an sound recording, a broadcast program or a performance protected under this Law, without a prior written authorization from the author or the owner of the related right;
 - (5) Manufacturing, assembling or importing for the purpose of sale or rent any device, tool or implement especially designed or made to circumvent a technical protection means, such as encryption or the like, used by the author or the owner of the related right;
 - (6) Removing, neutralizing or disabling, in bad faith, any technical protection device used by the author or the owner of the related rights;
 - (7) Infringing any of the moral or economic copyrights or related rights provided for in this Law.
- Sanctions shall be multiplied according to the number of infringed works, sound recordings, broadcast programs or performances.

In case of repetition, the punishment shall consist of imprisonment for a period of not less than three months and a fine of not less than 10,000 pounds and not more than 50,000 pounds.

In all cases, the court shall order the confiscation of the infringing copies, those obtained as a result of infringement, as well as equipment and implements used to commit the infringement.

In case of conviction, the court may also order the closure of the establishment used by the convicted person to commit his infringement, for a period of not more than six months. In case of repetition, the closure shall be mandatory in the cases of infringement provided for under items (2) and (3) of this Article.

The court shall order the publication of a summary of the judgement in one or more newspapers at the expense of the convicted person.

Article 182

Where the parties in dispute agree to arbitration, the provisions of the Arbitration Law on Civil and Commercial Disputes No. 27 of 1994 shall apply, unless otherwise agreed.

Article 183

The competent ministry shall grant license for the commercial or professional exploitation of works, sound recordings, performance or broadcast programs that fall into the public domain, against payment of fees, as prescribed by the Regulations, and not exceeding 1,000 pounds.

Article 184

Publishers, printers and producers of works, sound recordings, performance recordings and broadcast programs shall be required jointly to deposit one or more copies, not exceeding 10, of their works. The competent minister shall decide the number of such copies or their equivalent substitutes, taking into consideration the nature of each work, and the place of deposit.

Failure to deposit shall not affect the author's rights and related rights provided for under this Law.

The publisher, printer or producer who violate the provision of the first paragraph of this Article shall be punishable by a fine of not less than 1,000 pounds and not more than 3,000 pounds per work, sound recording or broadcast program. The obligation to deposit shall remain applicable.

This requirement shall not apply to works published in newspapers, magazines and periodicals, except where the work is published separately.

Article 185

A register shall be established with the competent ministry in which any act of disposal relating to works, performances, sound recordings and broadcast programs under the provisions of this Law shall be recorded. The Regulations shall determine the procedures for the registration against payment of a fee of not more than 1,000 pounds for each work.

The disposal shall not be valid with respect to third parties prior to such registration.

Article 186

Any person may obtain from the competent ministry a certificate for a deposited work, recorded performance, sound recording or broadcast program, against payment of a fee prescribed by the Regulations not exceeding 1,000 pounds for each such certificate.

Article 187

Any establishment that puts in circulation works, recorded performances, sound recordings or broadcast programs through sale, rent, loan or licensing, shall be required to:

- (1) Obtain a license from the competent minister against payment of a fee prescribed by the Regulations, not exceeding 1,000 pounds;
- (2) Maintain registers in which data and circulation year relating to each work, sound recording or broadcast program are recorded.

Without prejudice to any more severe sanction under any other law, violation of the provisions of this Article shall be punishable by a fine of not less than 1,000 pounds and not more than 5,000 pounds.

In case of repetition, the punishment shall be a fine of not less than 10,000 pounds and not more than 20,000 pounds.

Article 188

The Minister of Justice, in agreement with the competent minister, shall issue a decision designating law enforcement officers for the purposes of this Law.

BOOK FOUR PLANT VARIETIES**Article 189**

Under the provisions of this Law, protection is granted to plant varieties, derived inside or outside Egypt, whether developed through biological or non-biological means, when registered in the special register of protected plant varieties.

Article 190

The Prime Minister shall establish an office to be known as the Office of Plant Variety Protection. The Office shall be competent to receive, examine and decide on applications submitted for the protection of plant varieties, in accordance with the rules and procedures stipulated in the establishment decision.

Article 191

Without prejudice to international conventions in force in Egypt, any natural person or legal entity, Egyptian or foreign, belonging to, domiciled or active in a country or an entity that is a member of the World Trade Organization or that applies reciprocity to Egypt, shall have the right to protection of plant varieties as prescribed in this Book.

Article 192

To be eligible for protection a variety shall be new, distinct, uniform, stable and shall be subject of a denomination.

A variety shall be considered new if, at the filing date of the application, the vegetation propagation of the variety was not sold or otherwise transmitted to third parties by the breeder or with his consent for the exploitation of the variety. A variety shall not lose its novelty if it was exposed or circulated in Egypt for more than one year prior to the effective filing date of the application. Where a variety has been exposed or circulated outside Egypt, such period shall not exceed six years in case of trees and vines or four years for other crops. The variety shall also satisfy the condition of novelty where the sale or disposal to others, with the consent of the breeder, has taken place prior to the granting of protection to such variety.

A variety shall be considered distinct if it is distinguishable from other known plant varieties, by one or more obvious characteristics, provided that the variety maintains this characteristic after propagation.

A variety shall be considered uniform when the variations among its class remain within permissible limits.

A variety shall be considered stable, when replanted, if its essential characteristics do not change after repeated propagation for a period prescribed in the Regulations.

A breeder's right certificate shall be granted to the person, whether a natural person or a legal entity, who discovers the plant variety that fulfils the protection conditions.

Article 193

The term of protection for plant varieties shall be 25 years for trees and vines and 20 years for other crops.

The term of protection shall run from the date of the grant.

Nevertheless, a variety, for which a breeder's right is requested, shall be granted a temporary protection starting from the date of the filing of the application and expires on the date of the publication of the grant of the title. During this period, the breeder's right as stipulated in Article 194, shall be limited to a fair compensation as soon as such protection is granted, provided that the breeder

has notified his application to the party that has been exploiting the plant variety prior to granting the protection.

Article 194

The holder of a breeder's right certificate shall have an exclusive right to the commercial exploitation of the protected variety in any form whatsoever. The production, propagation, circulation, sale, marketing, importing, exporting of propagation material shall not be allowed without the written consent of the variety breeder.

Article 195

The protection shall not prevent third parties from the following acts:

- (1) Non-commercial activities and use of the result of propagation material, by farmers on their own holdings for private propagating purposes;
- (2) Activities related to experiments and scientific research purposes;
- (3) Activities of breeding, cross-breeding and selection for the purpose of breeding new varieties;
- (4) Activities related to teaching and training purposes;
- (5) Activities of use, commercial exploitation and consumption of the crop material, prime and intermediate material and finished products, which are made or derived directly or indirectly from the crop material, whether the crop material is an entire plant or part thereof.

Article 196

The Office of Plant Variety Protection, on submission by the Minister of Agriculture and after the approval of a ministerial committee established by a decision of the Prime Minister, may grant non-voluntary licenses to use and exploit the protected variety without the consent of the breeder, when necessary to safeguard the public interest and where the breeder fails to produce the variety on his own or to provide the propagation material of the protected variety, and where he refuses to grant third parties license for the exploitation of the variety, despite the appropriate conditions offered, or where he practices unfair competition.

The breeder is entitled to fair compensation for the use and exploitation, by third parties, during the non-voluntary license period. The assessment of such compensation shall take into consideration the economic value of the variety.

Article 197

In accordance with the provisions of Article 196, the licensee shall, during the period of the license, abide by the conditions of the license and shall not assign the license to a third party or prejudice other rights of the breeder.

The license shall lapse at the end of its duration or where the licensee does not comply with any of the terms of the license.

Article 198

The breeder's rights on the material of the protected variety shall lapse if offered by him or by his consent for circulation outside Egypt. In this case, third parties are entitled to circulate, sell, commercialize, distribute or import the protected variety whether in the form of propagation material or crop material from an entire plant or part thereof or products derived or manufactured from the crop or other plant components.

The breeder has the right to prevent others from exporting the protected variety if such exportation would lead to the propagation of the variety in a country where the variety does not enjoy protection.

Article 199

The Minister of Agriculture may, on the recommendation of the ministerial committee

referred to in Article 196, limit the exercise of the breeder of all or some of his rights provided for in this Law in any manner with the aim of safeguarding the public interest, and in particular if it appears that the protected plant variety:

(1) has harmful effects on the natural environment, the safety of biological diversity, the agricultural sector, the life or health of humans, animals or plants, in Egypt;

(2) has harmful economic or social effects, hampers local agricultural activities, or it appears that its use is incompatible with the values and beliefs of the community.

Article 200

The breeder shall disclose the genetic source relied on to develop the new plant variety. The protection of the new plant variety requires that the breeder has acquired that source by legitimate means under the Egyptian law.

Such a requirement extends to traditional knowledge and experience accumulated among local communities the breeder could have relied on in his efforts to develop the new plant variety.

Likewise, the breeder who deals with Egyptian genetic sources, with a view to develop new varieties derived therefrom, shall undertake to obtain the approval of the relevant competent administrative authorities. He shall also undertake to acknowledge the Egyptian traditional knowledge as sources to what he could have achieved using such knowledge and experience, through the disclosure of the Egyptian source the breeder benefited from, and by sharing the profits gained with the interested party, as prescribed in the Regulations of this Law.

A register shall be established in the Ministry of Agriculture to include the genetic Egyptian plants, both wild and domesticated.

Article 201

The Office of Plant Variety Protection shall issue breeder's right certificates in accordance with the procedures prescribed in the Regulations, against a fee prescribed therein, not exceeding 5,000 pounds.

The grant of such a certificate shall be published, at the expense of the title holder, in a monthly gazette issued by the Office. Where an application is rejected, the applicant shall be informed of the rejection decision and the reasons thereof. Any interested party may, within 15 days from the publication date or the date of notification, oppose the decision to grant a breeder's right certificate or to reject an application for the protection of a plant variety, as may be the case.

The Regulations shall prescribe the rules and procedures for the notification, examination of the appeal and the decision thereon.

Article 202

Where a variety loses one of the conditions required for granting a breeder's right, or when granted in violation of the provisions of this Law, the certificate of the breeder's right shall be cancelled in accordance with the rules and procedures as decided by the Minister of Agriculture.

Notification of this decision to the concerned parties shall be in a registered letter with acknowledgement of receipt, and may be appealed within 15 days from the date of notification.

The Minister of Agriculture shall issue a decision establishing the rules and procedures for examination and settlement of the appeal.

Article 203

Without prejudice to any more severe punishment under any other law, deliberate violation of the provisions contained in this Book shall be punishable by a fine of not less than 10,000 pounds and not more than 50,000 pounds.

In case of repetition, the punishment shall be an imprisonment for a period of not less than three months and not more than one year and a fine of not less than 20,000 pounds and not more than 100,000 pounds.

In all cases, the incriminated seeds and the propagating materials shall be confiscated.

Article 204

Upon the request of any concerned party, the president of the competent court considering the merits of the case, may issue a decision, by petition, to order one or more of the appropriate conservatory measures, and in particular:

- (1) Establishing infringement of a protected right.
- (2) Drawing a detailed inventory and detailed description of the infringing products and the implements used or may be used in the infringement.
- (3) Seizure of all articles stated in item 2.

In all cases, the president may designate one or more experts to assist the bailiff in charge of the execution of such measures. He may require the applicant to deposit an appropriate financial security. Where the applicant fails to submit the merits of the case to the competent court, within 15 days following the date of the order, such order shall cease to have effect.

Article 205

The concerned parties may, within 30 days from the date of issue or publication of the order, as may be the case, appeal to the president of the court who issued that order. The president may confirm or revoke the order totally or partly, in accordance with the rules and procedures provided for under the law of civil and commercial proceedings.

Article 206

The Minister of Justice, in agreement with the Minister of Agriculture, shall issue a decision designating law enforcement officers for the purpose of implementing the provisions contained in this Book.

[End of document]

11. Estonia

Heritage Conservation Act, 2002

TK Estonian text only

12. Ethiopia

Proclamation No. 482/2006 Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation

WHEREAS, the immense biodiversity wealth Ethiopia is endowed with must be conserved and sustainably utilized for the benefit and development of its peoples;

WHEREAS, it is necessary to recognize the historical contribution Ethiopian communities made to the conservation, development and sustainable utilization of biodiversity resources;

WHEREAS, Ethiopia is a part to the Convention on Biological Diversity and Convention requires the enactment of access legislation;

WHEREAS, Ethiopia has agreed to the African Model Law on Community, Farmers' and Plant Breeders' Right and Access to Biological Resources;

WHEREAS, it is necessary to protect and encourage the customary use of genetic resources by Ethiopian communities which are relevant to the conservation and sustainable use of the biodiversity resources of the country;

WHEREAS, it is necessary to recognize and protect the knowledge of Ethiopian communities generated and accumulated with respect to the conservation and utilization of genetic resources and promote the wider application of such knowledge with the approval and sharing benefits by such communities;

WHEREAS, it is necessary to involve communities in the making of decisions concerning the use of genetic resources and community knowledge and sharing of benefits derived from the utilization thereof;

WHEREAS, in order to realize these objectives, it is necessary to determine by law the access to genetic resources and community knowledge, and to provide for the rights of communities over genetic resources and community knowledge;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE GENERAL PROVISIONS

1. Short Title

This Proclamation may be cited as “Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482 /2006.”

2. Definitions

In this Proclamation, unless the context requires otherwise:-

1/ “access” means the collection, acquisition, transfer or use of genetic resources and/or community knowledge;

2/ “biological resource” includes genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystem with actual or potential value for humanity;

3/ “derivative” means product extracted or developed from biological resource this may include products such as plant varieties, oils, resins, gums, chemicals and proteins;

4/ “ex situ” means a condition in which genetic resource is found outside of its natural habitat;

5/ “exploration” means an activity to find out the existence or the status of a given genetic resources;

6/ “genetic resource” means any genetic material of biological resource containing genetic information having actual or potential value for humanity and it including derivatives;

7/ “in situ” means a condition in which genetic resource is found in its natural habitat or ecosystem;

8/ “Institute” means the Institute of Biodiversity Conservation established by Proclamation No. 120/1998 (as amended);

9/ “local community” means a human population living in a distinct geographical area in Ethiopia as a custodian of a given genetic resource or creator of a given community knowledge;

10/ “person” means a natural or juridical person;

11/ “prior informed consent” means the consent given by the Institute and the concerned local community based on an access application containing a complete and accurate access information to a person seeking access to a specified genetic resource or community knowledge;

12/ “relevant institution” means a state organ responsible for administering or having special technical expertise on a specific sector of genetic resources or community knowledge;

13/ “state” means, the Government of the Federal Democratic Republic of Ethiopia or its Regional State, as applicable;

14/ “community knowledge” means knowledge, practices, innovations or technologies created or developed over generations by local communities on the conservation and use of genetic resources.

15/ “Biodiversity” means the variability among living organisms from all sources of ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;

3. Objectives

The objective of this Proclamation is to ensure that the country and its communities obtain fair and equitable share from the benefits arising out of the use of genetic resources so as to promote the conservation and sustainable utilization of the country’s biodiversity resources;

4. Scope of Application

1/ This Proclamation shall apply on access to genetic resources found in in situ or ex situ conditions and community knowledge.

2/ Notwithstanding the provision of Sub-Article (1) of this Article, this Proclamation shall not apply to:

a/ the customary use and exchange of genetic resources and community knowledge by and among Ethiopian Local communities; and

b/ the sale of produce of biological resources for direct consumption, that do not involve the use of the genetic resource thereof.

5. Ownership

1/ The ownership of genetic resources shall be vested in the state and the Ethiopian people.

2/ The ownership of community knowledge shall be vested in the concerned local community.

PART TWO PROTECTION OF COMMUNITY RIGHTS

6. Principle

Local communities shall have the following rights over their genetic resources and community knowledge:

1/ the right to regulate the access to their community knowledge;

2/ an inalienable right to use their genetic resources and community knowledge;

3/ the right to share from the benefit arising out of the utilization of their genetic resources and community knowledge.

7. Right to regulate access

1/ The right of local communities to regulate access to their community knowledge shall include the following:

a/ the right to give prior informed consent for access to their community knowledge;

b/ when exercising the right to give prior informed consent, the right to refuse consent when they believe that the intended access will be detrimental to the integrity of their cultural or natural heritages;

c/ the right to withdraw or place restriction on the prior informed consent they have given for access to their community knowledge where they find out that such consent is likely to be detrimental to their socio-economic life or their natural or cultural heritages;

d/ the right to demand the restriction or withdrawal of the prior informed consent given by the Institute for access to their genetic resources where they found out that is likely to be detrimental to their socio-economic life or their natural or cultural heritages;

2/ The conditions and the procedure in accordance to which local communities shall give prior informed consent for access to their community knowledge shall be specified by a regulation;

8. Use Right

1/ Local communities shall have an inalienable right to use or exchange among themselves their genetic resources or community knowledge in the course of sustaining their livelihood systems in accordance with their customary practices or norms.

2/ No legal restriction shall be placed on the traditional system of local communities on the use and exchange of genetic resources and community knowledge;

9 Right to share benefit

1/ Local communities shall have the right to share from the benefit arising out of the utilization of their community knowledge;

2/ Local communities shall have the right to obtain 50% of the benefit shared by the state in the form of money from the benefits derived out of the utilization of their genetic resources in accordance with Article 18 (1) of this proclamation;

3/ The money obtained pursuant to Sub-Article (1) and (2) of this Article shall be put to the common advantage of the concerned local communities;

4/ The procedure in accordance to which such monetary shall be used for the common advantage of local communities shall be specified by regulation to be issued under this proclamation.

10. Protection of Community Rights

1/ The rights of local communities over their genetic resources and community knowledge shall be protected as they are enshrined in the customary practices and norms of the concerned communities.

2/ An item of community knowledge shall be identified, interpreted and ascertained in accordance with the customary practices and Norma of the concerned local community.

3/ The non-registration of any community knowledge shall not render it unprotected by community rights.

4/ The publication or oral description of a given genetic resource or a community knowledge, or the presence of the genetic resources in gene bank or any other conservation center or that it is in use shall not affect its protection as community rights.

PART THREE CONDITION OF ACCESS

11. Requirement of Permit

1/ Without prejudice to the provisions of Sub-Article 2(a) of Article 4 of this Proclamation, no person shall access genetic resources or community knowledge unless in possession of written access permit granted by the Institute based on prior informed consent.

2/ Unless otherwise explicitly expressed, the granting of permit to access genetic resources shall not be construed to constitute permit to access the community knowledge associated therewith and vice versa.

3/ Without prejudice to the provisions of Sub-Article 2(b) of Article 4 of this Proclamation, no person shall export genetic resources out of Ethiopia unless in possession of export permit granted by the Institute to this effect.

4/ Notwithstanding the provisions of Sub-Article (1) of this Article organs of the state which are empowered by law to conserve genetic resources may not be required to obtain access permit from the Institute to collect genetic resource or community knowledge in the discharge of their duties;

provided however, that they may not transfer the genetic resources or community knowledge to third persons or export same out of Ethiopia unless they are given explicit permit by the Institute, When collecting genetic resources and community knowledge, employees of such institutions must carry with them a letter to this effect.

12. Basic Pre-Conditions of Access

1/ Access to genetic resources shall be subject to the prior informed consent of the Institute.

2/ Access to community knowledge shall be subject to the prior informed consent of the concerned local community.

3/ The state and the concerned local community shall obtain fair and equitable share from benefits arising out of the utilization of genetic resources and community knowledge accessed.

4/ An access applicant who is a foreigner shall present a letter from the competent authority of his national state or that of his domicile assuring that it shall uphold and enforce the access obligations the applicant.

5/ In cases of access by foreigners, the collection of genetic resources and community knowledge shall be accompanied by the personnel of the Institute or the personnel of the relevant institution to be designated by the Institute.

6/ The research based on the genetic resources accessed shall be carried out in Ethiopia and with the participation of Ethiopian nationals designated by the Institute, unless where it is impossible.

7/ Where the research on the genetic resources accessed is permitted to be carried out abroad, the institution sponsoring and/or hosting the research shall give a letter of assurance that they observe the access obligations attached thereto.

13. Conditions for Denial of Access

The Institute may deny access to genetic resources; where:

1/ The access requested is in relation to the genetic resource of an endangered species;

- 2/ The access may have adverse effects upon human health or the cultural values of the local community;
- 3/ The access may cause undesirable impact on the environment;
- 4/ The access may cause danger of loss of ecosystem;
- 5/ The access is intended to use genetic resources for purposes contrary to the national laws of Ethiopia or the treaties to which Ethiopia is a party;
- 6/ The applicant has violated hitherto access conditions or access agreements.

14. Issuance of Access Permit

- 1/ A person who wants to obtain permit to access genetic resources or community knowledge shall present an application in writing to the Institute. The conditions and procedure in accordance with which applications shall be presented examined and prior informed consent shall be given shall be specified by regulations.
- 2/ Upon giving of prior informed consent, the Institute shall, based on the provisions of this proclamation, negotiate and conclude genetic resources access agreement.
- 3/ Where the access application involves access to community knowledge, the Institute shall negotiate and conclude the access agreement based on the prior informed consent of the concerned local community to that effect.
- 4/ The Institute shall not grant permit for exporting genetic resources out of Ethiopia unless the condition provided under Article 12 (6) of this Proclamation is met.

15. Special Access Permit

- 1/ The Institute may, without the need to strictly follow the access procedure provided for in this Proclamation, grant specific access permit to Ethiopia national public research and higher learning institutions and intergovernmental institutions based in the country, so that they have facilitated access to genetic resources and community knowledge for purpose of development and academic research activities they undertake within the country. Where the Institute grants specific access permits to such institutions, it shall determine, as appropriate, the obligations they shall assume while having access under such permit.
- 2/ An access to genetic resources under a multilateral system of access to which Ethiopia is a party shall be made in accordance with the conditions and procedure specified thereof. The condition and procedure in accordance with which access to genetic resources under multilateral systems shall be implemented shall be determined by regulations.

16. Contents of Access Agreement

An access agreement shall specify, among other things, the following issues:

- 1/ the identity of the parties to the agreement;
- 2/ the type and quantitative description of the genetic resource permitted to be accessed;
- 3/ the description of the community knowledge permitted to be accessed or associated with the genetic resource to be accessed;
- 4/ the locality where the genetic resource or community knowledge is to be collected or the person providing same;
- 5/ the institution with which the sample of the genetic resource and the description of community knowledge accessed shall be deposited;
- 6/ the intended use the genetic resource or the community knowledge;
- 7/ the relation of the access agreement with existing or future access agreements on the same genetic resource or community knowledge;
- 8/ the relevant institution designated by the Institute to participate in the collection of and/or the research based on the genetic resource to be accessed and be in charge of monitoring the implementation of the access agreement;
- 9/ the benefit the state shall get from the access to genetic resources;
- 10/ where the agreement involves access to community knowledge, the benefit the concerned local community shall obtain from the use thereof;
- 11/ the duration of the access agreement;
- 12/ dispute settlement mechanisms; and
- 13/ the obligations the access permit holder shall have under this Proclamation.

17. Obligations of Access Permit Holder

A person who shall be given an access permit shall have the following obligations:

- 1/ deposit the copy of the access permit granted to him with the relevant regional institution in the district where the genetic resource is to be collected and show the access permit up on request;

- 2/ not to deplete population of farmers planting stock or wild species or to remove significant genetic variation from local gene pool during collection;
 - 3/ where the genetic resource is to be collected from protected areas, to observe the rules and regulations of the administration of the protected area;
 - 4/ deposit the sample of the genetic resources and collected and the collection data, and the description of community knowledge accessed with the Institute or the relevant institution the Institute may designate;
 - 5/ observe the type and quantitative limits of the genetic resource permitted to be accessed:
 - 6/ upon request, to supply to the Institute a sample from the genetic resource and copy of the description of the community knowledge accessed;
 - 7/ submit to the Institute regular status reports of the research;
- and where genetic resource is to be collected repeatedly, follow up the environmental and socio-economic impact of the access and submit a report thereon;
- 8/ inform the Institute in writing of all the findings of the research and development based on the genetic resource and community knowledge accessed;
 - 9/ not to transfer the genetic resource and the community knowledge accessed to any other third party or to use same for any purpose other than that originally intended, without first notifying to and obtaining written authorization from the Institute;
 - 10/ return any unused genetic material at the end of the planned research or upon termination of the access agreement;
 - 11/ not to transfer to third parties the access permit or the rights and obligations there under without obtaining the consent of the Institute to that effect;
 - 12/ where he seeks to acquire intellectual property right over the genetic resources accessed or parts thereof, negotiate new agreement with the Institute based on the relevant laws of Ethiopia;
 - 13/ not apply for a patent or any other intellectual property protection over the community knowledge accessed without first obtaining explicit written consent from the Institute;
 - 14/ recognize the locality where the genetic resource or community knowledge accessed from as origin in the application for commercial property protection of the product developed there from;
 - 15/ share the benefit that may be obtained from the utilization of the genetic resource or community knowledge accessed to the state and the concerned local communities;
 - 16/ respect the laws of the country, particularly those regarding sanitary control, biosafety and protection of the environment;

17/ respect the cultural practices, traditional values and customs of local communities;

18/ observe the terms and conditions of the access agreement.

18. Benefit Sharing

1/ The kind and the amount of the benefit to be shared by the state and local communities from access to genetic resources or community knowledge shall be determined case by case in each specific access agreements to be signed.

2/ The remaining portion of the monetary benefit from access to genetic resources, after deducting the share of the local community as determined pursuant to Article 9 (1) of this Proclamation, shall be allocated for conservation of biodiversity and the promotion of community knowledge.

The conditions how the money shall be put to such use shall be determined by regulation.

3/ The sharing of non-monetary benefits from access to genetic resources among the state and the concerned local community shall be specified in each specific access agreement taking into account the kinds of benefits agreed to be shared with the access permit holder.

19. Types of Benefit

The benefit to be shared from an access to genetic resources and community knowledge may include the following modes:

1/ License fee;

2/ Upfront payment;

3/ Milestone payment;

4/ Royalty;

5/ Research funding;

6/ Joint ownership of intellectual property;

7/ Employment opportunity;

8/ Participation of Ethiopian nationals from the Institute or the relevant institutions in the research based on the genetic resources or community knowledge accessed;

9/ Priority to supply the raw material of genetic resource required for producing products there from;

10/ Access to products and technologies developed from the use of genetic resource or community knowledge accessed;

11/ Training, both at institutional and local communities levels, to enhance local skills in genetic resources conservation, evaluation, development, propagation and use;

12/ Provision of equipment, infrastructure and technology support; and

13/ Any other benefit as appropriate

PART FOUR FOLLOW UP AND COMPLIANCE MEASURE

20. Follow-up

1/ The Institute shall follow-up the execution of access agreements through the following mechanisms:

a) inspection;

b) periodic progress and status report by access permit holders and the relevant institutions designated to accompany the collection, participate in the research and monitor the implementation of access agreement;

c) a report by any other person or individual; and

d) any other mechanism deemed appropriate

2/ The access permit holder and the relevant institutions designated to take part in the collection of and research the based on genetic resources and to monitor the implementation of access agreements shall give periodic reports to the Institute on the collection conducted, the progress of the research and the findings there from.

3/ The Institute shall inform the concerned local communities of the progress of the research and the findings thereof, the utilization of community knowledge and the benefit shared there from.

21. Compliance Measure

1/ The Institute may alter an access agreement and limit the size of the genetic resource to access or put any other limitation, as appropriate, where it is recognized that the access has posed threat of genetic erosion, degradation of the environment or violation of the cultural values of communities which can not be easily averted.

2/ Where the access permit holder have violated or failed to comply with the provisions of this Proclamation or the terms and conditions of the access agreement or where the access causes risk of damage to genetic resources or the environment or affects overriding public interest, the Institute shall

suspend or terminate an access agreement and prohibit the access to genetic resources or community knowledge.

3/ Where the Institute decides to alter, suspend or terminate an access agreement, it shall communicate same to the concerned local community and the access permit holder.

PART FIVE EXPLORATION OF GENETIC RESOURCES

22. Prohibition

1/ Without prejudice to the provisions of Article 4(2) of this Proclamation, no person may conduct exploration of genetic resources unless in possession of exploration permit from the Institute.

2/ Notwithstanding the provisions of Sub-Article (1) of this Article, organs of the state which are empowered by law to conserve genetic resources are not required to obtain exploration permit to conduct exploration of genetic resources in the discharge of their duties.

23. Application

1/ Any person who wants to obtain exploration permit shall present written application to the Institute.

2/ The application shall specify the purpose of the exploration, the types of the genetic resources to be explored, the locality where the exploration shall be conducted and the time schedule for the exploration.

24. Granting Exploration Permit

1/ Upon receiving a complete exploration application, the Institute shall, in consultation with the relevant institution where appropriate, grant an exploration permit to the applicant.

2/ The exploration permit shall specify the types of the genetic resources to be explored, the locality where the exploration shall take place, the time schedule of the exploration and any other condition the Institute deems necessary.

3/ Where the Institute grants exploration permit to a foreigner; it shall assign its scientific personnel or designate other relevant institution to accompany the exploration mission.

25. Obligations of Explorers

Any holder of an exploration permit shall have the following obligations:

1/ deposit a copy of the exploration permit with the relevant institution in the district of the locality where the exploration will be conducted;

- 2/ strictly observe the terms and conditions specified in the permit;
- 3/ present to the Institute a detailed and complete report of the exploration mission upon its completion;
- 4/ show, upon on requested, the exploration permit issued to him;
- 5/ respect local customs, traditions, values, property rights in the locality where the exploration shall be conducted and the laws of the country.

PART SIX ADMINISTRATION OF ACCESS

26. Powers of Ministry of Agriculture and Rural Development

The implementation of the provisions of this proclamation that deal with genetic resources of wild animals shall be the responsibility of the Ministry of Agriculture and Rural Development.

27. Powers and Duties of the Institute

Without prejudice to the powers and duties entrusted to it in other provisions of this Proclamation, the Institute shall have the powers and duties to:

- 1/ follow-up and ensure that access is carried out in accordance with this Proclamation as well as regulations and directives issued hereunder;
- 2/ collect the benefits to be obtained from access agreements and pass over to beneficiaries;
- 3/ prepare model access agreements;
- 4/ sensitize contents of this Proclamation;
- 5/ collect, analyze and as necessary disseminate to users information on access to genetic resources and community knowledge;
- 6/ cause that legal actions be taken against offences committed in violations of this Proclamation;
- 7/ issue directives and perform such other activities necessary for the implementation of this Proclamation;
- 8/ delegate its powers and duties to other legally established bodies where deemed necessary and convenient to carry out its duties in a better way;

28. Responsibilities of Local Communities

Local communities shall have the responsibility to:

1/ prohibit any person, who does not belong to their communities, from collecting or taking genetic resources from their localities without having the necessary permit; and

2/ require any person, who does not belong to their communities and who is collecting or taking genetic resource from their localities, to show his access permit, and if he is without permit immediately notify or present him to the nearest kebele or wereda administration;

29. Responsibilities of Regional Bodies

Kebele administration and regional bodies at all levels responsible for the conservation of genetic resources shall:

1/ regulate that genetic resources is not accessed from their respective jurisdiction without permit by any person who does not belong to the communities thereof; and

2/ require access permit from any person, who does not belong to the communities thereof and who is collecting or taking genetic resources from their respective jurisdiction, and if he is without permit, seize the genetic resource and present him to the law and notify the Institute the detailed particulars of the genetic resource and the person found in possession of same;

30. Responsibilities of Customs Offices

In accordance with directives to be given to them by the Institute, customs officers shall have the responsibilities to:

1/ inspect that any genetic resources being taken out of the country has been accompanied with an export permit given by the Institute;

2/ require any person leaving the country who is transporting or is in possession of genetic resource to produce the necessary permit to this effect from the Institute;

3/ seize genetic resource being transported out of the country and the person transporting same without permit from the Institute and immediately report same to the nearby relevant body and the Institute;

4/ ensure that a statement is written on the package of a biological resource product to be exported indicating that the use of the genetic material contained in the product is prohibited and doing so would constitute a penal offence.

31. Responsibilities of Mail Service Institutions

Postal and other courier service institutions shall, before receiving and transporting genetic resources out of the country as mail, require their clients to produce permit from the Institute to export the genetic resources out of the country.

32. Responsibilities of Quarantine Control Institutions

Quarantine control Institution shall, ensure that the quarantine certificate they issue to biological resource products, contain a statement indicating that the certificate does not constitute a permit to use the product as genetic resource and that doing so is prohibited and would constitute an offence.

PART SEVEN MISCELLANEOUS PROVISIONS

33. Transitory Provisions

1/ Access agreements made prior to the coming into force of this Proclamation shall be revised and harmonized with the provisions of this Proclamation.

2/ The access to genetic resources under agreements concluded prior to the coming into force of this Proclamation shall be suspended until they are revised and harmonized with the provisions of this Proclamation.

34. Duty to Cooperate

Any person shall have the duty to cooperate with the Institute, the relevant institutions, and local communities in the implementation of this Proclamation as well as regulations and directives issued hereunder.

35. Penalty

1/ Any person who:

- a) Accesses genetic resources or community knowledge without obtaining an access permit from the Institute;
- b) Provides false information in the access application or in the course of subsequent monitoring of access agreement;
- c) Subsequently changes the purpose of access specified in the access agreement without obtaining permit from the Institute to the effect.
- d) Explores genetic resources without obtaining exploration permit from the Institute or provides false information in the application for exploration permit;

Shall, with out prejudice to the confiscation of the genetic resource accessed, the cancellation of the access permit granted, and the civil liability arising thereof, be punished, depending on the gravity of the circumstance, with rigorous imprisonment of not less than three years and a fine of not less than ten-thousand and not exceeding thirty-thousand birr.

2/ Where the offence committed is in relation to genetic resources endemic to Ethiopia:-

The punishment shall be, depending of the circumstance, rigorous imprisonment of not less than five years and not exceeding twelve-years and a fine ranging from fifty thousand birr to hundred-thousand birr.

3/ Where the offences under this Article are committed in negligence, the penalty shall be a fine of not less than five thousand birr or, depending on the circumstance and the gravity of the offence, simple imprisonment of not less than three months.

36. Inapplicable Laws

No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, have effect with respect to matter provided for by this Proclamation.

37. Power to Issue Regulations

The Council of Ministers may issue regulations necessary for the proper implementation of this Proclamation.

38. Effective Date

This Proclamation shall come into force upon publication in the Federal Negarit Gazeta.

Comparison of Ethiopian legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

This instrument provides reasonably comprehensive coverage of the common provisions. However it does not address multiple owners and its dealings with international context is limited.

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	3. Objectives The objective of this Proclamation is to ensure that the country and its communities obtain fair and equitable share from the benefits arising out of the use of genetic resources so as to promote the conservation and sustainable utilization of the country's biodiversity resources;	
2. definition of terms- key terms used in the draft	2. Definitions In this Proclamation, unless the context requires otherwise:- 1/ "access" means the collection, acquisition, transfer or use of genetic resources and/or community knowledge; 2/ "biological resource" includes genetic resources, organisms or parts thereof, populations or any other biotic component of ecosystem with actual or potential value for humanity; 3/ "derivative" means product extracted or developed from biological resource this may include products such as plant varieties, oils, resins, gums, chemicals and proteins; 4/ "ex situ" means a condition in which genetic resource is found outside of its natural habitat; 5/ "exploration" means an activity to find out the existence or the status of a given genetic resources; 6/ "genetic resource" means any genetic material of biological resource containing genetic information having actual or potential value for humanity and it including derivatives; 7/ "in situ" means a condition in which genetic resource is found in its natural habitat or ecosystem; 8/ "Institute" means the Institute of Biodiversity Conservation established by Proclamation No. 120/1998 (as amended); 9/ "local community" means a human population living in a distinct	

	<p>geographical area in Ethiopia as a custodian of a given genetic resource or creator of a given community knowledge;</p> <p>10/ "person" means a natural or juridical person;</p> <p>11/ "prior informed consent" means the consent given by the Institute and the concerned local community based on an access application containing a complete and accurate access information to a person seeking access to a specified genetic resource or community knowledge;</p> <p>12/ "relevant institution" means a state organ responsible for administering or having special technical expertise on a specific sector of genetic resources or community knowledge;</p> <p>13/ "state" means, the Government of the Federal Democratic Republic of Ethiopia or its Regional State, as applicable;</p> <p>14/ "community knowledge" means knowledge, practices, innovations or technologies created or developed over generations by local communities on the conservation and use of genetic resources.</p> <p>15/ "Biodiversity" means the variability among living organisms from all sources of ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>4. Scope of Application</p> <p>1/ This Proclamation shall apply on access to genetic resources found in in situ or ex situ conditions and community knowledge.</p> <p>2/ Notwithstanding the provision of Sub-Article (1) of this Article, this Proclamation shall not apply to:</p> <p>a/ the customary use and exchange of genetic resources and community knowledge by and among Ethiopian Local communities; and</p> <p>b/ the sale of produce of biological resources for direct consumption, that do not involve the use of the genetic resource thereof.</p>	
4. beneficiaries- who should benefit	<p>5. Ownership</p> <p>1/ The ownership of genetic resources shall be vested in the state and the Ethiopian people.</p> <p>2/ The ownership of community knowledge shall be vested in the concerned local community.</p> <p>6. Principle</p> <p>Local communities shall have the following rights over their genetic resources and community knowledge:</p> <p>1/ the right to regulate the access to their community knowledge;</p> <p>2/ an inalienable right to use their genetic resources and community knowledge;</p> <p>3/ the right to share from the benefit arising out of the utilization of their genetic resources and community knowledge.</p>	
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>7. Right to regulate access</p> <p>1/ The right of local communities to regulate access to their community knowledge shall include the following:</p> <p>a/ the right to give prior informed consent for access to their community knowledge;</p> <p>b/ when exercising the right to give prior informed consent, the right to refuse consent when they believe that the intended access will be detrimental to the integrity of their cultural or natural heritages;</p> <p>c/ the right to withdraw or place restriction on the prior informed consent they have given for access to their community knowledge where they find out that such consent is likely to be detrimental to their socio-economic life or their natural or cultural heritages;</p> <p>d/ the right to demand the restriction or withdrawal of the prior informed consent given by the Institute for access to their genetic resources where they found out that is likely to be detrimental to their socio-economic life or their natural or cultural heritages;</p> <p>2/ The conditions and the procedure in accordance to which local</p>	

	<p>communities shall give prior informed consent for access to their community knowledge shall be specified by a regulation;</p> <p>10. Protection of Community Rights</p> <p>1/ The rights of local communities over their genetic resources and community knowledge shall be protected as they are enshrined in the customary practices and norms of the concerned communities.</p> <p>2/ An item of community knowledge shall be identified, interpreted and ascertained in accordance with the customary practices and Norma of the concerned local community.</p> <p>3/ The non-registration of any community knowledge shall not render it unprotected by community rights.</p> <p>4/ The publication or oral description of a given genetic resource or a community knowledge, or the presence of the genetic resources in gene bank or any other conservation center or that it is in use shall not affect its protection as community rights.</p> <p>11. Requirement of Permit</p> <p>1/ Without prejudice to the provisions of Sub-Article 2(a) of Article 4 of this Proclamation, no person shall access genetic resources or community knowledge unless in possession of written access permit granted by the Institute based on prior informed consent.</p> <p>2/ Unless otherwise explicitly expressed, the granting of permit to access genetic resources shall not be construed to constitute permit to access the community knowledge associated therewith and vice versa.</p> <p>3/ Without prejudice to the provisions of Sub-Article 2(b) of Article 4 of this Proclamation, no person shall export genetic resources out of Ethiopia unless in possession of export permit granted by the Institute to this effect.</p> <p>4/ Notwithstanding the provisions of Sub-Article (1) of this Article organs of the state which are empowered by law to conserve genetic resources may not be required to obtain access permit from the Institute to collect genetic resource or community knowledge in the discharge of their duties; provided however, that they may not transfer the genetic resources or community knowledge to third persons or export same out of Ethiopia unless they are given explicit permit by the Institute, When collecting genetic resources and community knowledge, employees of such institutions must carry with them a letter to this effect.</p> <p>12. Basic Pre-Conditions of Access</p> <p>1/ Access to genetic resources shall be subject to the prior informed consent of the Institute.</p> <p>2/ Access to community knowledge shall be subject to the prior informed consent of the concerned local community.</p> <p>3/ The state and the concerned local community shall obtain fair and equitable share from benefits arising out of the utilization of genetic resources and community knowledge accessed.</p> <p>4/ An access applicant who is a foreigner shall present a letter from the competent authority of his national state or that of his domicile assuring that it shall uphold and enforce the access obligations the applicant.</p> <p>5/ In cases of access by foreigners, the collection of genetic resources and community knowledge shall be accompanied by the personnel of the Institute or the personnel of the relevant institution to be designated by the Institute.</p> <p>6/ The research based on the genetic resources accessed shall be carried out in Ethiopia and with the participation of Ethiopian nationals designated by the Institute, unless where it is impossible.</p> <p>7/ Where the research on the genetic resources accessed is permitted to be carried out abroad, the institution sponsoring and/or hosting the research shall give a letter of assurance that they observe the access obligations attached thereto.</p>	
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	<p>14. Issuance of Access Permit</p> <p>1/ A person who wants to obtain permit to access genetic resources or community knowledge shall present an application in writing to the Institute. The conditions and procedure in accordance with which applications shall be presented examined and prior informed consent shall be given shall be specified by regulations.</p> <p>2/ Upon giving of prior informed consent, the Institute shall, based on the provisions of this proclamation, negotiate and conclude genetic resources access agreement.</p> <p>3/ Where the access application involves access to community knowledge, the Institute shall negotiate and conclude the access agreement based on the prior informed consent of the concerned local community to that effect.</p> <p>4/ The Institute shall not grant permit for exporting genetic resources out of Ethiopia unless the condition provided under Article 12 (6) of this Proclamation is met.</p> <p>15. Special Access Permit</p> <p>1/ The Institute may, without the need to strictly follow the access procedure provided for in this Proclamation, grant specific access permit to Ethiopia national public research and higher learning institutions and intergovernmental institutions based in the country, so that they have facilitated access to genetic resources and community knowledge for purpose of development and academic research activities they undertake within the country. Where the Institute grants specific access permits to such institutions, it shall determine, as appropriate, the obligations they shall assume while having access under such permit.</p> <p>16. Contents of Access Agreement</p> <p>An access agreement shall specify, among other things, the following issues:</p> <p>1/ the identity of the parties to the agreement;</p> <p>2/ the type and quantitative description of the genetic resource permitted to be accessed;</p> <p>3/ the description of the community knowledge permitted to be accessed or associated with the genetic resource to be accessed;</p> <p>4/ the locality where the genetic resource or community knowledge is to be collected or the person providing same;</p> <p>5/ the institution with which the sample of the genetic resource and the description of community knowledge accessed shall be deposited;</p> <p>6/ the intended use the genetic resource or the community knowledge;</p> <p>7/ the relation of the access agreement with existing or future access agreements on the same genetic resource or community knowledge;</p> <p>8/ the relevant institution designated by the Institute to participate in the collection of and/or the research based on the genetic resource to be accessed and be in charge of monitoring the implementation of the access agreement;</p> <p>9/ the benefit the state shall get from the access to genetic resources;</p> <p>10/ where the agreement involves access to community knowledge, the benefit the concerned local community shall obtain from the use thereof;</p> <p>11/ the duration of the access agreement;</p> <p>12/ dispute settlement mechanisms; and</p> <p>13/ the obligations the access permit holder shall have under this Proclamation.</p> <p>17. Obligations of Access Permit Holder</p> <p>A person who shall be given an access permit shall have the following obligations:</p> <p>1/ deposit the copy of the access permit granted to him with the relevant regional institution in the district where the genetic resource is to be collected and show the access permit up on request;</p>	
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	<p>2/ not to deplete population of farmers planting stock or wild species or to remove significant genetic variation from local gene pool during collection;</p> <p>3/ where the genetic resource is to be collected from protected areas, to observe the rules and regulations of the administration of the protected area;</p> <p>4/ deposit the sample of the genetic resources and collected and the collection data, and the description of community knowledge accessed with the Institute or the relevant institution the Institute may designate;</p> <p>5/ observe the type and quantitative limits of the genetic resource permitted to be accessed;</p> <p>6/ upon request, to supply to the Institute a sample from the genetic resource and copy of the description of the community knowledge accessed;</p> <p>7/ submit to the Institute regular status reports of the research; and where genetic resource is to be collected repeatedly, follow up the environmental and socio-economic impact of the access and submit a report thereon;</p> <p>8/ inform the Institute in writing of all the findings of the research and development based on the genetic resource and community knowledge accessed;</p> <p>9/ not to transfer the genetic resource and the community knowledge accessed to any other third party or to use same for any purpose other than that originally intended, without first notifying to and obtaining written authorization from the Institute;</p> <p>10/ return any unused genetic material at the end of the planned research or upon termination of the access agreement;</p> <p>11/ not to transfer to third parties the access permit or the rights and obligations there under without obtaining the consent of the Institute to that effect;</p> <p>12/ where he seeks to acquire intellectual property right over the genetic resources accessed or parts thereof, negotiate new agreement with the Institute based on the relevant laws of Ethiopia;</p> <p>13/ not apply for a patent or any other intellectual property protection over the community knowledge accessed without first obtaining explicit written consent from the Institute;</p> <p>14/ recognize the locality where the genetic resource or community knowledge accessed from as origin in the application for commercial property protection of the product developed there from;</p> <p>15/ share the benefit that may be obtained from the utilization of the genetic resource or community knowledge accessed to the state and the concerned local communities;</p> <p>16/ respect the laws of the country, particularly those regarding sanitary control, biosafety and protection of the environment;</p> <p>17/ respect the cultural practices, traditional values and customs of local communities;</p> <p>18/ observe the terms and conditions of the access agreement.</p> <p>22. Prohibition</p> <p>1/ Without prejudice to the provisions of Article 4(2) of this Proclamation, no person may conduct exploration of genetic resources unless in possession of exploration permit from the Institute.</p> <p>2/ Notwithstanding the provisions of Sub-Article (1) of this Article, organs of the state which are empowered by law to conserve genetic resources are not required to obtain exploration permit to conduct exploration of genetic resources in the discharge of their duties.</p> <p>23. Application</p> <p>1/ Any person who wants to obtain exploration permit shall present written application to the Institute.</p> <p>2/ The application shall specify the purpose of the exploration, the types of the genetic resources to be explored, the locality where the exploration shall be conducted and the time schedule for the exploration.</p> <p>24. Granting Exploration Permit</p> <p>1/ Upon receiving a complete exploration application, the Institute</p>	
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	<p>shall, in consultation with the relevant institution where appropriate, grant an exploration permit to the applicant.</p> <p>2/ The exploration permit shall specify the types of the genetic resources to be explored, the locality where the exploration shall take place, the time schedule of the exploration and any other condition the Institute deems necessary.</p> <p>3/ Where the Institute grants exploration permit to a foreigner; it shall assign its scientific personnel or designate other relevant institution to accompany the exploration mission.</p> <p>25. Obligations of Explorers</p> <p>Any holder of an exploration permit shall have the following obligations:</p> <p>1/ deposit a copy of the exploration permit with the relevant institution in the district of the locality where the exploration will be conducted;</p> <p>2/ strictly observe the terms and conditions specified in the permit;</p> <p>3/ present to the Institute a detailed and complete report of the exploration mission upon its completion;</p> <p>4/ show, upon on requested, the exploration permit issued to him;</p> <p>5/ respect local customs, traditions, values, property rights in the locality where the exploration shall be conducted and the laws of the country.</p> <p>PART SIX ADMINISTRATION OF ACCESS</p> <p>26. Powers of Ministry of Agriculture and Rural Development</p> <p>The implementation of the provisions of this proclamation that deal with genetic resources of wild animals shall be the responsibility of the Ministry of Agriculture and Rural Development.</p> <p>27. Powers and Duties of the Institute</p> <p>Without prejudice to the powers and duties entrusted to it in other provisions of this Proclamation, the Institute shall have the powers and duties to:</p> <p>1/ follow-up and ensure that access is carried out in accordance with this Proclamation as well as regulations and directives issued hereunder;</p> <p>2/ collect the benefits to be obtained from access agreements and pass over to beneficiaries;</p> <p>3/ prepare model access agreements;</p> <p>4/ sensitize contents of this Proclamation;</p> <p>5/ collect, analyze and as necessary disseminate to users information on access to genetic resources and community knowledge;</p> <p>6/ cause that legal actions be taken against offences committed in violations of this Proclamation;</p> <p>7/ issue directives and perform such other activities necessary for the implementation of this Proclamation;</p> <p>8/ delegate its powers and duties to other legally established bodies where deemed necessary and convenient to carry out its duties in a better way;</p> <p>28. Responsibilities of Local Communities</p> <p>Local communities shall have the responsibility to:</p> <p>1/ prohibit any person, who does not belong to their communities, from collecting or taking genetic resources from their localities without having the necessary permit; and</p> <p>2/ require any person, who does not belong to their communities and who is collecting or taking genetic resource from their localities, to show his access permit, and if he is without permit immediately notify or present him to the nearest kebele or wereda administration;</p> <p>29. Responsibilities of Regional Bodies</p> <p>Kebele administration and regional bodies at all levels responsible for the conservation of genetic resources shall:</p> <p>1/ regulate that genetic resources is not accessed from their respective jurisdiction without permit by any person who does not belong to the communities thereof; and</p> <p>2/ require access permit from any person, who does not belong to the communities thereof and who is collecting or taking genetic</p>	
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	<p>resources from their respective jurisdiction, and if he is without permit, seize the genetic resource and present him to the law and notify the Institute the detailed particulars of the genetic resource and the person found in possession of same;</p> <p>30. Responsibilities of Customs Offices</p> <p>In accordance with directives to be given to them by the Institute, customs officers shall have the responsibilities to:</p> <p>1/ inspect that any genetic resources being taken out of the country has been accompanied with an export permit given by the Institute;</p> <p>2/ require any person leaving the country who is transporting or is in possession of genetic resource to produce the necessary permit to this effect from the Institute;</p> <p>3/ seize genetic resource being transported out of the country and the person transporting same without permit from the Institute and immediately report same to the nearby relevant body and the Institute;</p> <p>4/ ensure that a statement is written on the package of a biological resource product to be exported indicating that the use of the genetic material contained in the product is prohibited and doing so would constitute a penal offence.</p> <p>31. Responsibilities of Mail Service Institutions</p> <p>Postal and other courier service institutions shall, before receiving and transporting genetic resources out of the country as mail, require their clients to produce permit from the Institute to export the genetic resources out of the country.</p> <p>32. Responsibilities of Quarantine Control Institutions</p> <p>Quarantine control Institution shall, ensure that the quarantine certificate they issue to biological resource products, contain a statement indicating that the certificate does not constitute a permit to use the product as genetic resource and that doing so is prohibited and would constitute an offence.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>9 Right to share benefit</p> <p>1/ Local communities shall have the right to share from the benefit arising out of the utilization of their community knowledge;</p> <p>2/ Local communities shall have the right to obtain 50% of the benefit shared by the state in the form of money from the benefits derived out of the utilization of their genetic resources in accordance with Article 18 (1) of this proclamation;</p> <p>3/ The money obtained pursuant to Sub-Article (1) and (2) of this Article shall be put to the common advantage of the concerned local communities;</p> <p>4/ The procedure in accordance to which such monetary shall be used for the common advantage of local communities shall be specified by regulation to be issued under this proclamation.</p> <p>18. Benefit Sharing</p> <p>1/ The kind and the amount of the benefit to be shared by the state and local communities from access to genetic resources or community knowledge shall be determined case by case in each specific access agreements to be signed.</p> <p>2/ The remaining portion of the monetary benefit from access to genetic resources, after deducting the share of the local community as determined pursuant to Article 9 (1) of this Proclamation, shall be allocated for conservation of biodiversity and the promotion of community knowledge.</p> <p>The conditions how the money shall be put to such use shall be determined by regulation.</p> <p>3/ The sharing of non-monetary benefits from access to genetic resources among the state and the concerned local community shall be specified in each specific access agreement taking into account the kinds of benefits agreed to be shared with the access permit holder.</p>	

	<p>19. Types of Benefit</p> <p>The benefit to be shared from an access to genetic resources and community knowledge may include the following modes:</p> <ol style="list-style-type: none"> 1/ License fee; 2/ Upfront payment; 3/ Milestone payment; 4/ Royalty; 5/ Research funding; 6/ Joint ownership of intellectual property; 7/ Employment opportunity; 8/ Participation of Ethiopian nationals from the Institute or the relevant institutions in the research based on the genetic resources or community knowledge accessed; 9/ Priority to supply the raw material of genetic resource required for producing products there from; 10/ Access to products and technologies developed from the use of genetic resource or community knowledge accessed; 11/ Training, both at institutional and local communities levels, to enhance local skills in genetic resources conservation, evaluation, development, propagation and use; 12/ Provision of equipment, infrastructure and technology support; and 13/ Any other benefit as appropriate 	
7. Sanctions and remedies- dealing with breaches	<p>35. Penalty</p> <ol style="list-style-type: none"> 1/ Any person who: <ol style="list-style-type: none"> a) Accesses genetic resources or community knowledge without obtaining an access permit from the Institute; b) Provides false information in the access application or in the course of subsequent monitoring of access agreement; c) Subsequently changes the purpose of access specified in the access agreement without obtaining permit from the Institute to the effect. d) Explores genetic resources without obtaining exploration permit from the Institute or provides false information in the application for exploration permit; <p>Shall, with out prejudice to the confiscation of the genetic resource accessed, the cancellation of the access permit granted, and the civil liability arising thereof, be punished, depending on the gravity of the circumstance, with rigorous imprisonment of not less than three years and a fine of not less than ten-thousand and not exceeding thirty-thousand birr.</p> <ol style="list-style-type: none"> 2/ Where the offence committed is in relation to genetic resources endemic to Ethiopia:- <p>The punishment shall be, depending of the circumstance, rigorous imprisonment of not less than five years and not exceeding twelve-years and a fine ranging from fifty thousand birr to hundred-thousand birr.</p> <ol style="list-style-type: none"> 3/ Where the offences under this Article are committed in negligence, the penalty shall be a fine of not less than five thousand birr or, depending on the circumstance and the gravity of the offence, simple imprisonment of not less than three months. 	
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>20. Follow-up</p> <ol style="list-style-type: none"> 1/ The Institute shall follow-up the execution of access agreements through the following mechanisms: <ol style="list-style-type: none"> a) inspection; b) periodic progress and status report by access permit holders and the relevant institutions designated to accompany the collection, participate in the research and monitor the implementation of access agreement; c) a report by any other person or individual; and d) any other mechanism deemed appropriate 2/ The access permit holder and the relevant institutions designated to take part in the collection of and research the based on genetic 	

	<p>resources and to monitor the implementation of access agreements shall give periodic reports to the Institute on the collection conducted, the progress of the research and the findings there from.</p> <p>3/ The Institute shall inform the concerned local communities of the progress of the research and the findings thereof, the utilization of community knowledge and the benefit shared there from.</p> <p>21. Compliance Measure</p> <p>1/ The Institute may alter an access agreement and limit the size of the genetic resource to access or put any other limitation, as appropriate, where it is recognized that the access has posed threat of genetic erosion, degradation of the environment or violation of the cultural values of communities which can not be easily averted.</p> <p>2/ Where the access permit holder have violated or failed to comply with the provisions of this Proclamation or the terms and conditions of the access agreement or where the access causes risk of damage to genetic resources or the environment or affects overriding public interest, the Institute shall suspend or terminate an access agreement and prohibit the access to genetic resources or community knowledge.</p> <p>3/ Where the Institute decides to alter, suspend or terminate an access agreement, it shall communicate same to the concerned local community and the access permit holder.</p> <p>34. Duty to Cooperate</p> <p>Any person shall have the duty to cooperate with the Institute, the relevant institutions, and local communities in the implementation of this Proclamation as well as regulations and directives issued hereunder.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		Not addressed
10. exceptions – emergencies, traditional use, conservation	<p>8. Use Right</p> <p>1/ Local communities shall have an inalienable right to use or exchange among themselves their genetic resources or community knowledge in the course of sustaining their livelihood systems in accordance with their customary practices or norms.</p> <p>2/ No legal restriction shall be placed on the traditional system of local communities on the use and exchange of genetic resources and community knowledge;</p> <p>13. Conditions for Denial of Access</p> <p>The Institute may deny access to genetic resources; where:</p> <p>1/ The access requested is in relation to the genetic resource of an endangered species;</p> <p>2/ The access may have adverse effects upon human health or the cultural values of the local community;</p> <p>3/ The access may cause undesirable impact on the environment;</p> <p>4/ The access may cause danger of loss of ecosystem;</p> <p>5/ The access is intended to use genetic resources for purposes contrary to the national laws of Ethiopia or the treaties to which Ethiopia is a party;</p> <p>6/ The applicant has violated hitherto access conditions or access agreements.</p>	

11. disclosure-permits, databases, disclosure in intellectual property applications		Built into access provisions
12. interaction with existing laws- avoiding conflict with other laws	<p>36. Inapplicable Laws No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, have effect with respect to matter provided for by this Proclamation.</p> <p>37. Power to Issue Regulations The Council of Ministers may issue regulations necessary for the proper implementation of this Proclamation.</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with	15. 2/ An access to genetic resources under a multilateral system of access to which Ethiopia is a party shall be made in accordance with the conditions and procedure specified thereof. The condition and procedure in accordance with which access to genetic resources under multilateral systems shall be implemented shall be determined by regulations.	
14. transitional provisions- existing uses	<p>33. Transitory Provisions</p> <p>1/ Access agreements made prior to the coming into force of this Proclamation shall be revised and harmonized with the provisions of this Proclamation.</p> <p>2/ The access to genetic resources under agreements concluded prior to the coming into force of this Proclamation shall be suspended until they are revised and harmonized with the provisions of this Proclamation.</p>	

13. Gabon

Law No. 2/94 on the Protection of Cultural Property 1994

TK TCE French text only

14. Gambia

15. Ghana

Traditional Medicine Practice Act 2000. Available English language text not suitable for reproduction.
Act relates to registration of traditional medicine practitioners.

16. India

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 5th February, 2003/Magha 16, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 5th February, 2003, and is hereby published for general information:

THE BIOLOGICAL DIVERSITY ACT, 2002

No. 18 OF 2003

[5th February, 2003]

An Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

WHEREAS India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto.

AND WHEREAS India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992;

AND WHEREAS the said Convention came into force on the 29th December, 1993;

AND WHEREAS the said Convention reaffirms the sovereign rights of the States over their biological resources;

AND WHEREAS the said Convention has the main objective of conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources;

AND WHEREAS it is considered necessary to provide for conservation, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources and also to give effect to the said Convention.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER -I

Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Biological Diversity Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions

In this Act, unless the context otherwise requires,—

- (a) "benefit claimers" means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application;
- (b) "biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems;
- (c) "biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material;
- (d) "bio-survey and bio-utilization" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay;
- (e) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;
- (f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;
- (g) "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 2 1;
- (h) "local bodies" means Panchayats and Municipalities, by whatever name called, within the meaning of clause (1) of article 243B and clause (1) of article 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self-government constituted under any other provision of the Constitution or any Central Act or State Act;
- (i) "member" means a member of the National Biodiversity Authority or a State Biodiversity Board

and includes the Chairperson;

(j) "National Biodiversity Authority" means the National Biodiversity Authority established under section 8;

(k) "prescribed" means prescribed by rules made 1 under this Act;

(l) "regulations" means regulations made under this Act;

(m) "research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;

(n) "State Biodiversity Board" means the State Biodiversity Board established under section 22;

(o) "sustainable use" means the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations;

(p) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.

CHAPTER -II

Regulation of Access to Biological Diversity

Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority

3. (1) No person referred to in sub-section (2) shall, without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization.

(2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, namely:

(a) a person who is not a citizen of India;

(b) a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961;

(c) a body corporate, association or organization

(i) not incorporated or registered in India; or

(ii) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.

Results of research not to be transferred to certain persons without approval of National Biodiversity Authority

4. No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from, India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 or a body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.

Explanation.-For the purposes of this section, "transfer" does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.

Sections 3 and 4 not to apply to certain collaborative research projects

5.(1) The provisions of sections 3 and 4 shall not apply to collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3).

(2) All collaborative research projects, other than those referred to in sub-section (1) which are based on agreements concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause (a) of sub-section (3), be void.

(3) For the purposes of sub-section (1), collaborative research projects shall

(a) conform to the policy guidelines issued by the Central Government in this behalf;

(b) be approved by the Central Government.

Application for intellectual property rights not to be made without approval of National Biodiversity Authority

6.(1) No person shall apply for any intellectual property right, by whatever name called, in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application.

Provided that if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before the seating of tile patent by the patent authority concerned:

Provided further that the National Biodiversity Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.

(2) The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of financial benefits arising out of the commercial utilization of such rights.

(3) The provisions of this section shall not apply to any person making an application for any right under any law relating to protection of plant varieties enacted by Parliament.

(4) Where any right is granted under law referred to in sub-section (3), the concerned authority granting such right shall endorse a copy of such document granting the right to the National Biodiversity Authority.

Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes

7. No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned:

Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaid*s and *hakim*s, who have been practicing indigenous medicine.

CHAPTER -III

National Biodiversity Authority

Establishment of National Biodiversity Authority

8.(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.

(2) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.

(4) The National Biodiversity Authority shall consist of the following members,

(a) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government;

(b) three ex officio members to be appointed by the Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests;

(c) seven ex officio members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with –

(i) Agricultural Research and Education;

(ii) Biotechnology;

(iii) Ocean Development;

(iv) Agriculture and Cooperation;

(v) Indian Systems of Medicine and Homoeopathy;

(vi) Science and Technology;

(vii) Scientific and Industrial Research;

(d) five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and knowledge-holders of biological resources.

Conditions of service of Chairperson and members

9. The term of office and conditions of service of the Chairperson and the other members other than *ex officio* members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government.

Chairperson to be Chief Executive of National Biodiversity Authority

10. The Chairperson shall be the Chief Executive of the National Biodiversity Authority and shall exercise such powers and perform such duties, as may be prescribed.

Removal of members

11. The Central Government may remove from the National Biodiversity Authority any member who, in its opinion, has

- (a) been adjudged as an insolvent; or
- (b) been convicted of an offence which involves moral turpitude; or
- (c) become physically or mentally incapable of acting as a member; or
- (d) so abused his position as to render his continuance in office detrimental to the public interest; or
- (e) acquired such financial or other interest as is likely to affect prejudicially his functions as a member.

Meetings of National Biodiversity Authority

12. (1) The National Biodiversity Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.

(2) The Chairperson of the National Biodiversity Authority shall preside at the meetings of the National Biodiversity Authority.

(3) If for any reason the Chairperson is unable to attend any meeting of the National Biodiversity Authority, any member of the National Biodiversity Authority chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come before any meeting of the National Biodiversity Authority shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson or, in his absence, the person presiding, shall have and exercise a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.

- (6) No act or proceeding of the National Biodiversity Authority shall be invalidated merely by reason of
- (a) any vacancy in, or any defect in the constitution of, the National Biodiversity Authority; or
 - (b) any defect in the appointment of a person acting as a member; or
 - (c) any irregularity in the procedure of the National Biodiversity Authority not affecting the merits of the case.

Committees of National Biodiversity Authority

13. (1) The National Biodiversity Authority may constitute a committee to deal with agro-biodiversity. [*Explanation*-For the purposes of this sub-section, "agro-biodiversity" means biological diversity, of agriculture related species and their wild relatives.]
- (2) Without prejudice to the provisions of sub-section (1), the National Biodiversity Authority may constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.
- (3) A committee constituted under this section shall co-opt such number of persons, who are not the members of the National Biodiversity Authority, as it may think fit and the persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.
- (4) The persons appointed as members of the committee under sub-section (2) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

Officers and employees of National Biodiversity Authority

- 14.(1) The National Biodiversity Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.
- (2) The terms and conditions of service of such officers and other employees of the National Biodiversity Authority shall be such as may be specified by regulations.

Authentication of orders and decisions of National Biodiversity Authority

15. All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorized by the National Biodiversity Authority in this behalf and all other instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorized by it in this behalf.

Delegation of powers

16. The National Biodiversity Authority may, by general or special order in writing, delegate to any member, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.

Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India

17. The salaries and allowances payable to the members and the administrative expenses of the National Biodiversity Authority including salaries, allowances and pension payable to, or in respect

of, the officers and other employees of the National Biodiversity Authority shall be defrayed out of the Consolidated Fund of India.

CHAPTER -IV

Functions and Powers of the National Biodiversity Authority

18.(1) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.

(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.

(3)

The National Biodiversity Authority may

(a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources;

(b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites;

(c) perform such other functions as may be necessary to carry out the provisions of this Act.

(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.

CHAPTER -V

Approval by the National Biodiversity Authority

Approval by National Biodiversity Authority for undertaking certain activities

19.(1) Any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

(2) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (1) or sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

Transfer of biological resource or knowledge

20.(1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.

(2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.

(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:

Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.

Determination of equitable benefit sharing by National Biodiversity Authority

21.(1) The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.

(2) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:

(a) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;

(b) transfer of technology;

(c) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;

(d) association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;

(e) setting up of venture capital fund for aiding the cause of benefit claimers;

(f) payment of monetary compensation and non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.

(3) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund:

Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.

(4) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.

CHAPTER -VI

State Biodiversity Board

Establishment of State Biodiversity Board

22.(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a Board for the State to be known as the (name of the State) Biodiversity Board.

(2)Notwithstanding anything contained in this section, no State Biodiversity Board shall be constituted for a Union territory and in relation to a Union territory, the National Biodiversity Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union territory:

Provided that in relation to any Union territory, the National Biodiversity Authority may delegate all or any of its powers or functions under this sub-section to such person or group of persons as the Central Government may specify.

(3) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(4) The Board shall consist of the following members, namely:

(a) a Chairperson who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government;

(b)not more than five ex officio members to be appointed by the State Government to represent the concerned Departments of the State Government;

(c)not more than five members to be appointed from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.

(5)The head office of the State Biodiversity Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.

Functions of State Biodiversity Board

23. The functions of the State Biodiversity Board shall be to—

(a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources;

(b)regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;

(c) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.

Power of State Biodiversity Board to restrict certain activities

24.(1) Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.

(2) On receipt of an intimation under sub-section (1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquires as it deems fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity:

Provided that no such order shall be made without giving an opportunity of being heard to the person affected.

(3) Any information given in the form referred to in sub-section (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.

Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board

25. The provisions of sections 9 to 17 shall apply to a State Biodiversity Board and shall have effect subject to the following modifications, namely:

(a) references to the Central Government shall be construed as references to the State Government;

(b) references to the National Biodiversity Authority shall be construed as references to the State Biodiversity Board;

Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board.

(c) reference to the Consolidated Fund of India shall be construed as reference to the Consolidated Fund of the State.

CHAPTER -VII

Finance, Accounts and Audit of National Biodiversity Authority

Grants or loans by the Central Government

26. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the National Biodiversity Authority by way of grants or loans such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

Constitution of National Biodiversity Fund

27.(1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto –

- (a) any grants and loans made to the National Biodiversity Authority under section 26;
- (b) all charges and royalties received by the National Biodiversity Authority under this Act; and
- (c) all sums received by the National Biodiversity Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for–

- (a) channeling benefits to the benefit claimers;
- (b) conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;
- (c) socio-economic development of areas referred to in clause (b) in consultation with the local bodies concerned.

Annual report of National Biodiversity Authority

28. The National Biodiversity Authority shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and furnish, to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditors report thereon.

Budget accounts and audit

29.(1) The National Biodiversity Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the National Biodiversity Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the National Biodiversity Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Biodiversity Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the National Biodiversity Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National Biodiversity Authority.

(4) The accounts of the National Biodiversity Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government.

Annual Report to be laid before parliament

30. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER –VIII

Finance, Accounts and Audit of State Biodiversity Board

Grants of money by State Government to State Biodiversity Board

31. The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the State Biodiversity Board by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.

Constitution of State Biodiversity Fund

32.(1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto

- (a) any grants and loans made to the State Biodiversity Board under section 31;
 - (b) any grants or loans made by the National Biodiversity Authority;
 - (c) all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.
- (2) The State Biodiversity Fund shall be applied for
- (a) the management and conservation of heritage sites;
 - (b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37;
 - (c) conservation and promotion of biological resources;
 - (d) socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned;
 - (e) meeting the expenses incurred for the purposes authorized by this Act.

Annual report of State Biodiversity Board

33. The State Biodiversity Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government.

Audit of accounts of State Biodiversity Board

34. The accounts of the State Biodiversity Board shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the State Biodiversity Board shall furnish, to the State Government, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.

Annual Report of State Biodiversity Board to be laid before State Legislature

35. The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the House of State Legislature.

CHAPTER –IX

Duties of the Central and the State Governments

Central Government to develop National strategies plans. Etc., for conservation, etc., of biological diversity

36.(1) The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of *in situ*, and *ex situ*, conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.

(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment; (ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

4) The Central Government shall undertake measures, *Explanation:-* For the purposes of this section,–

(a) "*ex situ* conservation" means the conservation of components of biological diversity outside their natural habitats;

(b) "*in situ* conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

(5) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including *sui generis* system.

Biodiversity heritage sites

37.(1) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.

(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.

(3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.

Power of Central Government to notify threatened species

38. Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a

threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.

Power of Central Government to designate repositories

39.(1) The Central Government may, in consultation with the National Biodiversity Authority, designate institutions as repositories under this Act for different categories of biological resources.

(2) The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.

(3) Any new taxon discovered by any person shall be notified to the repositories or any institution designated for this purpose and he shall deposit the voucher specimens with such repository or institution.

Power of Central Government to exempt certain biological resources

40. Notwithstanding anything contained in this Act, the Central Government may, in consultation with the National Biodiversity Authority, by notification in the Official Gazette, declare that the provisions of this Act shall not apply to any items, including biological resources normally traded as commodities.

CHAPTER -X

Biodiversity Management Committees

Constitution of Biodiversity Management Committee

41.(1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

Explanation.—For the purposes of this sub-section,—

(a) "cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;

(b) "folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

(c) "landrace" means primitive cultivar that was grown by ancient farmers and their successors.

(2) The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.

(3) The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.

CHAPTER -XI

Local, Biodiversity Fund

Grants to Local Biodiversity Fund

42. The State Government may, after due appropriation made by State Legislature by law in this behalf, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.

Constitution of Local Biodiversity Fund

43.(1) There shall be constituted a Fund to be called the Local Biodiversity Fund at every area notified by the State Government where any institution of self-government is functioning and there shall be credited thereto

(a) any grants and loans made under section 42;

(b) any grants or loans made by the National Biodiversity Authority;

(c) any grants or loans made by the State Biodiversity Boards;

(d) fees referred to in sub-section (3) of section 41 received by the Biodiversity Management Committees;

(e) all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.

Application of Local Biodiversity Fund

44.(1) Subject to the provisions of sub-section (2), the management and the custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied, be in the manner as may be prescribed by the State Government.

(2) The Fund shall be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community in so far such use is consistent with conservation of biodiversity.

Annual Report of Biodiversity Management Committees

45. The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body.

Audit of accounts of Biodiversity Management Committees

46. The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.

Annual report, etc, of the Biodiversity Management Committee to be submitted to district Magistrate

47. Every local body constituting a Biodiversity Management Committee under sub-section (1) of section 41, shall cause, the annual report and audited copy of accounts together with auditor's report thereon referred to in sections 45 and 46, respectively and relating to such Committee to be submitted to the District Magistrate having jurisdiction over the area of the local body.

CHAPTER –XII Miscellaneous

National Biodiversity Authority to be bound by the directions given by Central Government

48.(1) Without prejudice to the foregoing provisions of this Act, the National Biodiversity Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Provided that the National Biodiversity Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of State Government to give Directions

49.(1) Without prejudice to the foregoing provisions of this Act, the State Biodiversity Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the State Government may give in writing to it from time to time:

Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the State Government whether a question is one of policy or not shall be final.

Settlement of disputes between State Biodiversity Boards

50.(1) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case may be, may prefer an appeal to the Central Government within such time as may be prescribed.

(2) Every appeal made under sub-section (1) shall be in such form as may be prescribed by the Central Government.

(3) The procedure for disposing of an appeal shall be such as may be prescribed by the Central Government:

Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of, being heard.

(4) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.

(5) While adjudicating any dispute under sub-section (4), the National Biodiversity Authority shall be guided by the principles of natural justice and shall follow such procedure as may be prescribed by the Central Government.

(6) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions; dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (h) any other matter which may be prescribed.

(7) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code and the National Biodiversity Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXV1 of the Code of Criminal Procedure, 1973.

Members, officers, etc., of National Biodiversity Authority and State Biodiversity Board deemed to be public servants

51. All members, officers and other employees of the National Biodiversity Authority or the State Biodiversity Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions, of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Appeal

52. Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal-within the said period, allow it to be filed within a further period not exceeding sixty days.

Execution of determination or order

53. Every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.

Explanation.-For the purposes of this section and section 52, the expression "State Biodiversity Board" includes the person or group of persons to whom the powers or functions under sub-section (2) of section-22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.

Protection of action taken in good faith

54. No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer of the Central Government or the State Government or any member, officer or employee of the National Biodiversity Authority or the State Biodiversity Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Penalties

55.(1) Whoever contravenes or to or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both.
(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

Penalty for contravention of directions or orders of Central government, State government, National Biodiversity Authority and State Biodiversity Boards

56. If any person contravenes any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees every day during which the default continues.

Offences by companies

57.(1) Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.

Explanation. -For the purposes of this section,—

(a) "company" means anybody corporate and includes a firm or other association of individuals; and
(b) "director", in relation to a firm, means a partner in the firm.

Offences to be cognizable and non-bailable

58. The offences under this Act shall be cognizable and non-bailable.

Act to have effect in addition to other Acts

59. The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.

Power of Central Government to give directions to State Government

60. The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or regulation or order made thereunder.

Cognizance of offences

61. No Court shall take cognizance of any offence under this Act except on a complaint made by—

(a) the Central Government or any authority or officer authorized in this behalf by that Government; or

(b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

Power of Central Government to make rules

62.(1) The Central Government may' by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for A or any of the following matters, namely:–

(a) terms and conditions of service of the Chairperson and members under section 9;

(b) powers and duties of the Chairperson under section 10;

(c) procedure under sub-section (1) of section 12 in regard to transaction of business at meetings,

(d) form of application and payment of fees for undertaking certain activities under sub-section (1) of section 19;

(e) the form and manner of making an application under sub-section (2) of section 19;

(f) form of application and the manner for transfer of biological resource or knowledge under sub-section (2) of section 20;

(g) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;

(h) form in which the annual statement of account shall be prepared under subsection (1) of section 29;

(i) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;

(j) the additional matter in which the National Biodiversity Authority may exercise powers of the civil court under clause (h) of sub-section (6) of section 50;

(k) the manner of giving notice under clause (b) of section 61;

(1) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this section and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session or a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following. The session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power of State Government to make rules

63.(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–

(a) the other functions to be performed by the State Biodiversity Board under clause (c) of section 23;

(b) the form in which the prior intimation shall be given under sub-section (1) of section 24;

- (c) the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33;
- (d) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34;
- (e) management and conservation of national heritage sites under section 37;
- (f) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-section (1) of section 44;
- (g) the form of annual report and the time at which such report shall be prepared during each financial year under section 45;
- (h) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;
- (i) any other matter which is to be, or may be, specified.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power of remove difficulties

64. The National Biodiversity Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

Power to remove difficulties

65.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

SUBHASH C. JAIN Secretary to the Government of India

Comparison of Indian Biodiversity Law with common provisions under the Nagoya Protocol and WIPO draft agreements

Limited focus on a number of the common provisions. This instrument is largely focussed on setting up infrastructure.

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions,	An Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.	

genetic resources		
2. definition of terms- key terms used in the draft	<p>Definitions</p> <p>In this Act, unless the context otherwise requires,–</p> <p>(a) "benefit claimers" means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use and application;</p> <p>(b) "biological diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part, and includes diversity within species or between species and of eco-systems;</p> <p>(c) "biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material;</p> <p>(d) "bio-survey and bio-utilization" means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorisation and bioassay;</p> <p>(e) "Chairperson" means the Chairperson of the National Biodiversity Authority or, as the case may be, of the State Biodiversity Board;</p> <p>(f) "commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping;</p> <p>(g) "fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under section 2 1;</p> <p>(h) "local bodies" means Panchayats and Municipalities, by whatever name called, within the meaning of clause (1) of article 243B and clause (1) of article 243Q of the Constitution and in the absence of any Panchayats or Municipalities, institutions of self-government constituted under any other provision of the Constitution or any Central Act or State Act;</p> <p>(i) "member" means a member of the National Biodiversity Authority or a State Biodiversity Board and includes the Chairperson;</p> <p>(j) "National Biodiversity Authority" means the National Biodiversity Authority established under section 8;</p> <p>(k) "prescribed" means prescribed by rules made 1 under this Act;</p> <p>(l) "regulations" means regulations made under this Act;</p> <p>(m) "research" means study or systematic investigation of any biological resource or technological application, that uses biological systems, living organisms or derivatives thereof to make or modify products or processes for any use;</p> <p>(n) "State Biodiversity Board" means the State Biodiversity Board established under section 22;</p> <p>(o) "sustainable use" means the use of components of biological diversity in such manner and at such rate that does not lead to the long-term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations;</p> <p>(p) "value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights		
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access	<p style="text-align: center;">CHAPTER -II</p> <p style="text-align: center;">Regulation of Access to Biological Diversity</p> <p style="text-align: center;">Certain persons not to undertake Biodiversity related activities without approval of National Biodiversity Authority</p>	<p>State regulated no requirement for prior informed consent</p> <p>Provided for by</p>

<p>including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>	<p>3. (1) No person referred to in sub-section (2) shall, without previous approval of the National Biodiversity Authority, obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization.</p> <p>(2) The persons who shall be required to take the approval of the National Biodiversity Authority under sub-section (1) are the following, namely: (a) a person who is not a citizen of India; (b) a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 196 1; (c) a body corporate, association or organization (i) not incorporated or registered in India; or (ii) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management.</p> <p>Results of research not to be transferred to certain persons without approval of National Biodiversity Authority</p> <p>4. No person shall, without the previous approval of the National Biodiversity Authority, transfer the results of any research relating to any biological resources occurring in, or obtained from, India for monetary consideration or otherwise to any person who is not a citizen of India or citizen of India who is non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961 or a body corporate or organization which is not registered or incorporated in India or which has any non-Indian participation in its share capital or management.</p> <p><i>Explanation.</i>-For the purposes of this section, "transfer" does not include publication of research papers or dissemination of knowledge in any seminar or workshop, if such publication is as per the guidelines issued by the Central Government.</p> <p>Sections 3 and 4 not to apply to certain collaborative research projects</p> <p>5.(1) The provisions of sections 3 and 4 shall not apply to collaborative research projects involving transfer or exchange of biological resources or information relating thereto between institutions, including Government sponsored institutions of India, and such institutions in other countries, if such collaborative research projects satisfy the conditions specified in sub-section (3).</p> <p>(2) All collaborative research projects, other than those referred to in sub-section (1) which are based on agreements concluded before the commencement of this Act and in force shall, to the extent the provisions of agreement are inconsistent with the provisions of this Act or any guidelines issued under clause (a) of sub-section (3), be void. (3) For the purposes of sub-section (1), collaborative research projects shall (a) conform to the policy guidelines issued by the Central Government in this behalf; (b) be approved by the Central Government.</p> <p>Application for intellectual property rights not to be made without approval of National Biodiversity Authority</p> <p>6.(1) No person shall apply for any intellectual property right, by whatever name called, in or outside India for any invention based on any research or information on a biological resource obtained from India without obtaining the previous approval of the National Biodiversity Authority before making such application.</p> <p>Provided that if a person applies for a patent, permission of the National Biodiversity Authority may be obtained after the acceptance of the patent but before the seating of tile patent by the patent authority concerned:</p> <p>Provided further that the National Biodiversity Authority shall dispose of the application for permission made to it within a period of ninety days from the date of receipt thereof.</p> <p>(2) The National Biodiversity Authority may, while granting the approval under this section, impose benefit sharing fee or royalty or both or impose conditions including the sharing of</p>	<p>regulation by national authority</p>
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	<p>financial benefits arising out of the commercial utilization of such rights.</p> <p>(3) The provisions of this section shall not apply to any person making an application for any right under any law relating to protection of plant varieties enacted by Parliament.</p> <p>(4) Where any right is granted under law referred to in sub-section (3), the concerned authority granting such right shall endorse a copy of such document granting the right to the National Biodiversity Authority.</p> <p>Prior intimation to State Biodiversity Board for obtaining biological resource for certain purposes</p> <p>7. No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned:</p> <p>Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and <i>vaid</i>s and <i>hakims</i>, who have been practicing indigenous medicine.</p> <p>CHAPTER -V Approval by the National Biodiversity Authority</p> <p>Approval by National Biodiversity Authority for undertaking certain activities</p> <p>19.(1) Any person referred. to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.</p> <p>(2) Any person who intends to apply for a patent or any other form of intellectual property protection whether in India or outside India referred to in sub-section (1) of section 6, may make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.</p> <p>(3) On receipt of an application under sub-section (1) or sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:</p> <p>(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.</p> <p>Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.</p> <p>Transfer of biological resource or knowledge</p> <p>20.(1) No person who has been granted approval under section 19 shall transfer any biological resource or knowledge associated thereto which is the subject matter of the said approval except with the permission of the National Biodiversity Authority.</p> <p>(2) Any person who intends to transfer any biological resource or knowledge associated thereto referred to in sub-section (1) shall make an application in such form and in such manner as may be prescribed to the National Biodiversity Authority.</p> <p>(3) On receipt of an application under sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application:</p> <p>Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.</p> <p>(4) The National Biodiversity Authority shall give public notice of every approval granted by it under this section.</p>	
6. benefit sharing- how are benefits shared,	<p>Determination of equitable benefit sharing by National Biodiversity Authority</p> <p>21.(1) The National Biodiversity Authority shall while granting approvals under section 19 or section 20 ensure that the terms and conditions subject to which approval is granted</p>	Provided for by regulation by

<p>what types of benefit, dealing with technology transfer, capacity building</p>	<p>secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers.</p> <p>(2) The National Biodiversity Authority shall, subject to any regulations made in this behalf, determine the benefit sharing which shall be given effect in all or any of the following manner, namely:</p> <p>(a) grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers;</p> <p>(b) transfer of technology;</p> <p>(c) location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;</p> <p>(d) association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;</p> <p>(e) setting up of venture capital fund for aiding the cause of benefit claimers;</p> <p>(f) payment of monetary compensation and non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit.</p> <p>(3) Where any amount of money is ordered by way of benefit sharing, the National Biodiversity Authority may direct the amount to be deposited in the National Biodiversity Fund:</p> <p>Provided that where biological resource or knowledge was a result of access from specific individual or group of individuals or organizations, the National Biodiversity Authority may direct that the amount shall be paid directly to such individual or group of individuals or organizations in accordance with the terms of any agreement and in such manner as it deems fit.</p> <p>(4) For the purposes of this section, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.</p>	<p>national authority</p>
<p>7. Sanctions and remedies-dealing with breaches</p>	<p>Appeal</p> <p>52. Any person, aggrieved by any determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act, may file an appeal to the High Court within thirty days from the date of communication to him, of the determination or order of the National Biodiversity Authority or the State Biodiversity Board, as the case may be:</p> <p>Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal-within the said period, allow it to be filed within a further period not exceeding sixty days.</p> <p>Execution of determination or order</p> <p>53. Every determination of benefit sharing or order made by the National Biodiversity Authority or a State Biodiversity Board under this Act or the order made by the High Court in any appeal against any determination or order of the National Biodiversity Authority or a State Biodiversity Board shall, on a certificate issued by any officer of the National Biodiversity Authority or a State Biodiversity Board or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.</p> <p><i>Explanation.</i>-For the purposes of this section and section 52, the expression "State Biodiversity Board" includes the person or group of persons to whom the powers or functions under sub-section (2) of section-22 have been delegated under the proviso to that sub-section and the certificate relating to such person or group of persons under this section shall be issued by such person or group of persons, as the case may be.</p> <p>Protection of action taken in good faith</p> <p>54. No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer of the Central Government or the State Government or any member, officer or employee of the National Biodiversity Authority or the State Biodiversity Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.</p> <p>Penalties</p> <p>55.(1) Whoever contravenes or to or abets the contravention of the provisions of section 3 or section 4 or section 6 shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten lakh rupees and where the damage caused exceeds ten lakh rupees such fine may commensurate with the damage caused, or with both.</p>	

	<p>(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 7 or any order made under sub-section (2) of section 24 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.</p> <p>Penalty for contravention of directions or orders of Central government, State government, National Biodiversity Authority and State Biodiversity Boards</p> <p>56. If any person contravenes any direction given or order made by the Central Government, the State Government, the National Biodiversity Authority or the State Biodiversity Board for which no punishment has been separately provided under this Act, he shall be punished with a fine which may extend to one lakh rupees and in case of a second or subsequent offence, with fine which may extend to two lakh rupees and in the case of continuous contravention with additional fine which may extend to two lakh rupees every day during which the default continues.</p> <p>Offences by companies</p> <p>57.(1) Where an offence or contravention under this Act has been committed by a company, every person who at the time the offence or contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.</p> <p>(2) Notwithstanding anything contained in sub-section (1), where an offence or contravention under this Act has been committed by a company and it is proved that the offence or contravention has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence or contravention and shall be liable to be proceeded against and punished accordingly.</p> <p><i>Explanation.</i> -For the purposes of this section,—</p> <p>(a) "company" means anybody corporate and includes a firm or other association of individuals; and</p> <p>(b)"director", in relation to a firm, means a partner in the firm.</p> <p>Offences to be cognizable and non-bailable</p> <p>58. The offences under this Act shall be cognizable and non-bailable.</p>	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>CHAPTER -III</p> <p>National Biodiversity Authority</p> <p>Establishment of National Biodiversity Authority</p> <p>8.(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established by the Central Government for the purposes of this Act, a body to be called the National Biodiversity Authority.</p> <p>(2) The National Biodiversity Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.</p> <p>(3) The head office of the National Biodiversity Authority shall be at Chennai and the National Biodiversity Authority may, with the previous approval of the Central Government, establish offices at other places in India.</p> <p>(4) The National Biodiversity Authority shall consist of the following members,</p> <p>(a) a Chairperson, who shall be an eminent person having adequate knowledge and experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the Central Government;</p>	

	<p>(b) three ex officio members to be appointed by the Central Government, one representing the Ministry dealing with Tribal Affairs and two representing the Ministry dealing with Environment and Forests of whom one shall be the Additional Director General of Forests or the Director General of Forests;</p> <p>(c) seven ex officio members to be appointed by the Central Government to represent respectively the Ministries of the Central Government dealing with –</p> <p>(i) Agricultural Research and Education;</p> <p>(ii) Biotechnology;</p> <p>(iii) Ocean Development;</p> <p>(iv) Agriculture and Cooperation;</p> <p>(v) Indian Systems of Medicine and Homoeopathy;</p> <p>(vi) Science and Technology;</p> <p>(vii) Scientific and Industrial Research;</p> <p>(d) five non-official members to be appointed from amongst specialists and scientists having special knowledge of, or experience in, matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources, representatives of industry, conservers, creators and know ledge-holders of biological resources.</p> <p>Conditions of service of Chairperson and members</p> <p>9. The term of office and conditions of service of the Chairperson and the other members other than <i>ex officio</i> members of the National Biodiversity Authority shall be such as may be prescribed by the Central Government.</p> <p>Chairperson to be Chief Executive of National Biodiversity Authority</p> <p>10. The Chairperson shall be the Chief Executive of the National Biodiversity Authority and shall exercise such powers and perform such duties, as may be prescribed.</p> <p>Removal of members</p> <p>11. The Central Government may remove from the National Biodiversity Authority any member who, in its opinion, has</p> <p>(a) been adjudged as an insolvent; or</p> <p>(b) been convicted of an offence which involves moral turpitude; or</p> <p>(c) become physically or mentally incapable of acting as a member; or</p> <p>(d) so abused his position as to render his continuance in office detrimental to the public interest; or</p> <p>(e) acquired such financial or other interest as is likely to affect prejudicially his functions as a member.</p> <p>Meetings of National Biodiversity Authority</p> <p>12. (1) The National Biodiversity Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.</p> <p>(2) The Chairperson of the National Biodiversity Authority shall preside at the meetings of the National Biodiversity Authority.</p> <p>(3) If for any reason the Chairperson is unable to attend any meeting of the National Biodiversity Authority, any member of the National Biodiversity Authority chosen by the members present at the meeting shall preside at the meeting.</p> <p>(4) All questions which come before any meeting of the National Biodiversity Authority shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairperson or, in his absence, the person presiding, shall have and exercise a second or casting vote.</p> <p>(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.</p> <p>(6) No act or proceeding of the National Biodiversity Authority shall be invalidated merely by reason of</p> <p>(a) any vacancy in, or any defect in the constitution of, the National Biodiversity Authority; or</p> <p>(b) any defect in the appointment of a person acting as a member; or</p> <p>(c) any irregularity in the procedure of the National Biodiversity Authority not affecting the merits of the case.</p> <p>Committees of National Biodiversity Authority</p> <p>13. (1) The National Biodiversity Authority may constitute a committee to deal with agro-biodiversity. [<i>Explanation</i>-For the purposes of this sub-section, "agro-biodiversity" means biological diversity, of agriculture related species and their wild relatives.]</p> <p>(2) Without prejudice to the provisions of sub-section (1), the National Biodiversity Authority may constitute such number of committees as it deems fit for the efficient discharge of its duties and performance of its functions under this Act.</p> <p>(3) A committee constituted under this section shall co-opt such number of persons, who are not the members of the National Biodiversity Authority, as it may think fit and the</p>	
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	<p>persons so co-opted shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the right to vote.</p> <p>(4) The persons appointed as members of the committee under sub-section (2) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.</p> <p>Officers and employees of National Biodiversity Authority</p> <p>14.(1) The National Biodiversity Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.</p> <p>(2) The terms and conditions of service of such officers and other employees of the National Biodiversity Authority shall be such as may be specified by regulations.</p> <p>Authentication of orders and decisions of National Biodiversity Authority</p> <p>15. All orders and decisions of the National Biodiversity Authority shall be authenticated by the signature of the Chairperson or any other member authorized by the National Biodiversity Authority in this behalf and all other instruments executed by the National Biodiversity Authority shall be authenticated by the signature of an officer of the National Biodiversity Authority authorized by it in this behalf.</p> <p>Delegation of powers</p> <p>16. The National Biodiversity Authority may, by general or special order in writing, delegate to any member, officer of the National Biodiversity Authority or any other person subject to such conditions, if any, as may be specified in the order, such of the powers and functions under this Act (except the power to prefer an appeal under section 50 and the power to make regulations under section 64) as it may deem necessary.</p> <p>Expenses of National Biodiversity Authority to be defrayed out of the Consolidated Fund of India</p> <p>17. The salaries and allowances payable to the members and the administrative expenses of the National Biodiversity Authority including salaries, allowances and pension payable to, or in respect of, the officers and other employees of the National Biodiversity Authority shall be defrayed out of the Consolidated Fund of India.</p> <p>CHAPTER -IV</p> <p>Functions and Powers of the National Biodiversity Authority</p> <p>18.(1) It shall be the duty of the National Biodiversity Authority to regulate activities referred to in sections 3, 4 and 6 and by regulations issue guidelines for access to biological resources and for fair and equitable benefit sharing.</p> <p>(2) The National Biodiversity Authority may grant approval for undertaking any activity referred to in sections 3, 4 and 6.</p> <p>(3)</p> <p>The National Biodiversity Authority may</p> <p>(a) advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources;</p> <p>(b) advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and measures for the management of such heritage sites;</p> <p>(c) perform such other functions as may be necessary to carry out the provisions of this Act.</p> <p>(4) The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource obtained from India or knowledge associated with such biological resource which is derived from India.</p> <p>CHAPTER -VI</p> <p>State Biodiversity Board</p> <p>Establishment of State Biodiversity Board</p> <p>22.(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established by that Government for the purposes of this Act, a Board for the State to be known as the (name of the State) Biodiversity Board.</p> <p>(2) Notwithstanding anything contained in this section, no State Biodiversity Board shall be constituted for a Union territory and in relation to a Union territory, the National Biodiversity Authority shall exercise the powers and perform the functions of a State Biodiversity Board for that Union territory:</p> <p>Provided that in relation to any Union territory, the National Biodiversity Authority may delegate all or any of its powers or functions under this sub-section to such person or group of persons as the Central Government may specify.</p> <p>(3) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.</p> <p>(4) The Board shall consist of the following members, namely:</p> <p>(a) a Chairperson who shall be an eminent person having adequate knowledge and</p>	
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	<p>experience in the conservation and sustainable use of biological diversity and in matters relating to equitable sharing of benefits, to be appointed by the State Government;</p> <p>(b) not more than five ex officio members to be appointed by the State Government to represent the concerned Departments of the State Government;</p> <p>(c) not more than five members to be appointed from amongst experts in matters relating to conservation of biological diversity, sustainable use of biological resources and equitable sharing of benefits arising out of the use of biological resources.</p> <p>(5) The head office of the State Biodiversity Board shall be at such place as the State Government may, by notification in the Official Gazette, specify.</p> <p>Functions of State Biodiversity Board</p> <p>23. The functions of the State Biodiversity Board shall be to—</p> <p>(a) advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources;</p> <p>(b) regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians;</p> <p>(c) perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government.</p> <p>Power of State Biodiversity Board to restrict certain activities</p> <p>24.(1) Any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in section 7 shall give prior intimation in such form as may be prescribed by the State Government to the State Biodiversity Board.</p> <p>(2) On receipt of an intimation under sub-section (1), the State Biodiversity Board may, in consultation with the local bodies concerned and after making such enquires as it conservation, may deem fit, by order, prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity: Provided that no such order shall be made without giving an opportunity of being heard to the person affected.</p> <p>(3) Any information given in the form referred to in sub-section (1) for prior intimation shall be kept confidential and shall not be disclosed, either intentionally or unintentionally, to any person not concerned thereto.</p> <p>Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board</p> <p>25. The provisions of sections 9 to 17 shall apply to a State Biodiversity Board and shall have effect subject to the following modifications, namely:</p> <p>(a) references to the Central Government shall be construed as references to the State Government;</p> <p>(b) references to the National Biodiversity Authority shall be construed as references to the State Biodiversity Board;</p> <p>Provisions of sections 9 to 17 to apply with modifications to State Biodiversity Board.</p> <p>(c) reference to the Consolidated Fund of India shall be construed as reference to the Consolidated Fund of the State.</p> <p style="text-align: center;">CHAPTER -VII Finance, Accounts and Audit of National Biodiversity Authority Grants or loans by the Central Government</p> <p>26. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the National Biodiversity Authority by way of grants or loans such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.</p> <p>Constitution of National Biodiversity Fund</p> <p>27.(1) There shall be constituted a Fund to be called the National Biodiversity Fund and there shall be credited thereto –</p> <p>(a) any grants and loans made to the National Biodiversity Authority under section 26;</p> <p>(b) all charges and royalties received by the National Biodiversity Authority under this Act; and</p> <p>(c) all sums received by the National Biodiversity Authority from such other sources as may</p>	
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	<p>be decided upon by the Central Government.</p> <p>(2) The Fund shall be applied for–</p> <p>(a) channeling benefits to the benefit claimers;</p> <p>(b) conservation and promotion of biological resources and development of areas from where such biological resources or knowledge associated thereto has been accessed;</p> <p>(c) socio-economic development of areas referred to in clause (b) in consultation with the local bodies concerned.</p> <p>Annual report of National Biodiversity Authority</p> <p>28. The National Biodiversity Authority shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and furnish, to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditors report thereon.</p> <p>Budget accounts and audit</p> <p>29.(1) The National Biodiversity Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the National Biodiversity Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The accounts of the National Biodiversity Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the National Biodiversity Authority to the Comptroller and Auditor-General of India.</p> <p>(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the National Biodiversity Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the National Biodiversity Authority.</p> <p>(4) The accounts of the National Biodiversity Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government.</p> <p>Annual Report to be laid before parliament</p> <p>30. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.</p> <p style="text-align: center;">CHAPTER –VIII Finance, Accounts and Audit of State Biodiversity Board</p> <p>Grants of money by State Government to State Biodiversity Board</p> <p>31. The State Government may, after due appropriation made by the State Legislature by law in this behalf, pay to the State Biodiversity Board by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.</p> <p>Constitution of State Biodiversity Fund</p> <p>32.(1) There shall be constituted a Fund to be called the State Biodiversity Fund and there shall be credited thereto</p> <p>(a) any grants and loans made to the State Biodiversity Board under section 31;</p> <p>(b) any grants or loans made by the National Biodiversity Authority;</p>	
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	<p>(c) all sums received by the State Biodiversity Board from such other sources as may be decided upon by the State Government.</p> <p>(2) The State Biodiversity Fund shall be applied for</p> <p>(a) the management and conservation of heritage sites;</p> <p>(b) compensating or rehabilitating any section of the people economically affected by notification under sub-section (1) of section 37;</p> <p>(c) conservation and promotion of biological resources;</p> <p>(d) socio-economic development of areas from where such biological resources or knowledge associated thereto has been accessed subject to any order made under section 24, in consultation with the local bodies concerned;</p> <p>(e) meeting the expenses incurred for the purposes authorized by this Act.</p> <p>Annual report of State Biodiversity Board</p> <p>33. The State Biodiversity Board shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government.</p> <p>Audit of accounts of State Biodiversity Board</p> <p>34. The accounts of the State Biodiversity Board shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the State Biodiversity Board shall furnish, to the State Government, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.</p> <p>Annual Report of State Biodiversity Board to be laid before State Legislature</p> <p>35. The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the House of State Legislature.</p> <p style="text-align: center;">CHAPTER –XII Miscellaneous</p> <p>National Biodiversity Authority to be bound by the directions given by Central Government</p> <p>48.(1) Without prejudice to the foregoing provisions of this Act, the National Biodiversity Authority shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.</p> <p>Provided that the National Biodiversity Authority shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.</p> <p>(2) The decision of the Central Government whether a question is one of policy or not shall be final.</p> <p>Power of State Government to give Directions</p> <p>49.(1) Without prejudice to the foregoing provisions of this Act, the State Biodiversity Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the State Government may give in writing to it from time to time: Provided that the State Biodiversity Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.</p> <p>(2) The decision of the State Government whether a question is one of policy or not shall be final.</p> <p>Settlement of disputes between State Biodiversity Boards</p> <p>50.(1) If a dispute arises between the National Biodiversity Authority and a State Biodiversity Board, the said Authority or the Board, as the case may be, may prefer an appeal to the Central Government within such time as may be prescribed.</p> <p>(2) Every appeal made under sub-section (1) shall be in such form as may be prescribed by the Central Government.</p> <p>(3) The procedure for disposing of an appeal shall be such as may be prescribed by the Central Government:</p> <p>Provided that before disposing of an appeal, the parties shall be given a reasonable opportunity of, being heard.</p>	
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	<p>(4) If a dispute arises between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.</p> <p>(5) While adjudicating any dispute under sub-section (4), the National Biodiversity Authority shall be guided by the principles of natural justice and shall follow such procedure as may be prescribed by the Central Government.</p> <p>(6) The National Biodiversity Authority shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely–</p> <p>(a) summoning and enforcing the attendance of any person and examining him on oath;</p> <p>(b) requiring the discovery and production of documents;</p> <p>(c) receiving evidence on affidavits;</p> <p>(d) issuing commissions for the examination of witnesses or documents;</p> <p>(e) reviewing its decisions; dismissing an application for default or deciding it <i>ex parte</i>;</p> <p>(g) setting aside any order of dismissal of any application for default or any order passed by it <i>ex parte</i>;</p> <p>(h) any other matter which may be prescribed.</p> <p>(7) Every proceeding before the National Biodiversity Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code and the National Biodiversity Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXV1 of the Code of Criminal Procedure, 1973.</p> <p>Members, officers, etc., of National Biodiversity Authority and State Biodiversity Board deemed to be public servants</p> <p>51. All members, officers and other employees of the National Biodiversity Authority or the State Biodiversity Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions, of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p style="text-align: center;">CHAPTER –IX Duties of the Central and the State Governments</p> <p>Central Government to develop National strategies plans. Etc., for conservation, etc., of biological diversity</p> <p>36.(1) The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of <i>in situ</i>, and <i>ex situ</i>, conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.</p> <p>(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.</p> <p>(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.</p> <p>(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment; (ii) to regulate, manage or control the risks associated with the use and release of living modified</p>	

	<p>organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.</p> <p>4) The Central Government shall undertake measures,<i>Explanation:-</i>For the purposes of this section,–</p> <p>(a) "<i>ex situ</i> conservation" means the conservation of components of biological diversity outside their natural habitats;</p> <p>(b) "<i>in situ</i> conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.</p> <p>(5) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including <i>sui generis</i> system.</p> <p>Biodiversity heritage sites</p> <p>37.(1) Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.</p> <p>(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.</p> <p>(3)The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.</p> <p>Power of Central Government to notify threatened species</p> <p>38. Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time o time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.</p> <p>Power of Central Government to designate repositories</p> <p>39.(1) The Central Government may, in consultation with the National Biodiversity Authority, designate institutions as repositories under this Act for different categories of biological resources.</p> <p>(2) The repositories shall keep in safe custody the biological material including voucher specimens deposited with them.</p> <p>(3) Any new taxon discovered by any person shall be notified to the repositories or any institution designated for this purpose and he shall deposit the voucher specimens with such repository or institution.</p> <p style="text-align: center;">CHAPTER -X Biodiversity Management Committees</p> <p>Constitution of Biodiversity Management Committee</p> <p>41.(1) Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.</p> <p><i>Explanation.-</i>For the purposes of this sub-section,–</p> <p>(a) "cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;</p> <p>(b) "folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;</p> <p>(c) "landrace" means primitive cultivar that was grown by ancient farmers and their successors.</p> <p>(2) The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.</p> <p>(3) The Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resource for commercial purposes from areas falling within its territorial jurisdiction.</p> <p style="text-align: center;">CHAPTER -XI Local, Biodiversity Fund</p> <p>Grants to Local Biodiversity Fund</p>	
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	<p>42. The State Government may, after due appropriation made by State Legislature by law in this behalf, pay to the Local Biodiversity Funds by way of grants or loans such sums of money as the State Government may think fit for being utilized for the purposes of this Act.</p> <p>Constitution of Local Biodiversity Fund 43.(1) There shall be constituted a Fund to be called the Local Biodiversity Fund at every area notified by the State Government where any institution of self-government is functioning and there shall be credited thereto (a) any grants and loans made under section 42; (b) any grants or loans made by the National Biodiversity Authority; (c) any grants or loans made by the State Biodiversity Boards; (d) fees referred to in sub-section (3) of section 41 received by the Biodiversity Management Committees; (e) all sums received by the Local Biodiversity Fund from such other sources as may be decided upon by the State Government.</p> <p>Application of Local Biodiversity Fund 44.(1) Subject to the provisions of sub-section (2), the management and the custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied, be in the manner as may be prescribed by the State Government. (2) The Fund shall be used for conservation and promotion of biodiversity in the areas falling within the jurisdiction of the concerned local body and for the benefit of the community in so far such use is consistent with conservation of biodiversity.</p> <p>Annual Report of Biodiversity Management Committees 45. The person holding the custody of the Local Biodiversity Fund shall prepare, in such form and during each financial year at such time as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the concerned local body.</p> <p>Audit of accounts of Biodiversity Management Committees 46. The accounts of the Local Biodiversity Fund shall be maintained and audited in such manner as may, in consultation with the Accountant-General of the State, be prescribed and the person holding the custody of the Local Biodiversity Fund shall furnish, to the concerned local body, before such date as may be prescribed, its audited copy of accounts together with auditor's report thereon.</p> <p>Annual report, etc, of the Biodiversity Management Committee to be submitted to district Magistrate 47. Every local body constituting a Biodiversity Management Committee under sub-section (1) of section 41, shall cause, the annual report and audited copy of accounts together with auditor's report thereon referred to in sections 45 and 46, respectively and relating to such Committee to be submitted to the District Magistrate having jurisdiction over the area of the local body.</p>	
11. disclosure- permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws- avoiding conflict with other laws	<p>Act to have effect in addition to other Acts 59. The provisions of this Act shall be in addition to, and not in derogation of, the provisions in any other law, for the time being in force, relating to forests or wildlife.</p> <p>Power of Central Government to give directions to State Government 60. The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any rule or regulation or order made thereunder.</p> <p>Cognizance of offences 61. No Court shall take cognizance of any offence under this Act except on a complaint made by– (a) the Central Government or any authority or officer authorized in this behalf by that Government; or</p>	

	<p>(b) any benefit claimer who has given notice of not less than thirty days in the prescribed manner, of such offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.</p> <p>Power of Central Government to make rules</p> <p>62.(1) The Central Government may' by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for A or any of the following matters, namely:–</p> <p>(a) terms and conditions of service of the Chairperson and members under section 9;</p> <p>(b) powers and duties of the Chairperson under section 10;</p> <p>(c) procedure under sub-section (1) of section 12 in regard to transaction of business at meetings,</p> <p>(d) form of application and payment of fees for undertaking certain activities under sub-section (1) of section 19;</p> <p>(e) the form and manner of making an application under sub-section (2) of section 19;</p> <p>(f) form of application and the manner for transfer of biological resource or knowledge under sub-section (2) of section 20;</p> <p>(g) form in which, and the time of each financial year at which, the annual report of the National Biodiversity Authority shall be prepared and the date before which its audited copy of accounts together with auditor's report thereon shall be furnished under section 28;</p> <p>(h) form in which the annual statement of account shall be prepared under subsection (1) of section 29;</p> <p>(i) the time within which and the form in which, an appeal may be preferred, the procedure for disposing of an appeal and the procedure for adjudication, under section 50;</p> <p>(j) the additional matter in which the National Biodiversity Authority may exercise powers of the civil court under clause (h) of sub-section (6) of section 50;</p> <p>(k) the manner of giving notice under clause (b) of section 61;</p> <p>(1) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.</p> <p>(3) Every rule made under this section and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session or a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following. The session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p> <p>Power of State Government to make rules</p> <p>63.(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–</p> <p>(a) the other functions to be performed by the State Biodiversity Board under clause (c) of section 23;</p> <p>(b) the form in which the prior intimation shall be given under sub-section (1) of section 24;</p> <p>(c) the form in which, and the time of each financial year at which, the annual report shall be prepared under section 33;</p> <p>(d) the manner of maintaining and auditing the accounts of the State Biodiversity Board and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 34;</p> <p>(e) management and conservation of national heritage sites under section 37;</p> <p>(f) the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied under sub-section (1) of section 44;</p> <p>(g) the form of annual report and the time at which such report shall be prepared during each financial year under section 45;</p> <p>(h) the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished under section 46;</p> <p>(i) any other matter which is to be, or may be, specified.</p> <p>(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.</p>	
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	<p>Power of remove difficulties</p> <p>64. The National Biodiversity Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.</p> <p>Power to remove difficulties</p> <p>65.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

**The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act
2006 (India)**

AS PASSED BY LOK SABHA ON 15TH DECEMBER 2006
Bill No.158-C of 2005

**THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF
FOREST RIGHTS) BILL, 2006**

A BILL to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to state development interventions.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:–

Short title and commencement.

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,–

(a) “community forest resource” means customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral

communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;

(b) “critical wildlife habitat” means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

(c) “forest dwelling Scheduled Tribes” means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests and forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities

(d) “forest land” means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National parks;

(e) “forest rights” means the forest rights referred to in section 3;

(f) “forest villages” means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses, permitted by the Government;

(g) “Gram Sabha” means a village assembly, which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;

(h) “habitat” includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling Scheduled Tribes ;

(i) “minor forest produce” includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like;

(j) “nodal agency” means the nodal agency specified in section 11;

(k) “notification” means a notification published in the Official Gazette;

(l) “prescribed” means prescribed by rules made under this Act;

(m) “Scheduled Areas” means the Schedule Areas referred to in clause (1) of article 244 of the Constitution;

(n) “Sustainable use” shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;

(o) “other traditional forest dweller” means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depends on the forest or forests land for bona fide livelihood needs.

Explanation: For the purpose of this clause, “generation” means a period comprising of twenty five years.

(p) “village” means—

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 or;

(ii) any area referred to as a village in any State law relating to panchayats other than the Scheduled Areas; or

- (ii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
- (iii) in the case of States where there are no Panchayats, the traditional village, by whatever name called;
- (q) "wild animal" means any species of animal specified in Schedules I to IV of the Wildlife (Protection) Act, 1972 and found wild in nature.

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of

forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Paltas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages;

(i) right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation prior to the 13th of December 2005.

(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy- five trees per hectare, namely: -

(a) schools;

(b) dispensary or hospital;

- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill upgradation or vocational training centers;
- (l) roads; and
- (m) community centers:

Provided such diversion of forest land shall be allowed only if,-

- (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and
- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

CHAPTER III

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in-

(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;

(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.

(2) The forest rights recognized under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-

(a) the process of recognition and vesting of rights as specified in section 6 is complete in all areas under consideration;

(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972, that the activities of impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;

(c) the State Government has concluded that other reasonable options, such as, co-existence are not available;

(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfills the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;

(e) the free informed consent of the Gram Sabhas in the area concerned to the proposed resettlement and to the package provided has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses:

(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next of kin.

(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.

(6) Where the forest rights recognized and vested under sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.

(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

(8) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

Duties of holders of forest rights.

5. The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-

(a) protect the wild life, forest and biodiversity;

(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with;

(e)

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.

6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha;

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolutions passed by the Gram Sabha and prepare the records of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of the decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest rights, shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such records and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institution at the appropriate level, appointed by the respective Panchayati Raj institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

7. Where any authority or Committee or officers or member of such authority or Committee contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

8. No court shall take cognizance of any offence under section 9 unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the

State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

9. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

10. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any Authority as referred to in Chapter IV including its chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

11. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government on this behalf shall be the nodal agency for the implementation of the provisions of this Act.

12. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing:

13. Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. 40 of 1996 Power to make rules.

14. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) procedural details for implementation of the procedure specified in section 6,

(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;

(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;

(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Comparison of Indian Forest Dwellers legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

This legislation deals with the rights of tribal peoples rather than traditional knowledge and genetic resources *per se*

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	1. (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
2. definition of terms- key terms used in the draft	Definitions. 2. In this Act, unless the context otherwise requires,- (a) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access; (b) "critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4; (c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests and forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities (d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National parks; (e) "forest rights" means the forest rights referred to in section 3; (f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses, permitted by the Government; (g) "Gram Sabha" means a village assembly, which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women; (h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of Primitive Tribal Groups and pre-agricultural communities and other forest dwelling Scheduled Tribes ; (i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu	

	<p>leaves, medicinal plants and herbs, roots, tubers, and the like;</p> <p>(j) "nodal agency" means the nodal agency specified in section 11;</p> <p>(k) "notification" means a notification published in the Official Gazette;</p> <p>(l) "prescribed" means prescribed by rules made under this Act;</p> <p>(m) "Scheduled Areas" means the Schedule Areas referred to in clause (1) of article 244 of the Constitution;</p> <p>(n) "Sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;</p> <p>(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depends on the forest or forests land for bona fide livelihood needs.</p> <p>Explanation: For the purpose of this clause, "generation" means a period comprising of twenty five years.</p> <p>(p) "village" means—</p> <p>(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 or;</p> <p>(ii) any area referred to as a village in any State law relating to panchayats other than the Scheduled Areas; or</p> <p>(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or</p> <p>(iii) in the case of States where there are no Panchayats, the traditional village, by whatever name called;</p> <p>(q) "wild animal" means any species of animal specified in Schedules I to IV of the Wildlife (Protection) Act, 1972 and found wild in nature.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>CHAPTER II FOREST RIGHTS</p> <p>3. For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-</p> <p>(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;</p> <p>(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;</p> <p>(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;</p> <p>(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;</p> <p>(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre- agricultural communities;</p> <p>(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;</p> <p>(g) rights for conversion of Paltas or leases or grants issued by any local authority or any State Government on forest lands to titles;</p> <p>(h) rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages;</p> <p>(i) right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use;</p> <p>(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of concerned tribes of any State;</p> <p>(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;</p> <p>(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;</p> <p>(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation prior to the 13th of December 2005.</p> <p>(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy- five trees per hectare, namely: -</p> <p>(a) schools;</p> <p>(b) dispensary or hospital;</p> <p>(c) anganwadis;</p>	

	<p>(d) fair price shops;</p> <p>(e) electric and telecommunication lines;</p> <p>(f) tanks and other minor water bodies;</p> <p>(g) drinking water supply and water pipelines;</p> <p>(h) water or rain water harvesting structures;</p> <p>(i) minor irrigation canals;</p> <p>(j) non-conventional source of energy;</p> <p>(k) skill upgradation or vocational training centers;</p> <p>(l) roads; and</p> <p>(m) community centers:</p> <p>Provided such diversion of forest land shall be allowed only if,-</p> <p>(i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and</p> <p>(ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.</p>	
4. beneficiaries- who should benefit	<p>CHAPTER III</p> <p>RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS</p> <p>4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in-</p> <p>(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;</p> <p>(b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.</p> <p>(2) The forest rights recognized under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:-</p> <p>(a) the process of recognition and vesting of rights as specified in section 6 is complete in all areas under consideration;</p> <p>(b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972, that the activities of impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;</p> <p>(c) the State Government has concluded that other reasonable options, such as, co-existence are not available;</p> <p>(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfills the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;</p> <p>(e) the free informed consent of the Gram Sabhas in the area concerned to the proposed resettlement and to the package provided has been obtained in writing;</p> <p>(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package:</p> <p>Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses:</p> <p>(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.</p> <p>(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next of kin.</p> <p>(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed.</p> <p>(6) Where the forest rights recognized and vested under sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.</p> <p>(7) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.</p>	

	<p>(8) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.</p> <p>Duties of holders of forest rights.</p> <p>5. The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-</p> <p>(a) protect the wild life, forest and biodiversity;</p> <p>(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;</p> <p>(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;</p> <p>(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with;</p> <p>(e)</p>	
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>		
<p>6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building</p>		
<p>7. Sanctions and remedies- dealing with breaches</p>	<p>CHAPTER V OFFENCES AND PENALTIES</p> <p>7. Where any authority or Committee or officers or member of such authority or Committee contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:</p> <p>Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.</p> <p>8. No court shall take cognizance of any offence under section 9 unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.</p>	
<p>8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes</p>	<p>CHAPTER IV AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS</p> <p>Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof.</p> <p>6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits</p>	

of conduct, databases	<p>of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.</p> <p>(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition: Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha; Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.</p> <p>(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolutions passed by the Gram Sabha and prepare the records of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.</p> <p>(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of the decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition: Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.</p> <p>(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by Sub-Divisional Level Committee.</p> <p>(6) The decision of the District Level Committee on the record of forest rights, shall be final and binding.</p> <p>(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such records and reports as may be called for by that agency.</p> <p>(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the Departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institution at the appropriate level, appointed by the respective Panchayati Raj institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.</p> <p>(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure-permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws-avoiding conflict with other laws	<p>CHAPTER VI MISCELLANEOUS</p> <p>9. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.</p> <p>10. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good</p>	

	<p>faith done or intended to be done under this Act.</p> <p>(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.</p> <p>(3) No suit or other legal proceeding shall lie against any Authority as referred to in Chapter IV including its chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.</p> <p>11. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government on this behalf shall be the nodal agency for the implementation of the provisions of this Act.</p> <p>12. In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing:</p> <p>13. Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. 40 of 1996 Power to make rules.</p> <p>14. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-</p> <p>(a) procedural details for implementation of the procedure specified in section 6,</p> <p>(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;</p> <p>(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;</p> <p>(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;</p> <p>(e) any other matter which is required to be, or may be, prescribed.</p> <p>(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

17. Italy

Legislative Decree No. 219 of April 24, 2006 on the Implementation of Directive 2001/83/EC (& Subsequent Amending Directives) on the Community Code on Medicinal Products for Human Use, and the Directive 2003/94/EC

TK Italian text only

18. Jordan

Law No. 55 of 2008 Amending the Antiquities Law

TCE and TK. Arabic text only

19. Kiribati

Environment Amendment Act 2007

This Act does not deal with access and benefit sharing, it deals with conservation and other environmental matters.

20. Kyrgyzstan

Law of the Kyrgyz Republic on the Protection of Traditional Knowledge 2007

TCE TK and genetic resources. No English text

21. Lao People's Democratic Republic

Law on National Heritage 2005

While this Act mentions traditional knowledge it is focussed on national heritage and as such does not deal with issues of access and benefit sharing pertaining to use of knowledge belonging to particular communities.

Part I General Provisions

Article 1. Purposes

The Law on National Heritage determines the principles, regulations and measures for the administration, use, protection, conservation, restoration, [and] rehabilitation of the national heritage, and also determines the rights and duties of the State, social organisations and individuals to preserve the value of the national cultural, historical and natural heritage, with the aims of educating citizens with a conscious love for their nation and fine national traditions that is deeply embedded in their hearts¹ and of assuring the elements for prosper sustainability of the nation.

Article 2. National Heritage

National Heritage [refers to items]² produced by mankind or formed by nature that have outstanding cultural, historical or natural value, thereby becoming precious assets [and] property of the Lao national community, some of which are adopted as regional and world heritage. National heritage consists of cultural, historical and natural heritage existing in the form of tangible objects, intangible items, moveable or immoveable property, and living or non-living organisms, reflecting³ the history of the Lao nation [and] the Lao people in each different era.

National heritage includes items existing in the country and abroad.

Article 3. Use of Terms

The terms used in this law shall have following meanings:

1. National cultural and historical heritage means tangible objects, intangible items, moveable property and immoveable property which are of high outstanding value from the point of view of culture, history, science or technology, thereby becoming national property, and which have been inherited from generation to generation in different eras;
2. National natural heritage means the heritage formed by nature which is of outstanding value from the point of view of landscape scenery, biodiversity of a pure, original nature, [and] aesthetics.
3. National icons means tangible objects, intangible items, moveable property and immoveable property which are special, rare, and unique to the nation from the point of view of culture, history, and nature;
4. Historical trails⁴ means the sites, architectural works, and archaeological sites with archaeological objects, which are of high outstanding value from the point of view of culture, history and science;
5. Archaeological objects means the tangible products created by mankind evidencing the historical evolution of mankind's society;
6. Sources of archaeological objects means the places where the archaeological objects and historical evidence are found in a homogeneous group;
7. Replica means a newly created object which is copied from an ancient object, which has similar characteristics, features, dimensions, colours, patterns, decorations and other specifications that are identical to the original pattern;
8. Architectural works means artistic structures, which are outstanding from the point of view of culture and history, relating to ethnic livelihood practices, ancestors and national heroes;
9. Protection of the national heritage means the protection from theft, destruction, burning, natural causes of damage or illegal use;
10. Conservation of the national heritage means preserving the cultural, historical or natural value, the trails, [and] the colours of national heritage against loss or deterioration;
11. Restoration of the national heritage means the process of maintaining [and] protecting the forms, patterns and original details of buildings, [and] structures in accordance with a certain era by adding or recovering the missing parts to the originals;
12. Rehabilitation of national heritage means restoration, [or] new construction in order to return historical cultural objects or structures, [or] natural scenery to its original condition and unique character;
13. Heritage sites means archaeological, anthropological, monumental, natural, and architectural places, which are of outstanding value from the point of view of culture, history, science or technology, [and] scenery, which have been inherited from generation to generation;
14. Anthropological places means places, which are sacred to the people, relating to their religions, traditions and historical trails;
15. Monuments means places that are memorials to glorious ancestors and the heroic liberation movements and struggle of the multi-ethnic Lao people in the protection and development of the nation, [serving to remind] future generations;

16. Museums means places for restoring, conserving and exhibiting articles relating to culture, history, nature, science and society for domestic and foreign research, education, study tours, [and] tourism;

17. Precious property means highly valuable, outstanding and rare property.

Article 4. State Policy on National Heritage

Socio-economic development shall proceed side by side with protection and conservation of the national heritage.

The State promotes and creates the conditions for individuals, [and] organisations within the country and abroad to participate in the protection, conservation, restoration and rehabilitation of the national heritage in a sustainable manner.

The State promotes research, innovation and advancement regarding national heritage, and publicises⁵ the national and public value of national heritage, meanwhile restricting [and] eliminating obstructions to the advancement of the multi-ethnic people and the forward movement of the nation.⁶

The State recognises property constituting national heritage that belongs to organisations and individuals and that has been lawfully registered.

Article 5. Obligations of Citizens

Lao citizens, aliens, and apatrids⁷ residing in the territory of the Lao PDR shall have the obligation to participate in the protection, conservation, restoration and rehabilitation of the national heritage. Foreigners, [and] tourists entering the Lao PDR shall have the same obligation to participate in the protection and conservation of the national heritage.

Article 6. International Cooperation

The State has a policy to promote international relations and cooperation regarding national heritage in the exchange of lessons, information, scientific research, [and] technical training, in the dissemination of culture, in exhibitions, in attracting funds and in other activities.

Part II National Heritage

Chapter 1 Cultural Heritage

Article 7. Types of Cultural Heritage

Cultural heritage consists of:

- Cultural heritage in tangible objects;
- Cultural heritage in intangible items.

Article 8. Cultural Heritage in Tangible Objects

The cultural heritage in tangible objects refers to [items of] tangible heritage which are of high outstanding value from a cultural point of view, including in the form of moveable or immoveable property with unique character, namely: antiques, handicrafts such as: weave patterns (such as laichok [and] matmee⁸), artistic works, consumer goods, foods such as: sticky rice, [and] fermented fish, traditional music instruments such as: khean...⁹ production tools, ancient inscriptions, archaeological sites, anthropological sites and others.

Article 9. Cultural Heritage in Intangible Items

The cultural heritage in intangible items refers to [items of] intangible heritage which are of high outstanding value from a cultural point of view, such as: local innovation, knowledge, public philosophies, beliefs, fine traditions which are expressed in livelihood practices, social behaviour, languages, alphabets, numbers, scripts¹⁰, legends, novels, proverbs, poems, traditional music,

traditional dances, songs, melodies, folk songs, formulas of traditional medicine and others which are inherited from generation to generation.

Chapter 2 Historical Heritage

Article 10. Types of Historical Heritage

Historical heritage consists of two types:

- Historical heritage in tangible objects;
- Historical heritage in intangible items.

Article 11. Historical Heritage in Tangible Objects

The historical heritage in tangible objects refers to [items of] tangible heritage which are of high outstanding value from a historical point of view, including in the form of moveable or immoveable property, namely: places of worship, sacred buildings, military equipment, tools, foods, consumer goods, documents of record, historical sites such as: places of liberation and struggle of the people, heroic ancestors and revolutionary leaders, battle fields, and monuments ...¹¹

Article 12. Historical Heritage in Intangible Items

The historical heritage in intangible items refers to [items of] conceptual¹² heritage which are connected with the history in different eras and generations, such as: ideas, theories, ideologies which express love for the nation and unyielding bravery¹³, innovative knowledge, capability, strategies, martial arts and tactics, warfare lessons, [and experiences gained from] the leadership, administration and development of the nation.

Chapter 3 Natural Heritage

Article 13. Types of Natural Heritage

Natural heritage consists of two types:

- Natural heritage having scenic value;
- Natural heritage having scientific [or] ecological value.

Article 14. Natural Heritage Having Scenic Value

Natural heritage having scenic value refers to heritage [areas] which have outstanding aesthetic value, [or] are pure in biodiversity, namely: national conservation forests, biodiversity conservation areas, natural caves, waterfalls, rapids, cascades¹⁴, streams, islands, mountains, cliffs, aquatic and wild animals, lakes, marshes, canals, ponds, and others...

Article 15. Natural Heritage Having Scientific, [or] Ecological Value

Natural heritage having scientific or ecological value refers to heritage [areas] which have precious natural value, and which are significant, [and] outstanding from the point of view of geology, biology, [and] geography.

Part III Levels of National Heritage

Chapter 1 Levels of Cultural and Historical National Heritage

Article 16. Levels of Cultural and Historical National Heritage

The cultural and historical national heritage is divided into three levels:

- Local level;
- National level;
- World level.

Article 17. Local Level

Cultural and historical heritage at local level refers to [items of] heritage which are of outstanding local value situated in that local area, such as: Prabat Phon San, That Phone.

Article 18. National Level

Cultural and historical heritage at the national level refers to [items of] heritage which are of outstanding national value located in any area of the Lao PDR, and which have become the heritage of the national community, such as: That Luang, Wat Xieng Thong, Viengxay district, Lumvong dances, Seosavath and Sang Sinh Say novels, and others.

Article 19. World Level

World cultural and historical heritage refers to [items of] Lao heritage which are of the outstanding world value located in any area of the Lao PDR, and which have been adopted by the United Nations Educational, Scientific and Cultural Organisation, such as: Luang Prabang City, Wat Phou Champasack and others.

Chapter 2 Levels of Natural National Heritage

Article 20. Levels of Natural National Heritage

The natural national heritage is divided into four levels:

- Local level;
- National level;
- Regional Level;
- World level.

Article 21. Local Level

Natural heritage at local level refers to heritage [areas] which are of outstanding local value from the point of view of aesthetic scenery and biodiversity located in that local area, such as: Tat Lo, Tat Kouang Xi.

Article 22. National Level

Natural heritage at national level refers to heritage [areas] which are of outstanding national value from the point of view of aesthetic scenery, which are located in any area of the Lao PDR, and which have become the heritage of the national community, such as: Phou Bia, Khon Phapheng, Xepiane National Conservation Forest, Phou Hin Poun, Nakai-Nam Theun National Biodiversity Conservation Area, dinosaur fossil site and others.

Article 23. Regional Level

Natural heritage at regional level refers to Lao national heritage [areas] which are of outstanding regional value from the point of view of regional aesthetic scenery, which are located in any area of the Lao PDR, and which have been adopted by concerned regional organisations, such as: national conservation forests, hot springs and others

Article 24. World Level

Natural heritage at world level refers to Lao national heritage [areas] which are of outstanding world value from the point of view of aesthetic scenery, which are located in any area of the Lao PDR, and which have been adopted by the United Nations Educational, Scientific and Cultural Organisation.

Chapter 3 National Icons

Article 25. The Importance of National Icons

National icons include [items of] national heritage which are special, rare and unique to the nation, which the State shall pay attention to protect [and] conserve for sustainable¹⁵ existence with the country¹⁶.

Article 26. Types of National Icons

National icons are classified into tangible objects, intangible items, moveable property or immoveable property, such as: That Luang Vientiane, Haw Pha Keo, Wat Xieng Thong, Prabang, Khunbulom inscription, Sang Sinh Say novels, Xiang Miang novels and others.

Part IV Administrative Regulations, Use, Protection, Conservation, [and] Restoration of Cultural and Historical National Heritage

Chapter 1 Administrative Regulations on National Cultural and Historical Heritage

Article 27. Administrative Regulations

The State centrally and uniformly administers the national cultural and historical heritage throughout the country, including those [items] in the representative offices of the Lao PDR abroad, by registering, and by dividing [responsibility for their] administration among sectors¹⁷ and local administrations¹⁸.

The State protects the property [and] copyright [subsisting in items of] Lao national cultural and historical heritage which are outside the territory of the Lao PDR, which are in the illegitimate possession of other countries, or [in respect of which foreign countries have illegitimately asserted] copyright.

Article 28. Registration

[Items of] national cultural and historical heritage which are possessed by individuals or organisations shall be registered.

The State conducts surveys, and collects the [items of] heritage to evaluate, classify and register [them], while encouraging possessors of heritage [items] to propose them for registration in accordance with the following regulations:

1. National heritage at the local level shall be registered with the information and culture divisions at provincial or city level;
2. National heritage at the national level shall be registered with the Ministry of Information and Culture;
3. National heritage at world level shall be registered with the concerned international organisations based on the proposal of the government of the Lao PDR;
4. National heritage that is in the possession of the representative offices of the Lao PDR abroad shall be registered with the Ministry of Information and Culture and the concerned sector;
5. National heritage which are national icons shall be registered with the Ministry of Information and Culture.

After registration, the State recognises these [items of] heritage as national heritage, and also recognises the right of possession of the owners of these [items of] heritage.

In the event that the [items of] heritage are not registered, the owners of these [items of] heritage are not entitled to conduct any activities relating to these [items of] heritage, such as: displaying them in exhibitions, making replicas and others.

National heritage [items] at national level which have high value, are rare and are of unique national character shall be considered and proposed for registration of ownership and copyright in the name of the nation with international organisations.

Article 29. Maintenance, Restoration and Rehabilitation

The State promotes individuals and organisations to participate in the maintenance, restoration and rehabilitation of the national cultural and historical heritage.

The maintenance, restoration and rehabilitation of [items of] national heritage shall be approved by the organisations with which they are registered.

Article 30. Replicas

A replica is a new object created by copying the pattern, colour, [and] design of the original heritage [item].

The replication of [items of] national heritage which are national icons and national heritage at the national level shall be approved by the Ministry of Information and Culture. For the national heritage at the local level, the approval of the information and culture divisions at the provincial and city level shall be obtained.

Article 31. New Creations

Individuals and organisations intending to create monuments or sculptures of their ancestors, leaders, [or] national heroes, shall obtain approval from the government.

For the creation of religious places, approval shall be obtained from the provincial governor or city mayor, in coordination with concerned authorities.

For the sculpting of Buddhas, [and] the sculpting of monuments of an individual's ancestors, approval shall be obtained from the information and culture sector.

Article 32. Exhibition

There are three main types of exhibition of national heritage:

- Exhibitions open to the public;
- Exhibitions for the purpose of obtaining contributions for the protection and restoration [of the national heritage];
- Exhibitions for commercial purpose.

The exhibition of national heritage may be conducted within the country or abroad.

The exhibition of national heritage within the country shall require the approval of the information and culture sector, after coordination with the concerned local administrations.

The exhibition of national heritage abroad shall require the approval of the government, by a proposal through the Ministry of Information and Culture.

Article 33. Seen and Discovered

Individuals or organisations that, during the conduct of any activities, see any national heritage shall immediately report to the local administrations and the concerned information and culture sector, and shall suspend such activities until approval for continuation is granted.

Individuals or organisations that have discovered sites, received information on existing sites, or suspect that any [item of] national heritage or holy relic exists, shall immediately report to the local administrations and the information and culture sector, and shall be prohibited from exploring them prior to obtaining the approval of the information and culture sector.

Article 34. Research and Analysis

The State promotes domestic or foreign persons or organisations to conduct research and analysis on the national cultural and historical heritage by granting different policies¹⁹.

The research and analysis of such national heritage shall require approval from the information and culture sector. The person or organisation intending to cooperate with foreign countries to conduct such research and analysis shall obtain approval from the Ministry of Information and Culture, after coordination with the Ministry of Foreign Affairs.

The original record of the data and the results of such research and analysis shall be handed over to the information and culture sector for storage and publication, in accordance with regulations.

Article 35. Export for Analysis

The export to other countries for analysis of parts or objects that are the national cultural and historical heritage that are of high value, shall require the approval of the government. For parts or objects that are other national heritage, approval from the Ministry of Information and Culture is required.

Article 36. Import, Display or Distribution

The importation, display or distribution of cultural products of other countries shall be examined and approved by the information and culture sector.

Tangible cultural products of other countries, especially Buddhas, or intangible items that contradict the culture, [or] fine national traditions of Laos will not be permitted to be imported, displayed or distributed.

Article 37. Transfer

The ownership of [items of] national cultural and historical heritage which are registered may be transferred or licensed to other people, but the transferee shall notify the information and culture sector where the [item of] heritage is registered within thirty days from the date of transfer.

Article 38. Purchase and Sale

Any individual or organisation intending to purchase or sell²⁰ any [item of] national cultural and historical heritage shall obtain approval from the information and culture sector. In the case where such national cultural and historical heritage [item] has high outstanding value, the State shall have priority to buy such heritage at an agreed price.

The State does not permit the sale of national heritage out of the country. For the exchange [of national heritage] between states, prior approval of the government shall be obtained.

Article 39. Succession

[Items of] national cultural and historical heritage which are registered may be transferred by inheritance, provided that the successor shall notify the information and culture sector where the [item of] national heritage is registered within sixty days from the date of succession. In the event that there are many successors, one person shall be assigned in writing as the representative to make such notification.

Chapter 2

Regulations on the Use of Cultural and Historical National Heritage

Article 40. Purpose of Use

The use of national cultural and historical heritage has the following purposes:

1. As the basis for national prosperity, as the driving force for social expansion, and for the development of a strong and wealthy nation;
2. To educate citizens to love their nation, to be unified and proud of historical efforts, to be creative, to bravely struggle, and to be united as one with the multi-ethnic Lao people in the protection and development of the nation;
3. To educate citizens to love their nation, to be unified and proud of historical efforts, to be creative, to bravely struggle, and to be united as one with the multi-ethnic Lao people in the protection and development of the nation; 3. To increase the wealth of the store of national cultural and historical heritage;
4. To promote the tourism industry;
5. To integrate with world conservation activities and [world activities] that extend the value of the national cultural and historical heritage;
6. To conduct research on archaeological science, history and others.

Article 41. Regulations on Use

The use of national cultural and historical heritage shall comply with the following provisions:

1. the use shall be in accordance with the purpose, and shall be in an effective and sustainable manner;
2. it is prohibited to use heritage areas, heritage sites, and historical sites for any purpose that may cause changes to their original conditions;
3. a suitable portion of the revenue from the [use of] national heritage shall be used for the development of such heritage.

Chapter 3

Regulations on the Protection, Conservation, Maintenance and Restoration of National Cultural and Historical Heritage

Article 42. Protection and Conservation of National Cultural and Historical Heritage in Tangible Objects

The protection and conservation of national cultural and historical heritage in tangible objects shall be carried out as follows:

1. Individuals or organisations that are responsible for the national heritage [object] shall assess the effect of damage to the national cultural and historical heritage and determine preventive measures, including immediate and proper solutions;
2. Individuals or organisations intending to pursue socio-economic development, in particular industrial, agricultural and infrastructural development, in [national cultural and historical heritage] areas or in places where it is suspected that there is any national cultural and historical heritage shall obtain prior approval from the Ministry of Information and Culture, including determination of measures to protect such heritage from damage;
3. Individuals or organisations are prohibited from causing damage to national cultural and historical heritage, such as: destroying Buddhas, archaeological sites and anthropological sites; encroaching onto historical sites; occupying land in national heritage conservation areas; changing the original condition of any heritage to another condition; and changing history.

Domestic and foreign persons are prohibited from receiving concessions of any national cultural and historical heritage²¹ at the national level unless there is necessity, in which event approval shall be obtained from the government based on the proposal of the Ministry of Information and Culture.

Article 43. Protected Area of Heritage Sites

The protected area of heritage sites is generally divided into three zones:

- Zone 1 is the central area, where the heritage is located, which must be protected in its original circumstances and where no construction is permitted;
- Zone 2 is the area surrounding the central area, where some activities are permitted to increase the value of zone 1, provided that no damage shall be caused to that surrounding area;
- Zone 3 is the administrative area where construction is permitted to serve zones 1 and 2 for the accommodation of tourists.

The detailed determination of each zone will be in specific regulations.

Article 44. Protective Measures for Heritage Sites

The responsible authorities shall pay attention to monitor the cases where it is discovered that the national heritage has been encroached on, destroyed or damaged by human or natural causes, for which immediate protective measures shall be laid down in coordination with the local administration where the heritage is located, followed by notification to the information and culture sector for an immediate solution.

Article 45. Procedures for Maintenance, Restoration and Rehabilitation

The maintenance, restoration and rehabilitation of national cultural and historical heritage shall be carried out as follows:

1. There must be a specific enterprise or enterprises, which are lawfully registered and meet the conditions to perform the maintenance, restoration and rehabilitation of national cultural and historical heritage;
2. The performance of work shall be approved by the heritage administrative agency where the [items of] heritage are registered. For national cultural and historical heritage at the national and world levels, approval shall be obtained from the Ministry of Information and Culture;
3. The original character of the [items of] heritage shall be maintained.

Article 46. Protection and Conservation of National Heritage in the Form of Intangible Items

The protection and conservation of national cultural and historical heritage in the form of intangible items shall be carried out as follows:

- The protection and conservation of national cultural and historical heritage shall be undertaken simultaneously with its promotion, publication and wide use in domestic and foreign contexts;
- The nature of research [and] creation shall be national, public and advanced;
- Expatriates and foreigners, including their organisations, and international organisations intending to conduct research and analysis on the national heritage shall perform [such research and analysis] in accordance with the reality of that heritage and shall obtain approval from the Ministry of Information and Culture;
- It is prohibited to copy, [or] assemble the results of research, [or] innovation of other people regarding any national heritage by pirating the copyright or publication without obtaining the prior consent of the copyright owner and of the concerned authorities;
- It is prohibited to disseminate or publish any national heritage which constitutes national secrets.

Part V Regulations on the Administration, Use, Protection, Conservation, Restoration and Rehabilitation of Natural National Heritage

Chapter 1 Regulations on the Administration of National Natural Heritage

Article 47. Regulations on the Administration of National Natural Heritage

The State centrally and uniformly administers [areas of] national natural heritage within the country by registering them, and dividing [the responsibility for their] administration among sectors and concerned local authorities.

The State protects the property [and] copyright [subsisting in items of] Lao national natural heritage which are outside the territory of the Lao PDR, which are in the illegitimate possession of other countries, or [in respect of which foreign countries have illegitimately asserted] copyright.

Article 48. Registration of National Natural Heritage

[Areas of] national natural heritage shall be registered, in particular the areas which contain heritage of high value [and] outstanding things, such as: biodiversity protected areas, conservation forests, wetlands, [and] caves that have natural value, and shall be regulated as follows:

1. National natural heritage at the local level shall be registered with the information and culture division at the provincial or city level, in coordination with concerned sectors;
2. National natural heritage at the national level shall be registered with the Ministry of Information and Culture, in coordination with the concerned sectors;
3. National natural heritage at the regional level shall be registered with the concerned regional organisations by the proposal of the government;
4. National natural heritage at world level shall be registered with the United Nations Educational, Scientific and Cultural Organisation by the proposal of the government.

Article 49. Regulations on the Administration of Sources of Biodiversity

Sources of biodiversity which are national natural heritage, such as: wetlands, ponds and marshes, shall be administered by inspection and registration, as proposed by the concerned sectors.

Article 50. Regulations on the Administration of Conservation Forests

Conservation forests that have been registered as national natural heritage shall be administered for the purpose of protecting nature in a sustainable [and] rich manner.

Article 51. Regulations on the Administration of National Parks

National parks, which are full of richness in respect of the ecosystem and their clean and aesthetic attraction, and which have become national natural heritage shall be administered as places for relaxation and for domestic and foreign tourists.

Article 52. Regulations on the Administration of Natural Landscape Scenery

Areas with natural landscape scenery, which are of value from the point of view of natural and aesthetic scenery and are outstanding, including mountains, cliffs, forests, rivers, streams, waterfalls and others, shall be registered as national natural heritage and shall be administered for the purpose of the sustainable preservation of their aesthetic nature.

The administration of the natural heritage defined in articles 49 to 52 of this law shall be regulated in separate regulations.

Chapter 2 Regulations on the Use, Protection, Conservation and Restoration of National Natural Heritage

Article 53. Purpose and Regulations on Use

The use of national natural heritage has the following purposes:

1. As the basis of national prosperity, and as the basis and potential for socio-economic development;
2. To create awareness in citizens to love the natural environment, in particular, forests, water resources and biodiversity;
3. To promote the tourism industry;
4. To integrate with world and regional conservation activities and [with world and regional activities] that extend the value of the national natural heritage;
5. To conduct research on nature, biodiversity and others;
6. To increase the wealth of the store of national natural heritage.

Use of national natural heritage shall:

1. Be consistent with the socio-economic development plan;
2. Be effective, [and] sustainable, and cause no harmful effects to the natural environment or to society;
3. Be in accordance with laws and regulations.

Article 54. Regulations on the Protection and Conservation of National Natural Heritage

The protection and conservation of national natural heritage shall be carried out as follows:

1. Individuals or organisations intending to pursue socio-economic development in any national natural heritage area, in particular industrial, agricultural and infrastructural development, shall obtain prior approval from the Ministry of Information and Culture and other concerned sectors;
2. Individuals or organisations that are responsible for the national natural heritage [area] shall assess the effect of damage to such national natural heritage, and determine preventive measures, including immediate and proper solutions;
3. National natural heritage shall be preserved for its aesthetic scenery and richness of biodiversity;
4. Individuals or organisations are prohibited from causing harmful effects to national natural heritage, such as: destruction of forests[;] surface or underground exploration of natural resources in any national natural heritage area[;] encroaching on or occupying land in biodiversity protected areas, conservation forest areas, national parks and areas of natural aesthetic scenery[;] including changing the original conditions of any natural heritage.²²

Article 55. Regulations on the Restoration of National Natural Heritage

The restoration of national natural heritage shall comply with the following:

1. There must be a specific enterprise or enterprises, which are lawfully registered and meet the conditions to engage in the restoration of national natural heritage;
2. The restoration shall be approved by the heritage administrative agency where the heritage [areas] are registered. For national natural heritage at regional and world levels, approval shall be obtained from the Ministry of Information and Culture in coordination with concerned sectors;
3. The original character of the heritage shall be maintained;
4. The restoration shall aim to return the national natural heritage [areas] that have deteriorated, been damaged or been destroyed to their original conditions.

Article 56. Development Goals

The development of national natural heritage aims to make the heritage sustainable, abundant and richer as the basis for national economic development, [and] for research and study, [and] to promote the maximum value of such heritage, while at the same time extending the potential of the heritage, serving to protect the environment and tourism throughout the country, and contributing to national protection and development.

Part VI Museums

Article 57. Types of Museums

Museums are divided into three types as follows:

- State museums;
- Collective museums;
- Private museums.

Article 58. The Meaning of Museum

1. State museums are places for storing, exhibiting, and preserving precious and outstanding objects of the State, consisting of:

- The national museums, which are places for storing, exhibiting, and preserving precious and outstanding objects throughout the country;
- The sectoral museums, which are places for storing, exhibiting, and preserving precious and outstanding objects relating to the concerned sector;
- The local museums, which are places for storing, exhibiting, and preserving precious and outstanding objects existing in that local area.

2. Collective museums are places for storing, exhibiting, and preserving precious and outstanding objects of the collectives in that area;

3. Private museums are places for storing, exhibiting and preserving private articles.

Article 59. Regulations on the Establishment of Museums

The establishment of museums shall meet the following conditions:

- There shall be adequate numbers of articles that are of precious value in culture, history, nature, science, [or] technology for exhibition;
- Places for exhibition and storage must be secure;
- There shall be knowledgeable experts on that national heritage, as regulated.

The establishment of museums shall be approved in the following cases:

- National museums shall be approved by the President of the State, based on the proposal of the government;
- Sectoral and local museums shall be approved by the Prime Minister, based on the proposal of the Ministry of Information and Culture;
- Collective and private museums shall be approved by the provincial governors or city mayors, based on the proposal of the information and culture divisions.

Part VII National Heritage Fund

Article 60. Sources of National Heritage Fund

To assure the protection, conservation, restoration and rehabilitation of national heritage in a sustainable and better-developed manner, it is necessary to establish the national heritage fund, which shall be derived from:

1. The State budget;
2. The assistance of foreign countries and international organisations;
3. The contribution of individuals and organisations within the country and from abroad;
4. The revenue from the use of national heritage such as: entrance fees, publications, research and analysis of national heritage, from the tourism business, from fines of violators and others;
5. Compensation²³ for activities that affect the national heritage;

6. Income from activities relating to national heritage and others.

Article 61. Administration and Use of the National Heritage Fund

The administration and use of the national heritage fund shall comply with the purposes stipulated in the first paragraph²⁴ of article 60 of this law, and shall be in accordance with the Law on State Budget and other relevant laws.

The administration and use of such fund shall be specifically regulated.

Part VIII Administrative and Inspection Agencies²⁵

Chapter 1 Administrative Agencies

Article 62. Administrative Agencies

The State centrally and uniformly administers the national heritage throughout the country by assigning tasks to the Ministry of Information and Culture as the focal point, in coordination with concerned sectors and with concerned local authorities.

The national heritage administrative agencies are divided into four levels as follows:

1. The Ministry of Information and Culture;
2. The information and culture divisions at the provincial and city level;
3. The information and culture offices at the district and municipal level;
4. The village administrations.

The administration of [items of] Lao national heritage that have become world heritage or regional heritage shall be administered by special organisations, such as: the committee for national heritage, the local heritage committees and the office of world heritage, the establishment and activities of which shall be separately regulated.

Article 63. Rights and Duties of the Ministry of Information and Culture

In the administration of the national heritage, the Ministry of Information and Culture shall have following main rights and duties:

1. To conduct research, lay down policies and strategies, and issue legislation on the national heritage, in particular, on the cultural and historical heritage;
2. To conduct surveys, gather data, analyse, [and] explore each type of national heritage;
3. To disseminate and educate on the policy directives, laws and regulations relating to the national heritage;
4. To supervise, encourage, monitor, [and] inspect the information and culture divisions in their implementation of laws, regulations, plans, [and] projects on the national heritage;
5. To supervise, [and] encourage the offices of regional and world heritage in their implementation of laws, regulations, plans, and projects on regional and world heritage;
6. To register and issue licenses relating to national heritage within its responsibility;
7. To build up human resources relating to national heritage;
8. To be the focal point, in coordination with other concerned sectors, in administering and implementing²⁶ the national heritage;
9. To extend relations and cooperation with foreign countries and international organisations on activities relating to national heritage;
10. To summarise reports and provide evaluations on the implementation of activities relating to national heritage to the government and Prime Minister;
11. To exercise other rights and perform other duties as regulated by laws and regulations.

Article 64. Rights and Duties of the Information and Culture Divisions

In the administration of national heritage, each information and culture division at the provincial or city level shall have following main rights and duties:

1. To elaborate on the laws, regulations, plans, [and] projects of the Ministry in its own regulations, plans, projects and implementation;
2. To conduct surveys, [and] gather data on the national heritage within its area of responsibility;
3. To disseminate [and] educate on the policy directives, laws and regulations on national heritage;
4. To register and issue licenses relating to the national heritage within its responsibility;
5. To supervise, [and] encourage the information and culture offices at district and municipal level in their implementation of administrative activities relating to national heritage;
6. To be the focal point, in coordination with other concerned sectors, in the administration and implementation of activities relating to national heritage;
7. To summarise reports and provide evaluations on the implementation of activities relating to national heritage to its higher authority;
8. To exercise other rights and perform other duties as regulated by laws and regulations.

Article 65. Rights and Duties of Information and Culture Offices at the District Level

In the administration of national heritage, each information and culture office at the district or municipal level shall have following main rights and duties:

1. To implement laws, regulations, plans, [and] projects on national heritage;
2. To conduct surveys, gather data, [and] create lists of the national heritage within its area of responsibility;
3. To disseminate, [and] educate on the policy directives, laws and regulations on national heritage;
4. To issue licenses relating to the national heritage within its responsibility;
5. To coordinate with other concerned sectors in the administration and implementation of activities relating to national heritage;
6. To summarise reports and provide evaluations on the implementation of activities relating to national heritage to its higher authority;
7. To exercise other rights and perform other duties as regulated by laws and regulations.

Article 66. Rights and Duties of the Village Administrations

In the administration of national heritage, each village administration shall have following main rights and duties:

1. To perform tasks relating to national heritage in the administration, protection, conservation, rehabilitation and use of the national heritage within its area of responsibility;
2. To conduct surveys, and create lists of the national heritage within its area of responsibility to propose to higher authorities for adoption;
3. To summarise reports on the implementation of activities relating to the national heritage to its higher authorities.

Article 67. Rights and Duties of Other Concerned Agencies

Other concerned agencies [involved in] the administration of national heritage at central and local levels shall have the right and duty to coordinate with the information and culture sector in accordance with their roles and responsibilities.

Chapter 2 Inspection Agencies

Article 68. Inspection Agencies

The inspection agencies are the same agencies as the administrative agencies defined in Article 62 of this law.

The inspection agencies shall have the following rights and duties:

1. To inspect the implementation of plans, projects, laws and regulations relating to the administration of national heritage, including contracts and international conventions that the Lao PDR has signed and or to which it is a party;
2. To inspect the resolution of proposals by individuals or organisations relating to national heritage;
3. To exercise other rights and perform other duties as stipulated by laws and regulations.

Article 69. Types of Inspections

There are three types of inspections of national heritage:

1. Regular systematic inspections, which are carried out based on the operational plan, on a regular basis and at a specified time;
2. Inspections with advance notification, which are inspections outside the operational plan in the event of necessity and of which notice shall given in advance²⁷ to the person inspected;
3. Emergency inspections, which are emergency inspections without advance notice to the inspected person.

Part IX Policies and Measures²⁸

Article 70. Policies

Individuals or organisations with outstanding performance in the administration, protection, conservation, restoration and development of national heritage will receive awards and other appropriate policies.

Persons who have seen, discovered, researched or given useful information on national heritage, in addition to receiving awards, will receive other benefits in accordance with the laws and regulations.

Article 71. Measures

Individuals or organisations that have violated the provisions of this law shall be re-educated, fined, or subject to civil liability or criminal punishment, as determined on a case by case basis.

Part X Final Provisions

Article 72. Implementation

The government of the Lao PDR is entrusted to implement this law.

Article 73. Effectiveness

This law shall enter into force sixty days after the date of the promulgating decree issued by the President of the Lao People's Democratic Republic.

All regulations and provisions that contravene this law are null and void.

¹ The literal translation is “conceptual basis”.

² The Lao word translated as “heritage” has, embedded in it, the meaning of “a thing or item of heritage”. It is wide enough to cover sites, ideas, practices and objects. The Lao word is therefore a concrete, count noun unlike the English abstract noun. Where possible, the translators have translated this term in the singular form as “heritage” without further qualification but in some places it has been necessary to add a qualifier such as [items] or [locations] to make sense of the text. Readers should, in any event, always note that the Lao word has a different semantic and grammatical structure from its English counterpart.

³ The literal translation is “identifying”.

⁴ This term appears to refer not just to physical trails or tracks but to the abstract sense of “links to the past”.

⁵ The literal translation is “disseminates”.

⁶ The sentence structure has been changed for readability.

⁷ Readers may wish to refer to the Law on Lao Nationality for the distinction between aliens, apatrids (i.e. persons unable to certify their nationality) and foreign individuals.

⁸ These are two specific examples of weave patterns, which are listed in the law. The spelling of many of these transliterations of Lao words can vary. The translators have adopted the English translations used by the Lao Tourism Organisation where these are available. In other cases, the translators have attempted to provide transliterations that are as close to the Lao word as possible.

⁹ In Lao, using three dots in punctuation implies “etc.” or “and others”.

¹⁰ The Lao word translated as “scripts” refers to longer texts than the word previously described as “inscriptions”. Inscriptions may be on physical objects (e.g., in caves or on rocks).

¹¹ The three dots at the end of the sentence implies “etc.” or “and others”.

¹² The Lao term connotes non-physical, mental, conscious and spiritual.

¹³ The literal translation is “brave fight without surrender”.

¹⁴ The Lao terms translated as “waterfalls” and “cascades” have the meanings of “waterfalls from tall cliffs” and “waterfalls along rivers” respectively.

¹⁵ The literal translation is “prosper”.

¹⁶ The connotation of the Lao text is that these national icons should prosper or flourish as long as the country does.

¹⁷ The term “sector” is used in many Lao laws to refer to the cluster of government ministries or agencies engaged in a particular activity.

¹⁸ The same Lao term may be translated as both “local administrations” and “local administrative authorities”. The translators have generally applied the following convention: (i) if the term is used in a sentence in juxtaposition to a reference to some specific agency within the line ministries, the term has been translated as “local administrations”, referring only to the bodies responsible for local administration discussed in the Law on Local Administration; and (ii) if the term is used alone in a sentence, it has been translated as “local administrative authorities” to indicate that it may be wide enough to cover local administrations as well as local divisions, offices or units of line ministries. However, the reader should note the alternative meaning that may have been intended.

¹⁹ The term “policies” is often used as an indirect way of referring to “incentives’ or “privileges”. In this context, it is unclear whether that use is intended or whether “policies” is being used in the sense of “strategies and measures of governance”.

²⁰ The Lao word is a compound word: “buy-sell”.

²¹ The connotation is of a grant of concession in the heritage itself, e.g., granting someone the right to operate a historical site.

²² The punctuation in this paragraph has been changed to give a better sense of the breaks in ideas.

²³ The literal term is “obligations”.

²⁴ The translators are aware that it is awkward to speak of “the first paragraph” of Article 60, which has only one paragraph (with several points, point 1 of which does not appear to set out any

purpose). Instead, this reference in Article 61 appears to be a reference to the lead-in language at the start of Article 60.

²⁵ In the Lao language, the word roughly meaning “the entire organisation of responsible governmental agencies” is capable of being translated as any one of the following English words: “organisation”, “agency”, or “authority”. In choosing which English word to use, the translators have adopted the following convention. Where the governmental agencies in question have in practice adopted an English term for themselves (e.g., the Tax Authority), the translators have used that term. Otherwise, the translators have used the generic term “organisation” or, as in this law, “agency”.

²⁶ This is a literal translation. The translators are aware that it is awkward to speak of “implementing national heritage”. It is possible that this is a reference to implementing “activities” regarding national heritage. A similar provision in Article 64(4) spells this out. However, this Article 63(8) does not contain the word “activities”.

²⁷ The literal translation is “of which prior notice shall be given in advance”.

²⁸ See footnote 19. In the context of this Part, the term “policies” takes the meaning of “privileges” and the term “measures” takes the meaning of “sanctions”.

22. Liechtenstein

Law on the Temporary Clerical Immunity of Cultural Property 2007

Deals with TK and TCE. German text only.

23. Mauritania

Framework law No. 2005-046 of 25 July 2005 on the Protection of Tangible Cultural Heritage

Deals with TK and TCE. French text only.

Law 2000-045 pertaining to the Environmental Code. Deals with TK, TCE and genetic resources. French text only.

24. Mauritius

While this Act mentions traditional cultural expressions it is focussed on national heritage and as such does not deal with issues of access and benefit sharing pertaining to use of knowledge belonging to particular communities.

THE NATIONAL HERITAGE FUND ACT 2003

An Act

To provide for the establishment and management of the National Heritage Fund and for matters relating to national heritage

ENACTED by the Parliament of Mauritius as follows -

1. Short title

This Act may be cited as the National Heritage Fund Act 2003.

2. Interpretation

In this Act -

“Board” means the Board established under section 5;

“Chairperson” means the Chairperson of the Board;

“cultural significance” means aesthetic, anthropological, archaeological, architectural, botanical, ethnological, geological, historical, linguistic, palaeontological, scientific, social, spiritual or technological value;

“Director” means the person appointed under section 9;

“Fund” means the National Heritage Fund established under section 3;

“intangible heritage” means intangible aspects of inherited culture and includes culinary arts, cultural traditions, customs, festivities, oral history and traditions, performing arts, rituals, popular memory and skills and techniques connected with material aspects of culture;

“member” means a member of the Board and includes the Chairperson;

“Minister” means the Minister to whom the responsibility for the subject of arts and culture is assigned;

“monument” means -

(a) any structure of cultural significance, remains of such a structure, building or group of buildings, which, because of its homogeneity or its place in the landscape is of outstanding value; and

(b) architectural work, work of monumental sculpture and painting, element or structure of an archaeological nature, inscription, cave dwelling which is of outstanding value;

“national heritage” means -

(a) a national heritage designated in section 12 and specified in the Schedule; and

(b) includes a national monument designated under the repealed National Monuments (Designation) Regulations 1985 and specified in the Schedule.

“site” means any area on land or underwater, with or without any structure, building, monument or object, thereon having a cultural significance.

3. Establishment of the National Heritage Fund

(1) There is established, for the purposes of this Act, a Fund to be known as the National Heritage Fund.

(2) The Fund shall be a body corporate.

4. Objects of the Fund

The objects of the Fund shall be to -

- (a) safeguard, manage and promote the national heritage of Mauritius;
- (b) preserve the national heritage sites as a source material for scientific and cultural investigation and as an enduring basis for the purposes of development, leisure, tourism and enjoyment of present and future generations worldwide; and
- (c) educate and sensitise the public on cultural values, national heritage and to instill a sense of belonging and civic pride with respect to national heritage.

5. Establishment of the Board

(1) The Fund shall be administered and managed by a Board to be known as the National Heritage Fund Board.

(2) The Board shall consist of -

- (a) a Chairperson, appointed by the Prime Minister;
 - (b) a representative of the Prime Minister's Office;
 - (c) a representative of the Ministry responsible for the subject of arts and culture;
 - (d) a representative of the Ministry responsible for the subject of finance;
 - (e) a representative of the Ministry responsible for the subject of tourism;
 - (f) a representative of the Ministry responsible for the subject of education;
 - (g) a representative of the Ministry responsible for the subject of local government;
 - (h) a representative of the Ministry responsible for the subject of environment;
 - (i) a representative of the Ministry responsible for the subject of housing and lands;
 - (j) a representative of the Mauritius Association of Architects;
 - (k) a representative of the Mauritius Museums Council; and
 - (l) 3 persons having wide experience in matters relating to national heritage to be appointed by the Minister.
- (3) The members of the Board shall hold office for a period of 3 years and shall be eligible for re-appointment.
- (4) Subject to the approval of the Minister, the Board may provide for the payment of a fee to every member of the Board.

6. Functions and powers of the Board

The Board may do all such things as appear requisite and advantageous for the furtherance of the objects of this Act and in particular shall -

- (a) identify sites, monuments, structures, intangible heritage or such other objects of cultural significance to be designated as national heritage;
- (b) establish and maintain a register of designated national heritage;
- (c) regulate and authorise activities pertaining to the exploration, excavation, salvage of national heritage or any object or structure of cultural significance;
- (d) manage national heritage entrusted to it;
- (e) make such arrangements as are necessary to enable the public, whether on payment of a fee or free of charge, to view and enjoy a national heritage;
- (f) produce and publish materials to sensitise the public of the existence of a national heritage;
- (g) make surveys, prepare maps and plans and collect information in relation to any monument, site or intangible heritage which can be designated as a national heritage;
- (h) hold meetings, lectures and exhibitions and give advice or other information pertaining to the pursuit of objects of the Fund;
- (i) undertake or support research into the means of preserving a national heritage;
- (j) co-operate with any local or public authority or other body concerned in the objects of the Fund;
- (k) work in collaboration with the international community to trace and recover any national heritage which may be outside the territory of Mauritius or to restore foreign heritage or to jointly manage shared heritage;
- (l) provide guidance to owners of national heritage for restoration and management of the national heritage;
- (m) where appropriate, lease or entrust the management of a national heritage, vested in the Board, to any person on such terms as the Minister may approve;
- (n) have access and control of any heritage site for the purpose of exercising its functions and powers under this Act;
- (o) take such measures, as deemed necessary, to maintain, protect and promote a national heritage and to attain the objects of the Fund;
- (p) raise funds by subscriptions, donations, grants, gifts or loans; and
- (q) advise the Minister generally on all matters pertaining to national heritage.

7. Meetings of the Board

(1) Subject to section 37(6) and (8) of the Interpretation and General Clauses Act, the Board shall regulate its meetings and proceedings in such manner as it thinks fit.

(2) The Board shall meet at such time and place as the Chairperson may determine-

(a) at least once a month; or

(b) whenever the Chairperson deems it necessary or where a request for a meeting is made by not less than 5 members.

7(3) Seven members shall constitute a quorum.

(4) (a) The Board may co-opt representatives of bodies other than those specified in section 5(2), to attend meetings.

(b) No co-opted member shall have the right to vote.

8. Disclosure of interest

A member who has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered by the Board shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge, disclose in writing the nature of his interest to the Board and shall not –

(a) be present during any deliberation of the Board with respect to that matter; and

(b) take part in any decision of the Board with respect to that matter.

9. The Director

(1) The Board shall, with the approval of the Minister, appoint on such terms and conditions as the Board may determine, a Director.

(2) The Director shall be responsible for the execution of the policy and decisions of the Board and for the control and management of the day to day business of the Fund.

(3) In the exercise of his functions, the Director shall act in accordance with such directions as he may receive from the Board.

10. Appointment of staff

(1) The Board shall, with the approval of the Minister, appoint on such terms and conditions as the Board may determine, such staff as may be reasonably necessary for the purposes of, or in connection with, the discharge of its functions.

(2) Every member of the staff shall be under the administrative control of the Director.

11. Appointment of Advisory Committees

(1) The Board may set up an Advisory Committee on an ad hoc basis to advise the Board on matters pertaining to the objects of the Fund.

(2) Any Committee set up under subsection (1) shall consist of -

- (a) a Chairperson, designated by the Board from members of the Board;
 - (b) such other members of the Board as the Board may designate; and
 - (c) such co-opted members having appropriate specialized skills in the relevant fields, as the Minister may designate.
- (3) The Committee may regulate its meetings and proceedings in such manner as it thinks fit.

12. Designation of national heritage

The Minister may, on recommendation of the Board, designate by regulations -

- (a) any monument;
- (b) any object or site of cultural significance;
- (c) any intangible heritage;
- (d) any natural feature consisting of physical and biological formation or group of such formations which are of outstanding value; and
- (e) any geological and physiographical formation or precisely delineated area which constitute the habitat of animals and plants of outstanding value, in Mauritius to be a national heritage.

13. Ownership of national heritage

- (1) The ownership of a national heritage shall remain vested in the owner.
- (2) Where the Minister designates a private property as national heritage, the Director shall forthwith give notice, in writing, to the owner of that property.
- (3) Any owner of a national heritage who intends to alter structurally or make any addition to any national heritage shall -
- (a) give notice, in writing, of his intention to do so to the Director; and
 - (b) not commence any alteration or addition to the national heritage unless the Board has, with the approval of the Minister, authorised the said alteration or addition.
- (4) Where the Board is of the opinion that a national heritage shall be compulsorily acquired for the public benefit, the Board may make a recommendation to that effect to the Ministry responsible for the subject of lands.
- (5) Where the Minister responsible for the subject of lands is satisfied that the compulsory acquisition of a national heritage will be for the public benefit, he may acquire the national heritage in accordance with the Land Acquisition Act.

14. Maintenance of national heritage

(1) The Board may, by written notice, request the owner of a national heritage to maintain, or effect repairs to, the national heritage in such manner and within such time as may be specified in the notice.

(2) The Director or any officer designated by him shall, for the purposes of inspection and maintenance, have access to any national heritage at all reasonable times after giving reasonable notice, in writing, to the owner.

(3) Where the Board is satisfied that the owner of a national heritage is unable to maintain the national heritage, the Board may provide assistance to that owner, in such manner as it deems appropriate.

(4) Any person who interferes with, hinders or obstructs -

(a) any inspection or maintenance work; or

(b) any officer in the exercise of his powers or duties under this Act, shall commit an offence.

15. Powers of the Minister

(1) The Minister may give such directions of a general character to the Board not inconsistent with the objects of the Fund, which he considers necessary in the public interest, and the Board shall comply with those directions.

(2) The Board shall furnish to the Minister such information with respect to its activities as the Minister may require.

(3) The Minister may, after consultation with the Board, by regulations, cancel the designation of a national heritage where the national heritage has ceased to exist or where it would no longer serve the public interest that the national heritage remains so designated.

16. Prohibition on exports

No person shall export, or cause to export, a national heritage without the prior approval of the Board.

17. Offences

(1) Any person who unlawfully -

(a) alters, damages, destroys, defaces, digs up, moves, changes, covers, conceals or in any other way disfigures a national heritage;

(b) removes any part of a national heritage; or

(c) otherwise contravenes this Act,

shall commit an offence.

(2) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

18. Delegation of powers

Subject to such instructions and rules of a general nature as it may give or make, the Board may delegate to the Chairperson or to the Director such of its powers under this Act as may be necessary to assist it in the effective management of the Fund, other than the power to -

- (a) borrow money;
- (b) raise loans; or
- (c) enter into any transactions involving capital expenditure which exceeds 100,000 rupees.

19. Execution of documents

(1) Subject to subsection (2), all documents shall be deemed to be executed by or on behalf of the Fund if signed by the Chairperson or the Director.

(2) Every cheque of the Fund shall be signed by any 2 of the following persons -

- (a) the Chairperson;
- (b) the Director; or
- (c) such other member as may be appointed for that purpose by the Board.

20. General Fund

(1) There shall be a General Fund -

(a) into which shall be paid -

- (i) all monies accruing to the Fund, including all charges or fees that may be prescribed;
- (ii) all donations, grants and contributions received by the Fund; and
- (iii) any other sum which may lawfully accrue to the Fund;

(b) out of which all payments required to be made by the Fund shall be effected.

(2) The Board may establish such other special funds as it thinks fit for the furtherance of its objects.

21. Donations and legacies

Article 910 of the Code Napoleon shall not apply to the Fund.

22. Exemptions

Notwithstanding any other enactment -

- (a) the Fund shall be exempt from the payment of any duty, rate, charge, fee or tax;
- (b) no stamp duty or registration shall be payable in respect of any document under which the Fund is the sole beneficiary.

23. Regulations

- (1) The Minister may, after consultation with the Board, make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide -
 - (a) for the levying of fees or taking charges in respect of the activities conducted or facilities provided by the Fund;
 - (b) that any person who contravenes those regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year; and
 - (c) for an amendment to the Schedule.

24. Repeal

The following enactments are repealed -

- (a) the National Heritage Trust Fund Act;
- (b) the National Monuments Act;
- (c) the National Monuments (Designation) Regulations 1985.

25. Consequential amendments

- (1) Subject to subsections (2) and (3), the Schedule to the Statutory Bodies (Accounts and Audit) Act is amended in Part II by deleting the words “National Heritage Trust Fund” and replacing them by the words “National Heritage Fund”.
- (2) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Fund.
- (3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall apply in relation to the first financial year of the Fund.
- (4) The auditor to be appointed under section 5 of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

26. Transitional provisions

(1) All assets and liabilities of the National Monuments Board and of the National Heritage Trust Fund shall be transferred to the Fund.

(2) A person who immediately before the day on which this Act comes into operation, is employed by the National Heritage Trust Fund shall -

(a) where he is not employed by the Fund, be entitled to such compensation as may be provided in his contract of employment or by law; and

(b) not be entitled to any compensation where that person is appointed to the staff of the Fund without break in the continuity of employment and on terms not less favourable than those of his previous employment with the National Heritage Trust Fund.

(3) Where this Act does not make provision for the necessary transition from the repealed enactments specified in section 24, the Minister may make such regulations as are necessary for that purpose.

27. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

25. Morocco

Highlighted provisions deal with folklore

Law No. 2000 on Copyright and Related Rights as amended and supplemented by Law No. 34-05

PART I COPYRIGHT

CHAPTER I Introductory Provisions

Definitions

First Article

The terms used in this Law and their different alternatives shall have the following meanings:

(1) The “author” means the natural person who has created the work; any reference in this Law to the economic rights of authors, when the original owner of these rights is a natural person or legal entity other than the author, shall be extended to cover the rights of the original rights’ owner.

(2) The “work” means any literary or artistic creation under the terms of Article 3 below.

(3) A “collective work” means a work created by several authors at the initiative of a natural person or legal entity which shall publish it, subject to its own responsibility and in its own name, and in which the personal contributions of the authors who have helped to create the work shall be based on the whole of the work, without it being possible to identify the different contributions and their authors.

(4) A “collaborative work” means a work which two or more authors have helped to create.

(5) A “derived work” is to be understood as any new creation which has been designed and produced from one or more pre-existing works.

(6) A “composite work” means the new work in which a pre-existing work is incorporated without the collaboration of the author of that work.

(7) An “audiovisual work” means a work which consists of a series of interlinked images which give an impression of movement, accompanied by sounds or otherwise, which can be seen and, where it is accompanied by sounds, able to be heard. This definition shall also apply to cinematographic works.

(8) A “work of applied art” means an artistic creation with a utilitarian function or incorporated in an article of use, be it a work of craftsmanship or one that is produced by industrial processes.

(9) A “photographic work” means the recording of a light or other radiance on any carrier on which an image is produced or from which an image may be produced, irrespective of the nature of the technique (chemical, electronic or other) by which the recording is made.

An image extracted from an audiovisual work shall not be regarded as a photographic work, but as a part of the audiovisual work.

(10) “Expressions of folklore” means productions of elements characteristic of the traditional artistic heritage developed and preserved on the territory of the Kingdom of Morocco by a community or by individuals recognized as meeting the traditional artistic expectations of this community and comprising:

(a) popular tales, popular poetry and mysteries;

(b) songs and popular instrumental music;

(c) popular dances and shows;

(d) productions of the popular arts such as drawings, paintings, sculptures, terracottas, potteries, mosaics, works on wood, metallic objects, jewels, textiles, costumes.

(11) A “work inspired by folklore” is to be understood as any work composed with the aid of elements borrowed from the Moroccan traditional cultural heritage.

(12) The “producer” of an audiovisual work means the natural person or legal entity that takes the initiative and responsibility for producing the work.

(13) A “computer program” means a series of instructions expressed in words, codes, diagrams or any other form which, once they are incorporated in a carrier that can be deciphered by a machine, are able to accomplish a particular task or obtain a specific result, using a computer or an electronic method able to process the information.

(14) “Databases” means any collection of works, data or other independent elements, arranged systematically or methodically, and which are individually accessible by electronic or any other means.

(15) The term “published” refers to a work or a phonogram, copies of which have been made available to the public with the author’s consent in the case of a work, or with the producer’s consent in the case of a phonogram, for the sale, hiring, public loan or any other transfer of ownership or possession, in sufficient quantities to meet the normal needs of the public.

(16) “Broadcasting” means the communication of a work, performance or phonogram to the public by wireless transmission, including satellite transmission.

(17) “Reproduction” means the manufacture of one or more copies of a work, performance or phonogram, or part thereof, in any form whatsoever, including the sound and visual recording, and permanent or temporary storage, of a work, performance or phonogram, in electronic form.

(18) The “reprographic reproduction” of a work means the manufacture of facsimile copies of originals or copies of the work by means other than painting, for example, photocopying. The manufacture of facsimile copies that are reduced or enlarged shall also be regarded as “reprographic reproduction”.

(19) “Hiring” means the transfer of ownership of the original or a copy of a work or phonogram for a fixed duration, for profit-making purposes.

(20) “Public performance” means the fact of reciting, playing, dancing, or otherwise performing a work, either directly, or by means of any device or process—or, in the case of an audiovisual work, showing the images thereof in series or making audible the sounds which accompany it—in one or more places where persons external to a family circle and those immediately around it are or may be present, irrespective of whether these persons are or may be present in the same place and at the same time, or in different places and at different times, where the performance may be perceived, without there necessarily being public communication as defined in paragraph (22) below.

(21) “Performing a work” means reciting, playing, dancing or performing the work, either directly or by means of any device or process or, in the case of an audiovisual work, showing the images of the work in any order or making the sounds accompanying it audible.

(22) “Public communication” means the wire(less) transmission of the image, sound, or image and sound, of a work, performance or phonogram in such a way that these may be perceived by persons external to a family circle and those immediately around it, located in one or more places sufficiently far from the place of origin of the transmission so that, without this transmission, the image or sound cannot be perceived in this (these) place(s), irrespective of whether these persons may perceive the image or sound in the same place and at the same time, or in different places and at different times which they have chosen individually.

(23) “Performers” means actors, singers, musicians, dancers and other persons who perform, recite, sing, declaim, play or perform in any other manner artistic and literary works or expressions of folklore.

(24) A “copy” means the result of any act of reproduction.

(25) A “phonogram” means any physical media containing sounds reproduced directly or indirectly from a phonogram and which incorporates all or part of the sounds fixed on this phonogram.

(26) A “phonogram producer” means the natural person or legal entity that takes the initiative and assumes responsibility for the first fixation of the sounds originating from a performance, or other sounds or representations of sounds.

(27) The “fixation” means the embodiment of images, sounds, or images and sounds, or a performance thereof, allowing them to be seen, reproduced or communicated by means of a device.

CHAPTER II Subjects of Protection

General Provisions

Article 2

All authors shall enjoy the rights specified in this Law in relation to their literary or artistic works.

The protection resulting from the rights specified in the previous paragraph (hereinafter “protection”) shall begin as soon as the work is created, even if the work is not fixed on a physical media.

Works

Article 3

This Law shall apply to the literary and artistic works (hereinafter “works”) which are original intellectual creations in the literary and artistic field, such as:

- (a) works expressed in writing;
- (b) computer programs;
- (c) lectures, addresses, sermons and other works consisting of words or expressed orally;
- (d) musical works, irrespective of whether they contain accompanying texts;
- (e) dramatic and dramatico-musical works;
- (f) choreographic works and mimed works;
- (g) audiovisual works including cinematographic works and videograms;
- (h) works of fine art, including drawings, paintings, engravings, lithographs, printing on leather and all other works of fine art;
- (i) works of architecture;
- (j) photographic works;
- (k) works of applied art;
- (l) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;
- (m) expressions of folklore and works inspired by folklore;
- (n) drawings of garment industry designs.

Protection shall be independent of the mode or form of expression, quality and aim of the work.

Protection of the Title of the Work

Article 4

Provided that it is original, the title of a work shall be protected in the same way as the work itself.

Derived Works and Collections

Article 5

The following shall also be protected as works and shall enjoy the same protection:

(a) translations, adaptations, musical arrangements and other transformations of works and expressions of folklore;

(b) collections of works, expressions of folklore or of simple facts or data, such as encyclopædias, anthologies and databases, irrespective of whether they are reproduced on a machine-usable carrier or in any other form which, through the choice, coordination or arrangement of the subjects, constitute intellectual creations. The protection of the works referred to in subparagraph (a) should not be prejudicial to the protection of the pre-existing works used to produce these works.

Ancient Manuscripts

Article 6

Under this Law, protection shall be granted to the publication of the ancient manuscripts held in public libraries or the filings of public or private archives, without, however, the author of this publication being able to oppose the same manuscripts being republished according to the original text.

Protection of Expressions of Folklore

Article 7

(1) Expressions of folklore shall be protected for the following uses, where those uses have a commercial aim or lie outside the conventional or customary framework:

(a) reproduction;

(b) communication to the public through representation, performance, broadcasting or cable transmission, or any other means;

(c) adaptation, translation or any other modification;

(d) fixation of expressions of folklore.

(2) The rights granted in paragraph (1) shall not apply when the acts referred to in this paragraph relate to:

(a) the use made by a natural person solely for personal reasons;

(b) the use of short extracts for the purposes of reporting current events, to the extent justified by the object of the report;

(c) use solely for direct teaching or scientific research purposes;

(d) the cases where, under Chapter IV of Part I, a work can be used without the authorization of the author or rights' owners.

(3) In all printed publications, and in relation to any public communication of an identifiable expression of folklore, the source of this expression of folklore shall be indicated in an appropriate manner and in accordance with correct usage, by mentioning the name of the community or locality from which the expression of folklore used comes.

(4) The right to authorize the acts referred to in paragraph (1) of this Article shall belong to the Moroccan Copyright Office.

(5) The sums received in relation to this Article shall be allocated for professional purposes and to cultural development.

Unprotected Works

Article 8

The protection specified by this Law shall not be extended to:

- (a) official texts of a legislative, administrative or judicial nature, nor to their official translations;
- (b) current events;
- (c) ideas, processes, systems, operating methods, concepts, principles, discoveries or simple data, even if these are stated, described, explained, illustrated or incorporated in a work.

CHAPTER III Protected Rights

Moral Rights

Article 9

Independently of his economic rights and even after the transfer of those rights, the author of a work shall be entitled to:

- (a) claim the paternity of his work, in particular the right to have his name displayed on the copies of his work and, to the extent possible and in the customary manner, in relation to any public use of his work;
- (b) remain anonymous or use a pseudonym;
- (c) oppose any distortion, destruction or other modification of his work, or any other encroachment on the same work, which might be prejudicial to his honor or reputation.

Economic Rights

Article 10

Subject to the provisions of Articles 11 to 22 below, the author of a work shall have the exclusive right to carry out, prohibit or authorize the following acts:

- (a) republish and reproduce his work in any way or form whatsoever, whether permanent or temporary, including temporary storage in electronic form
- (b) translate his work;
- (c) prepare adaptations, arrangements or other transformations of his work;
- (d) carry out or authorize the hiring or public loan of the original or copy of his audiovisual work, his work incorporated in a phonogram, computer program, database or musical work in graphical form (scores), irrespective of the owner of the original, or of the copy subject to

hiring or public loan;

(e) carry out or authorize the public distribution, by sale, hiring, public loan or any other transfer of ownership or possession, of the original or copies of his work, distribution of which has not been authorized by him;

(f) perform his work in public;

(g) import copies of his work;

(h) broadcast his work;

(i) communicate his work to the public by cable or by any other means.

The hiring and loan rights specified in the fourth point of the first paragraph shall not apply to the hiring of computer programs, in cases where the program itself is not the essential aim of hiring.

Exercise of Economic Rights by Successors in Title

Article 11

The rights specified in the previous Article shall be exercised by the successors in title of the author of the work or by any other natural person or legal entity to which these rights have been accorded.

The Moroccan Copyright Office may exercise the above rights in cases where the persons cited in the previous paragraph do not exist.

CHAPTER IV Limitation of Economic Rights

Free Reproduction for Private Purposes

Article 12

Notwithstanding the provisions of Article 10 above, and subject to those in the second paragraph of this Article, it shall be permitted, without the authorization of the author or payment of a fee, to reproduce a lawfully published work solely for the private use of the user.

The provisions of the previous paragraph shall not apply to:

(a) the reproduction of architectural works in the form of buildings or other similar constructions;

(b) the reprographic reproduction of a whole book or a musical work in graphical form (scores);

(c) the reproduction of the whole or parts of databases in digital form;

(d) the reproduction of computer programs apart from in the cases specified in Article

21 below;

(e) any other reproduction of a work which appears to hamper the normal use of the work or would unjustifiably prejudice the author's legitimate interests.

Temporary Reproduction

Article 13

Notwithstanding the provisions of Article 10 above, the temporary reproduction of a work shall be permitted provided that this reproduction:

- (a) takes place in the course of a digital transmission of a work or act designed to make a work stored in digital form perceptible;
- (b) is carried out by a natural person or legal entity authorized, by the copyright owner or by the law, to carry out the said transmission of the work or act designed to make it perceptible;
- (c) is of an accessory nature to the transmission, takes place as part of normal use of the material and is automatically deleted without allowing the electronic recovery of the work for purposes other than those specified in paragraphs (a) and (b) of this Article.

Free Reproduction in the Form of a Citation

Article 14

Notwithstanding the provisions of Article 10 above, it shall be permitted, without the author's authorization or the payment of a fee, to cite a lawfully published work in another work, provided that the source and author's name are indicated, where this name appears in the source, and that such a citation complies with correct use and its scope does not exceed that justified by the aim to be achieved.

Free use for Education

Article 15

Notwithstanding the provisions of Article 10 above, it shall be permitted, without the author's authorization or the payment of a fee, but provided that the source and author's name are indicated, where this name appears in the source, to:

- (a) use a lawfully published work as an illustration in publications, broadcasts, or sound or visual recordings intended for educational purposes;
- (b) reproduce by reprographic means, for educational purposes or for examinations in educational institutions whose activities are not designed directly or indirectly to generate commercial profit, and to the extent justified by the aim to be achieved, individual articles lawfully published in a journal or periodical, short extracts of a lawfully published work or a lawfully published short work.

Free Reprographic Reproduction by Libraries and Archive Departments

Article 16

Notwithstanding the provisions of Article 10 above, and without the authorization of the author or any other copyright owner, a library or archive departments whose activities are not designed directly or indirectly to generate commercial profit may produce, by means of reprographic reproduction, individual copies of a work:

- (a) when the reproduced work is an article, short work, or short extracts of a written work other than computer programs, with or without illustrations, published in a collection of works or an edition of a journal or periodical, or when the aim of the reproduction is to respond to the request of a natural person;

(b) when the production of such a copy is intended to preserve it and, if necessary, (where it appears to have been lost, destroyed or rendered unusable), to replace it in a permanent collection of another library or other archive department, or to replace copies lost, destroyed or rendered unusable.

Deposit of Reproduced Works in Official Archives

Article 17

Without prejudice to the right belonging to the author to obtain equitable remuneration, reproductions constituting exceptional documentation and a copy of recordings of cultural value, may be stored in official archives designated for this purpose by the government authority responsible for cultural affairs.

A list of the reproductions and recordings referred to above shall be drawn up by joint

decree of the government authority responsible for communication and that in charge of cultural affairs.

Free Use for Judicial and Administrative Purposes

Article 18

Notwithstanding the provisions of Article 10 above, it shall be permitted, without the author's authorization or the payment of a fee, to republish a work intended for judicial or administrative proceedings, to the extent justified by the aim to be achieved.

Free Use for Information Purposes

Article 19

Notwithstanding the provisions of Article 10 above, it shall be permitted, without the author's authorization or payment of a fee, but subject to the obligation to indicate the source and author's name, where this name appears in the source, to:

(a) reproduce in the press, broadcast or communicate to the public an economic, political or religious article published in journals or periodical collections of the same nature, provided that the right of reproduction, broadcasting or public communication is not expressly reserved;

(b) reproduce or make available to the public, for reporting purposes, current events by means of photography, cinematography, video or public cable broadcasting or communication, a work seen or heard during such an event, to the extent justified by the information aim to be achieved;

(c) reproduce in the press, broadcast or communicate to the public, political speeches, lectures, addresses, sermons or other works of the same nature delivered in public, as well as speeches made during trials, to the extent justified by the aim to be achieved, whereby the authors retain the right to publish collections of these works.

Free Use of Images of Works Permanently Located

in Public Places

Article 20

Notwithstanding the provisions of Article 10 above, it shall be permitted, without the author's authorization or payment of a fee, to republish, broadcast or communicate to the public by

cable an image of a work of architecture, a work of fine art, a photographic work, or a work of applied art which is permanently located in a place open to the public, unless the image of the work is the main subject of such a reproduction, broadcast or communication and if it is used for commercial purposes.

Free Reproduction and Adaptation of Computer Programs

Article 21

Notwithstanding the provisions of Article 10 above, the legitimate owner of a copy of a computer program may, without the owner's authorization or payment of a separate fee, produce a copy or adaptation of this program, provided that this copy or adaptation is:

(a) required for the use of the computer program for purposes for which the program has been obtained;

(b) required for archiving purposes and in order to replace the lawfully held copy in cases where the work appears to have been lost, destroyed or rendered unusable.

No copy or adaptation may be produced for purposes other than those specified in the previous two paragraphs of this Article and any copy or adaptation shall be destroyed in cases where prolonged possession of the computer program copy ceases to be lawful.

Free Temporary Recording by Broadcasting Organizations

Article 22

Notwithstanding the provisions of Article 10 above, a broadcasting organization may, without the author's authorization or payment of a separate fee, make a temporary recording, by its own means and for its own broadcasts, of a work which it has the right to broadcast.

The broadcasting organization shall destroy this recording within six months of it being produced, unless an agreement on a longer period has been reached with the author of the work thus recorded. However, in the absence of such an agreement, a single copy of this recording may be kept solely for archive storage purposes.

Free or Public Performance

Article 23

Notwithstanding the provisions of Article 10 above, it shall be permitted, without the author's authorization or payment of a fee, to perform a work publicly:

(a) during official or religious ceremonies, to the extent justified by the nature of these ceremonies;

(b) as part of the activities of an educational institution, for the staff and students of such an institution, provided the public consists solely of staff and students of the institution, or parents and supervisors, or other persons directly linked to the institution's activities.

Import for Personal Reasons

Article 24

Notwithstanding the provisions of Article 10(g) above, the import of a copy of a work by a natural person, for personal reasons, shall be permitted without the authorization of the author or of any other owner of the copyright in the work.

Chapter V Duration of Protection

General Provisions

Article 25

Unless otherwise specified in this chapter, the economic rights in a work shall be protected during the author's lifetime and for 70 years after his death.

Moral rights shall have no time limitation, and shall be exempt from prescription, inalienable and transferable to successors in title in the case of death.

Duration of Protection for Collaborative Works

Article 26

The economic rights in a collaborative work shall be protected during the lifetime of the last surviving author and for 70 years after his death.

Duration of Protection for Anonymous and Pseudonymous Works

Article 27

The economic rights in a work published anonymously or under a pseudonym shall be protected until the end of a 70-year period from the end of the calendar year when such a work was lawfully published for the first time or, where such an event has not occurred in the 50 years since the work was produced, 70 years from the end of the calendar year when such a work was made available to the public or, where this has not occurred in the 50 years since the production of this work, 70 years from the end of the calendar year of such production.

If, prior to the expiry of said period, the identity of the author is revealed unambiguously, the provisions of Article 25 or 26 above, shall apply.

Duration of Protection for Collective and Audiovisual Works

Article 28

The economic rights in a collective or audiovisual work shall be protected for a period of 70 years from the end of the calendar year when such a work was lawfully published for the first time or, where such an event has not occurred in the 50 years since the work was published, 70 years from the end of the calendar year when such a work was made available to the public or, where this has not occurred in the 70 years since the production of the work, 70 years from the end of the calendar year of such production.

Duration of Protection for Works of Applied Art

Article 29

The duration of protection of works of applied art shall be 70 years from the end of the calendar year when such a work was lawfully published for the first time, or where this has not occurred in the 50 years since the creation of the work, 70 years from the end of the calendar year of creation of such a work.

Calculation of Deadlines

Article 30

In this chapter, any deadline shall expire at the end of the calendar year during which it would normally lapse.

CHAPTER VI Ownership of Rights

General Provisions

Article 31

The author of a work shall be the first owner of the moral and economic rights in his work.

Ownership of the Rights in Collaborative Works

Article 32

The co-authors of a collaborative work shall be the first joint owners of the moral and economic rights in this work. However, if a collaborative work can be divided into independent parts (i.e. if the parts of this work can be reproduced, performed or otherwise used separately), the joint authors may enjoy independent rights in these parts, since they are the joint owners of the rights of the collaborative work considered to be a whole unit.

Ownership of the Rights in Collective Works

Article 33

The first owner of the moral and economic rights in a collective work shall be the natural person or legal entity, at the initiative and under the responsibility of which the work has been created in his name.

Ownership of the Rights in Composite Works

Article 34

The composite work shall be the property of the author who has produced it, subject to the rights of the author of the pre-existing work.

Ownership of the Rights in Works Created as Part of an Employment Contract

Article 35

In the case of a work created by an author on behalf of a natural person or legal entity (hereinafter “employer”) as part of an employment contract and his employment, unless otherwise specified in the contract, the first owner of the moral and economic rights shall be the author, but the economic rights in this work shall be considered to have been transferred to the employer to the extent justified by the employer’s usual activities at the time the work is created.

Ownership of the Rights in Audiovisual Works

Article 36

In the case of an audiovisual work, the first owners of the moral and economic rights shall be the joint authors of this work (such as the director, scriptwriter and music composer). The authors of pre-existing works adapted or used for audiovisual works shall be considered to have been assimilated to the joint authors.

Unless otherwise stipulated, the contract concluded between the producer of an audiovisual work and the joint authors of this work—other than the authors of the musical works included therein—as regards the contributions of the joint authors to the production of this work shall transfer to the producer the economic rights of the joint authors in the contributions.

However, unless otherwise stipulated in the contract, the joint authors shall retain their economic rights in other uses of their contributions insofar as these contributions can be used separately from the audiovisual work.

Remuneration for the Joint Authors of an Audiovisual Work

Article 37

Remuneration for the joint authors of an audiovisual work shall be determined according to the procedures for its use at the time the production contract is concluded or when the work is used.

In cases where the audiovisual work has been disclosed in a place accessible to the public or has been communicated, irrespective of the means, in return for payment of a fee, or by means of hiring with a view to private use, the joint authors shall be entitled to remuneration, in proportion to the fees paid by the user.

If the disclosure of the work is free of charge, the remuneration paid in this case shall be determined on the basis of a flat rate. The Moroccan Copyright Office shall determine the percentages of the proportional flat-rate remuneration, based on the procedures for use referred to in the first and second paragraphs above.

Presumption of Ownership and Existence of Copyright

Article 38

In civil, administrative or criminal proceedings, the person whose name is indicated in the usual manner as being the author, performer, producer of a phonogram or publisher, shall, in the absence of proof to the contrary, be considered to be the owner of the rights and shall therefore be entitled to institute legal proceedings. In the absence of proof to the contrary, the copyright or related rights shall exist for the work, performance or phonogram.

In the case of an anonymous work, or a work created using a pseudonym—apart from where the pseudonym leaves no doubt as to the author's identity—the publisher whose name appears on the work shall, in the absence of proof to the contrary, be considered to represent the author and, in this capacity, to be entitled to protect and ensure respect for the author's rights. This paragraph shall cease to apply when the author discloses his identity and provides evidence of his capacity.

CHAPTER VII Transfer of Rights and Licenses

Transfer of Rights

Article 39

Economic rights shall be transferable between living people and by effect of the law as a result of death. Moral rights shall not be transferable between living people but by effect of the law as a result of death.

The complete or partial transfer of the copyright in a work inspired by folklore, or the exclusive license relating to such a work, shall be valid only if it has received the approval of the Moroccan Copyright Office.

The global transfer of future works shall be null and void.

Licenses

Article 40

The author of a work may grant licenses to other persons for the purpose of acts covered by economic rights. These licenses may be exclusive or non-exclusive.

A non-exclusive license shall authorize its owner to carry out, in the permitted manner, the acts to which it relates at the same time as the author and other owners of non-exclusive licenses. An exclusive license shall authorize its owner, to the exclusion of all others including the author, to carry out, in the permitted manner, the acts to which it relates.

Form of Transfer and License Contracts

Article 41

Unless otherwise specified, the economic rights transfer or license contracts for the performance of the acts covered by the economic rights shall be drawn up in writing.

Extension of Transfers and Licenses

Article 42

Transfers of economic rights and licenses for the performance of acts covered by such rights may be limited to certain specific rights, as well as in relation to the aims, duration, territorial scope and extent or means of use.

The failure to mention the territorial scope for which economic rights are transferred or the license granted to carry out acts covered by such rights shall be considered to limit the transfer or license to the country in which either one or the other is granted.

The failure to mention the scope or means of use for which economic rights are transferred or the license granted for the performance of acts covered by economic rights shall be considered to limit the transfer or license to the scope and means of use necessary for the aims envisaged at the time the transfer or license is granted.

Alienation of Originals or Copies of Works, Transfer and License Concerning Copyright in these Works

Article 43

An author who transfers by alienation the original or a copy of his work shall be considered, unless otherwise stipulated in the contract, not to have assigned any of his economic rights, nor to have granted any license for the performance of the acts covered by economic rights.

Notwithstanding the previous paragraph, the legitimate acquirer of an original or copy of a work shall, unless otherwise stipulated in the contract, be entitled to present the original or copy directly to the public.

The right specified in the second paragraph shall not be extended to persons who have taken possession of originals or copies of a work by means of hiring or any other means, without having acquired ownership thereof.

CHAPTER VIII Provisions Specific to the Publishing Contract

Definition

Article 44

The publishing contract shall be the contract by means of which the author of a work or his successors in title shall transfer, subject to specific conditions, to a person known as the “publisher”, the right to produce or to have produced a number of copies of the work, whereby the publisher shall cover the costs of publication and distribution.

General Provisions

Article 45

Subject to being declared null and void, the contract shall be drafted in writing and shall provide, for the benefit of the author or his successors in title, remuneration proportionate to the products used or flat rate remuneration.

Subject to the provisions governing the contracts concluded between minors and prohibited persons, personal consent shall be mandatory, even where this relates to a legally incapable author, unless the incapacity is physical in nature.

The provisions of the second paragraph of this Article shall not be applicable when the publishing contract is endorsed by the author’s successors in title.

Obligations of the Author

Article 46

The author shall guarantee to the publisher:

- the peaceful and, unless otherwise specified, exclusive exercise of the transferred right;
- that this right is respected and defended against any infringement that might be made against it;
- the opportunity to produce and distribute the copies of the work.

Unless otherwise stipulated, the subject of the publication provided by the author shall remain his property. The publisher shall be responsible for it for a period of one year after the production has been completed.

Obligations of the Publisher

Article 47

The publisher shall be obliged to:

- carry out the production or have this done, according to the conditions specified in the contract;
- make no change to the work, without the written authorization of the author;
- to display on each of the copies the name, pseudonym or mark of the author, unless otherwise stipulated;
- supply any proof designed to establish the accuracy of his accounts.

The author may require, at least once a year, the production by the publisher of a report mentioning:

- (a) the number of copies produced during the financial year with details of the date and size of the print runs;
- (b) the number of copies in stock;
- (c) the number of copies sold by the publisher and the number unused or destroyed inadvertently or in cases of force majeure;
- (d) the amount of the fees due and, where applicable, that of the fees paid to the author;
- (e) the sale price charged.

Remuneration

Article 48

The contract may provide either for remuneration in proportion to the products used or for flat-rate remuneration.

As regards bookshop publishing, the remuneration may be a flat rate for the first edition, with the author's formal agreement, in the following cases:

- (1) scientific or technical works;
- (2) anthologies and encyclopædias;
- (3) prefaces, annotations, introductions, presentations;
- (4) illustrations of a work;
- (5) limited deluxe editions.

For works published in journals and periodical collections of any kind and by press agencies, the remuneration for the author bound to the information company by a work or service hiring contract may also be set at a flat rate.

Cases of Termination of the Publishing Contract

Article 49

In cases where the publisher becomes insolvent or is the subject of a bankruptcy adjudication, the publishing contract shall not be terminated.

If the receiver or the party responsible for liquidation continues the venture subject to the conditions of the Code of Commerce, he shall assume the rights and obligations of the publisher.

If the business capital has been transferred at the request of the receiver or the party responsible for liquidation, subject to the terms of the Code of Commerce, the acquirer shall be subrogated to the assignor.

If, within a period of one year from the date of the insolvency judgment, the venture has not been continued and the business capital has not been transferred, the author may request the contract to be terminated.

The publishing contract shall be automatically terminated when, owing to a failure to sell or for any other reason, the publisher destroys all copies.

The contract may be terminated by the author independently of the cases provided for by the common law when, on a formal demand granting him a suitable deadline, the publisher has not published the work or, where a print run has been sold out, has not republished the work.

An edition shall be considered to have been sold out if two requests for delivery of copies addressed to the publisher have not been satisfied within three months.

If the work is incomplete at the time of the author's death, the contract shall be settled as regards the incomplete part of the work, except in the case of agreement between the publisher and the author's successors in title.

PART II RIGHTS OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS (RELATED RIGHTS)

CHAPTER I

Rights of Authorization

Rights of Authorization of Performers

Article 50

Subject to the provisions of Article 54 to 56, the performer shall have the exclusive right to carry out or authorize the following acts:

(a) the broadcast of his performance, apart from when the broadcast is made from a fixation of the performance other than a fixation made under Article 55 or when a rebroadcast is made, as authorized by the broadcasting organization which first shows the performance;

(b) the communication to the public of his performance, apart from when this communication is made from a broadcast of the performance;

(c) the performance which has not yet been fixed;

(d) the reproduction of a fixation of his performance in any way or form whatsoever, whether permanent or temporary, including temporary storage in electronic form;

(e) the first distribution to the public of a fixation of his performance, through sale or any other transfer of ownership;

(f) the public hiring or loan of his performance;

(g) the public provision, by wire(less) means, of his performance fixed on a phonogram, so that access is provided for all persons from the place and at the time of their individual choosing;

(h) the import of a fixation of his performance.

In the absence of agreement to the contrary:

(a) the authorization to broadcast does not imply the authorization to allow other broadcasting organizations to show the performance;

(b) the authorization to broadcast does not imply the authorization to fix the performance;

(c) the authorization to broadcast and to fix the performance does not imply the authorization to reproduce the fixation;

(d) the authorization to fix the performance and to reproduce this fixation does not imply the authorization to broadcast the performance from the fixation or its reproductions.

Irrespective of his economic rights, and even after these rights have been transferred, the performer shall retain the right, as regards his live sound performances fixed on phonograms, to request to be mentioned as such, apart from when the method of use of the performance dictates that such a mention is omitted, and to oppose any distortion, destruction or other modification of his performances, that may be prejudicial to his reputation. The provisions of the second paragraph of Article 25 and the second paragraph of Article 39 of this Law shall apply to the moral rights of performers.

Rights of Authorization of Phonogram Producers

Article 51

Subject to the provisions of Articles 54 to 56, the phonogram producer shall have the exclusive right to carry out or authorize the following acts:

(a) the direct or indirect reproduction of his phonogram in any way or form whatsoever, whether permanent or temporary, including temporary storage in electronic form;

(b) the import of copies of his phonogram with a view to their distribution to the public;

(c) the public provision, through sale or by any other means of ownership transfer, of copies of his phonogram not subject to distribution authorized by the producer;

- (d) the public hiring or loan of copies of his phonogram;
- (e) the public provision, by wire(less) means, of his phonogram so that access is provided for all persons from the place and at the time of their individual choosing;
- (f) the communication to the public of his phonogram;
- (g) the broadcasting of his phonogram.

Rights of Authorization of Broadcasting Organizations

Article 52

Subject to the provisions of Articles 54 to 56, the broadcasting organization shall have the exclusive right to carry out or authorize the following acts:

- (a) the rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts;
- (c) the reproduction of a fixation of its broadcasts;
- (d) the communication to the public of its television broadcasts.

CHAPTER II Equitable Remuneration for the Use of Phonograms

Equitable Remuneration for Broadcasting or Communication to the Public

Article 53

When a phonogram published for commercial purposes, or a reproduction of this phonogram, is used directly for public broadcasting or communication, not including any interactive transmissions, equitable and single remuneration, intended both for the performers and/or the producers of phonograms, shall be paid by the user.

The sum received for the use of a phonogram shall be divided half-and-half between the performers and the phonogram producers.

CHAPTER III Free Uses

General Provisions

Article 54

Notwithstanding the provisions of Articles 50 to 53, the following acts shall be permitted without the authorization of the successors in title mentioned in these articles and without the payment of a fee:

- (a) reporting of current events, provided that use is made only of short fragments of a performance, phonogram or broadcast;
- (b) reproduction solely for the purposes of scientific research;
- (c) reproduction as part of teaching activities, apart from when the performances or phonograms have been published as material intended for educational purposes;

(d) citation, as short fragments, of a performance, phonogram or broadcast, provided that such citations are properly used and are justified by their information aim;

(e) all other uses representing exceptions in relation to protected works pursuant to the provisions of this Law.

Free Use of Performances

Article 55

As soon as the performers have authorized the incorporation of their performance in a fixation of images, or of images and sounds, the provisions of Article 50 shall cease to be applicable.

Free Use by Broadcasting Organizations

Article 56

The authorizations required under Articles 50 to 52 to make fixations of performances and broadcasts, reproduce such fixations and phonograms published for commercial purposes shall not be required when the fixation or reproduction is made by a broadcasting organization using its own means and for its own broadcasts, provided that:

(a) for each of the broadcasts of a performance fixation or its reproductions, made subject to this paragraph, the broadcasting organization is entitled to broadcast the performance in question;

(b) for each of the broadcasts of a broadcast fixation, or a reproduction of such a fixation, made subject to this paragraph, the broadcasting organization is entitled to make the broadcast;

(c) for any fixation made subject to this paragraph or its reproductions, the fixation and its reproductions are destroyed within a period of the same duration as that applied to the fixations and reproductions of works protected by copyright under Article 22 of this Law, apart from a single copy which may be retained solely for archive storage purposes.

CHAPTER IV Duration of Protection

Duration of Protection for Performances

Article 57

The duration of protection to be granted to performances under this Law shall be a period of 70 years starting from the end of the calendar year when the performance was lawfully published for the first time or, where such publication has not occurred in the 50 years since the work was created, 70 years from the end of the calendar year of such creation.

Duration of Protection for Phonograms

Article 58

The duration of protection to be granted to phonograms under this Law shall be a period of 70 years starting from the end of the calendar year when the phonogram was lawfully published for the first time or, failing such publication within a period of 50 years from the creation of the phonogram, 70 years starting from the end of the calendar year of such creation.

Duration of Protection for Broadcasts

Article 59

The duration of protection to be granted to broadcasts under this Law shall be 70 years starting from the end of the calendar year when the broadcast was lawfully published for the first time or, failing such publication within a period of 50 years from the creation of the broadcast, 70 years from the end of the calendar year of creation.

PART III COLLECTIVE MANAGEMENT

Article 60

The protection and use of copyrights and related rights, as defined by this Law, shall be entrusted to the Moroccan Copyright Office.

Right to engage in legal proceedings

Article 60.1

The Moroccan Copyright Office shall have the right to engage in legal proceedings in order to defend the interests with which it is entrusted.

Swearing-in of agents and impounding

Article 60.2

Officials of the Moroccan Copyright Office, commissioned by the supervisory authority and sworn in under the conditions specified in the legislation currently in force regarding the swearing-in of reporting officers, shall be authorized to establish infringements of this Law.

They may, once the infringements have been established, proceed to impound the phonograms, videograms and any other usable recording medium, as well as any material used for unlawful reproduction.

Assistance of the public authorities

Article 60.3

Public authorities of all kinds shall be required to lend their assistance and support to the Moroccan Copyright Office, as well as to its officials, as part of the fulfillment of their duties.

PART IV

MEASURES, APPEALS AND PENALTIES AGAINST PIRACY AND OTHER OFFENSES

Protective Measures

Article 61

The court with competence to hear civil cases instituted under this Law shall have the authority, subject to the provisions of the Codes of Criminal and Civil Procedure, and to the conditions it considers reasonable, to:

- (a) make a judgment prohibiting the commission or ordering the cessation of the violation of any right protected under this Law;

(b) order the seizure of the copies of works or of the sound recordings suspected of having been made or imported, or being exported, without the authorization of the owner of the right protected under this Law, as well as of the packaging of these copies, the instruments that may have been used to produce them, and the documents, accounts or business papers relating to these copies.

The provisions of the Codes of Criminal and Civil Procedure relating to search and seizure shall apply to violations of rights protected under this Law.

The copyright and works not published prior to the author's death may not be seized.

Only copies of the work already published may be seized.

Border measures

Article 61.1

The Customs and Excise Authority may, at the written application of an owner of copyright or related right (based on the model adopted by that Authority), suspend the release for free circulation of merchandise suspected of being counterfeit or pirated, infringing copyright and related rights.

The aforementioned application shall be supported by appropriate evidence that there is an infringement of protected rights and shall provide sufficient information that the owner of the right could reasonably be expected to know about for the suspected counterfeit or pirated merchandise to be reasonably recognizable by the Customs and Excise Authority.

The applicant and the declarant or the holder of the merchandise shall be informed, without delay, by the Customs and Excise Authority, of the suspension measure taken.

The suspension application referred to in the first paragraph above shall be valid for a period of one year or the remaining period of protection of the copyright or related rights when such a period is shorter than one year.

Article 61.2

The suspension measure referred to in Article 61.1 above shall be lifted as of right where the requestor, within 10 working days following notification of the suspension measure to the requestor, fails to prove to the Customs and Excise Authority that:

- protective measures have been ordered by the President of the Court;
- or that he has brought legal proceedings, and furnished the security set by the court, to cover contingent liability should there be no subsequent acknowledgement that counterfeiting or piracy activities have taken place.

Article 61.3

For the purposes of bringing the legal action referred to in Article 61.2 above, the applicant may obtain from the Customs and Excise Authority information relating to the names and addresses of the importer, the sender, the consignee or the holder of the merchandise and the quantity of the merchandise, notwithstanding any provisions to the contrary.

Article 61.4

If the Customs and Excise Authority establishes or suspects that imported, exported or transit merchandise is counterfeit or pirated, the Authority shall, of its own motion, suspend the release for free circulation of such merchandise. In this case, the Authority shall without delay inform the owner of the rights of the measure taken and shall communicate to him, upon his written request, the information referred to in Article 61.3 above.

The declarant or holder of the merchandise shall also be informed of this measure without delay.

The above suspension measure shall be lifted as of right where the owner of the rights, within 10 working days following the date when the Authority communicated the information to him, fails to prove to the Customs and Excise Authority that the measures or actions have been undertaken on the conditions referred to in Article 61.2 above.

Article 61.5

The merchandise for which the release for free circulation has been suspended pursuant to the provisions of Articles 61.1 to 61.4 above and that has been recognized, by a court judgment that has become final, as being counterfeit or pirated merchandise shall be destroyed, except in exceptional circumstances. It may in no way be authorized for export or be the subject of other customs procedures or systems, except in exceptional circumstances.

Article 61.6

The measure suspending the release for free circulation implemented pursuant to the provisions of Articles 61.1 to 61.5 above shall not incur the liability of the Customs and Excise Authority.

Should the merchandise not be recognized as counterfeit or pirated, the importer may apply to the court for damages for any prejudice suffered, to be paid to him by the applicant.

Article 61.7

The scope of the provisions of Articles 61.1 to 61.6 above shall not apply to merchandise of a non-commercial nature contained in the personal luggage of travelers, in small quantities, or sent in small consignments for personal and private use.

Civil Penalties

Article 62

The owner of any rights protected under this Law whose recognized right has been infringed shall be entitled to payment, by the infringer, of damages for the prejudice suffered as a consequence of the act of infringement.

The amount of damages shall be fixed in keeping with the provisions of the Civil Code, taking into account the importance of the material and moral prejudice suffered by the rightsowner, as well as the size of the infringer's profits attributable to the infringement.

The rightsowner shall have the possibility of choosing between damages actually sustained, plus any profit resulting from the prohibited activity that has not been taken into account in the calculation of those damages, or the pre-established damages of between five thousand (5,000) dirhams and twenty-five thousand (25,000) dirhams, as deemed equitable by the court to compensate for the prejudice suffered.

At the end of the civil proceedings, the court that tried the case may order the unsuccessful party to reimburse reasonable costs for legal fees incurred by the other party.

Where infringing copies exist, the court shall have the authority to order the destruction or, only in exceptional circumstances, other reasonable disposal of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the owner of the right, unless the owner of the right requests otherwise. If an implement or device has been used to commit acts of infringement, the court shall, without any compensation or in exceptional circumstances, order their immediate destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right.

Where there is a danger that acts of infringement may be continued, the court shall expressly order that such acts no longer be committed. Furthermore, the court shall fix a sum the equivalent of at least 50 per cent of the value of the operation as damages.

Violations Committed Against Expressions of Folklore

Article 63

Whomsoever uses, without the authorization of the Moroccan Copyright Office, an expression of folklore in a way that is not permitted by Article 7(1) is committing an offense and shall be liable for damages, injunctions or any other form of reparation that the court may consider appropriate in the case in question.

Criminal Sanctions

Article 64

Any willful infringement of the following committed unlawfully and in any way, for the purposes of commercial exploitation, shall be punished by imprisonment for a period of between two and six months and a fine of between ten thousand (10,000) and one hundred thousand (100,000) dirhams, or just one of these two penalties:

- the rights of performers mentioned in Article 50;
- the rights of phonogram producers mentioned in Article 51;
- the rights of broadcasting organizations mentioned in Article 52.

Willful infringements for the purposes of commercial exploitation shall mean:

- any willful infringement of copyright or related rights which is not motivated, either directly or indirectly, by financial gain;
- any willful infringement committed with the aim of obtaining commercial advantage or private financial gain.

The same penalties specified in the first paragraph above, as well as additional

measures and sanctions mentioned in Article 64.3 below, shall be applied to:

- whoever imports or exports copies made in violation of the provisions of this Law;
- whoever unlawfully carries out one of the acts mentioned in Article 7(1) of this Law;
- whoever commits one of the acts mentioned in Article 65 of this Law;
- whoever has been found legally liable under Article 65.4 of this Law.

Article 64.1

In the case of persistent infringement, the penalties specified in Article 64 above shall be doubled.

Article 64.2

If the perpetrator of one of the acts mentioned in Article 64 commits a new act that constitutes an infringement of copyright or related rights less than five years after a first judgment that has become final, he shall be punished by a term of imprisonment of between one and four years and a fine of between sixty thousand (60,000) dirhams and six hundred thousand (600,000) dirhams, or just one of these penalties.

Article 64.3

In cases of infringement of the provisions of this Law, the competent court may order the following preventive measures and subsidiary penalties, provided that a prior order or on the same subject has not already been issued against the same parties:

1. the impounding of all copies made in infringement of the provisions of this Law, the packaging, the materials and equipment that could be used to commit the infringement, the assets linked to the infringement and the documents, accounts or business papers referring to such copies;
2. the confiscation of any assets with which the link with the unlawful activity may be established and, except in exceptional circumstances, all the copies made in infringement of the provisions of this Law and their packaging, materials and equipment used to manufacture them, without any compensation of any kind for the defendant;
3. the destruction, except in exceptional circumstances, of these copies and their packaging, materials and equipment used to manufacture them or, in exceptional cases, their disposal in another reasonable way, outside commercial circuits so as to reduce to a minimum the risks of further infringements, and all of the above without any compensation of any kind for the defendant;
4. the permanent or temporary closure of the establishment used by the perpetrator of the infringement or his accomplices;
5. the publication of the condemnatory sentence in one or more newspapers designated by the competent court, at the expense of the person convicted, although the costs of this publication must not exceed the maximum of the applicable fine.

Measures, Reparations and Penalties in Cases of Violation of Technical Means and Distortion of Information on the Rights Regime

Article 65

Without prejudice to the provisions of Law No. 77-03 on audiovisual communication, the following acts shall be considered unlawful and, for the purposes of Articles 61 to 64 of this Law, shall be assimilated to infringements of the rights of authors, performers and phonogram producers:

- (a) the manufacture, import, export, assembly, modification, sale or hiring of a device, system or means specially designed or adapted to render inoperable any device, system or means used to prevent or restrict the reproduction of a work, or in order to diminish the quality of the copies produced;
- (b) the manufacture, import, export, assembly, modification, sale or hiring of a device, system or means designed or adapted in the knowledge or having good reason to believe that such a device, system or means would allow or facilitate the decoding of coded program-carrying signals without the authorization of the legitimate distributor;
- (c) the reception and redistribution of program-carrying signals that were originally coded, in the knowledge that they have been decoded without the authorization of the legitimate distributor;
- (d) the circumvention, suppression or restriction of any effective technological measure;
- (e) the manufacture, import, sale, making available to the public or distribution of any device, unit, service or means used, advertised or promoted as, or essentially designed or produced with the aim of, allowing or assisting in the circumvention or disabling or limiting of any effective technological measure;
- (f) the removal or alteration of any information on the rights regime without authority;
- (g) the distribution or import for distribution of information on the rights regime in the knowledge that such information has been deleted or altered without authorization;
- (h) the distribution or import for distribution, broadcast, communication to the public or making available to the public, without authorization, of works, performances, phonograms or broadcasts, in the knowledge that electronic information on the rights regime has been deleted or altered without authorization.

As used in this Article, the expression "effective technological measure" shall mean any technological measure, device or component that, in its normal use, controls access to a work, performance, phonogram or other subject of protection, or protects any copyright or related rights.

As used in this Article, the expression "rights management information" shall mean information that identifies the author, the work, the performer or the performance, the phonogram producer, the phonogram, the broadcasting agency, the broadcast or the owner of any right under this Law, or any information about the terms and conditions of use of the work and other productions referred to in this Law, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, a copy of a phonogram or a fixed broadcast program, or appears in connection with the broadcast, communication to the public or the making available to the public of a work, fixed performance, phonogram or broadcast program.

Pursuant to Articles 61 to 64, any device or system or means mentioned in this Article and any copy from which information on the rights regime has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works.

Specific provisions

Article 65.1

The following non-profit entities: libraries, archive services, educational institutions or public broadcasting organizations shall not be subject to the provisions of Article 64 for violations mentioned in Article 65, paragraphs (a), (d), (e), (f), (g) or (h).

Non-profit entities covered in the previous paragraph may not be ordered to pay damages under Article 62 for violations mentioned in Article 65, paragraphs (a), (d), (e), (g), (h) or (i) if they provide proof that they were not aware or had no reason to think that their acts constituted a prohibited activity.

Article 65.2

Any infringement of the rights of an owner of copyright or related rights may be the subject of proceedings ordered by right by the Public Prosecutor's Office without any need for a private party or rightsowner to bring a complaint.

PART IV bis

Liability of service providers

Article 65.3

For the application of the provisions of Article 65.4, and for the purposes of the duties referred to in Article 65.5(B) to (D), "service provider" shall mean a provider or operator of facilities for online services or for access to networks, including a provider of transmission, routing or connection for digital communications online, with no alteration of the content, between the points specified by the user and of his choice.

For the purposes of the duty referred to in Article 65.5(A), "service provider" shall mean only a provider of transmission, routing or connection for digital communications online, with no alteration of the content, between the points specified by the user and of his choice.

Article 65.4

(A) Any service provider who, being aware of or having good reason to suspect any violation of copyright or related rights committed by another person, shall have promoted, encouraged, caused or contributed significantly to this violation, and shall be liable in the civil courts for this unlawful activity.

(B) Any service provider who has deliberately promoted, encouraged, caused or contributed significantly to any violation of copyright or related rights committed by another person, shall be liable in the criminal courts for this unlawful activity in accordance with the provisions of this Law.

(C) Any service provider with the right and ability to supervise or control infringements of copyright or related rights committed by another person, and having a direct financial interest in such activity, shall be liable in the civil courts for such unlawful activity.

(D) Any service provider who deliberately supervises or controls any infringements of copyright or related rights committed by another person, and who has a direct financial interest in such activity, shall be liable in the criminal courts for such unlawful activity in accordance with the provisions of this Law.

(E) Any action referred to in paragraphs (A) to (D) above and taken against the service provider shall be initiated in accordance with the Code of Civil Procedure, or the Code of Criminal Procedure. Furthermore, it shall no longer be necessary to name any other person in order to institute legal proceedings against a service provider, and it shall not be necessary to obtain a prior court ruling in separate proceedings determining the liability of another person.

Article 65.5

If a service provider fulfills the conditions defined in Articles 65.5 to 65.11, it shall be able to benefit from the limitations on liability specified in Articles 65.12 and 65.14 for infringements of copyright or related rights that it did not control, initiate or direct, and that took place by means of systems or networks controlled or exploited by it or in its name, in relation to the following functions:

- (A) the transmission or routing of the material or the supply of connections for that material, without modifying its content, or the intermediate and temporary storage of said material in the course of these operations;
- (B) automatic caching
- (C) storage on request by a user residing on a system or network controlled or exploited by or for the service provider; and
- (D) the sending of users, or the setting-up of a link, to an online location by means of information localization tools, including hypertext links and directories.

Article 65.6

The limitations to liability contained in Articles 65.12 and 65.14 only apply when service providers do not take the initiative with regard to the transmission of the material and neither select the material nor its recipients, unless a function described in Article 65.5(D) intrinsically entails a form of selection.

Article 65.7

The issue of whether service providers shall be eligible to benefit from the limitations contained in Articles 65.12 and 65.14 concerning each of the functions contained in Article 65.5(A) to (D) shall be examined separately from that of their eligibility concerning each of the other functions, in accordance with the conditions of eligibility contained in Articles 65.8

to 65.11.

Article 65.8

As to the functions mentioned in Article 65.5 (B), the service provider shall not benefit from the limitations on liability stated in Articles 65.12 and 65.14 until such time as:

- (a) it has limited access to the material that has been cached to the users of its system or network who meet the user-specific conditions for access to said material;
- (b) it has conformed to the rules concerning refreshing, reloading or any other up-dating of the cached material, when these rules are stated by the person putting the material online, in accordance with a generally-accepted data communications protocol for the system or network;

(c) it no longer interferes with the standard technical measures used on the original site to obtain information on the use of the material and does not modify the content of that material in its subsequent transmission to the users; and

(d) it acts without delay, on receipt of effective notice relating to an allegation of infringement of copyright or related rights in accordance with Article 65.13, either withdrawing the cached material or disabling access to the material withdrawn from the site of origin.

Article 65.9

As to the functions mentioned in Article 65.5(C) and (D), the service provider shall not benefit from the limitations on liability stated in Articles 65.12 and 65.14 unless:

(a) it does not directly enjoy financial gain attributable to the activity infringing copyright or related rights, under circumstances in which it has the right and ability to control that activity;

(b) it acts without delay to withdraw the material hosted on its system or network, or to disable access to that material on becoming aware of infringement of copyright or related rights, or of facts or circumstances which indicate that copyright or related rights have been infringed, in particular as a result of actual formal notice of allegations of infringement of copyright or related rights in accordance with Article 65.13; and

(c) it publicly appoints a representative responsible for receiving the formal notices mentioned in paragraph (b) above. A representative shall be publicly appointed to receive notices on behalf of a service provider if his name, postal address, e-mail address and telephone number are displayed to the public in an accessible fashion on the Internet site of the service provider, as well as in a register accessible to the public by Internet.

Article 65.10

The service provider shall not benefit from the limitations on liability stated in Articles 65.12 and 65.14 unless:

(a) it makes provision for and implements a cancellation procedure, under appropriate conditions, for the accounts of repeat offenders who have infringed copyright or related rights; and

(b) it conforms to and does not interfere with the standard technical measures for protection and identification of the material protected by the copyright or related rights, drawn up following agreement between the holders of the copyright and related rights and the service providers. These measures must be available under reasonable and non-discriminatory conditions and shall not entail substantial costs for the service providers or substantial constraints on their system or network.

Article 65.11

The issue of whether the service provider is eligible to benefit from the limitations on liability stated in Articles 65.12 and 65.14 cannot be conditional on the service provider guaranteeing monitoring of its service or the active search for indications of activities infringing copyright or related rights, except within the limits of the technical measures contained in Article 65.10.

Article 65.12

(A) Should the service provider be permitted to benefit from the limitations relating to the function mentioned in Article 65.5 (A), the courts shall be able to order either the cancellation of the

accounts referred to or the implementation of reasonable measures to block access to an online location located abroad.

(B) Should the service provider be permitted to benefit from the limitations relating to the functions mentioned in Article 65.5(B) to (D), the courts shall be able to order the withdrawal of the material infringing copyright or related rights, or the disabling of access to said material, the cancellation of the accounts referred to, and any other measures that the courts might consider necessary, on the condition that the measures selected from a range of similarly effective measures are those which pose the least constraint on the service provider.

(C) the measures stated in (A) and (B) above shall be ordered taking due account of the relative constraint imposed upon the service provider and the damage caused to the owner of copyright or related rights, the technical feasibility and effectiveness of the measure, and bearing in mind the availability of similarly effective methods of execution which pose less of a constraint.

(D) With the exception of decrees ensuring the preservation of evidence, or those which have no significant negative effect on the exploitation of the service provider's communications network, the measures provided for shall only be available should the service provider have been notified in the form and under the conditions provided for under the Code of Civil Procedure.

Article 65.13

The effective notice described in Articles 65.8(d) and 65.9(b) shall mean a written communication duly signed, containing within it the following:

- (1) the identity, address, telephone number and e-mail address of the owner of the copyright or related rights or his representative;
- (2) information allowing the service provider to identify the material protected by the copyright or related rights which have allegedly been infringed. Should multiple materials be present on a single online site on a system or network controlled or exploited by or for the service provider, they shall be covered by a single formal notice, a representative list of those materials on that site may be provided;
- (3) information allowing the service provider to identify and locate the material hosted on a system or network controlled or exploited by or for it and which allegedly constitutes an infringement of copyright or related rights and which must be withdrawn or to which access must be disabled;
- (4) a signed declaration stating that the information contained in the notice is accurate;
- (5) a signed declaration from the plaintiff stating that the material referred to in the complaint is used without the authorization either of the owner of the copyright or related rights or his representative.
- (6) a declaration made by the plaintiff, stating that he is the owner of a protected right allegedly the subject of infringement, or that he is authorized to act on behalf of the owner of that right.

The notice may be transmitted by e-mail, with an electronic signature fulfilling the requirement for a signature.

In the case of notices relating to an information localization tool in accordance with Article 65.5(D), the information provided must be sufficient to allow the service provider to locate the reference or link located in a system or network controlled or exploited by or for it; however, in the case of a

notice relating to a substantial number of references or links placed on a single online site on a system or network controlled or exploited by or for the service provider, a representative list of those references or links placed on the site may be provided.

Article 65.14

(A) If the service provider withdraws the material or disables access to that material in good faith, on the basis of an alleged or apparent infringement of copyright or related rights, it shall be exonerated of any liability in the event of subsequent claims, provided that it promptly takes reasonable measures:

- to inform the person putting the material on line on its system or network of its actions; and

- if the person issues a response to an actual notice and is prosecuted in court for infringement of copyright or related rights, to put the material back up online unless the person who issued the initial actual notice brings a challenge before the courts within a reasonable time period.

(B) Any damage resulting from the acts carried out in good faith by the service provider, on the basis of false information contained in the notice given or in a response to notice, shall incur the liability of the party that issued such false information.

(C) The “response to notice” issued by a subscriber whose material has been withdrawn or disabled inadvertently or because of mistaken identity must be written, duly signed by that subscriber and contain within it the following:

- (1) the identity, address and telephone number of the subscriber;

- (2) the identification of the material which has been withdrawn or for which access has been disabled:

- (3) the location where the material appeared prior to its withdrawal or the disabling of access;

- (4) a signed declaration attesting to the accuracy of the information contained in the response to the notice;

- (5) a statement in which the subscriber agrees to grant competence to the court of his place of domicile should he reside on the national territory, or to another court competent with regard to the domicile of the service provider when said service provider is domiciled outside the national territory;

- (6) a signed statement from the subscriber attesting in good faith that he believes that the material was withdrawn or disabled inadvertently or owing to mistaken identity.

The response to notice may be forwarded by e-mail and the electronic signature shall satisfy the requirement for a signature.

Article 65.15

The Moroccan Copyright Office shall demand, upon written request of an owner of copyright or related rights or his representative, or a service provider receiving notice, to identify any perpetrator

of an alleged infringement of copyright or related rights, and to communicate as soon as possible and where possible sufficient information about him to be forwarded to the rightsowner.

PART V

SCOPE OF APPLICATION OF THE LAW

Application to Literary and Artistic Works

Article 66

The provisions of this Law relating to the protection of literary and artistic works shall apply to:

- (a) works whose author or any other original copyright owner is a national of the Kingdom of Morocco or has his habitual residence or headquarters in the Kingdom of Morocco;
- (b) audiovisual works whose producer is a national of the Kingdom of Morocco or has his habitual residence or headquarters in the Kingdom of Morocco;
- (c) works published for the first time in the Kingdom of Morocco, or published for the first time in another country and also published in the Kingdom of Morocco within a period of 30 days;
- (d) works of architecture erected in the Kingdom of Morocco or works of fine art forming part of a building located in the Kingdom of Morocco.

The provisions of this Law relating to the protection of literary and artistic works shall apply to works which are entitled to protection under an international treaty to which the Kingdom of Morocco is party.

Application to the Rights of Performers, Producers of Phonograms and Broadcasting Organizations

Article 67

The provisions of this Law relating to the protection of performers shall apply to performances when:

- the performer is a national of the Kingdom of Morocco;
- the performance takes place on the territory of the Kingdom of Morocco;
- the performance is fixed in a phonogram protected under this Law; or
- the performance which has not been fixed in a phonogram is incorporated in a broadcast protected under this Law.

The provisions of this Law relating to the protection of phonogram producers shall

apply to phonograms when:

- the producer is a national of the Kingdom of Morocco; or
- the first fixation of the sounds has been made in the Kingdom of Morocco;
- the phonogram has been produced for the first time in the Kingdom of Morocco.

The provisions of this Law relating to the protection of broadcasting organizations shall apply to broadcasts when:

- the head office of the organization is located on the territory of the Kingdom of Morocco; or
- the broadcast has been transmitted from a station located on the territory of the Kingdom of Morocco.

The provisions of this Law shall also apply to the performances, phonograms and broadcasts protected under the international conventions to which the Kingdom of Morocco is a party.

Applicability of International Conventions

Article 68

The provisions of an international treaty concerning copyright and related rights, to which the Kingdom of Morocco is a party, shall apply in the cases specified in this Law. In the case of a discrepancy between the provisions of this Law and those of an international treaty to which the Kingdom of Morocco is a party, the provisions of the international treaty shall apply.

PART VI

MISCELLANEOUS AND FINAL PROVISIONS

Transitional Provisions

Article 69

The provisions of this Law shall also apply to the works which have been created, performances which have taken place or have been fixed, the phonograms which have been fixed and the broadcasts that have been made prior to the entry into force of this Law, provided that these works, performances, phonograms and broadcasts have not yet entered the public domain, owing to the fact that the period of protection, to which they were subject in the previous legislation or in the legislation of their country of origin, has expired.

The legal effects of the acts and contracts concluded or stipulated prior to the entry into force of this Law shall remain intact and unaffected.

Entry into Force

Article 70

The provisions of this Law shall enter into force six months after its publication in the Official Gazette.

Repeal

Article 71

Dahir No. 1-69-135 of 25 jourmada I 1390 (July 29, 1970), relating to the protection of literary and artistic works, is hereby repealed.

26. Mozambique

The following is a policy which is relevant to this project but lacks operational clauses that fit with the common provisions

COUNCIL OF MINISTERS

Resolution No. 12/97 of June 10, 1997

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It being necessary to establish the principles of and strategy for our cultural development and within the framework of the implementation of the Government's FiveYear Plan, the Council of Ministers, exercising the powers conferred on it by Article 153(1)(e) of the Constitution of the Republic, orders that:

Sole paragraph. The Cultural Policy and its Implementation Strategy, annexed hereto and forming an integral part of this Resolution, are hereby approved.

Approved by the Council of Ministers.

Let it be published.

The Prime Minister, Pascoal Manuel Mocumbi.

Cultural Policy of Mozambique and corresponding Implementation Strategy

1. Definition

The Constitution of the Republic of Mozambique establishes the principle whereby the State shall promote the development of the character and culture of Mozambique and shall guarantee free expression of the traditions and values of Mozambican society. The Government's FiveYear Plan reaffirms the value of culture and the need to create the conditions for greater creative, free, democratic participation by each individual and by civil society as a whole, together with respect for the diversity of religious beliefs and ethnic origins.

Culture may be defined as a complex set of ways of being, behaving and relating from birth to death,

including the rituals that mark the main stages in the process of social integration and socialization. Culture encompasses the following: creative aspects; the visual and performing arts; material aspects: clothing, architecture and work tools; institutional aspects: economic, social, political and military structures; philosophical aspects: ideas, beliefs and values. All these aspects are continually interacting with new situations and experiences. Culture must therefore be understood as the totality of the way of life of a people or a community.

The Government acknowledges the role of culture as a decisive factor in the character of Mozambican people and considers its development to be a fundamental element in the consolidation of national unity and of individual and group identity.

State intervention in terms of cultural development shall be guided by a Cultural Policy based on the presuppositions reflected in the Constitution of the Republic, the Cultural Heritage Law, the recommendations of the First National Conference on Culture and the Government's FiveYear Plan for the cultural sector, as well as in experiences of governance in Mozambique and throughout the world.

The Cultural Policy is a tool that regulates the activities of the Government with regard to its links with the other actors involved in the promotion and development of culture.

The aim of the Cultural Policy is to guide the activities of all in contributing to the cohesion and the psychological and social equilibrium of communities, as well as to the integration of their members. The Government's Cultural Policy constitutes a contribution to the definition of what it means to be Mozambican as reflected in the heritage of all our citizens.

2. Principles and goals of the Cultural Policy

2.1. Principles

The Cultural Policy is based on the acceptance and application of the following principles:

- a) economic and social development shall have culture as a mandatory and fixed point of departure and reference point. Development will be sustainable only if it has men and women as its primary and end beneficiaries;
- b) culture is a key instrument for affirming and developing national identity;
- c) all citizens have an equal right to take part in cultural life and to enjoy access to the benefits of culture and art;
- d) cultural cooperation with other peoples shall be based on interdependence between States, irrespective of their political or ideological systems;
- e) through international cultural cooperation, all peoples, nations and agencies shall contribute to the creation of a better world, a world of peace, wellbeing and mutual understanding and respect.

2.2. Objectives

2.2.1. Overall objectives

The overall objectives of the Cultural Policy shall be as follows:

- a) to promote the development of Mozambican culture and character and to guarantee the free expression of Mozambican values, in close cooperation with those who play an active part in society;
- b) to promote the dissemination of Mozambican culture, both nationally and internationally, and to take steps to ensure that the Mozambican people benefit from the cultural achievements of other peoples;
- c) to promote respect for and the development and acceptance of the expressions of culture of each

community;

d) to promote the identification, preservation and development of Mozambique's cultural and artistic heritage;

e) to encourage associations, the business community, community leaders and other collective bodies and individuals to complement the State's activities in the sphere of the promotion and development of Mozambican culture, both at home and abroad;

f) to protect the affirmation of local cultural identities as an expression of unity in diversity;

g) to promote the assessment of the social and cultural impact of development projects and the inclusion therein of a cultural component;

h) to contribute to the education of communities and all those active in society with regard to a culture of peace, tolerance, social harmony and respect for human rights.

2.2.2. Specific objectives

The following shall be specific objectives of the Cultural Policy:

a) to establish a reference framework for all legislation and regulations governing cultural activity and for the actions of the various bodies in this field;

b) to create an environment that is favorable to the preservation and development of national traditions and also to the appropriation and mastery of modern science and technologies in the interests of national development;

c) to promote the inclusion of social and cultural values in teaching curricula;

d) to foster the development of patriotism, liberty, public spiritedness, work, democracy and social solidarity in the life and work of Mozambican people;

e) to encourage actions that promote equal access for citizens to the benefits of culture and art;

f) to improve and consolidate the foundations for a cultural administration based on decentralization, participation by the people and the development and support of cultural associations and local initiatives;

g) to encourage and support research on and development of Mozambique's history and cultural heritage;

h) to establish the specific duties of the State and to create spaces for the involvement of civil society in the promotion of cultural development;

i) to lay down the fundamental principles for coordinating and harmonizing the efforts of the main actors involved in cultural activities;

j) to encourage the constant improvement of the quality of Mozambique's artistic output;

k) to develop intellectual artistic creators and to establish the principles underlying the protection of intellectual property;

l) to establish the basic principles for providing funding and support for cultural activity;

m) to encourage cultural exchange between the country's various regions and cultural cooperation and exchange with other peoples.

3. Priorities in terms of cultural development

The Government shall prioritize the following areas:

social and cultural research

the preservation and dissemination of cultural heritage;

artistic creation and performance;

cultural associations;

artistic and professional training;

grassroots participation;

the development of networks of cultural institutions;

international cooperation and exchange.

3.1. Social and cultural research

The promotion of research into and the study and dissemination of Mozambican culture is essential in order to understand lines of continuity and create cultural interlinkages. Knowledge of the cultural and social practices of communities is an important resource in terms of governance and planning based on a better understanding of the reality of the situation.

Universities and research institutes, both public and private, shall be responsible for promoting scientific research into the Mozambican social and cultural spheres, such as history and the oral tradition; social and family organization; forms of production and economic organization; traditional authorities; rites of initiation and passage; propitiation ceremonies; magical and religious beliefs and practices; the national languages; the performing and visual arts; the impact of the clash of civilizations in Mozambique; the peace culture and the development of democratic institutions; conflict and forms of reconciliation and social restructuring.

3.2. Cultural heritage

3.2.1. Historic monuments, sites and locations

Mozambique possesses evidence of human history that is important not just for local communities but also for the rest of humankind. The Island of Mozambique (classified as a World Heritage site), rock art, walled enclosures (the Swahili ruins, stonewalled settlements known as zimbabwes, as well as aringas (fortified enclosures)), historic sites and areas with high biodiversity are examples of this rich heritage that contribute to the identity of the Mozambican character and physical space. The State and Mozambican society are dutybound to promote and support initiatives designed to preserve and develop these fixed assets.

In this regard, the Government shall define principles and priorities for action in the areas of conservation, restoration, presentation, education and tourism in relation to these fixed assets.

The Government shall lay down the conditions and requirements for the declaration as national monuments of assets the historical, archaeological, architectural, artistic or natural value of which is such that they merit such classification.

3.2.2. Museums

Museums play an important role in the preservation, study and communication of collective memory and the material and spiritual culture of both the Mozambican people and others throughout history.

In this context, the concept of a museum is that of a space for conservation, research and communication of our cultural and natural heritage. In addition to conservation work, this concept encompasses the scientific interpretation of the informative value of our natural and cultural heritage, as well as its communication by means of documented exhibitions of interest to the community and activities such as publications, lecture series, audiovisual sessions, workshops and other educational programs.

The Government's policy shall encourage the improvement and expansion of the network of national, regional and specialized museums, whether or not they are under the administrative supervision of the State. Moreover, one particular priority within the framework of the Government's Cultural Policy shall also be the institutionalization of existing museums that have not yet been institutionalized. Efforts will also be made to support initiatives launched by the various economic and social sectors to set up new museums and at provincial level, an information and coordination system shall be created between the bodies which carry out activities in the field of museology, and the standards to be upheld shall be established.

3.2.3. Archives

The function of archives is to collect, process, conserve and disseminate documents, chiefly primary documents stored on different kinds of media.

The Government shall support the activities of the existing archives and shall encourage the creation of other archives, both general and specialized, at the national and local levels.

3.2.4. Distinctive elements of local culture: folklore, typical costume and cuisine

Style of dress and eating habits are among the most striking of a people's distinctive characteristics. Owing to Mozambique's vast expanse of territory and the intermingling of different peoples and civilizations there over the centuries, Mozambique boasts a wide variety of costumes and cooking styles.

The Government shall foster research on and the promotion of local costumes, and shall encourage their use both as a source of inspiration for stylists and as a product for the national and international markets.

The Government shall likewise encourage and support initiatives designed to develop and exploit Mozambique's national food and drink, including by means of their industrial production.

3.2.5. Traditional rituals, beliefs, medicine and power

Traditional medicine is an area in which therapeutic, ritual, symbolic and magical and religious aspects interact. These practices also contribute to the maintenance and restoration of social equilibrium. A large proportion of the population depends on these practices, often employing them in tandem with modern medicine.

The traditional authorities, together with the priests of magical and religious cults and the holders of knowledge concerning traditional medicine, are among the guarantors of social stability and harmony in many communities.

The Government shall acknowledge and develop the participation of the traditional authorities in the management of cultural heritage and shall promote research into these areas of knowledge and their inclusion in public administration and in modern medicine.

3.2.6. National languages

National languages are an important heritage as they are the main repository of national traditions and the main vehicle for their expression. They are the communication tool of the majority of Mozambicans and a crucial element in the involvement of citizens in social, economic and political life.

The actions to be undertaken in this field, based on close cooperation between the relevant institutions and departments, include the following: the development of the social value of languages; supporting existing and future centers for the study of Mozambican languages; codifying and standardizing the spelling of Mozambican languages; and selecting the languages that, in each province or region, shall be introduced into the National Education System and into political, social and economic life.

Incentives shall be given to projects to produce dictionaries, grammars, manuals and literary and scientific works in national languages.

The development and expansion of the teaching of Portuguese, as the official language of Mozambique, shall continue to be encouraged.

4. Artistic creation and performance

Artistic creation and performance are excellent ways of promoting and improving ongoing communication and dialogue between the various strata of society. They also help to promote the expression of a people's identity and to project its image.

The people's love of their country, spirit of solidarity and creative initiative can be strengthened in part through the use of their different means of expression, forms and styles, artistic creation and performance.

Priorities in this area include music, dance, theater and the visual arts.

4.1. Music, dance and theater

Our country has a rich heritage in the fields of music, dance and theater and has produced a number of renowned artists.

In tandem with research into the various forms of cultural expression, the Government shall encourage the development of artists and of music, dance and theater in Mozambique, in their various styles and genres, and shall support their inclusion in the production of modern musical, choreographical and theatrical works.

The Government's policy shall encourage the promotion of festivals, competitions and prizes for the various forms of artistic expression.

4.2. Handicrafts and visual arts

Handicrafts, as a tangible part of the history and culture of the Mozambican people, represent a valuable heritage that must be protected and developed. The Government shall encourage the setting up of centers for the production of handicrafts and the continual improvement of techniques and products, with a view to exhibiting and marketing handicrafts both within and outside the country.

Drawing, painting, sculpture, ceramics and other forms of plastic arts shall also be encouraged and supported. The Government shall therefore support initiatives to set up workshops and art and handicraft galleries throughout the country.

5. Cultural industries

5.1. Cultural and recreational performances

Performances constitute a form of leisure and entertainment which also contributes to the civic and patriotic education of citizens. Thus, the Government shall encourage and support the organization of cultural and recreational performances, as well as the existence of bodies organizing performances and promoters.

5.2. Cinema and audio visual works

The moving image is an art form and plays an important role in citizens' education and entertainment. It is also used as a means of recording, disseminating and conserving images of historical and cultural interest.

The need to build a society founded on peace, harmony and moral values makes it imperative to introduce mechanisms to limit the proliferation of films that represent an apology for violence, promiscuity and lack of respect towards women and towards life. It shall be the responsibility of the Government, within the framework of this Cultural Policy, to support and regulate cinematographic production and dissemination.

Given the importance of the moving image, the Government shall encourage and support the setting up of associations devoted to the study, criticism and dissemination of cinema and to promoting its development.

5.3. Music recording studios

The setting up of music studios fitted with modern recording equipment will contribute to the promotion of Mozambican music, which has advanced considerably in terms of both form and content. Music recording studios that meet international requirements and quality standards must be set up if Mozambican music is to be widely disseminated and accepted on the national and international markets. Initiatives to create highquality recording studios in Mozambique shall therefore be encouraged and incentivized, leading to the publication of records, compact discs and cassettes that can be marketed successfully on the national and international markets.

5.4. The manufacture of musical instruments

One basic prerequisite of the production of music is the availability and accessibility of musical instruments. Thus, in order to promote and develop domestic musical talent, the State shall encourage any initiative involving the production of musical instruments in Mozambique.

6. Literature and books

6.1. Literature

Literature is both oral and written. For centuries, oral literature has been the most important vehicle for passing on and preserving knowledge and experiences, history, myths, poems, stories, songs, legends and proverbs down through the generations. Written literature plays an important role in the development of creativity and in conveying Mozambican and universal ideas, experiences and values.

In this context, it shall be the Government's responsibility to support the development of all forms of literature and the identification of new talents, in addition to holding competitions and establishing prizes.

6.2. Books

The Government shall create the conditions necessary for books to be an accessible, indispensable, object in the daily lives of Mozambicans, and to that end shall foster the emergence of a book industry and book trade that will develop and reinforce people's enjoyment of reading.

6.3. Libraries

Libraries, both public and private, are designed for research and for the acquisition, processing and dissemination of bibliographic, cinematographic, iconographic and phonographic material for consultation by interested parties for the purposes of study or pleasure.

The Government shall promote initiatives designed to improve the work of libraries through the creation of mechanisms to facilitate the circulation of books produced within and outside of Mozambique.

The Government shall likewise encourage the creation of libraries in teaching establishments, production units and social, economic, cultural and youth associations, to complement the role of the public libraries.

7. Cultural development

7.1 Casas de Cultura (Cultural institutes) and cultural centers

The Casa de Cultura is the basic institution in terms of the carrying out of cultural work in the community.

The Casas de Cultura provide a venue for a variety of activities, including: initiation into and education in the arts; catering for interested circles; organizing popular festivities and celebrating dates of national importance; performances and concerts featuring different forms of artistic expression; debates, competitions and festivals, and; art, handicraft, photographic and other kinds of exhibitions.

The State shall therefore promote and support the establishment of Casas de Cultura in provincial capitals, the main towns in districts and major population centers.

The Government shall likewise encourage the setting up of Casas de Cultura in economic and social and professional organizations to conduct a wide variety of activities, with the relevant local Casa de Cultura remaining a reference point in terms of methodological guidance at the operational level.

Conditions and infrastructure permitting, Casas de Cultural may serve as both cultural and sports centers.

7.2. Artistic and professional training

People are the most decisive factor in the implementation of the government's Cultural Policy. The appropriate training of human resources for cultural development is therefore of the utmost importance.

To this end, art teachers shall be trained for art schools and for the National Education System, as shall experts in areas of special interest for cultural development such as archaeology, anthropology, linguistics, ethnomusicology, art history, museology, cultural planning and administration, librarianship, documentation, sociology, and so on.

Training for the development and management of these areas shall therefore fall into three main categories, namely:

the training of managers to direct and administer the sector at the different levels;
the training of cultural organizers to foster the cultural movement within the community; and
the academic and professional training of artists and cultural experts in the various specialized areas.
In the context of these efforts, the improvement of conditions in terms of infrastructure and the extension of training facilities to the provinces are of prime importance.

7.3. International cooperation and exchange

Cooperation between peoples and nations enables the exchange of experiences, better understanding and increased mutual respect.

Cultural cooperation therefore plays a fundamental role in the expansion and development of political and economic cooperation between countries.

Within the framework of international cultural cooperation and exchange programs, the Government shall promote the strengthening of its ties with all countries, regardless of their political systems or geographical location. At the same time, the Government shall pay particular attention to strengthening ties of friendship and cooperation with other countries in the region and with Portuguese speaking countries.

8. Strategies for implementing the Cultural Policy

The following points stand out as the main measures and strategies to be adopted in terms of the implementation of the aims of the Cultural Policy: the need to link the public cultural sector with the private sector and the community; coordination with other sectors; institutional capacitybuilding, and; the creation of mechanisms for the funding of cultural activities.

8.1. Linkins between the public sector and civil society

The State and civil society have a role and a responsibility in terms of cultural development and shall act in coordination, complementing one another.

The Ministry for Culture, Youth and Sports, the central State body for directing, planning, coordinating and developing government policies on culture, shall be responsible for coordinating the efforts of the whole of society in the sphere of cultural development.

8.1.1. Competences of the State

In the context of the implementation of the Cultural Policy, the State shall be competent in terms of:

- a) the drafting and approval of legislation and instruments regulating the funding of culture, the social status of artists and creators and the operation of cultural institutions, and the ratification of the relevant international agreements and recommendations on various aspects of cultural life;
- b) the creation of a legal framework to guide those involved in the social, cultural, political and economic development of the country;
- c) the approval of legislation for the promotion, safeguarding and preservation of the cultural heritage and the monitoring of compliance with this legislation within the scope of the powers of the Council of Ministers as defined in the Constitution;
- d) the creation of cultural institutions such as museums, libraries, Casas de Cultura, art schools, galleries and theaters;

- e) the fostering and encouragement of the promotion of cultural exchanges between Mozambican and foreign groups;
- f) the negotiation and signing of agreements and other similar instruments on cultural exchange with other countries, and the regulation of the running of foreign cultural centers;
- g) the promotion of competitions and festivals in order to stimulate interest in cultural and artistic expression;
- h) the promotion of social and cultural and historical research;
- i) the promotion of the correct spelling and pronunciation of clan names and geographical names as a way of respecting the linguistic richness and ethnic diversity of Mozambique.

8.1.2. The role of civil society

As part of the process of implementing this Cultural Policy, civil society can contribute towards the setting up of institutions designed to develop and promote Mozambican culture at home and abroad, and can help organize associations and set up enterprises to disseminate, preserve and develop Mozambican culture. It can also promote the patriotic cultural education of citizens in such a way that they become more aware of the importance and value of our national heritage. Civil society can also contribute to the funding of activities to train Mozambican officials in the sphere of artistic education and cultural administration.

Civil society also has both the right and the duty to promote, sponsor and carry out cultural initiatives in the various fields such as festivals, competitions, debates, round tables, gatherings, concerts and exhibitions, as well as to participate in activities to coordinate and assess the impact of cultural work in Mozambican society.

8.2. Intersectoral coordination

As a part of a multisectoral and multidisciplinary approach, the cultural sector is required to coordinate with other institutions in order to achieve the goals set under the Cultural Policy. A number of areas stand out in this regard, for example: education, technology, the environment and tourism, and public administration.

8.2.1. Culture and education

The close relationship between culture and education may be expressed in simple terms by saying that education (both formal and informal) is the vehicle par excellence for passing on culture from one generation to the next. The family plays a decisive role in the formation of an individual's personality. A number of measures have been designed to ensure the implementation of the Cultural Policy through education, including:

- the promotion of the development of the family and other informal mechanisms that play a part in education;
- the introduction of aesthetic education into the National Education System and the carrying out of cultural activities in schools;
- the use of national languages at certain levels of education;
- the organization of cultural festivals and competitions in schools.

27. Myanmar

This is essentially a national heritage Act

The State Peace and Development Council **The Protection and Preservation of Cultural Heritage Regions Law** (The State Peace and Development Council Law No. 9/98) The 5 th Waning Day of Tawthalin, 1360 M.E. (10 th September, 1998)

The State Peace and Development Council hereby enacts the following Law

Chapter I Title and Definition

1. This Law shall be called the Protection and Preservation of Cultural Heritage Regions Law.

2. The following expressions contained in this Law shall have the meanings given hereunder:

(a) Cultural Heritage means ancient monument or ancient site which is required to be protected and preserved by reason of its historical, cultural artistic or anthropological value;

(b) Ancient Monument includes the following that have existed before 1886 or that have been determined as cultural heritage:

(1) Architectural structure, shrine, sputa, temple, monastery, palace, residential building and carving, image and painting thereon;

(2) Natural or man-made cave in which human beings had dwelt;

(3) Stone inscription and record;

(4) Road, bridge, sepulcher, sepulchral site and remains of excavated structure;

(5) Pond, city-wall, wall, gateway, moat, fort and any remains thereof;

(c) Ancient Site means place or high ground where a town or settlement of ancient people or ancient monument had existed before 1886 or which is determined as cultural heritage whether it is in the process of excavation or has not yet been excavated;

(d) Precinct of Ancient Monument means the enclosure of an ancient monument prescribed under this Law;

(e) Ancient Monumental Zone means the zone where the ancient monument is situated and which is prescribed under this Law:

(f) Ancient Site Zone means the zone where the ancient site is situated and which is prescribed under this Law

(g) Protected and Preserved Zone means the zone prescribed under this Law for the protection and preservation of the view of the cultural heritage, ancient monument and ancient sites in order that they may not be destroyed;

(h) Cultural Heritage Region means the ancient monumental zone, ancient site zone or the protected and preserved zone prescribed under this Law

(i) Department means the Department of Archaeology.

Chapter II Objectives

3. The objectives of this Law are as follows:

(a) to implement the protection and preservation policy with respect to perpetuation of cultural heritage that has existed for many years;

(b) to protect and preserve the cultural heritage regions and the cultural heritage therein so as not to deteriorate due to natural disaster or man-made destruction;

- (c) to uplift hereditary pride and to cause dynamism of patriotic spirit of citizens by protecting and preserving the cultural heritage regions.
- (d) to promote public awareness and will as to the high value of the protection and preservation of the cultural heritage regions;
- (e) to protect the cultural heritage regions from destruction;
- (f) to carry out protection and preservation of the cultural heritage regions in conformity with the International Convention approved by the State.

Chapter III Determining Cultural Heritage Region

4. The Ministry of Culture may, with the approval of the Government issue notification demarcating any or more than one of the following kinds of zones as a cultural heritage region:

- (a) ancient monumental zone;
- (b) ancient site zone;
- (c) protected and preserved zone.

5. The Ministry of Culture may carry out as follows for the acquisition of any land within the cultural heritage region, if necessary: -

- (a) If the land is under the administration of any government department or government organization, coordinating in advance, with the relevant government department or government organization;
- (b) If it is land in which there is right of cultivation, right of possession, right of utilization, beneficial right, right of succession or right of transfer, coordinating in advance with the relevant Ministry in accordance with the existing laws.

Chapter IV Protecting and Preserving the Cultural Heritage Region

6. The Ministry of Culture may cause to be dismantled a building which is not an ancient monument and which obstructs the view of an ancient monument or surrounding natural landscape within the cultural heritage region.

7. The Ministry of Culture may direct the relevant Trust who is taking care of the ancient monument to do so without altering the original ancient form and structure and the original ancient workmanship.

8. The Ministry of Culture may determine region wise the conditions to be observed in the construction of buildings in the cultural heritage region.

9. The Department shall carry out works of protection and preservation of the ancient monuments and ancient sites situated in the cultural heritage region.

10. The Department may prohibit any person from ploughing and cultivating within the boundary of the ancient monument or ancient site or from carrying out any activity that may cause damage to the cultural heritage in the cultural heritage region.

11. The Department shall, with the approval of the Ministry of Culture, carry out the following in the cultural regions:

- (a) determining the precinct of an ancient monument
- (b) prescribing the conditions to be abided by the shops opened within the precinct determined under sub- section (a).

Chapter V Functions and Duties of the Ministry of Culture

12. The functions and duties of the Ministry of Culture are as follows:

- (a) carrying out works of protection and preservation, revelation of and research on cultural heritage regions;
- (b) safeguarding the prominent and culturally of high value cultural heritage regions and the decaying cultural heritages that should be given priority in preservation;
- (c) determining with the approval of the Government, the ancient monuments and ancient sites that should be determined as cultural heritage in the cultural region;
- (d) carrying out with the approval of the Government, to enable the ancient monuments and ancient sites that should be determined as world cultural heritage to be included in the list of the world cultural heritage;
- (e) taking measures as may be necessary to prevent smuggling of antiquities from the cultural heritage region to foreign countries and to recover those antiquities that have been taken outside the country;
- (f) carrying out public educative work for protection and preservation of cultural heritage regions, and for taking pride in the value of the cultural heritage.

Chapter VI Applying for Prior Permission, Scrutinizing and Issuing

13. A person desirous of carrying out one of the following shall abide by the provisions of other existing laws and also apply to the Department in accordance with stipulations to obtain prior permission under this Law

- (a) within the ancient monumental zone or the ancient site zone:
 - (1) constructing or extending a building;
 - (2) renovating the ancient monument or extending the boundary of its enclosure;
- (b) within the protected and preserved zone, constructing, extending, renovating a hotel, motel, guest house, lodging house or industrial building or extending the boundary of its enclosure;
- (c) within the cultural heritage region
 - (1) carrying out the renovation and maintenance work of the ancient monument without altering the original ancient form and structure or original ancient workmanship;
 - (2) carrying out archaeological excavations;
 - (3) building road, constructing bridge, irrigation canal and embankment or extending the same.

14. (a) The Department shall, after scrutinizing the application submitted under section 13 in accordance with the stipulations, submit the same to the Ministry of Culture with the remark of the Department;

(b) The Ministry of Culture may, in respect of the matter contained in section 13, grant or refuse permission after scrutiny;

(c) When permission is granted under sub-section (b) the Department shall issue the permit to the application together with the conditions to be observed.

15. A person desirous of carrying out one of the following shall abide by the provisions of other existing laws and also apply in accordance with the stipulations to the Department to obtain prior permission under this Law:-

- (a) renovation of a building other than an ancient monument or extension of the boundary of its enclosure in the ancient monumental zone or the ancient site zone;

(b) within the protected and preserved zone, constructing, extending, renovating a building other than a hotel, motel, guest house, lodging house or industrial building or extending the boundary of its enclosure;

(c) digging well, pond and fish-breeding pond or extending the same within the cultural heritage region.

16. The Department:

(a) may, after scrutinizing in accordance with the stipulations the application submitted under section 15, grant or refuse permission;

(b) shall, when permission is granted under section (a), issue the permit to the applicant together with the conditions to be observed.

17. The Ministry of Culture and the Department shall, with respect to the application for prior permission under this Law, scrutinize based on the following acts : -

(a) whether it can cause obstruction of the view of the cultural heritage region or not.

(b) whether it is clear of the ancient monument or ancient site or not;

(c) whether it can obstruct the surrounding natural landscape or not;

(d) whether it can undermine the grandeur of the ancient monument or not;

(e) whether it can affect the security of the cultural heritage or not; and

(f) whether it can cause environmental pollution or not.

Chapter VII Prohibitions

18. No person shall, without prior permission granted under this law, construct, extend, renovate a building or extend the boundary of its enclosure in the ancient monumental zone or ancient site zone.

19. No person shall, without prior permission granted under this Law carry out any of the following with respect to a building within the protected and preserved zone: -

(a) constructing or extending;

(b) renovating or extending the boundary of its enclosure.

20. No person shall carry out any of the following in the cultural heritage region:

(a) destroying an ancient monument;

(b) willfully altering the original ancient form and structure or original ancient workmanship of an ancient monument;

(c) excavating to search for antiquities;

(d) exploring for petroleum, natural gas, precious stones or minerals.

21. No person shall, without prior permission granted under this Law, carry out any of the following in the cultural heritage region:

(a) carrying out renovation and maintenance work on an ancient monument

(b) carrying out archaeological excavation;

(c) building road, constructing bridge, irrigation canal, embankment or extending the same

(d) digging well, pond, fish-breeding pond or extending the same;

22. No person shall construct a building which is not in conformity with the conditions prescribed region wise by the Ministry of Culture in the cultural heritage region.

23. No person shall plough and cultivate or carry out any activity which may cause damage to the cultural heritage within the boundary notified by the Department in the cultural heritage region.

Chapter VIII Offences and Penalties

24. Whoever violates any provision of section 18, sub-section (a) of section 19 or section 21 shall, on conviction be punished with fine which may extend to kyats 50,000 or with imprisonment for a term which may extend to 5 years or with both.

25. Whoever violates any provision of sub-section (b) of section 19, section 22 or section 23 shall, on conviction be punished with fine which may extend to kyats 30,000 or with imprisonment for a term which may extend to 3 years or with both.

26. Whoever violates any provision of section 20 shall, on conviction be punished with imprisonment, for a term which may extend from a minimum of 1 year to a maximum of 7 years and may also be liable to a fine.

27. The Court shall also pass any of the following orders on whoever is convicted of any of the offences under this Law:

(a) causing the building constructed to be dismantled

(b) causing the restoration of the extended building or boundary of the enclosure to its original position;

(c) causing the restoration of the altered and repaired form of the building or land to its original form.

28. Whoever fails to abide by the order passed under section 27, shall be liable to a fine which may extend from kyats 500 to 1,000 for each day for failure to abide by such order.

Chapter. IX Miscellaneous

29. (a) The provision of sub-section (d) of section 20 shall not apply to the drilling of petroleum or natural gas and mining of precious stones or minerals for the benefit of the State in the cultural heritage region.

(b) If any circumstance arises for the drilling of petroleum or natural gas and mining of precious stones or minerals in the cultural heritage region for the benefit of the State, it shall be submitted to the Government and permission shall be requested.

30. In order to carry out the provision-is of this Law:

(a) the Ministry of Culture may issue such rules and procedures as may be necessary, with the approval of the Government;

(b) the Ministry of Culture and the Department may issue such orders and directives as may be necessary.

Sd./ Than Shwe Senior General Chairman The State Peace and development Council

The State Law and Order Restoration Council **The Traditional Drug Law** (The State Law and Order Restoration Council Law No. 7/96) The 10th Waxing Day of 2nd Waso, 1358 M.E. (25th July, 1996)

This instrument is essentially about regulating traditional medicine

The State Law and Order Restoration Council hereby enacts the following Law:

Chapter I Title and Definition

1. This Law shall be called the Traditional Drug Law.

2. The following expressions contained in this Law shall have the meanings given hereunder:- (a) Traditional Drug means a local concoction for use either directly or indirectly, whether internally or externally, in the diagnosis, prevention and treatment of diseases, promotion of health or for any beneficial effect in human beings and animals. This expression also includes a substance determined as a traditional drug by the Ministry of Health by notification from time to time;

(b) Traditional Medicine means medicine for the physical well-being and longevity of people in accordance with anyone of the four nayas of traditional medicine, namely Desana naya, Bethitsa naya, Netkhata vedanaya and Vissadara naya;

(c) Board of Authority means the Myanmar Food and Drug Board of Authority constituted under the National Drug Law and incorporated under the provision of section 4 of this Law;

(d) Essential Traditional Drug means a traditional drug which is determined by the Board of Authority and which is essential for the health care of the majority of the people;

(e) Traditional Drug Differing from Standards means traditional drug which is concocted not in conformity with the formula mentioned at the time of its registration;

(f) Deteriorated Traditional Drug means a traditional drug, the expiration date of which has been reached or passed or a traditional drug which has so denatured in any manner that it has become a traditional drug differing from standards;

(g) Expiration Date means the date mentioned on the label of a traditional drug by the producer of the traditional drug with the approval of the Board of Authority to indicate that such a drug no longer possesses the claimed efficacy, potency, safety and quality;

(h) Label means the indication in any manner, displayed on the material in which the traditional drug is contained or with which the traditional drug is packed;

(i) Traditional Pharmaceutical Raw Material means the substance to be used mainly in the manufacture of a traditional drug and which is determined by the Board of Authority;

(j) Traditional Drug Registration means the registration of the traditional drug which is to be manufactured, with the Board of Authority;

(k) Licence means a permit granted for the manufacture of the traditional drug;

(l) Traditional Drug Manufacture means the operations to be carried out in the manufacture of a traditional drug. This expression also includes the performance of all or any one of the operations carried out in processes. It does not, however, include compounding of drugs according to traditional medical practitioner's prescription for use in his treatment of patients at a hospital, dispensary or pharmacy for indigenous medicinal ingredients or to the prescription of any drug or homely remedy of any person for his own personal use;

(m) Homely Remedy means a traditional concoction from readily available materials, ingredients, or folk medicine;

(n) Quality Assurance means the warranty of the manufacturer of the traditional drug that it is effective, genuine and safe in the treatment of one or more diseases it claims to cure;

(o) Advertising means carrying out measures in any manner to inform the public in order to promote distribution and sale of the traditional drugs;

(p) Primary Laboratory means a laboratory prescribed by the Board of Authority by notification to analyse samples of the traditional drug;

(q) Appellate Laboratory means a laboratory specified by the Board of Authority in order that a final and conclusive decision may be made in respect of analysis of the traditional drug after re-analysis of samples, when a problem arises in respect of the analysis report of drugs from primary laboratories or when either party is dissatisfied and files an appeal.

Chapter II Aims

3. The aims of this law are as follows:- (a) to promote and develop traditional medicine and traditional drugs;

(b) to enable the public to consume genuine quality, safe and efficacious traditional drugs;

(c) to register traditional drugs systematically;

(d) to control and regulate systematically the manufacture of traditional drugs.

Chapter III Formation of the Board of Authority and Functions thereof

4. For the purpose of carrying out measures relating to traditional drugs mentioned in this Law, the Government shall incorporate in the Myanmar Food and Drug Board of Authority expert pharmacologists and other qualified persons.

5. Non-governmental members of the Board of Authority are entitled to remuneration prescribed by the Ministry of Health.

6. The functions and duties of the Board of Authority formed under section 4 are as follows:- (a) laying down policy relating to registration of traditional drugs;

(b) causing experiments, analyses and tests to be carried out as may be necessary, in order to determine whether the traditional drugs for which registration is applied for are in conformity with the traditional medicine treatises used by generations of traditional medical practitioners, whether they are up to the standard in quality and effectiveness, whether they are safe for consumption;

(c) determining the qualifications of persons entitled to apply for licence and the terms and conditions thereof for the manufacture of the registered traditional drug;

(d) stipulation terms and conditions relating to labeling of drugs, altering of labels and advertising;

(e) stipulating terms and conditions relating to the quality assurance of the registered traditional drug;

(f) selecting and determining essential traditional drugs;

(g) declaring substances determined as traditional pharmaceutical raw materials;

(h) determining traditional drugs and raw materials which are unfit for use by the public and submitting them to the Ministry of Health;

(i) co-coordinating with the Ministries concerned to conserve and prevent the traditional pharmaceutical raw materials from the danger of extinction;

(j) disseminating of techniques and methods relating to collection, production, storage and preservation of traditional pharmaceutical raw materials;

(k) giving guidance to conduct research work for raising the standard and modernization of traditional drugs;

(l) giving advice to Government departments and organizations which produce or import traditional pharmaceutical raw materials;

- (m) carrying out educative activities for extensive use of traditional drugs by the public;
 - (n) forming of committees as may be necessary to deal with technical matters and determining the functions and duties thereof;
 - (o) forming of Traditional Drug Supervisory Committees in States and Divisions, Districts and Townships and determining the functions and duties thereof;
 - (p) determining Primary and Appellate Laboratories.
- 7.** If there arises a controversy or dispute with respect to a substance, the Board of Authority shall determine whether it is a traditional drug or a traditional pharmaceutical raw material.
- 8.** The Board of Authority may co-ordinate with the Ministry concerned in order to supervise the collection, production, storage, marketing, export and import of traditional pharmaceutical raw materials.
- 9.** The Board of Authority may delegate any organization or any person to carry out its functions and duties.

Chapter IV Registration of Traditional Drugs

- 10.** A person desirous of registering a traditional drug with the Board of Authority may do so in accordance with the stipulations.
- 11.** The Board of Authority may, after carrying out analyses, experiments and tests, as may be necessary, permit or refuse the registration.
- 12.** The tenure of registration, registration fees and the fees for extension of the tenure of registration are as prescribed by the Board of Authority.
- 13.** A person who is permitted to register the traditional drug:- (a) shall pay the prescribed registration fees;
- (b) shall abide by the conditions relating to registration and shall also abide by the orders and directives issued by the Board of Authority;
- (c) on the expiry of the tenure of registration, may extend it by paying the prescribed fees for extension of the term of registration.
- 14.** If a person who has been permitted to register the traditional drug is found on investigation to have violated any condition relating to permission for registration or any order or directive issued by the Board of Authority the organization or person to whom the Board of Authority has assigned responsibility may revoke the registration subject to a time limit or cancel it.
- 15.** A person whose registration has been revoked subject to a time limit may apply for renewal of the registration to the Board of Authority on the expiry of the time limit.
- 16.** A person whose registration of the traditional drug has been cancelled shall, with respect to the traditional drugs in his possession comply with the direction of the Board of Authority.

Chapter V Application for Licence

- 17.** A person desirous of manufacturing a registered traditional drug shall apply for a licence to the Board of Authority in accordance with the stipulations.
- 18.** The Board of Authority may cause scrutiny to be made as to whether or not the application is in conformity with the stipulations and may if necessary issue the licence or refuse to issue the licence.
- 19.** The tenure of the licence, the licence fees and the fees for extension of the tenure of the licence shall be as prescribed by the Board of Authority.

- 20.** A person who has obtained a licence shall:- (a) pay the prescribed licence fees;
- (b) abide by the conditions contained in the licence as well as the orders and directives issued by the Board of Authority;
- (c) on expiry of the tenure of the licence pay the fees for extension of the tenure of the licence and extend the tenure of the same.
- 21.** If a person who has obtained a licence is found on investigation to have violated any condition of the licence or any order or directive issued by the Board of Authority, the organization to which or the person to whom the Board of Authority has assigned responsibility may revoke the licence subject to a time limit or cancel it.
- 22.** A person whose licence has been revoked subject to a time limit may apply for renewal of the licence to the Board of Authority on expiry of the time limit.
- 23.** A person whose licence has been cancelled:- (a) shall not apply for a new licence;
- (b) may hand over or sell the traditional drugs in his possession which are determined by the Board of Authority as of standard quality to another person who has obtained a licence, within 60 days;
- (c) with respect to traditional drugs in his possession, which are below standard quality shall dispose them of as directed by the Board of Authority.
- 24.** The Department of Traditional Medicine may direct the State and Divisional, District and Township Traditional Drugs Supervisory Committees to seize the traditional drugs which are below standard quality and which have been manufactured and distributed by a person whose licence has been cancelled.

Chapter VI Appeals

- 25.** A person dissatisfied with any of the following decisions made by the organization or person assigned responsibility by the Board of Authority in respect of a traditional drug may file an appeal to the Board of Authority within 60 days from the date of such decision:- (a) Refusal to permit registration, revocation subject to a time limit or cancellation of registration;
- (b) Refusal to grant licence, revocation subject to a time limit or cancellation of licence.
- 26.** The decision of the Board of Authority shall be final and conclusive.

Chapter VII Prohibition

- 27.** No one shall manufacture the following traditional drug:- (a) a traditional drug which has not been registered;
- (b) a drug for which registration has been revoked subject to a time limit or cancelled;
- (c) a traditional drug differing from standards;
- (d) a traditional drug which is determined as unfit for use by the Ministry of Health by notification.
- 28.** No one shall sell the following traditional drug:- (a) a traditional drug which has not been registered;
- (b) a traditional drug for which registration has been revoked subject to a time limit or cancelled;
- (c) a deteriorated traditional drug;
- (d) a traditional drug which is determined as unfit for use by the Ministry of Health by notification.
- 29.** No one shall manufacture a traditional drug without a licence.
- 30.** A person who has obtained a licence:- (a) shall not fail to abide by any condition of the licence;

(b) shall not fail to abide by the orders and directives issued by the Ministry of Health, the Board of Authority, or the Department of Traditional Medicine

Chapter VIII Offences and Penalties

31. Whoever violates any provision of section 27 or section 28 of this Law shall, on conviction, be punished with fine which may extend to kyats 30,000 or with imprisonment for a term which may extend to 3 years, or with both. In addition, the exhibits involved in the offence shall also be liable to be confiscated.

32. Whoever violates any provision of section 29 shall, on conviction:- (a) if it is an offence relating to an unregistered traditional drug, be punished with fine which may extend to Kyats 30, 000, or with imprisonment for a term which may extend to 3 years, or with both;

(b) if it is an offence relating to a registered traditional drug, be punished with fine which may extend to Kyats 10,000, or with imprisonment for a term which may extend to two years, or with both;

(c) the exhibits involved in the offence shall also be liable to be confiscated.

33. A person who, has obtained a licence and who violates any provision of section 30 shall, on conviction, be punished with fine which may extend to Kyats 5,000, or with imprisonment which may extend to one year, or with both.

Chapter IX Miscellaneous

34. Notwithstanding anything contained in the Union of Myanmar Public Health Law, 1972, the provisions of this Law shall be complied with in cases relating to traditional drugs.

35. The Ministry of Health may exempt any Government department or organization from compliance with any provision of this Law.

36. The Government department or organization which is authorized to issue export permits may issue export permits only for traditional drugs registered under this Law.

37. A person engaged in manufacturing of traditional drugs shall, on the day this Law is enacted, take steps to register and obtain the required licence within the period prescribed by the Board of Authority.

38. In instituting legal proceedings under this Law, prior sanction of the Ministry of Health or the organization or person delegated with powers for this purpose shall be obtained.

39. When a traditional drug which is exported without any permission under any existing law is seized by the relevant Government department or organization, it shall be handed over or disposed of in the manner prescribed by the Board of Authority.

40. The office work of the Board of Authority shall be carried out by the Department of Traditional Medicine.

41. The Ministry of Health shall assign responsibility as Traditional Drug Inspectors to the staff subordinate to it for inspection of traditional drugs. In addition, it may also assign responsibility as Traditional Drug Inspectors to suitable staff in co-ordination with other Ministries.

42. The orders and directives issued under the Union of Myanmar Public Health Law, 1972, may continue to be applicable in so far as they are not inconsistent with this Law.

43. For the purpose of carrying out the provisions of this Law:- (a) the Ministry of Health may issue rules and procedures as may be necessary, with the approval of the Government;

(b) the Ministry of Health, the Board of Authority and the Department of Traditional Medicine may issue orders and directives as may be necessary.

Sd./ Than Shwe Senior General Chairman The State Law and Order Restoration Council

28. Nigeria

This legislation pertains more to regulation of herbal medicines

DRUGS AND RELATED PRODUCTS (REGISTRATION, ETC.) ACT 1996 (AS AMENDED) **Herbal Medicines and Related Products (Labelling) Regulations 2005**

Commencement:

In exercise of the powers conferred on the Governing Council of the National Agency for Food and Drug Administration and Control (NAFDAC) by Section 8 of the Drugs and Related Products (Registration, Etc.) Act 1993, as amended, and of all the powers enabling it in that behalf, THE GOVERNING COUNCIL OF THE NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL with the approval of the Honourable Minister of Health hereby makes the following Regulations:-

Scope. 1. These Regulations shall apply to all labeling of herbal medicines and related products used as diagnostic, therapeutic or prophylactic agents.

Prohibition. 2. No person shall manufacture, import, export, distribute, advertise or sell any herbal medicine or related product that is not labelled as required by the provisions of these Regulations.

Adequate and clear labelling information

3.(1) All information on a label shall be -

- (a) clearly and prominently displayed thereon; and
- (b) readily discernible to the consumer.
- (2) All labelling information shall be in English language and may include other languages.
- (3) Herbal medicines and related products labeling shall be informative and accurate and neither promotional in tone nor false or misleading.
- (4) The labeling shall be based whenever possible on data derived from human experience.
- (5) No implied claims or suggestions of herbal medicines or related products may be made, if there is in-adequate evidence of safety or a lack of substantial evidence of effectiveness.
- (6) Where a claim of effectiveness or therapeutic indication labelling is made by a herbal medicine or related product, it shall carry boldly and in close proximity to the claim, a statement to the fact that such claim have not been evaluated by the Agency, unless such claims has been clinically proven and deemed satisfactory by the Agency.

Name and Address of Manufacturer, Packer or Distributor

- 4.(1) The label of herbal medicines and related products in package form shall specify conspicuously the name and place of business of the manufacturer, and may include the distributor or packer.
- (2) Where a herbal medicine or related product is not manufactured by a person whose name appears on the label, the name shall reveal the connection between the person and the manufacturer, such as "*Manufactured for* _._.", "*Distributed by* _._.", or any other wording that expresses the facts.

No reference to International Bodies etc.

5. No reference, direct or indirect to international bodies shall be made upon any label of herbal medicine or related product, except as prescribed by the Agency.

Declaration of ingredients

- 6.(1) Name or index number of colour used in the preparation shall be declared on the label.
- (2) A quantitative list of ingredients of the herbal medicines by their botanical names or, by their common names, shall be declared quantitatively on the label.

Trade mark

7. (1) Where a herbal medicine or related product have a trade mark displayed on the

label, the trade mark shall not give a wrong impression of the nature, quality or substance of the herbal medicine or related product.

(2) Where the trade mark registration is in conflict with any regulations or requirements of the Agency, the latter shall supersede.

Identification Number assigned by the Agency

8. The inner and outer labels of a herbal medicine or related product shall show, in a clear terms, the Agency registration number (NAFDAC REG. NO.) assigned to it as indicated on the certificate of registration in a manner prescribed by the Agency.

Identification mark on tablets, capsules etc.

9. (1) All tablets, capsule, caplets and similar dosage forms of herbal medicines and related products shall bear identification marks traceable to the manufacturer or holder of a certificate of registration of the herbal medicine or related product unless otherwise exempted by the Agency.

(2) Exemptions request shall be made in writing to the Agency giving reasons why a waiver is justified.

Adequate Labelling for Herbal Medicines and Related Products

10. Herbal medicines and related products shall be properly labelled with the following information on the inner and outer labels:

(1) The brand name, botanical or common name if any shall be qualified as herbal, homeopathic, animal or mineral medicinal product and or admixture there of.

(2) The name shall not be suggestive of therapeutic claim.

(3) Each product shall have a distinct design.

(4) A quantitative list of all ingredients of the product by their botanical or common names.

(5) The net content of the product in terms of weight, measure, or numerical count and shall be in metric unit.

(6) The name and address of the manufacturer.

(7) Adequate directions for safe use of the product, including amount for use in specific age groups

(8) The lot or batch number of the product.

(9) The manufacture and expiration dates.

(10) The storage conditions.

(11) Dosage, route and frequency of administration.

(12) Indication for the product.

Labelling of bulk package

10. Where a herbal medicine or related product is sold in bulk for further manufacturing, provisions of this regulation shall not apply, provided that, the label of the bulk product contains the following information:

(1) The proprietary or brand name of the herbal medicines.

(2) The botanical or common name of the herbal medicines.

(3) A statement of net contents.

(4) An identifying lot or batch number.

(5) The manufacture and expiration dates.

(6) Statement of caution e.g. "manufacturing purpose only".

Labelling Information for Practitioners

11. All herbal medicines or related products may be accompanied by an outer label and package insert with relevant information to practitioners for the safe use of the products.

Adequate Information on the insert

12.(1) Relevant information required to appear on the package insert for Practitioners shall include:

- (a) Description;
- (b) Clinical Pharmacology;
- (c) Indications and usage;
- (d) Contraindications;
- (e) Warnings against misuse;
- (f) Precautions;
- (g) Dosage and administration;
- (h) Adverse reactions;
- (i) Drug abuse and dependence;
- (j) Symptoms of over dosage and antidote;
- (k) How supplied;
- (l) Animal Pharmacology and/or Animal;
- (m) Toxicology;
- (n) Clinical studies;
- (o) Storage conditions;
- (p) References.

(2) The labeling shall contain a "Product Title" section preceding the "Description" section.

Prohibition of Labelling of Herbal Medicines or Related Products for certain treatments

13 (1) No person shall label a herbal medicine or related product as a treatment, preventive or cure for any of the diseases, disorders or abnormal states as identified in schedule 1 to the Food and Drug Act 1990 (as amended.)

2) No person shall sell, advertise, display or orally present any herbal medicine or related product to the general public whose label contains such words as "for vitality".

Penalty

14.(1) A person who contravenes any of the provisions of these Regulations shall be guilty of an offence and liable on conviction:-

(a) in case of an individual to imprisonment for a term not exceeding two years or to a fine not exceeding N50,000. or to both such imprisonment and fine.

(b) in the case of a body corporate to a fine not exceeding N100,000.

(2) Where an offence under this regulation is Committed by a body corporate, firm, or other association of individual-

(a) every director, manager, secretary or other similar officer of the body corporate; or

(b) every partner or officer of the firm; or

(c) every trustee of the body concerned;

or

(d) every person concerned in the management of the affairs of the association; or

(e) every person who was purporting to act in a capacity referred to in paragraphs (a) to (d) of this regulation is severally guilty of that offence and liable to be proceeded against and punished for that offence in the same manner as if he had himself committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

Forfeiture

15. In addition to the penalty specified in regulation 14 of these Regulations, a person convicted of an offence under these Regulations shall forfeit to the Agency, the herbal medicine or related product and whatsoever is used in connection with the commission of the offence.

Herbal medicines and related products not for use in pregnancy

16. Both the inner and outer labels of all herbal medicines and related products shall carry a warning statement directing pregnant women not to use them, except there is adequate evidence of safety in pregnancy.

Warning for Children

17. The label of all herbal medicines and related Products shall carry a warning "keep this medicine out of reach of children".

Mis-leading and Misinformation

18. (1) The label of a herbal medicine or related product with antipyretic and analgesic property shall not bear the indication "for fever" but shall be labelled "for feverish conditions" or "feverish feeling".

(2) No person shall sell, advertise, display any herbal medicine or related product with a name suggestive of the symptom, disorders, diseases or abnormal states that it is supposed to treat, prevent or cure e.g. "? Backache Tablets".

Interpretation

19. In these regulations, unless the context otherwise requires –

"**Agency**" means the National Agency for Food and Drug Administration and Control;

"**Botanical name**" means the scientific name by which plant is identified;

"**Common name**" means, with reference to herbal medicine or related product, the name in English language or other such language by which the product is commonly known;

"**Expiration date**" means any date after which a herbal medicine or related product is not recommended for use;

"Herbal Medicines and Related Products"

include:

(a) Finished medicinal products containing plant and/or their preparation presented with therapeutic or prophylactic claim and include all preparations containing a plant material in part or wholly;

(b) Animal medicinal product which shall be defined as a finished medicinal product containing only animal material and their preparations presented with therapeutic or prophylactic claim;

(c) Mineral medicinal product which shall be defined as finished medicinal product containing only in-organic minerals and/or their preparations;

(d) Preparation or admixture thereof manufactured, sold or advertised for use in the diagnosis, treatment, mitigation or prevention of any disease, disorder, abnormal physical state or the symptom thereof, in man or animal; and

(e) Preparation or admixture used for restoring, correcting or modifying organic functions in man or in animal;

"**Label**" includes any legend, word or mark attached to, included in, belonging to or accompanying any herbal medicine or related product;

"**Package**" includes anything in which any herbal medicine or related product is wholly or partly contained, placed or packed;

"**Practitioners**" means any person authorized by the appropriate governmental body to practice herbal medicine; and

"**Sell**" includes sell, offer for sale, expose for sale, have in possession for sale.

29. Norway

Act relating to the management of biological, geological and landscape diversity (Nature Diversity Act)

This is essentially a conservation Act but it does include provisions relating to access to genetic resources

Chapter I Purpose and scope, etc.

Section 1 (*purpose of the Act*) The purpose of this Act is to protect biological, geological and landscape diversity and ecological processes through conservation and sustainable use, and in such a way that the environment provides a basis for human activity, culture, health and wellbeing, now and in the future, including a basis for Sami culture.

Section 2 (*geographical scope of the Act*) The Act applies to Norwegian land territory, including river systems, and to Norwegian territorial waters.

Chapter VII of the Act applies to Svalbard and Jan Mayen. The King may decide that other provisions also apply to Svalbard and Jan Mayen. The Act of 15 June 2001 No. 79 relating to the protection of the environment in Svalbard and the Act of 21 February 1930 No. 2 relating to Jan Mayen otherwise apply instead of this Act.

On the continental shelf and in the areas of jurisdiction established under the Act of 17 December 1976 No. 91 relating to the economic zone of Norway, sections 1, 3 to 5, 7 to 10, 14 to 16, 57 and 58 apply to the extent they are appropriate.

Section 3 (*definitions*) For the purposes of this Act, the following definitions apply:

- (a) species: a group of living organisms distinguished according to biological criteria;
- (b) population: a group of individuals of the same species living within a delimited area at the same time;
- (c) biological diversity: ecosystem and species variability and intra-species genetic variability, and the ecological relationships between ecosystem components;
- (d) animal: mammal, bird, reptile, amphibian, fish or invertebrate;
- (e) alien organism: an organism that does not belong to a species or population that occurs naturally in an area ;
- (f) genetic material: genes and other hereditary material in any biological material that can be transferred to other organisms with or without the help of technology, except for human genetic material;
- (g) harvesting: hunting, trapping, fishing and collection of plants or parts of plants (including berries and fruit) and fungi, for recreational and commercial purposes;
- (h) import: movement across a land border with a neighbouring state or to land from areas that lie outside the geographical scope of the Act;
- (i) biological, geological and landscape diversity: includes all diversity that is not largely a result of human influence;
- (j) habitat type: a homogeneous environment, including all plant and animal life and environmental factors that operate there, or special types of natural features such as ponds, habitat islands in fields or the like, and special types of geological features;
- (k) organism: an individual plant, animal, fungus or microorganism, including all parts thereof that are capable of reproduction or of transferring genetic material;
- (l) plants: vascular plants, mosses and algae;
- (m) fungi: fungi and lichens;
- (n) release: release, intentional discharge of organisms or the disposal of such organisms as waste into the environment, or into a closed system from which escape is not impossible;
- (o) removal: any form of killing or extraction of entire or parts of organisms from the natural environment, regardless of its purpose;
- (p) wildlife: terrestrial mammals, birds, reptiles and amphibians that occur naturally in the wild;
- (q) invertebrate: animal without a backbone;

- (r) area with specific ecological functions: an area, the delimitation of which may change over time, that fulfils an ecological function for a species, such as a spawning, nursery or larval drift area, migration route, feeding, moulting or overnighing area, display ground or mating area, breeding area, overwintering area or habitat.
- (s) ecological status: status of and trends for functions, structure and productivity in areas of a habitat type, viewed in the light of relevant environmental pressures;
- (t) ecosystem: a relatively well-delimited, homogeneous natural system where plant, animal, fungus and microorganism communities interact with one another and with the non-living environment.

Chapter II General provisions on sustainable use

Section 4 (*management objectives for habitat types and ecosystems*) The objective is to maintain the diversity of habitat types within their natural range and the species diversity and ecological processes that are characteristic of each habitat type. The objective is also to maintain ecosystem structure, functioning and productivity to the extent this is considered to be reasonable.

Section 5 (*management objectives for species*) The objective is to maintain species and their genetic diversity for the long term and to ensure that species occur in viable populations in their natural ranges. To the extent necessary to achieve this objective, areas with specific ecological functions for different species and other ecological conditions on which they are dependent are also to be maintained.

The management objective under the first paragraph does not apply to alien organisms.

The genetic diversity of domesticated species shall be managed in such a way that it helps to secure the future resource base.

Section 6 (*general duty of care*) Any person shall act with care and take all reasonable steps to avoid causing damage to biological, geological and landscape diversity contrary to the objectives set out in sections 4 and 5. If an activity is carried out in accordance with a permit issued by an official authority, the duty of care is considered to have been fulfilled if the conditions for the permit are still satisfied.

Section 7 (*the principles for official decision-making set out in sections 8 to 12*) The principles set out in sections 8 to 12 shall serve as guidelines for the exercise of public authority, including when an administrative agency allocates grants, and for the management of real property. Decisions shall state how these principles have been applied in an assessment under the first sentence.

Section 8 (*knowledge base*) Official decisions that affect biological, geological and landscape diversity shall, as far as is reasonable, be based on scientific knowledge of the population status of species, the range and ecological status of habitat types, and the impacts of environmental pressures. The knowledge required shall be in reasonable proportion to the nature of the case and the risk of damage to biological, geological and landscape diversity.

Furthermore, the authorities shall attach importance to knowledge that is based on many generations of experience acquired through the use of and interaction with the natural environment, including traditional Sami use, and that can promote the conservation and sustainable use of biological, geological and landscape diversity.

Section 9 (*precautionary principle*) When a decision is made in the absence of adequate information on the impacts it may have on the natural environment, the aim shall be to avoid possible significant

damage to biological, geological or landscape diversity. If there is a risk of serious or irreversible damage to biological, geological or landscape diversity, lack of knowledge shall not be used as a reason for postponing or not introducing management measures.

Section 10 (ecosystem approach and cumulative environmental effects)

Any pressure on an ecosystem shall be assessed on the basis of the cumulative environmental effects on the ecosystem now or in the future.

Section 11 (user-pays principle) The costs associated with preventing or limiting any damage caused by a project to biological, geological and landscape diversity shall be borne by the project owner, unless this is unreasonable in the light of the nature of the project and of the damage.

Section 12 (environmentally sound techniques and methods of operation) In order to prevent or limit damage to biological, geological or landscape diversity, use shall be made of such methods and such techniques and siting of industrial and other activities as, based on an overall assessment of past, present and future use of such diversity and economic factors, produce the best results for society at large.

Section 13 (quality norms for biological, geological and landscape diversity) The King may establish recommended quality norms for biological, geological and landscape diversity, for example concerning the distribution or abundance of a species or the range or ecological status of a habitat type.

Limit values for pollutants or environmental quality objectives for river systems are fixed in accordance with the provisions of the Act of 13 March 1981 No. 6 relating to protection against pollution and to waste (the Pollution Control Act) or the Act of 24 November 2000 No. 82 relating to river systems and groundwater (the Water Resources Act).

If a quality objective laid down in a norm under this Act is not achieved, or if there is a risk of this, the competent authority under this Act should in consultation with other authorities concerned draw up a plan for ways of nonetheless achieving the quality objective. Such plans may entail a need to establish further regulations under this Act or other statutes.

Section 14 (other important public interests and Sami interests) Measures under this Act shall be weighed against other important public interests.

When decisions are made under the Act that directly affect Sami interests, due importance shall be attached, within the framework that applies for the individual provision, to the natural resource base for Sami culture.

Chapter III Species management

Section 15 (principle for species management) Harvesting and other removal of animals that occur naturally in the wild shall be authorised by statute or a decision pursuant to statute. Unnecessary harm and suffering caused to animals occurring in the wild and their nests, lairs and burrows shall be avoided.

Harvesting and other removal of plants and fungi occurring in the wild are permitted to the extent that they do not jeopardise the survival of the population concerned or are not limited by statute or by a decision pursuant to statute.

The provisions of the first and second paragraphs do not preclude lawful access and passage, agricultural activities or other activities that take place in accordance with the duty of care laid down in section 6.

Harvesting and other utilisation of marine organisms are regulated by the Act of 6 June 2008 No. 37 relating to the management of wild living marine resources (the Marine Resources Act).

Section 16 (*harvesting of wildlife and salmonids and freshwater fish*) Decisions to permit the harvesting of wildlife are made under the Act of 29 May 1981 No. 38 relating to wildlife and wildlife habitats (the Wildlife Act).

Decisions to permit the harvesting of salmonids and freshwater fish are made under the Act of 15 May 1992 No. 47 relating to salmonids and freshwater fish.

Harvesting may only be permitted when the best available documentation indicates that the species produces a harvestable surplus.

In making decisions regarding permission to harvest and regarding harvesting methods, importance shall also be attached to the function of the species in the ecosystem and the effect the harvesting may otherwise have on biological diversity. Importance shall also be attached to the significance of the species as food or for recreation, harvesting traditions in the area in question and any damage that the species causes.

The third and fourth paragraphs do not apply in the case of decisions regarding the harvesting of alien organisms.

Section 17 (*general provisions regarding other removal of wildlife and salmonids and freshwater fish*) Small rodents, reptiles and salmonids and freshwater fish may be killed if this is necessary to prevent injury to persons or damage to property.

Wildlife may be killed in circumstances where this is considered necessary to eliminate an immediate and significant risk of injury to persons. The owner, or a person acting on behalf of the owner, may kill a wild animal making a direct attack on livestock or domesticated reindeer. Any kill or attempt to kill under this paragraph shall immediately be reported to the police.

Killing to spare an animal unnecessary suffering is permitted in accordance with the Act of 20 December 1974 No. 73 relating to animal welfare (the Animal Welfare Act). The same applies to killing in order to prevent an infectious disease that may have significant social consequences in accordance with the Act of 19 December 2003 No. 124 relating to food production and food safety (the Food Act).

Section 18 (*other removal of wildlife and salmonids and freshwater fish after assessment by the authorities*)

The King may make regulations or individual decisions permitting the removal of wildlife and salmonids and freshwater fish

- (a) to protect naturally occurring plants, animals and ecosystems,
- (b) to prevent damage to crops, livestock, domesticated reindeer, forest, fish, water or or other property,
- (c) to safeguard general health and safety interests or other public interests of substantial importance,
- (d) for capture for the purpose of restoring stocks,
- (e) for capture for the purpose of lawful breeding and farming,
- (f) for research, teaching or taxonomic purposes, or

(g) which are alien organisms.

Decisions under the first paragraph (a) to (f) may only be made if the removal does not jeopardise the survival of the stock and the purpose cannot be achieved in any other satisfactory manner.

The competent authority under the Act may on its own initiative implement removal for such purposes as are mentioned in the first paragraph (a) to (d) and (g), cf. second paragraph. Such removal is not considered to be an individual decision and may if necessary take place on another person's property. The King may make further regulations regarding such removal.

The municipal authorities may grant permits for the removal of cervids and beavers to prevent damage under section 18, first paragraph (b), and for the removal of a beaver lodge or dam to prevent substantial damage due to flooding. The issue of permits by the municipal authorities may be appealed to the county governor.

Section 19 (compensation for loss and consequential costs when livestock and domesticated reindeer are killed or injured by predators)

When livestock and domesticated reindeer are killed or injured by predators, the state shall provide full compensation for the loss and consequential costs in accordance with regulations made by the King. The King may also make regulations regarding the recovery of an amount that has been incorrectly paid out.

Section 20 (removal of invertebrates) Unless otherwise provided, it is permitted to

- (a) kill invertebrates that are a nuisance or cause damage,
- (b) kill alien invertebrates,
- (c) remove invertebrates provided that this does not jeopardise the population in the area. When the competent authority under the Act takes measures under the first paragraph (a) or (b), this may if necessary take place on the real property of other persons.

The King may make regulations or individual decisions regarding harvesting and other removal of terrestrial invertebrates.

Harvesting and other utilisation of marine wild living invertebrates are regulated by the Marine Resources Act.

Section 21 (removal of plants and fungi) Section 15, second paragraph, does not preclude the removal of plants and fungi to prevent injury to the health of persons or animals, damage to crops, forest or other property, to remove alien organisms, or to safeguard important public interests.

The competent authority under the Act may implement measures on the property of other persons in order to prevent injury or damage as mentioned in the first paragraph, and removal in order to protect indigenous species and ecosystems.

The King may make regulations or individual decisions regarding harvesting and other removal of plants and fungi that are not regulated by provisions laid down in or under another statute.

Harvesting and other utilisation of wild living marine plant and fungus species are regulated by the Marine Resources Act.

Section 22 (regulation of access to and passage through uncultivated land) To prevent damage or disturbance to plants or animals, the King may make regulations regarding the organisation of

major events on uncultivated land and regarding nature studies, photography, etc. and forms of access and passage that may cause particular damage.

Section 23 (*priority species*) The King in Council may make regulations designating priority species. In making such decisions, substantial importance is to be attached to whether

- (a) the population status or trends for the species are contrary to the objective set out in section 5, first paragraph,
- (b) a significant proportion of the species' natural range is in Norway or it has distinctive genetic characteristics in Norway, or
- (c) there are international obligations related to the species.

In the sea, the provision in the first paragraph (b) is only applicable in particular cases.

When there is documentation to show, based on scientific criteria, that the population status or trends for a species are substantially contrary to the objective set out in section 5, first paragraph, the competent authorities under the Act – on their own initiative or at the request of an organisation or other persons with legal interests in the matter – shall consider whether decisions should be made under the first paragraph.

The Ministry may make regulations prescribing that priorities under the first paragraph (a) shall lapse when the species management objective set out in section 5, first paragraph, has been achieved.

Section 24 (*nature of the protection*) Regulations governing priority species made under section 23, first paragraph, may

(a) prohibit any form of removal of, damage to or destruction of a priority species or specific populations of the species, and prescribe that the provisions of sections 15 to 22 shall only apply to the extent that this follows from the regulations,

(b) make provisions regarding the protection of certain types of areas of limited extent with specific ecological functions for the species. The considerations required to be taken into account must not render current use of the areas significantly more difficult. If, following such a decision, the sum of such considerations constitutes restrictions that render use substantially more difficult and entail a substantial loss, the landowner may require the area to be protected under chapter V or exemptions to be made from the priority status of the areas concerned under the fifth paragraph. The provision does not apply in the sea, c) require clarification of the impacts of any works planned in areas with specific ecological functions for the species concerned, including the identification of alternative areas that may be used to ensure the conservation of the species in accordance with section 5, first paragraph.

The regulations may include provisions regarding management measures in accordance with section 47 when this is necessary in order to ensure the conservation of the species. As far as possible, public grant schemes shall be used in a way that promotes the conservation of priority species.

If provisions are made regarding the protection of certain types of areas with specific ecological functions for priority species under the first paragraph (b) in cases where active management or other types of measures are essential to safeguarding the area, the state shall present an action plan to protect such areas. The public authorities may enter into further agreement with the landowner or the rightsholder regarding management of an area with specific ecological functions for priority species.

In parallel with the making of regulations under section 23, first paragraph, the competent authority shall assess whether it is necessary to make further decisions regarding areas with specific ecological functions under the present or other statutes in order to protect the species and its genetic diversity.

The competent authority under the Act may grant exemptions from regulations made under section 23 if this does not result in the deterioration of the species' population status or trend, or if significant public interests make it necessary.

Section 25 (*protection of individual populations*) The King may prescribe special management and protection measures, including total protection, for a population of a species if it is believed to have distinctive genetic characteristics.

Section 26 (*trade, etc.*)

In order to implement the Convention of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or other international obligations, or otherwise to conserve species naturally occurring in the wild, the King may make regulations regarding the import and export, transport, sale and keeping or possession of living or dead specimens or parts of such.

Section 27 (*ex-situ conservation measures and measures for domesticated species*) If a species is in immediate danger of extinction, the competent authority under this Act shall assess whether, in addition to decisions under section 23, ex-situ conservation measures shall be implemented, if this will promote the species' survival in the natural environment.

The King may make regulations regarding special conservation measures for domesticated species in order to achieve the objective set out in section 5, third paragraph.

Chapter IV Alien organisms

Section 28 (*due care requirement*) Any person that is responsible for releasing living or viable organisms into the environment shall exercise due care, and as far as possible seek to prevent such release having adverse impacts on biological diversity. If an organism is released in accordance with a permit issued by a public authority, the duty of care is considered to be fulfilled if the conditions of and for the permit are still satisfied.

Any person that initiates an activity or project that may result in the spread or release of living or viable organisms beyond their natural range shall take reasonable measures to prevent this.

If damage is caused to biological diversity or there is a risk of serious damage to biological diversity as a result of the release or unintentional discharge of alien organisms, the person responsible shall immediately notify the competent authority under this Act, and take measures in accordance with sections 69 and 70, unless such duty to notify the authorities and take measures is prescribed in another statute.

The King may make regulations regarding activities or projects that may entail a risk of the spread or unintentional discharge of organisms that do not occur naturally in an area, and regarding the duty of notification under the third paragraph.

Section 29 (*import*) Living or viable organisms may only be imported to Norway subject to a permit granted by the competent authority under this Act.

If an organism is imported with a view to releasing it into the environment, the application for a permit shall clarify the possible effects of such release on biological diversity.

No permit may be granted if there is reason to believe that the import will have substantial adverse impacts on biological diversity.

The King may make regulations regarding import under the first paragraph, including requirements for permits and conditions for permits. The King may also make regulations to the effect that specific organisms may be imported without a permit under this section, or may prohibit the import of specific organisms if this is

considered necessary in order to avoid substantial adverse impacts on biological diversity.

Unless otherwise provided by regulations made by the King, no permit is required under this Act for the import of terrestrial plants and specified livestock. Nor is a permit required for the import of biological control agents for which an import permit has been granted in or under other legislation.

Section 30 (general rules regarding the release of organisms or species into the environment)

Without legal authority under section 31 or a permit granted by the competent authority under this Act, no person must release

- (a) organisms belonging to species or subspecies that do not occur naturally in Norway, including foreign tree species, into the environment,
- (b) wildlife belonging to species, subspecies or populations that do not already occur naturally in the district, into the environment,
- (c) organisms, except for those belonging to a native population, to the sea or a river system unless a permit has been granted under the Act of 17 June 2005 No. 79 relating to aquaculture (the Aquaculture Act),
- (d) organisms that do not already occur naturally in an area into the environment if the King has made regulations requiring a permit for this purpose.

Applications for a permit to release organisms or species under the first paragraph shall give an account of the impacts such release may have on biological diversity. The King may make regulations setting out requirements for applications.

A permit may not be granted if there is reason to believe that the release will have substantial adverse impacts on biological diversity.

Section 31 (release without a special permit) Provided the duty of care under section 28 is observed,

- (a) organisms imported subject to a permit under section 29, first paragraph, cf. second paragraph, with a view to release,
- (b) plants in gardens, parks and other cultivated areas, if the plants are not likely to spread outside the area, and Norwegian tree species,
- (c) biological control agents for which a release permit has been granted in or under other legislation,
- (d) specified organisms if the King has made regulations to that effect, may be released.

Release under the first paragraph may not take place contrary to regulations under section 30, first paragraph (d). This does not apply to Norwegian tree species.

Section 32 (relationship to other Acts) The requirement of a permit under this Act does not exempt the applicant from the requirement of an import or release permit under other legislation. If an import or release permit is required under two or more statutes, the competent authorities under the present and other statutes shall ensure that the processing of applications is coordinated. The King may make regulations regarding such coordination.

The provisions of sections 28 to 31 do not apply to genetically modified organisms falling within the scope of the Act of 2 April 1993 No. 38 relating to the production and use of genetically modified organisms (the Gene Technology Act).

Assessments under this chapter shall not include considerations relating to plant, animal and human life and health that are safeguarded by the Act of 5 August 1994 No. 55 relating to the control of communicable diseases (Communicable Diseases Control Act) and the Food Act.

Chapter V Protected areas

Section 33 (*objectives relating to protected areas*) Protected areas on land, in river systems and in the sea under this chapter shall promote the conservation of

- (a) the full range of variation of habitats and landscape types,
- (b) species and genetic diversity,
- (c) endangered natural environments and areas with specific ecological functions for priority species,
- (d) major intact ecosystems, also making them accessible for low-impact outdoor recreation
- (e) areas of special conservation value,
- (f) natural environments that reflect human use through the ages (cultural landscapes) or that are also of historical value, and facilitation of forms of use that help to maintain biological, geological and landscape diversity,
- (g) ecological and landscape coherence at national and international level, or h) reference areas where environmental trends can be monitored.

When a decision is made under another statute to protect the natural environment in an area, importance should be attached to the objectives in the first paragraph. If such decisions made under another statute are part of a plan that covers areas protected by a decision under this Act, the King may prescribe provisions to ensure that the protection provided by the various statutes is coordinated in order to promote the objective of the plan.

Section 34 (*regulations regarding protected areas*) Individual protected areas, cf. sections 35 to 39, will be established by the King in Council by means of regulations. The landowners and rightsholders affected by the regulations are also subject to the provisions of the Public Administration Act regarding individual decisions.

The regulations describe the purpose of protecting the area, including the natural and cultural qualities such protection is intended to safeguard and the state that protection is intended to achieve, the limits of the protected area, affected properties and provisions regarding use of the area. Regulations relating to marine protected areas shall state whether the purpose of protection applies to the seabed, water column, water surface or a combination of these.

The geographical extent of the protected area shall be consistent with the purpose of protection. In determining the limits of the protected area, importance shall be attached to safeguarding ecological functions of significance for achieving the purpose of protection and the resilience of the ecosystem to external pressures.

Within the framework of the provisions that apply to the individual category of protected area, the King may in the regulations prohibit or regulate activities or access or passage which alone or when combined with other use may undermine the purpose of protection. Special rules may be prescribed for different parts of the area when this is compatible with the function of the part in achieving the purpose of protection.

The regulations establishing a protected area shall not preclude the continuation of sustainable use that reinforces the purpose of such protection.

Section 35 (*national parks*) Large areas of natural habitat that contain distinctive or representative ecosystems or landscapes and where there is no major infrastructure development may be protected as national parks.

No activity that has a lasting impact on the natural environment or cultural heritage is permitted in a national park, unless such impact is essential to achieving the purpose of protection. The regulations shall protect the landscape and its plants, animals, geological features and cultural monuments from development, installations, pollution and other activity that may defeat the purpose of protection, and ensure that people can enjoy an undisturbed natural environment. Pedestrian access or passage in accordance with the provisions of the Outdoor Recreation Act is permitted. Such access or passage may only be limited or prohibited in delimited areas of a national park, and only if necessary in order to protect plants or animals, cultural monuments or geological features.

A draft strategic management plan shall be presented when a decision is made to protect an area. When an operational management plan is also relevant, it shall be part of the strategic management plan.

Section 36 (*protected landscapes*) Natural or cultural landscapes that are important in ecological or cultural terms, as a source of enjoyment or as a basis for forming an identity may be protected as protected landscapes. Cultural monuments that contribute to the distinctive character of a landscape are considered to be part of the landscape.

In a protected landscape, no projects may be initiated which may substantially alter the nature or character of the landscape. Current activities may be continued and developed within the limits of the first sentence. New projects shall be adapted to the landscape. Importance shall be attached to the overall impact of the projects implemented in the area. The regulations may include provisions regarding what may substantially alter the nature or character of the landscape, requirements relating to adaptation to the landscape, and non-pedestrian access or passage.

With regard to the parts of the protected landscape where use is essential to achieving the purpose of protection, a draft management plan to ensure that the purpose of protection is achieved shall be presented at the latest when a decision is made under the first paragraph to establish the protected landscape. The plan may include agreements regarding land use, the use of landscape elements or methods of operation. The plan or agreement may contain provisions regarding financial compensation to private individuals who contribute to management of the protected landscape.

A draft strategic management plan shall be presented when a decision is made to protect a landscape. In cases where an operational management plan is also relevant, it shall be part of the management plan.

Section 37 (*nature reserves*) Areas which

- (a) contain endangered, rare or vulnerable species, communities, habitats or landscape types,
- (b) represent a specific type of habitat,

- (c) are otherwise of particular importance for biological diversity,
- (d) comprise a distinctive geological feature, or
- (e) are of special scientific interest

may be protected as nature reserves.

An area which, if allowed to develop without human intervention or actively managed through habitat restoration, is likely to develop such qualities as are mentioned in the first paragraph may also be protected as a nature reserve.

In a nature reserve no person must do anything that reduces the conservation value of the area as described in the purpose of protection. A nature reserve may be given absolute protection from all activity, projects and access or passage. The regulations may contain provisions regarding protection of the cultural heritage in the reserve.

If a decision is made to establish a nature reserve in an area where active restoration measures are required, or where active use is essential to achieving the purpose of protection, a draft management plan to ensure that the purpose of protection is achieved shall be presented at the time the decision is made. The plan may include agreements regarding land use, the use of landscape elements or methods of operation. The plan or agreement may contain provisions regarding financial compensation to private persons who contribute to management of the protected landscape.

Section 38 (*habitat management areas*) An area that has or may have special importance because it fulfils specific ecological functions for one or more specified species may be protected as a habitat management area. A prohibition may be imposed on activity and access or passage that may affect or disturb the species or the ecological conditions necessary to its existence. Section 37, fourth paragraph, applies correspondingly.

Section 39 (*marine protected areas*) Marine protected areas may be established on the grounds of their marine conservation value, but also to safeguard valuable marine areas that are ecologically necessary for terrestrial species.

Areas which

a) contain distinctive or representative ecosystems and are without major infrastructure development, b) contain endangered, rare or vulnerable species, communities, habitats or landscape types, c) represent a specific type of habitat, d) are otherwise of particular importance for biological diversity, e) comprise a distinctive geological feature, f) are of special scientific interest, or g) are of special importance as an area with specific ecological functions for one or more specified species may be protected as marine protected areas.

Marine protected areas may be established to fulfil one or more of the objectives set out in section 33, first paragraph.

The decision to establish a marine protected area must state whether the purpose of the protection and restrictions apply to the seabed, water column, surface or a combination of these elements. Sections 33, 34 and 40 to 51 otherwise apply correspondingly to the extent they are appropriate.

In a marine protected area no person must do anything that reduces the conservation value of the area as described in the purpose of protection. A marine protected area may be protected from all activity, pollution, projects and use, subject to the limitations that follow from international law. Any restrictions imposed on activity shall be proportional to the purpose of protection.

Harvesting and other utilisation of wild living marine resources are regulated under the Marine Resources Act within the limits of the protection regulations.

Marine areas where protection consists solely of specific provisions regulating fishing activities shall be established under the Marine Resources Act.

Section 40 (international status for protected areas) The King may make regulations granting a protected area special status under an international convention on the protection of the natural or cultural environment. The effect that the convention in question attributes to such status also applies as Norwegian law.

Section 41 (administrative procedure) When a protection process under this chapter commences, steps shall be taken within the limits of the second to third paragraphs and sections 42 and 43 to ensure that administrative procedures are carried out in the closest possible cooperation with landowners, rightsholders, interested commercial parties and representatives of the local community, including Sami cultural and business interests, the municipal and county authorities, the Sami Parliament and other relevant authorities. The same applies when a landowner or rightsholder himself offers areas for protection. The administrative process shall ensure that the purpose of protection and the conservation value, the delimitation of the area and the consequences of protection are defined as clearly as possible. As part of the administrative process, information shall also be obtained regarding other possible elements of value in the area.

The issue of the simultaneous commencement of municipal and regional planning work under the Act of 27 June 2008 No. 71 relating to planning and the processing of building applications (the planning part of the Planning and Building Act) shall be clarified with the municipal and county authorities. The King may make regulations regarding the coordinated processing of plans under the Planning and Building Act and protection under this Act.

Section 42 (announcement of planned proposals for protection of an area) The competent authority shall publish the proposal for protection of an area, with the main consequences it is expected to have, in at least one newspaper that is widely read locally. Proposals regarding marine protected areas shall be announced in a manner appropriate to make interested parties aware of the proposal. As far as possible, landowners and other rightsholders shall be informed by letter and given a reasonable time limit for submitting comments before a proposal is drawn up.

At an early stage of the preparations, and well before the proposal is announced, steps shall be taken to establish cooperation with any public authorities, organisations, etc. which have a special interest in the protection measure. Regulations shall be drawn up in cooperation with the central government authorities concerned.

Section 43 (consultation regarding proposal for protection regulations) The proposed regulations shall be circulated for comment under the provisions of section 37 of the Act of 10 February 1967 relating to procedure in cases relating to the public administration (the Public Administration Act). The provisions of section 16 of the Public Administration Act apply to notification of landowners and rightsholders. The proposal shall be deposited for public inspection in at least one easily accessible

place and published in the Norwegian Gazette and in at least one newspaper that is widely read locally.

The proposal circulated for comment shall describe the area to which the proposal applies, including the purpose of protection and the conservation value, the delimitation of the area concerned and any qualities other than biological, geological and landscape diversity, as well as the anticipated consequences of the proposal, and give a time limit of at least two months for submitting comments.

The proposal shall be submitted to the municipal authorities, the county authorities and central government agencies concerned for comment, and to the Sami Parliament if the protection proposal affects Sami interests.

Section 44 (measures in connection with the initiation of the administrative process) When an announcement has been made under section 42, an administrative agency may automatically reject an application for a permit, etc. for a project in an area to which the protection proposal applies. A permit may only be granted if the project will have no significant impact on the purpose of the proposal. When important public interests make it necessary, the King may nonetheless grant a permit for the project.

Simultaneously with or after an announcement as mentioned in section 42, the Ministry may prescribe a duty to provide notification of projects that do not require a permit under other statutes for all or parts of the proposed protected area. The duty of notification shall be announced in the same way as the protection proposal. The consultation process under section 37, first paragraph, of the Public Administration Act shall be implemented after the duty of notification has been determined, in order to decide whether the duty of notification should be maintained and whether further provisions should be laid down regarding such duty.

When an announcement has been made under section 42, a public authority may not provide a grant for a project in an area to which the protection proposal applies. The competent authority may grant exemptions from this rule if the project will have no significant impact or will have a favourable impact on the purpose of the proposal.

The King may decide that all or part of the provisions of the first to third paragraphs shall also be applied before a protection proposal is announced, if key public authorities have begun work on an overall protection plan.

The effects of the first to fourth paragraphs are limited to four years after the proposal has been announced. The Ministry may extend the effects by up to two years.

Section 45 (temporary protection) The Ministry may make regulations regarding the temporary protection of specified areas in order to prevent damage to their conservation value. The provisions of the Public Administration Act regarding individual decisions apply in respect of private landowners and rightsholders who are affected by the decision.

When a specific habitat type is in danger of being permanently lost, the King may make regulations prescribing limitations and prohibiting activities and access or passage that may further jeopardise the continued existence of the habitat type.

Sections 41 to 43 do not apply to decisions regarding temporary protection under the first and second paragraphs. When a temporary protection decision is made, the administrative process shall continue without undue delay. The effect of a temporary protection decision is limited to four years

from the time the decision was announced. The Ministry may extend the effect of the temporary protection decision by up to two years.

Section 46 (statement of grounds for and announcement of protection decisions) In decisions made under section 34, an account shall be given in the grounds of the biological, geological and landscape diversity and other qualities that are protected in and by the protection decision, and of how the latter helps to fulfil national objectives and international obligations.

Decisions made under sections 34 and 45 shall be announced under the provisions of section 38 of the Public Administration Act and be published in at least one newspaper that is widely read locally. Decisions regarding marine protected areas should be announced in a manner appropriate to make interested parties aware of the proposal. Landowners, rightsholders and municipal authorities in the protected area shall be notified of the decision under the provisions of section 27 of the Public Administration Act. The announcement and the notification shall call attention to the right to compensation under section 50 and the time limit under section 51, first paragraph.

The protection decision shall be registered judicially.

The protection decision shall be publicly accessible in electronic format with associated maps.

Section 47 (management of protected areas) In areas that are protected under this chapter, the administrative authority may carry out management measures and mark the boundaries of the protected area. The administrative authority shall, if possible, enter into an agreement with the landowner whereby the latter shall carry out specified maintenance measures. The administrative authority may also enter into agreements with organisations with an interest in the matter or other persons to the effect that they shall carry out such maintenance measures.

Management may include measures to maintain or achieve the state of the natural or cultural environment that is the purpose of the protection, including measures to channel access or passage, removal of vegetation or alien tree species and restorative measures after works affecting the natural environment. No management measures that entail the harvesting of natural resources or a significant change in the state of the natural environment as it was when the protection process began, cf. section 42 or section 45, first paragraph, may be carried out under this section.

If management measures affect private property or rights in the protected area, the owner or rightsholder shall as far as possible be notified in advance.

Any financial benefits arising from the implementation of management measures accrue to the landowner or the rightsholder.

If possible, a draft operational management plan for the protected area shall be presented at the time the protection regulations are laid down.

Section 48 (exemption from a protection decision) The administrative authority may grant exemption from a protection decision if it is not contrary to the purpose of the protection decision and cannot make a significant impact on the conservation value, or if safety considerations or important public interests make it necessary.

When weighing other important public interests against the interests promoted by the protected area, particular emphasis shall be placed on the importance of the protected area for the overall network of protected areas and on whether a corresponding protected area can be established or developed elsewhere. The owner of a project may be required to bear reasonable costs arising from the safeguarding, establishment or development of such a corresponding area.

If a permit is required for a project under both the protection regulations and other legislation, the project owner may choose to submit parallel applications for permits. In such cases, a decision shall first be made under the protection regulations, unless otherwise provided by the protection regulations or the consent of the administrative authority.

An application for exemption under the first paragraph shall contain necessary documentation of the impact of the project on the conservation value. In an exemption under the first paragraph, the grounds for the decision shall show how the administrative authority has assessed the impacts on the conservation value that may result from exemption, and what importance has been attached to these impacts.

Section 49 (activities located outside a protected area which may cause damage within the area)

If an activity for which a permit is required under another statute may have an impact on the conservation value of a protected area, importance shall be attached to this value when deciding whether a permit should be granted, and when setting conditions. The duty of care under section 6 applies to other activities.

Section 50 (compensation to landowners and rightsholders in protected areas) A landowner or a holder of rights in property that is wholly or partly protected as a national park, protected landscape, nature reserve, habitat management area or marine protected area is entitled to compensation from the state for financial losses incurred when protection makes current use of the property more difficult. In the case of use requiring a permit from an official authority, the right to compensation only applies if a permit was granted before an announcement was made under section 42.

When the conditions under the first paragraph are fulfilled, compensation for losses incurred in connection with current use is determined in accordance with the calculation rules set out in the Act of 6 April 1984 No. 17 on compensation for the expropriation of real property (the Expropriation Compensation Act). The date of the protection decision shall serve as the basis for application of section 10 of the said Act.

The King will make regulations prescribing what is considered to be current use for activity in accordance with

- (a) a production licence under the Act of 29 November 1996 No. 72 relating to petroleum activities (the Petroleum Act),
- (b) a mining lease under the Act of 30 June 1972 No. 70 relating to mining (the Mining Act),
- (c) the Mineral Resources Act.

Section 51 (procedure for determining compensation) Not later than one year after the protection decision was made, the State shall make an offer of compensation under section 50 to an owner or a rightsholder who has submitted a written claim for compensation within four months of the protection decision. The Ministry may extend the time limit and may also grant reinstatement of the claim if the time limit is exceeded. The provisions of the Act of 17 June 2005 No. 90 relating to mediation and procedure in civil disputes (the Dispute Act) regarding reinstatement apply to the extent appropriate.

If the offer is not accepted, the owner or rightsholder may, not later than six months after the offer was made, submit a claim to the county governor requesting that the state apply to the district court for judicial assessment of compensation under section 50.

Assessment proceedings are conducted under the provisions of the Act of 1 June 1917 No. 1 relating to assessment and expropriation cases (the Assessment Procedure Act) and the provisions of this paragraph. Under the provisions of the Dispute Act, the district court may grant reinstatement if the time limit laid down in the second paragraph is exceeded. Section 42 of the Assessment Procedure Act applies to costs of assessment at first instance. If the state applies for a review of the assessment, the state shall cover the necessary costs incurred by the landowner. If the landowner applies for a review of the assessment, the provisions of chapter 20 of the Dispute Act shall apply.

Chapter VI Selected habitat types

Section 52 (selected habitat types)

In order to promote the objective set out in section 4, the King in Council may make regulations designating specific habitat types as selected throughout or in parts of the country. The regulations may prescribe further criteria for the types of areas of a selected habitat type to which the provisions of this chapter apply.

In deciding whether to designate a habitat type as selected, particular importance shall be attached to whether

a) trends for or the status of the habitat type are contrary to the objective set out in section 4, b) the habitat type is important for one or more priority species, c) a significant proportion of the natural range of the habitat type is found in Norway, or d) international obligations apply to the habitat type.

When there is documentation to show that the status of or trends for a habitat type based on scientific criteria are significantly contrary to the objective set out in section 4, the competent authorities under this Act shall – of their own initiative or at the request of an organisation or another person who has a legal interest in the matter – assess whether regulations should be made under the first paragraph.

When a habitat type is selected for which active management or other types of measures are essential to the maintenance of the habitat type, the state shall present an action plan to safeguard the habitat type.

Section 53 (general importance of the selection) In exercising the duty of care under section 6, special account shall be taken of areas of selected habitat types so as to avoid reduction of the range of the habitat type or deterioration of the ecological status of the areas.

In the exercise of official authority, including the allocation of grants by an administrative agency, and in the management of real property, special account shall be taken of areas of selected habitat types so as to avoid reduction of the range of the habitat type or deterioration of the ecological status of the areas. Before a decision is made to carry out works in an area of a selected habitat type, the impacts on the selected habitat type must be ascertained. The King may make regulations regarding how such impact assessments are to be carried out and processed.

In considering whether the range of the selected habitat type will be reduced or whether its ecological status will deteriorate, importance shall be attached to the significance of the area in question for the overall range and quality of the habitat type and to whether a corresponding area can be established or developed elsewhere. The project owner may be required to bear reasonable costs relating to the maintenance, establishment or development of such an area.

A legally binding plan under the Planning and Building Act which defines the land use of an area of a selected habitat type and which is adopted after regulations under section 52 have been made will prevail over the provisions of the first to third paragraphs.

The municipal authorities may make regulations providing that the provisions of sections 53 to 56 shall also apply to municipal management of areas of other specified habitat types in the municipality.

The public authorities may enter into further agreement with a landowner or rightsholder regarding the management of an area of a selected habitat type.

Section 54 (duty of notification of forestry projects) A forestry project that affects areas of selected habitat types and that does not require a permit shall be notified to the municipal authorities before work on the project is begun. A reply shall have been received from the municipal authorities before the project is carried out. The municipal authorities shall consider the project under the provisions of section 53, second and third paragraphs. If the municipal authorities find that the project may result in reduction of the range of the habitat type or deterioration of its ecological status, the authorities may refuse to permit the project or make further orders as to how the project shall be implemented in accordance with the provisions of section 6, fourth paragraph, or section 8, second paragraph, of the Act of 27 May 2005 No. 31 relating to forestry (the Forestry Act). The time limit for responding may be laid down in regulations made under section 52, first paragraph.

Section 55 (duty of notification of agricultural projects) An agricultural project that affects areas of selected habitat types and that does not require a permit shall be notified to the municipal authorities before work on the project is begun. A reply shall have been received from the municipal authorities before the project is carried out. The municipal authorities shall consider the project under the provisions of section 53, second and third paragraphs. If the municipal authorities finds that the project may result in reduction of the range of the habitat type or deterioration of its ecological status, the authorities may refuse to permit the project or make further orders as to how the project shall be implemented in accordance with the regulations made under section 11, first paragraph, of the Act of 12 May 1995 No. 23 relating to land (the Land Act).

Owners or users of agricultural properties that contain areas of selected habitat types may apply to the municipal authorities for approval of an environmental plan. If such approval is granted, the duty of notification under the first paragraph does not apply to agricultural projects carried out in accordance with the plan.

Section 56 (announcement and appeal) Notice that a permit has been granted to carry out a project in areas of a selected habitat type shall be published in at least one newspaper that is widely read locally or in the way prescribed by the individual statutes. In the case of selected marine habitat types, the announcement shall be made in a manner appropriate to make interested parties aware of the permit.

If a permit or the rejection of a permit for a project in an area of a selected habitat type is appealed against under other provisions currently in force, a superior environmental protection authority shall be given the opportunity to express an opinion on the appeal.

The municipal authorities report on areas of selected habitat types through the general reporting procedures that have been established between municipal and central government authorities.

Chapter VII Access to genetic material

Section 57 (management of genetic material) Genetic material obtained from the natural

environment is a common resource belonging to Norwegian society as a whole and managed by the state. It shall be utilised to the greatest possible benefit of the environment and human beings in both a national and an international context, also attaching importance to appropriate measures for sharing the benefits arising out of the utilisation of genetic material and in such a way as to safeguard the interests of indigenous peoples and local communities.

Section 58 (collection and utilisation of genetic material obtained from the natural environment)

The King may determine that the collection of biological material from the natural environment for the purpose of utilising the genetic material, or the utilisation of such material, requires a permit from the Ministry. If a collection permit has been granted, no new permit is required for subsequent utilisation, but the conditions for the permit apply correspondingly to any person that acquires the material or results arising from the collection. Collection for use in public collections and for use and further breeding or cultivation in agriculture or forestry does not require a permit.

The first paragraph does not limit the right of any owner or other entitled person to deny access on other grounds

a) to the biological material, or b) to the land from which the genetic material is obtained.

When granting permission under the first paragraph, the competent authority may grant exemptions from the provisions of chapter III.

The King may make regulations regarding which information the application shall contain, including information regarding use of the knowledge of indigenous peoples or local communities. Further provisions may also be made in the regulations regarding which conditions may be set, such as conditions to the effect that any benefits arising out of the utilisation of genetic material collected from the natural environment within Norwegian jurisdiction shall accrue to the state. The regulations may also state how the interests of landowners and indigenous peoples and local communities can be reasonably safeguarded. Conditions may be set for the further utilisation of material that is necessary to ensure the promotion of the objective set out in section 57.

Section 59 (genetic material in public collections) Public collections shall be managed in accordance with the principles set out in section 57. The person managing the collection has a duty to register any genetic material removed from the collection and provide public access to such information.

A public collection means a collection of genetic material that is managed by or on behalf of the state and to which any person has access on specified conditions.

Any person that receives genetic material derived from a public collection shall refrain, in Norway or abroad, from claiming intellectual property rights or other rights to the material that would limit use of the material, such as use for food or agriculture, unless the material has been modified in a way that results in a substantial change.

If intellectual property rights over genetic material are established contrary to the third paragraph, the competent authorities under the Act shall consider taking measures, including bringing legal action, to ensure promotion of the objective set out in section 57.

Any person may invoke conditions under the third paragraph, or other conditions that have been set for collection, against any person that, contrary to such conditions, seeks to enforce an intellectual property right.

The King may make further regulations regarding removals from collections, including setting such conditions as are mentioned in section 58, fourth paragraph, last sentence.

With regard to the removal of genetic material covered by the International Treaty on Plant Genetic Resources for Food and Agriculture of 3 November 2001 or by another international agreement, the standard conditions laid down under the agreement shall apply.

Section 60 (*genetic material from other countries*) The import for utilisation in Norway of genetic material from a state that requires consent for collection or export of such material may only take place in accordance with such consent. The person that has control of the material is bound by the conditions that have been set for consent. The state may enforce the conditions by bringing legal action on behalf of the person that set them.

When genetic material from another country is utilised in Norway for research or commercial purposes, it shall be accompanied by information regarding the country from which the genetic material has been received (provider country). If national law in the provider country requires consent for the collection of biological material, it shall be accompanied by information to the effect that such consent has been obtained.

If the provider country is a country other than the country of origin of the genetic material, the country of origin shall also be stated. The country of origin means the country in which the material was collected from *in situ* sources. If national law in the country of origin requires consent for the collection of genetic material, information as to whether such consent has been obtained shall be provided. If the information under this paragraph is not known, this shall be stated.

The King may make regulations prescribing that if utilisation involves use of the traditional knowledge of local communities or indigenous peoples, the genetic material shall be accompanied by information to that effect.

When genetic material covered by the International Treaty on Plant Genetic Resources for Food and Agriculture of 3 November 2001 is utilised in Norway for research or commercial purposes, it shall be accompanied by information to the effect that the material has been acquired in accordance with the Standard Material Transfer Agreement established under the treaty.

Section 61 (*implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture*)

The King may make regulations regarding the implementation of the International Treaty on Plant Genetic Resources for Food and Agriculture of 3 November 2001 in Norwegian law. The regulations may make further clarifications and exemptions from the provisions of this chapter.

Chapter VIII Competent authority under the Act, supervision, etc.

Section 62 (*competent authority under the Act*) The King is the highest authority under this Act.

The King may decide that the municipal authorities are the competent authority under further provisions prescribed in or under the Act. The King may give instructions to municipal authorities regarding the exercise of delegated authority under provisions laid down in or under chapter V. The King may decide that a specially appointed body is the administrative authority for an area that has been protected under chapter V.

The Directorate for Nature Management is the appeals body for decisions made by municipal authorities under this Act, unless otherwise provided. The county governor has the right to appeal against decisions made by municipal authorities to whom authority has been delegated.

The King may make regulations regarding municipal exercise of authority or performance of functions under the Act.

Section 63 (*supervision*) The Ministry supervises the state of the natural environment and monitors compliance with the provisions laid down in and under the Act. The supervisory authority decides the areas that shall be subject to supervision. The supervisory authority shall carry out sufficient control and inspection measures to be able to detect breaches of provisions.

When supervision is exercised, the person being inspected or the person responsible for the activity shall provide the supervisory authority with necessary assistance or information. The supervisory authority may stop persons, vessels or motor vehicles if this is necessary in order to exercise supervision. Importance shall be attached to exercising supervision as effectively as the circumstances permit with the least possible impact on the environment.

The authorities shall promote achievement of the objectives of this Act by providing advisory services, guidance and information.

Section 64 (*investigation*) If necessary in order to carry out tasks under the Act, the supervisory authority or the police shall be given unimpeded access to property where activities are being carried out that may have an impact on biological, geological or landscape diversity, or where it may be assumed that there has been an impact on such diversity,. The supervisory authority may also require documents or other material that may be of importance for carrying out tasks under this Act to be submitted for inspection.

Section 65 (*duty to provide information*) Any person that possesses or does anything that may have an impact on biological, geological and landscape diversity has a duty, on the orders of the supervisory authority and notwithstanding any duty of secrecy, to provide the supervisory authority with any information necessary to enable it to carry out its tasks under this Act.

If damage is caused to biological, geological and landscape diversity or if there is a risk of serious damage of this nature as a result of activities regulated under this Act, the person responsible shall notify the competent authority under the Act as quickly as possible, unless the risk has already been averted or the damage has been repaired.

Section 66 (*internal control*) The Ministry may make regulations relating to internal control and internal control systems to ensure compliance with requirements laid down in or under this Act.

Section 67 (*amendment and revocation of permits*) The competent authority under this Act may cancel or amend the conditions of a permit granted under the Act, or set new conditions, and if necessary revoke the permit if

a) it is necessary in order to prevent substantial unforeseen adverse impacts on biological, geological or landscape diversity, b) the adverse impacts can be reduced without unreasonable cost to the project owner; c) new technology makes it possible to reduce substantially the adverse impacts on biological, geological or landscape diversity, d) revocation or amendment is necessary in order to achieve quality norms prescribed under section 13, e) the project owner contravenes provisions laid down in or under this Act and the contravention in question is significant, repeated or persistent, or f) this otherwise follows from other revocation rules currently in force.

A permit may in any case be revoked or amended if it is more than 10 years since it was granted. The competent authority may relax restrictions and conditions set out in a permit if experience shows that this can be done without resulting in any substantial adverse impact on biological, geological or landscape diversity. In making decisions under the first and second paragraphs, account shall be taken of the costs that amending or revoking the permit will entail for the project owner and any other advantages and disadvantages that amendment or revocation will entail.

Section 68 (register of environmental decisions) The King may make regulations regarding the establishment of a register of environmental decisions and the duty to enter such decisions in the register. The register shall comprise decisions made under section 24, fifth paragraph, section 34, first paragraph, section 45, first and second paragraphs, section 48, first paragraph, and such decisions as are mentioned in section 56, first paragraph, first sentence.

Chapter IX Enforcement and sanctions

Section 69 (measures to remedy or mitigate the impact of unlawful activities) The competent authority under the Act may order the person responsible to remedy or stop situations that are contrary to the Act or decisions made under the Act.

Any person who by contravening the Act or a decision made under the Act causes a risk of reducing biological, geological or landscape diversity shall take measures to prevent such reduction. If such reduction has already occurred, the duty consists of preventing further reduction and – if possible - restoring the original state of diversity by taking appropriate action such as collection, clearing up, removal or levelling the ground. Measures that in themselves may result in any significant reduction of diversity shall only be taken with the consent of the competent authority under the Act or by order under the first paragraph.

The duty to take preventive, remedial or restorative action does not apply to the extent that it would be particularly unreasonable in the light of the cost and effects of the measures, the environmental impacts of the contravention and the offender's fault and financial situation.

Measures implemented under this section may consist of the killing of alien organisms to which the contravention relates or the return of living organisms to their original location.

Section 70 (unforeseen environmental impacts of lawful activities) If projects carried out in accordance with the Act or with decisions made under the Act prove to have substantial unforeseen impacts on biological, geological or landscape diversity, the person responsible shall take reasonable measures to prevent or limit damage or nuisance.

The competent authority under the Act may order the person responsible to carry out such measures as are mentioned in the first paragraph within a fixed time limit. When it can be done without particular inconvenience to the person responsible, the authority may order that the person to restore biological, geological or landscape diversity to its former state.

Section 71 (direct implementation) If the person responsible fails to comply with an order containing such requirements as are mentioned in section 69, first paragraph, or section 70, second paragraph, the competent authority under the Act may take steps to ensure that the measures are carried out. The competent authority under the Act may also ensure that the measures are carried out if they are urgently needed in the interests of biological, geological or landscape diversity, or if the identity of the person responsible cannot be established.

Expenses relating to measures carried out under the first paragraph may be claimed from the person responsible. The claim is enforceable by execution proceedings.

Section 72 (use of another person's property in connection with the implementation of measures)

If necessary for the implementation of measures under sections 69, 70 or 71, use may be made of the property of the person responsible or, if necessary, the real property of another person.

If use is made of another person's real property under the first paragraph, the person concerned shall receive compensation from the person responsible for any loss caused by damage or inconvenience. The state will act as guarantor for the amount.

If it is necessary to implement management measures under section 47, the competent authorities under the Act may make use of motor vehicles on real property that is not part of the protected area.

Section 73 (coercive fine) To ensure compliance with provisions laid down in or under this Act, the competent authority under the Act may make a decision to impose a coercive fine.

A coercive fine may be imposed when it is discovered that a provision has been contravened. The coercive fine shall become effective if the person responsible fails to meet the time limit fixed by the competent authority under the Act for remedying the situation. A coercive fine may be imposed in advance if this is warranted for particular reasons, in which case it shall become effective from the time a contravention commences. It may be determined that the coercive fine shall remain payable for as long as the unlawful situation persists, or that it shall be payable each time a contravention occurs. However, a coercive fine shall not remain payable if compliance is impossible owing to circumstances for which the person responsible is not to blame. A coercive fine may be imposed as a daily fine or as a lump-sum fine.

The coercive fine shall be imposed on the person responsible for the contravention. If the contravention has occurred on behalf of a company or other association, a foundation, or a public body, the coercive fine shall normally be imposed on the entity concerned. If a coercive fine has been imposed on a company that is part of a group of companies, accrued amounts thereof may also be recovered from the parent company.

The Ministry may waive accrued amounts of a coercive fine. Such a decision is not considered to be an individual decision under the Public Administration Act.

Section 74 (environmental compensation) Any person that contravenes provisions laid down in or under this Act or provisions that serve to implement objectives and principles set out in the Act shall, if so ordered by the competent authority under the Act, pay environmental compensation to the state.

The decision as to whether an order shall be made and the determination of the amount of environmental compensation will take place after an overall assessment of the importance of the environmental assets concerned, the possible extent and duration of the environmental damage, sanctions imposed on the offender and any other circumstances. The King may make regulations regarding summary fines in lieu of prosecution in accordance with a fixed scale for specific contraventions.

An order to pay environmental compensation is regarded as an individual decision under the Public Administration Act.

An order to pay environmental compensation is enforceable by execution proceedings. Liability to pay compensation may also be the subject of criminal proceedings. If the compensation claim is brought before a court in a criminal case, civil action or complaint against execution proceedings, the court may conduct a full trial of the compensation claim. Notification of an order to pay compensation shall include information about the provisions laid down in this paragraph.

The Ministry may waive a claim for environmental compensation. Such a decision is not regarded as an individual decision under the Public Administration Act.

No order shall be made to pay environmental compensation under this Act if an order is made to pay compensation under the Gene Technology Act or the Pollution Control Act.

The fact that a person is ordered to pay environmental compensation does not preclude the imposition of sanctions such as a contravention charge.

Section 75 (*penal measures*)

Any person that wilfully or negligently contravenes the provisions laid down in or under sections 15 to 18, sections 20 to 22, section 24, first paragraph (a) and (b), section 25, section 26, section 28, second to fourth paragraphs, sections 29 to 31, sections 34 to 39, sections 45, 54, 55, sections 58 to 61, section 63, second paragraph, first sentence, sections 64 to 69 or an order under section 70 shall be liable to fines or imprisonment for a term not exceeding one year.

Gross contravention of the first paragraph shall be punishable by a fine or imprisonment for a term not exceeding three years. In deciding whether the contravention is gross, particular importance shall be attached to whether it has caused or resulted in a risk of significant damage to biological, geological or landscape diversity, whether such damage must be regarded as irreversible, the degree of fault, and whether the offender has taken any measures to prevent or mitigate the damage.

If a contravention of one or more of the provisions mentioned in the first paragraph at the same time constitutes a contravention of the provisions of another statute, the provisions of this Act relating to penal measures shall only apply to the extent that there is no provision for corresponding penal measures in the statute concerned.

Chapter X Final provisions

Section 76 (*entry into force*) This Act applies from the date decided by the King. The King may determine that the Act shall enter into force at different times with respect to different provisions or different groups of organisms.

Section 77 (*transitional provisions*) Decisions regarding delegation of authority, regulations or individual decisions under provisions that are repealed or amended by this Act remain in force until otherwise decided by the King. Section 48 also applies to earlier protection decisions. In the case of the owner of or a rightsholder in an area that has been protected as a national park or a protected landscape and where the ordinary time limit for lodging claims for compensation had not expired on 1 January 2002, the question of compensation is regulated by sections 50 and 51 of this Act. The King may make regulations containing transitional provisions for adaptation from earlier legislation to this Act.

Section 78 (*amendments to other Acts*)

30. Oman

LAW OF COPYRIGHTS AND NEIGHBORING RIGHT

Royal Decree 65/2008: Promulgating the Law of Copyrights and Neighboring Rights

We, Qaboos bin Said, Sultan of Oman,

After perusal of the Basic Law of the State promulgated by Royal Decree 101/96;

The Financial Law promulgated by the Royal Decree no. 47/98;

The Judiciary Authority Law promulgated by the Royal Decree no. 90/99;

The Public Prosecution Law promulgated by the Royal Decree no. 92/99;

The Law of Penal Procedures promulgated by the Royal Decree no. 97/99;

The Law of Copyrights and Neighboring Rights promulgated by the Royal Decree no. 37/2000;

The Law on Civil and Commercial Procedure promulgated by the Royal Decree no. 29/2002;

And the Law of Telecommunications Regulatory promulgated by the Royal Decree no. 30/2002;

And according to the exigencies of public interest,

We decree the following:

Article I: The attached law shall apply to Copyrights and Neighboring Rights.

Article II: The Minister of Commerce and Industry shall issue the regulations implementing the attached law. Pending the issue of the regulations, prevailing regulations and decisions shall remain in force insofar as they do not contradict its provisions.

Article III: The above said Law of Copyrights and Neighboring Rights promulgated by the Royal Decree no. 37/2000 shall be repealed, together with anything that contradicts or contravenes the attached law.

Article IV: This Royal Decree shall be published in the Official Gazette and shall come into effect from the day following the date of its publication.

Qaboos bin Said Issued on: 4th of May 2008

Sultan of Oman

Chapter I Definitions

Article (1):

For the purposes of the application of the provisions of this Law, the following words and expressions shall have the meanings given below, unless otherwise required by the context:

1. The Ministry: The Ministry of Commerce and Industry
2. The Minister: The Minister of Commerce and Industry
3. Author: The natural person who creates the work.
4. Work: Any production in the literary, artistic, or scientific domain, of whatever type, way of expression, importance, or purpose.
5. Creation: The creative nature, which gives originality and distinction to the work.
6. Collective work: Any work created by a group of authors under the supervision of a natural or legal person who undertakes to publish under his own liability and supervision. The efforts of authors shall be integrated in the general objective when it is not possible to separate the share of all authors and distinguish it independently.
7. Joint work: Any work created with the contribution of many persons irrespective of whether it is possible or not to distinguish the share of each, unless otherwise agreed, and which is not classified under collective works.
8. Derivative work: Any new work created and produced from an existing one, like translations, musical adaptations, arrangements, and other alterations.
9. Audio-visual work: The work composed of a series of linked images giving the impression of motion and recorded on medium or any other devices, either along with audio or not, like movies.

10. Work of Applied Arts: Any artistic creation of useful functions or integrated into a tool for use concerning a work for producing traditional or industrial crafts.

11. Work of Photography: Any recording of light or any other radiation on a medium producing an image or from which an image can be produced, whatever is the technical nature through which the recording was accomplished.

12. Expressions of national folklore: Any expression or production of distinguishable elements reflecting the traditional popular heritage that was originated developed and maintained in the Sultanate of Oman to express the traditional cultural identity which is communicated through generations, including particularly the following expressions:

a) Oral expressions such as popular stories, anecdotes, sayings, mysteries, poems, and other folklores.

b) Musical expressions such as folk songs accompanied by musical instruments.

c) Movement performances such as dances, popular artistic presentations, and traditional popular rituals.

d) Concrete expressions including all products of folk fine arts such as drawings or paintings, sculptures, pottery, porcelain, textiles, clothing, carpets, traditional musical instruments, architectural forms.

13. Reproduction: Making one or more copies of a work, performance, sound recording, or a broadcasting program, directly or indirectly by any means and in any form, including permanent or temporary electronic storage, printing and photocopying of a work or sound recording.

14. Publication: Making available or offering, to the public, in reasonable quantities, tangible copies of a work, sound recording, broadcasting programs or performance by any means, with the consent of the right owner, in an appropriate quantities, for sale, rental, public lending, or other transfer of the ownership or the possession of the copies.

15. Sound recording: The fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in an audio-visual work.

16. Producer of sound recording: The natural or legal person, who assumes the responsibility for the first fixation of the sound recording.

17. Producer of audio-visual work: The natural or legal person, who takes the responsibility for making the audio-visual work.

18. Neighboring rights: The rights of the performers, producers of sound recordings and broadcasting organizations.

19. Performers: The persons, who act, sing, orate, recite, play, dance, or otherwise perform other works and national folklore expressions.

20. Public domain: The property, which include all works excluded from protection or of which the term of protection of economic rights expires at the date of enforcing this law, or of which the term is so reduced in accordance with the provisions of this law.

21. Broadcasting: Transmission of sounds or sounds and images, or transmission of any representation thereof, by wireless means - including transmission by satellite – to the public. It is considered as broadcasting the wireless transmission of encrypted signals if the means for decoding are provided to the public by the broadcasting organizations or with their consent. Broadcasting

does not include transmissions over computer networks or any transmission where the time and place of reception may be individually chosen by members of the public.

22. Public Performance: Any action presenting the work to the public of any variety whereby a contact is established between the public and the work through direct performance or any other means.

23. Communication to the public: Transmission of images, or sounds, or images and sounds, by wired or wireless means of a work, performance, sound recording or broadcasting program, in a way to allow individuals, other than family members and their closest friends, to receive the transmission in any place other than the origination point of the transmission, and regardless of the time and place of reception, including making them available to the public in such a way that members of the public may access them at a time or place chosen by the individual as received by a computer or any other means.

24. Broadcasting organizations: The authority, which transmits, by wireless means, audio or audio-visual broadcasting, or any representation thereof.

25. Effective Technological Measures: Any technology, device or component that, in the ordinary course of its operation, controls access to a work, performance, sound recording, or broadcasting program, or protects any copyright or neighboring rights.

26. Rights Management Information: Information that identifies:

- (a) a work, performance, sound recording, or broadcasting program;
- (b) the author of the work, the performer of the performance, the producer of the sound recording, or the broadcasting organization;
- (c) the owner of any right in the work, performance, sound recording, or the broadcasting program;
- (d) information about the terms and conditions of the use of the work, performance, sound recording, or the broadcasting program; or
- (e) any numbers or codes that represent such information.

When any of these items is attached to a copy of the work, performance, sound recording, or a broadcasting program, or appears in connection with the communication or making them available to the public.

27. Fixation: The embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device.

28. The Service Provider:

- A) A provider or operator of online services, network access, or associated facilities services
- B) With regard to transitory connections, a provider of transmission, routing, or connections for direct digital online communications, without modification of their content, between or among points specified by the user, of material of the user's possession and a content of his choice.

Chapter II Scope of Protection

Article (2):

The created works of literature, arts and science shall enjoy protection under this law regardless of their value, type, and way of expression or purpose of their production. The protection shall include:

- a. Books, booklets, articles, pamphlets and other written works.
- b. Computer programs and databases whether readable from the computer or other.

- c. Works that are orally recited such as lectures, speeches, discussions and other oral works.
- d. Dramatic, musical and choreographic works, silent shows (pantomimes) and other works made for acting performance.
- e. Musical compositions with or without words.
- f. Audio-visual works.
- g. Works of drawing, painting, architecture, sculpture, lithography, printing on fabric, wood or metals, and any similar works in fine arts.
- h. Photographic works and similar.
- i. Works of applied and plastic arts either handcrafted or industrial.
- j. Illustrations, geographical maps, plans, sketches, and three-dimensional works related to geography, topography, or architecture.

The title of the work also enjoys protection if created.

Article (3):

The following shall enjoy the protection under this law:

- a. Derivative works.
- b. Collections of works, such as encyclopedias, which by reason of the selection and arrangement of their contents constitute intellectual creations.
- c. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection and arrangement of their contents constitute intellectual creations.

The protection, stipulated in the three previous paragraphs shall be without prejudice to any copyright subsisting in the underlying content.

Article (4):

Protection shall not cover mere ideas, procedures, working methods, mathematical concepts, principles, discoveries and data.

Additionally, protection shall not cover the following:

- a. Official documents of whatever original language or translated language, as texts of laws, regulations, decisions, agreements, international conventions, judicial orders, judgments of arbitrators and decisions issued by administrative committees with judicial competence, as well as official translations.
- b. News of the day and current events which are mere journalistic information.

Notwithstanding, all of the above in the previous paragraphs shall enjoy protection if their compilation or arrangement, or any creation or intellectual effort, eligible for protection, is distinguished.

Chapter III Author's rights

First: Moral rights

Article (5):

The author shall enjoy non-prescriptive and non-transferable moral rights, such as:

- a. Right to claim authorship of the work in the manner he determines.
- b. Right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work, which would be prejudicial to his honor or reputation.

It is absolutely void and null to dispose of any of these rights, whether such disposition results or does not result in compensation.

The author's general successor shall enjoy these rights, and the Ministry shall succeed to these rights in the absence of a public successor to the author.

Second: Economic Rights

Article (6):

The author or his general successor shall have the right to enjoy the following economic rights:

- a) The reproduction of his work
- b) Translation of his work into another language, prepare derivative works based upon the copyrighted work, musical re-composition, or modification in another form.
- c) The disposition of the original or a copy of his work to the public through sale or other transfer of ownership.
- d) Rental of the original or a copy of his work embodied in sound recording, of his movie work, or computer program, for commercial purposes.
- e) Public performance of his work.
- f) Communication to the public.
- g) Broadcasting of his work.

Article (7):

The right of rental shall not apply to computer programs, if the program itself is not the main object of rental, and shall not apply as well to audio-visual works if it will not damage the normal use thereof.

Article (8):

The right owner or his successor shall have the right to transfer to a third party, all or part of his economic rights, stipulated under this law, or permits him to utilize such rights, according to a written contract that shall specify the right subject to disposal, the purpose, duration of use, and the location of the clearance.

Without prejudice to his moral rights stipulated in this law, the author shall not, in any way, retract any assignment of rights.

Article (9):

The author or his successor may obtain compensation in money or in kind against the transfer of one or more rights to another party or be authorized to use his economic rights of the work on the basis of a relative share in the royalties derived from the use, and he shall have the right to contract on the basis of a recorded amount, or on both bases.

Article (10):

The authorization to utilize a work embodied in a sound recording shall be granted by the consent of the author and all the owners of other rights on the work such as the performer or the producer collectively, the need for the authorization of any of them does not cease to exist because the authorization of the others.

Article (11):

Without prejudice to the provisions of article (8) of this law, the transfer of economic rights, in respect to the works of computer programs and applications or databases, shall be subject to authorization of the contract which is mentioned or attached to the program, either shown on the

medium of the program or shown upon loading or storing the program in the computer screen, and the program's buyer or user shall comply with the conditions stipulated in such authorization.

Article (12):

Disposal by the author of the original version of his work, shall not, in any way, result in transferring any of his economic rights, unless otherwise agreed upon. However, without prior agreement, the transferee of the ownership of this copy shall not be compelled to allow the author to reproduce, transfer, or present such.

Article (13):

Author's rights may not be seized pursuant to a court decision. However, copies of a published work may be seized. Works the owners of which die before publication may not be seized unless it is proven beyond any doubt that those owners intended to publish those works before their death.

Article (14):

Disposal by the author of all his future works shall be completely null and void.

Chapter IV Protection of Neighboring Rights

Article (15):

Performers shall enjoy non-transferable and non-prescriptive eternal moral rights, including:

- a- Right to claim authorship of their performances, whether live or recorded, as done by them, except where omission is dictated by the manner or use of the performance;
- b- Right to object to any distortion, mutilation or other modification of their performance, which would be prejudicial to their honor or reputation.

Any disposal of such copyrights either compensated or not, shall be void.

The performers' public successor shall succeed the rights stipulated in this article, and the Ministry shall succeed to these rights, in the absence of a general successor for the performers.

Article (16):

Performers shall enjoy the following exclusive economic rights:

- a. Broadcasting and communication to the public of their unfixed (live) performances.
- b. Fixation of their unfixed performances
- c. Preventing the use of their unfixed (live) performance in any way unless a prior written authorization is obtained.
- d. Making available to the public of the original or copies of their performances through sale or other transfer of ownership.
- e. Renting their broadcasted performances to the public, for commercial purposes.
- f. Broadcasting or any communication to the public of their performances fixed in a sound recording.
- g. Reproduction of their fixed performances.

The provision of this article does not apply in case the performers agree to incorporate their performances within an audio-visual work.

Article (17):

Producers of sound recordings shall enjoy the following exclusive economic rights:

- a. The use of their recordings in any way, including reproduction and rental.
- b. Making available to the public of the original and copies of their sound recordings through sale or other transfer of ownership.
- c. Broadcasting or any communication to the public of their sound recordings.

Article (18):

Broadcasting organizations shall enjoy the following exclusive economic rights:

- a. Fixing, reproducing, broadcasting and rebroadcasting their programs and communicating them to the public;
- b. Prohibiting others from communicating the television recording of their programs to the public without a prior written authorization.

It shall be considered prohibited for others to record, reproduce, rent, re-broadcast, distribute or communicate such to the public by any means.

Article (19):

The provisions of articles (8, 9, 10, 12, and 14) of this law shall be applied to disposals of economic rights of owners of neighboring rights. Provisions of article (13) apply to these rights.

Chapter V Free Uses of Works

Article (20): Subject to the moral copyrights, stipulated under this law, the following uses of works shall be lawful even without the consent of the author provided that the source and the name of the author are mentioned if listed in the work, and provided that a free use shall not be allowed if the use conflicts with the normal exploitation of the work, performance, or phonogram or unreasonably prejudices the legitimate interests of the author, performer, or producer of phonograms:

1. Quoting paragraphs from a protected work lawfully made available to the public in another work for clarification, explanation, or criticism purposes, to the extent of the desired purpose and as much as justified by such goal.
2. Use of the work in meetings within the family or through an educational institution for clarification during face-to-face educational or teaching purposes, within the limits justified by such goal, provided that this would be done with no direct or indirect compensation.
3. Reproduction, to the extent justified by the purpose and without the purpose of direct or indirect financial gain, of a single copy by reprographic means of protected works by public libraries, non-commercial documentation centers, educational establishments and scientific and cultural institutions, provided that such reproduction shall be:
 - a- For a published article or short work whereas the purpose of reproduction is to meet the need of a natural person for use in a study or research and provided that reproduction shall be for one time, or at varying intervals. Reproduction shall also be considered if repeated, on separate and unrelated occasions, and that there is no collective license available under which such reproduction can be made, or;
 - b. Reproduction for the purpose of maintaining the original copy or replacing a lost or damaged copy for which it is not possible to obtain a substitute.
4. Reproduction, broadcasting, or making available to the public by the press of portions of articles published in newspapers or periodicals on current economic, political, or religious topics and of broadcast works of the same character, in cases in which the reproduction, broadcasting, or such communication thereof is not expressly reserved for the right owner at the time of publication.
5. Reproduction of a single copy of a computer program by the lawful owner of the copy, provided that it is necessary for the use of the computer program for the purpose and extent for which the computer program was obtained, or for archival purposes and for the replacement of the lawfully owned copy of the program in the event that the original copy is lost, destroyed or rendered unusable, or making an adapted, altered, or modified copy of the program, or translated into

another computer language, whenever deemed necessary to match with a certain computer, and provided that it is exclusively used by the legitimate owner of the original copy.

6. Public performance of a dramatic, musical or dramatic musical, choreographic, pantomime works or any other work, created for dramatic performance, if:

- a- Religious ceremonies to the extent justified by the nature of these celebrations.
- b- Purposes of face-to-face learning activities in approved non-profit educational institutions, in classrooms or similar places dedicated to education.

In both cases, it is provided not to obtain, directly or indirectly, any financial gain.

7. Broadcasting organizations may, by their own means, for the purposes of use in their broadcasts, make a temporary recording of a work, provided that:

- a- The broadcasting organization is entitled to broadcast this work;
- b- The broadcasting organization destroys this recording after six months from execution thereof, unless the right owner agrees to extend this period, except for keeping one single copy of this recording for archive purposes.

Chapter VI Special provisions

Article (21):

Everyone who participates in making a joint work, whereas the part of each cannot be separated, shall be equally considered as right owner of such work, unless agreed otherwise in writing. In this case, any of them shall not individually exercise the copyrights unless agreed otherwise in writing. If the participation of all authors in the joint work concerns a different type of art, each of them shall have the right to separately use the part of his contribution, provided that such does not cause damage to the use of the joint work, unless agreed otherwise in writing.

If any of the authors passes away with no public successor, his part shall go to the other authors or their successors, unless agreed otherwise in writing.

Article (22):

The natural or legal person, who took the initiative to create the collective work and undertook to publish it under his name, shall be owner of the moral and economic rights of the work, unless agreed otherwise in writing.

Article (23):

The author, who completed the derivative work, shall be considered the owner of the moral and economic rights of such work, without prejudice to the rights of the author of the original work.

Article (24):

The following shall be considered as co-author of the audio-visual work:

- a. The author of the scenario, or the innovated written idea;
- b. The person who adapts an existing literary work to make it appropriate to audio-visual;
- c. The author of the script;
- d. The arranger of the music if specifically composed for the work;
- e. The director if he actually supervised the realization of the work;
- f. If the work was extracted or taken out of another existing one, the author of the previous work shall be considered as co-author of the new one.

Article (25):

Without prejudices to the right of the author of the literal or music portion to publish his work in a way different from publishing the audio-visual work – unless otherwise agreed upon in writing – the co-authors rights in the audio-visual work shall be as follows:

a- Where the author of a literary work or musical work has licensed the creation of a derivative screenplay or audiovisual work, that authorization shall be deemed to include the authorization to publicly perform the derivative work, unless the license specifically provides otherwise.

b- Where one of the participants in making an audio-visual work abstained to finish his part, the other co-authors may use the part which he made, without prejudice to any rights derived from his participation in the creation.

c- The producer of the audio-visual work shall represent the authors of this work and be entitled to exercise all of the economic rights, except for the composers of musical works, in the use of their rights of this work, unless agreed otherwise in writing.

Chapter VII Term of Protection of the Economic Rights and Neighboring Rights

First: Term of protection of the Economic rights

Article (26):

The term of protection for the economic copyrights, stipulated under this law, shall be the life of the author and seventy years starting from the beginning of the Gregorian calendar year following the year of his death.

Article (27):

The economic rights of authors of joint works shall be protected for their life and seventy years starting from the beginning of the Gregorian calendar year following the year of the death of the last surviving author.

Article (28):

The economic rights of the audio-visual works and collective works shall be protected for ninety-five years starting from the first day of the Gregorian calendar year following the year during which these works were legally published the first time, and if such works were not published during twenty-five years starting from the date they were completed, the economic rights of these works shall be protected for one hundred twenty years starting from the first day of the Gregorian calendar year following their creation.

Article (29):

The economic rights of the works published anonymously or under a pseudonym, shall be protected for ninety-five years starting from the first day of the Gregorian calendar year following the year during which these works were legally published for the first time. If such works were not published during twenty-five years starting from the date of completion, the economic rights of these works shall be protected for one hundred twenty years starting from the first day of the Gregorian calendar year following their creation, and if the identity of the author is known or revealed during the mentioned period, the term of protection shall be according to the provisions of article (26, 27) according to circumstances.

Article (30):

The economic rights of the works of applied arts shall be protected for ninety-five years starting from the first day of the Gregorian calendar year following the year during which these works were legally published for the first time. If such works were not published during twenty-five years starting from the date of completion, the economic rights of these works shall be protected for one

hundred twenty years starting from the first day of the Gregorian calendar year following their creation.

Second: Term of protection of the neighboring rights

Article (31):

The economic rights of the performers shall be protected for ninety-five years starting from the first day of the Gregorian calendar year following the year during which the recorded performance was legally published for the first time. If such work was not published during twenty-five years starting from the date of completion, the economic rights of this work shall be protected for one hundred twenty years starting from the first day of the Gregorian calendar year following its creation.

Article (32):

The economic rights of the producers of sound recordings shall be protected for Ninety-five years starting from the first day of the Gregorian calendar year following the year during which the sound recording was legally published for the first time. If such sound recording was not published during twenty-five years starting from the date of completion, the economic rights of such work shall be protected for one hundred twenty years starting from the first day of the Gregorian calendar year following the creation of such sound recording.

Article (33):

The rights of broadcasting programs of the broadcasting organizations shall be protected for twenty years starting from the first day of the Gregorian calendar year following the year in which the program was broadcasted for the first time.

Chapter VIII Deposit

Article (34):

The right holder shall have the right, to deposit, at his own expenses, one copy of the work, performance, or phonogram with the Ministry, and such deposit is considered as presumption of ownership, and bylaws shall determine deposit system and the manner of publication. They also determine due fees, in accordance with prevailing financial regulations.

Chapter IX Collective Management of Economic Copyrights and Neighboring Rights

Article (35):

The authors and neighboring rights owners and their successors in interest shall have the option of authorizing one or more professional associations or other authorities to manage all or some of their economic rights, according to exclusive or non-exclusive authorizations, for a fee to be deducted by the association or authority from their dues according to the terms agreed upon in writing.

Article (36):

The associations and authorities, cited in the previous article, shall, unless otherwise agreed in writing, assume the following powers:

- a- Authorize others to use all or some of the economic rights of the work, performance or sound recording, and agree on a fee due for such use.
- b- Collection of the due fee and distribution thereof to the right owners, after deduction of the payment due to these associations and authorities for managing such rights.
- c- Any other powers under the entered agreement for managing such rights.

Article (37):

The management of the economic rights for authors and neighboring rights owners shall be only engaged by authorization of the Ministry. Bylaws shall specify regulations to obtain such authorization and the due fees in accordance with prevailing financial regulations.

Article (38):

The management of economic rights for authors and neighboring rights owners shall be subject to control and supervision of the Ministry. The associations and authorities involved in this activity shall keep records of the names of their members, status, rights authorized to be used, due fee and the period agreed upon, and shall allow authors, rights owners and their representatives to access their data and information registered in these records.

The Ministry shall withdraw the authorization in case of breaching, by such association or authority, the provisions of this law or the decisions issued in application of its provisions.

Article (39):

The organization of collective administration for the economic rights of the author and neighboring rights owners shall be in accordance with the bylaws.

Chapter X Prohibitions Related to Effective Technological Measures, Rights Management Information, and Retransmission of Television Signals

Article (40):

The following acts are prohibited:

- 1- The unauthorized circumvention of any effective technological measures
- 2- The manufacture, import, distribution, offering to the public, providing, or otherwise trafficking in devices, products, or components, or offering to the public or providing services that:
 - (i) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measure; or
 - (ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or
 - (iii) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure.
- 3- Committing either of the following acts without obtaining a written authorization from the rights owner:
 - (a) the removal or alteration of rights management information;
 - (b) the distribution or importation for distribution knowing that the rights management information has been removed or altered; or
 - (c) the distribution, importation for distribution, broadcast, communication or making available to the public copies of a work, performance, or sound recording knowing that rights management information has been removed or altered.In all cases the prohibited acts should be done knowingly or with reasonable grounds to know that they would induce, enable, facilitate, or conceal an infringement of any copyright or neighboring right.
4. Manufacturing, assembling, modifying, importing, exporting, selling, leasing, or otherwise distributing a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the written authorization of the lawful distributor of such signal.

5. Intentionally receiving, or further distributing a program-carrying signal that originated as an encrypted satellite signal knowing that it has been decoded without the written authorization of the lawful distributor of the signal.

Chapter XI Border Measures

Article (41):

1. Any of the right owners may, if he believes that copyright goods may be imported that involve a violation of any of the rights established under the provisions of this law, submit a written request to the Customs Authorities to stop customs clearance of such goods and prevent circulation thereof.

The request must enclose sufficient evidence to convince the Customs Authorities that the rights of the applicant are apparently violated, and the application shall contain sufficient information, which may reasonably be expected to be available to the applicant to allow the mentioned authority to reasonably identify the concerned goods. The unavailability of such information should not prevent resorting to taking these measures. The Customs Authorities shall process the application and notify the applicant in writing of its decision on his application within seven days from the date of submitting the application. The decision, to stop custom clearance, applies for a period of one year from the date of submission or for the remainder of the term of protection for the goods for which an action shall be taken, whichever is shorter, unless the applicant requests a shorter period.

The concerned customs authorities shall ask the applicant to provide an appropriate bond or equivalent guarantee enough to protect the defendant and the competent authorities, and to prevent abuse of the right to request the suspension of customs clearance. The bond shall be set at a level that does not unreasonably deter recourse to these procedures.

The concerned customs authorities shall, automatically and with no need to file a complaint or request by the right owner or by others, issue a decision to stop customs clearance on goods that are imported, in transit or prepared for export upon receipt to the customs area under its jurisdiction, where the authority concludes that the evidence is apparently sufficient to prove violation of any of the rights set forth in this law.

2. If the concerned customs authorities decide, in application of the provisions of this article, to stop customs clearance procedures, it shall:

- a. Notify the importer of goods and the right owner of the decision issued to stop customs clearance as soon as issued.
- b. Notify the right owner, upon his written request, of the names and addresses of the sender, consignor, and importer of goods, the recipient, and quantities.
- c. Allow the concerned persons to inspect the goods according to the customs procedures conducted in this respect.

In this case the right owner shall file a lawsuit about the cause of dispute before the competent court and report it to the concerned customs authority within a period not exceeding ten working days from the date of notification of the decision to stop customs clearance of such goods, otherwise the decision is considered void unless this authority or competent court decides to extend the deadline for a term not exceeding ten more days in other estimated cases.

3. The application to stop customs clearance, and assessing the bond value or the equivalent guarantee to be deposited by the applicant on the basis of the provisions of this article, and defining the storage sites and fees shall be in accordance with the rules and regulations stipulated by the bylaws and matching with the provisions of prevailing financial rules.

4. The provisions of this article do not apply to small quantities, with non-commercial nature, of works and sound recordings which are available among the personal belongings of passengers or sent in small parcels.

Chapter XII Preventive Measures

Article (42):

The competent court shall, upon the request of the holder of a protected right, under an order issued for a petition, order to take one, or more, of the following preventive measures:

- a. Prevent the violation of, or the prohibited action against, any right protected under this law.
- b. Stop violation of any right protected under this law.

- c. Sign the seizure of the copies of the work, subject to violation, as well as the materials used in making such copies.
- d. If the alleged violation is for public performance of a work, performance, or sound recording, stop the current show or ban it in the future.
- e. Limit income from illegal publishing or presentation decided by an expert, appointed by the court for such purpose, and sign the seizure of the income in all cases.

The Court may order the Petitioner to provide evidences available to him, that suggest violation of his rights, or committing the prohibited act, or that either of them is eminent, and any other information that it may deem necessary to enable competent authorities to execute the appropriate measure when issued.

The Court may oblige the petitioner to submit adequate bond or equivalent guarantee sufficient to protect the defendant and prevent abuse of the right. The bond value or an equivalent guarantee shall not be so high as to unreasonably deter recourse to these procedures.

The Court shall act on the petition expeditiously and within ten days from the date it is submitted.

The Court may issue an order on the petition in the absence of the defendant, where it is likely that delay in issuing an order may incur to the Plaintiff a damage which cannot be remedied, or in which evidences of infringement may be removed or destroyed, and in this case, the defendant shall be notified of the order without delay as soon as issued, and notification may be sent, when appropriate, immediately after implementation of the order. The defendant may file a grievance before the competent court within ten days from the day following the date of his notification.

The plaintiff shall submit the original dispute to the court within a period of fifteen days from the day following the date of issuance of the order on the appropriate procedure, or from the day following the date of his notification on rejecting the grievance submitted by the defendant; otherwise the taken procedure would be completely void.

Chapter XIII Civil and Administrative Procedures and Remedies

Article (43):

1 - Without prejudices to any other compensations prescribed by any other law, the Court shall order anyone convicted of committing acts of infringements against any of the financial rights of the Author or of the holders of Neighboring rights to pay to the rights holder the following:

- a) Compensations sufficient enough to cover for the damages to the right holder attributed to the infringement;
- b) The amount of profits gained by the infringer and attributed to the infringement, and which was not taken into consideration when estimating the compensations referred to in the previous paragraph.

For the implementation of the provisions of this paragraph, the right holder is each and every exclusive licensee, and also the unions and association representing the right holders, as per prevailing laws.

2 - Without prejudices to any other compensations prescribed by any other law, the Court shall order anyone convicted of committing any of the acts cited in Article (40) of this law to pay to the rights holder the following:

- a) Compensations sufficient enough to cover for the damages to the right holder attributed to the infringement;
- b) The amount of profits gained by the infringer and attributed to the infringement, and which was not taken into consideration when estimating the compensations referred to in the previous paragraph.

The provision of this paragraph does not apply to authorities entrusted with keeping documents, public libraries, documentation centers, and non-profit educational and scientific institutions. It also does not apply to non-commercial broadcasting corporations on acts committed in violation to the

provisions of paragraphs (1, 2, 3) of article (40) of this law, if they do not know, or have no strong reasons to know that their action is considered a violation of the provisions of this law.

3 - When estimating the compensation stated in paragraph (1) of this article, the Court must take into consideration the value of the infringed good or service, as estimated at the retail price determined by the right holder, or according to any other criterion he determines, provided that it is fair enough.

4 - Instead of the compensation prescribed by paragraphs (1, 2) of this article, the Court must order, for the right holder, and upon his request, the previously estimated legal compensation, provided it does not exceed the amount of Rials Ten Thousands for each act of infringement to cover for the damage to the rights holder as a result of acts of infringement. The Executive Regulations shall determine the amount of these compensations which must be capable of remedying the damages incurred.

5 - When estimating the amount of compensation prescribed in this article, the Court must consider the court fees and lawyers' charges spent by the right holder, except in exceptional circumstances as seen by the Court in view of the compensation demanded by the right holder.

Article (44):

In civil proceedings involving acts violating the provision of this law, the person whose name is indicated as the author, producer, performer, broadcasting entity, or publisher of the work, performance, broadcasting program, or sound recording in the usual manner shall be presumed, in the absence of proof to the contrary, to be such. It shall be presumed that, in the absence of proof to the contrary, the copyright or neighboring right subsists in such subject matter.

Article (45):

The competent civil court shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services.

Article (46):

The competent civil court shall have the authority to order the infringer to stop the infringement, including orders banning the export of infringed goods, banning the entry of imported goods to the trade channels after being customs cleared.

Article (47):

The concerned civil court shall have all the jurisdictions prescribed for a concerned criminal court under the two articles (53) and (54) of this law. The Public Prosecution shall assume the jurisdictions prescribed in Article (50) of this Law.

Article (48):

The concerned civil court shall determine the fees and remuneration of experts and specialists it may appoint to assume certain missions related to the lawsuit and such assessment must be proportionate with the volume and nature of the mission, and in a manner that does not deter recourse of such procedures.

Chapter XIV Criminal Procedures and Penalties**Article (49):**

The Public Prosecution shall assume criminal investigation on whatever crimes it becomes aware of that violate the provisions of this law, without the need of a complaint filed by the right owner, or his representative, or a request thereof from a concerned government agency.

Article (50):

The Public Prosecution may issue an order to seize goods suspected of involving violation of any of the protected rights, established under the provisions of this law, and other relevant materials and any assets traceable to the activity of violation or prohibited act, as well as any tools used in committing the crime and any documentary evidence related to the crime. Such orders need not individually identify the items subject to seizure, so long as they fall within general categories specified in the order.

Article (51):

In criminal proceedings involving acts violating the provision of this law, the person whose name is indicated as the author, producer, performer, broadcasting entity, or publisher of the work, performance, broadcasting program, or sound recording in the usual manner shall be presumed, in the absence of proof to the contrary, as such. It shall also be presumed that, in the absence of proof to the contrary, the copyright or neighboring right subsists in such subject matter.

Article (52):

Without prejudices to any more severe sanction provided under any other law, any person shall be punished by imprisonment from a minimum of three months up to a maximum of three years as well as monetary fines from a minimum of Two Thousand Rials up to a maximum of Ten Thousand Rials, or by either one, if that person performs one of the following acts:

- 1 - Sells, leases, or transacts a copy of work protected in accordance with the provisions of this law, without the consent of the right holder.
- 2 - Intentionally violates any of the protected moral or economic copyrights or neighboring rights protected by the provisions of this law.
- 3 - Intentionally violates any of the protected moral or economic copyrights or neighboring rights protected by the provisions of this law for the purpose of realizing commercial benefits or achieving private financial gains, or intentionally violates any of the author's rights even without meaning to, directly or indirectly realizing financial gains.
- 4 - Intentionally violates the economic right of a work in the Sultanate of Oman by its publication abroad, or offering it for further distribution, or export.
- 5 - Commits any of the prohibited actions prescribed in paragraphs (1, 2, 3) of Article (40) of this Law with the purpose of realizing commercial profits or private financial gain, unless the perpetrator was a non-profit public library, a document keeping agency, educational or scientific or cultural institution, or a non-commercial governmental broadcasting corporation.
- 6 - Knowingly traffics in counterfeit labels affixed or designed to be affixed to: a sound recording, a copy of a computer program, documentation or packaging for a computer program, or an audio-visual work.

- 7 - Knowingly traffics in counterfeit documentation or packaging for a computer program.
- 8 - Intentionally importing or exporting goods infringing the provisions of this law.
- 9 - Manufacturing, assembling, modifying, importing, exporting, selling, leasing, or otherwise distributing a tangible or intangible system or device, knowing or having reason to know that the device or system is primarily used in decoding an encrypted program-carrying satellite signal without the written authorization of the lawful distributor of such signal.
- 10 - Intentionally receives or further distributes an encrypted program-carrying satellite signal if he knowing or having reasons to know that it has been decoded without the written authorization of the lawful distributor of such signal.

In all cases, the punishment, both in its minimum and/or maximum limits, shall be doubled for repeating the offense, together with closure of the commercial establishment where the offense was committed, or banning of the activity, subject to the Court considerations.

In deciding the punishment, the Court must observe that the punishment should be severe enough to deter further offenses matching with the policy aiming at eliminating the infringer's economic gains.

Article (53):

Upon proofing the violation or intentionally committing the prohibited act, the court shall have the authority to order the forfeiture of any assets traceable to the infringing activity and shall, except in exceptional circumstances, order the forfeiture and destruction of all the pirated goods, and the materials and tools used in the infringing activity and destroy them at the expense of the convicted defendant, or to dispose of them outside the commercial channels should the destruction causes harms to the public health or the environment.

Article (54):

Without prejudice to any more severe sanction provided under any other law:

a) Any person shall be punished by imprisonment from a minimum of seven days up to a maximum of one month as well as monetary fines from a minimum of One Hundred Rials up to a maximum of One Thousand Rials, or by either one, if that person, any of the rivals, violates an order issued by the court pursuant to articles (45, 46) of this law.

b) Any person shall be punished by monetary fines from a minimum of One Hundred Rials up to a maximum of One Thousand Rials, if that person, be any of the rivals, their lawyers, experts, and other aides to the judges, violates an order issued by the court regarding protecting the secrecy of information submitted or exchanged during the proceedings.

Article (55):

The Magistrate Court shall keep a detailed account of all goods, materials, and other tools of which their destruction has been ordered in a crime committed in violation of the provisions of this law. The Enforcing Agency, at the request of the violated right owner, may temporarily delay executing the destruction order, where the materials could be used as evidence in a civil lawsuit.

Article (56):

Any person, who is injured by a violation of the provisions of this law, may exercise the civil remedies against the perpetrator, before the concerned criminal court.

Chapter XV General and Closing Provisions

Article (57):

The provisions of this Law shall apply to:

- a. Works, performances, and sound recordings of Omanis and foreigners, normal residents in the Sultanate, and broadcasting programs belonging to broadcasting organizations stationed in the Sultanate, or broadcasted from headquarters located inside the Sultanate.
- b. Works, performances, sound recordings, and broadcasting programs that have been produced in the Sultanate of Oman regardless of the citizenship or the residence of the producer.
- c. Works, performances, and sound recordings that are published for the first time in the Sultanate of Oman or in a foreign country and then published in the Sultanate within a period of thirty days starting from the date of publication abroad, regardless of the citizenship or place of residence of the authors.
- d. Audio-visual works where the headquarters of their producers or their residence is in the Sultanate of Oman.
- e. Architectural works that have been constructed in the Sultanate and other works of art, incorporated in a building, or any other facilities, located in the Sultanate.
- f. Authors, performers, producers of sound recordings, and broadcasting organizations, that are eligible for protection by virtue of and in accordance with any multilateral and bilateral international treaties and conventions, to which the Sultanate of Oman is a party or may become a party later.

Article (58):

The employees, appointed by a decision of the Minister of Justice, following agreement with the Minister, shall have the right to inspect, control and access related locations, to check on violations to the provisions of this law and its bylaws.

Article (59):

Enforcing the provisions of this law does not imply violating the provisions of the multilateral and bilateral international treaties and conventions, in which the Sultanate of Oman is a part or may become a part later, relevant to the copyrights and neighboring rights, which govern the rights of the citizens of member States or equivalent to them.

Article (60):

The provisions of this Law shall apply to all works, performances, sound recordings, and broadcasting programs that are produced or broadcasted before the date that was enforced, provided that they have fallen into public domain due to the expiry of the term of protection as prescribed in the cancelled law, or in the legislations prevailing in their country of origin.

Article (61):

The Ministry shall undertake the following powers:

- a. Alert authors and neighboring rights owners of their moral and economical rights.
- b. Amicably settle disputes that arise on any of the rights set forth in this law, if approved by the parties, and as detailed in the bylaws.
- c. Coordinate with the concerned authorities for the protection of copyrights and neighboring rights.
- d. Other powers set forth in this law or required to implement its provisions, as specified by the bylaws.

Article (62):

The publication of final judicial decisions in copyright cases, and administrative rulings of general application pertaining to the enforcement of copyright rights, shall be in the exigencies of public

interests, and consistent with the rules detailed in the bylaws. Posting in the Internet shall be considered as publication.

Article (63):

Without prejudices to the provisions of the referred telecommunications law, the provisions of this law shall apply on the service provider on violations he commits against its provisions or its bylaws.

Article (64):

Where no specific text covers in this law, provisions of the referred criminal procedures, civil and commercial procedures laws shall apply to referred criminal and civil proceedings, as circumstances imply.

31. Panama

Special System for the Collective Intellectual Property Rights of Indigenous Peoples

ACT 20 June 26, 2000 (Published in *Gaceta Oficial* (Official Gazette) No. 24,083 of June 27, 2000)
Concerning the Special System for the Collective Intellectual Property Rights of Indigenous Peoples, for the Protection and Defense of their Cultural Identity and Traditional Knowledge, and Setting out other Provisions THE LEGISLATIVE ASSEMBLY DECREES:

I. Chapter I Purpose

Article 1. The purpose of this Act is to protect the collective intellectual property rights and traditional knowledge of indigenous peoples in their creations, such as inventions, models, drawings and designs, innovations contained in the images, figures, symbols, graphics, stone carvings and other details; as well as the cultural elements of their history, music, art and traditional forms of artistic expression suitable for commercial use, via a special system to register, promote and market their rights, in order to highlight the social and cultural values of indigenous cultures and guarantee social justice for them.

Article 2. The customs, traditions, beliefs, spirituality, religion, worldview, expressions of folklore, artistic expressions, traditional knowledge and all other traditional forms of expression of indigenous peoples are part of their cultural heritage; they may not therefore be the subject of exclusive rights of any kind on the part of third parties that have not been authorized via the intellectual property system, such as copyright, industrial designs, marks, geographical indications and other indications, unless expressly requested by the indigenous peoples. Nevertheless, the rights recognized above shall be observed and unaffected pursuant to existing legislation.

II. Chapter II Items suitable for protection

Article 3. That worn by the Kuna, Ngöbe and Buglé, Emberá and Wounaán, Naso and Bri-bri peoples is hereby recognized as traditional indigenous dress, such as:

1. *Dule mor*. Consists of the combination of clothing with which Kuna men and women identify the culture, history and portrayal of their people. It is made up of the *morsan*, *saburedi*, *olassu* and *wini*.
2. *Jio*. Consists of the combination of clothing with which Embera and Wounaán men and women identify the culture, history and portrayal of their people. The women use the *wua* (*paruma*), *boró barí*, *dyidi dyidi*, *kondyita*, *neta*, *parata kerá*, *manía*, *sortija*, *kipará* (*jagua*), *kanchí*

(*achiote*) and *kera patura*. The men use the same pieces of clothing, except the *paruma*; men also use the *amburá* and *andíá* ear and chest coverings.

3. *Nahua*. Consists of the dress with which Ngöbe and Buglé women identify the culture, history and portrayal of their people. It is a one-piece, calf-length dress that is made of smooth, brightly coloured cloth and decorated with geometric appliqués of contrasting colours, and it includes a wide necklace made with beads.

The technical description of these traditional forms of dress shall be recorded in their respective registers.

Article 4. This Act recognizes the collective rights of indigenous peoples in their musical instruments, music, dances or performances, the oral and written expressions that are part of their traditions and make up their historical, cosmological and cultural expression.

Requests for registration of these collective rights shall be made by the respective Congresses or traditional indigenous authorities to the Directorate General of Registration of Industrial Property of the Ministry of Commerce and Industry, hereinafter DIGERPI, or to the National Copyright Directorate of the Ministry of Education, as appropriate, for approval and registration.

Article 5. The collective rights of indigenous peoples in their traditional artistic and work tools, as well as in the technique for their manufacture, expressed in national raw materials, through the elements of nature, their processing, preparation, combination of natural dyes, including the ivory palm and semi-precious wood (*cocobolo* and *nazareno*) carvings, traditional baskets, *nuchus*, beads, leather bags, and all other traditional cultural expressions of these peoples, are hereby recognized.

These rights shall be registered upon the request of indigenous general congresses or traditional authorities to the departments mentioned in the previous article.

Article 6. Those objects incurring protection that may be registered as set out in this Act are hereby designated collective rights of indigenous peoples, in order to protect their originality and authenticity.

III. Chapter III Registration of collective rights

Article 7. The *Departamento de Derechos Colectivos y Expresiones Folclóricas* (Department of Collective Rights and Expressions of Folklore), through which shall be granted, *inter alia*, the registration of the collective rights of indigenous peoples, is hereby created within DIGERPI.

This registration shall be requested by indigenous general congresses or traditional authorities to protect their dress, arts, music and any other traditional rights incurring protection.

The registration of the collective rights of indigenous peoples shall neither lapse nor have a fixed duration; application for such registration to DIGERPI shall not require the services of a lawyer and shall be exempt from all payment. Appeals against said registration shall be notified personally to the representatives of indigenous general congresses or traditional authorities.

Article 8. The provisions concerning collective and guarantee marks contained in Act 35 of 1996 shall be applicable to the present system, insofar as they do not infringe the rights recognized in the present Act.

Article 9. DIGERPI shall create the position of collective indigenous rights examiner, to protect the intellectual property and other traditional rights of indigenous peoples. This public servant shall be empowered to examine all applications made to DIGERPI in relation to the collective rights of indigenous peoples, to prevent registrations in violation of this Act.

IV. Chapter IV Promoting indigenous art and cultural expressions

Article 10. The arts, crafts, dress and other forms of cultural expression of indigenous peoples shall be the subject of promotion and encouragement by the National Directorate General of Crafts of the Ministry of Commerce and Industry.

The National Directorate General of Crafts or the Provincial Offices of said Ministry, with the consent of local indigenous authorities and upon request by the interested party, shall stamp, print or affix, free of charge, a certification on the work of art, item of dress, craft or other form protected by patent or copyright, which testifies to the fact that it was created using traditional indigenous methods and/or by indigenous hands. For this purpose, the office issuing the certification has the authorization to inspect the workshops, materials, finished products and processes used.

Article 11. The Ministry of Commerce and Industry shall do what is necessary for indigenous craftspeople to participate and exhibit their work in national and international exhibitions. The National Directorate General of Crafts shall contribute to the celebration of Indigenous Craftspeople Day under the auspices of the Ministry.

Article 12. In national and international presentations of Panamanian indigenous culture, the exhibition of indigenous people's dress, dances and traditions shall be mandatory.

Article 13. The Ministry of Education shall include content in the school curriculum referring to indigenous artistic expressions as an integral part of national culture.

Article 14. Competent public institutions shall be empowered to publicize and promote, in conjunction with indigenous general congresses and traditional authorities, the history, customs, values, and artistic and traditional expressions (including dress) of indigenous peoples as an integral part of national culture.

The exhibition and sale of indigenous crafts made by students shall be allowed at school fairs for the benefit of the students' education center.

V. Chapter V Use and Marketing Rights

Article 15. The right to use and market the art, crafts and other cultural expressions based on the traditional heritage of indigenous peoples must be governed by each people's rules for use, approved and registered with DIGERPI or with the National Copyright Department of the Ministry of Education, as the case may be.

Article 16. Folkloric dance troupes that give artistic performances on the national and international stage shall be hereby exempt from the previous article. Nevertheless, the natural or legal persons organizing artistic performances to highlight all or part of an indigenous culture shall include members of said culture in the performance. If it is not possible to hire these persons, the authorization of the respective indigenous general congress or traditional authority shall be required in order to preserve the authenticity of the performance. The National Institute of Culture shall enforce the fulfillment of this obligation.

VI. Chapter VI Prohibitions and Sanctions

Article 17. Subparagraph j is hereby added to Article 439 of the Administrative Code (*Código Fiscal*), as follows:

Article 439. Shall be importable into the Republic foreign goods from all countries except those listed below: ...

j. Non-original products, be they printed, embroidered, woven or any other article that imitates, completely or partly, the workmanship of the traditional dress of indigenous peoples, as well as said peoples' musical instruments and traditional works of art.

Article 18. Paragraph 7 is hereby added to Article 16 of Act 30 of 1984, as follows:

Article 16. The following acts shall constitute the crime of smuggling: ...

1. The hidden, undeclared possession, without transitional authorization under customs law, of non-original products that imitate, in whole or in part, the workmanship of the traditional dress of the indigenous peoples of Panama, as well as the materials and musical instruments, and works of art or crafts of said peoples.

Article 19. A paragraph is hereby added to Article 55 of Act 30 of 1984, as follows:

Article 55. ...

When the customs offense involves goods that imitate products belonging to the indigenous peoples of Panama, of the fifty per cent (50%) of the fine that is not transferable to the informers and apprehending parties mentioned in the present article, fifty per cent (50%) shall go to the National Treasury, and the other fifty per cent (50%) shall be earmarked for the investment expenses of the corresponding indigenous reserve or people, according to the process established by law.

Article 20. The industrial reproduction, in whole or in part, of traditional dress and other collective rights recognized in this Act is hereby prohibited, unless authorized by the Ministry of Commerce and Industry, with the prior express consent of indigenous general congresses and councils, and as long as it does not contravene the provisions of this Act.

Article 21. In cases not covered by customs law and industrial property law, infringements of this Act shall be sanctioned, according to severity, with fines from one thousand Balboas (B/.1,000.00) to five thousand Balboas (B/.5,000.00). For repeat offenses, the fine shall be double the above amount. The sanctions established in this standard shall be enforced in addition to the confiscation and destruction of the products used to commit the infringement.

Of the fines levied pursuant to this Article, fifty per cent (50%) shall go to the National Treasury, and the other fifty per cent (50%) shall be earmarked for the investment expenses of the corresponding indigenous region or people.

Article 22. The following authorities shall be empowered to apprehend the transgressors of this Act, take preventive measures with regard to the respective products and articles, and hand them over to the appropriate officials:

1. The Chief of the region or the Governor of the province, in cases where the former does not exist.
2. The General Assembly of the corresponding indigenous region. For this purpose, the traditional authorities may request the help and co-operation of the Police Force.

Article 23. Small-scale non-indigenous craftspeople who earn their living producing, reproducing and selling replicas of Ngöbe and Buglé indigenous crafts and who reside in the districts of Tolé, Remedios, San Félix and San Lorenzo in the province of Chiriquí shall be exempt from the present Act. These small-scale non-indigenous craftspeople may manufacture and market these replicas, but they may not claim the collective rights of indigenous peoples recognized by this Act.

VII. Chapter VII Final provisions

Article 24. The non-indigenous Panamanian craftspeople who, at the time of entry into force of this Act, earn their living producing, reproducing and selling replicas of traditional indigenous crafts and are registered with the National Directorate General of Crafts, shall be allowed to carry out such activities with the consent of traditional indigenous authorities.

The Ministry of Commerce and Industry, after checking the date of registration and the date on which the craftsperson's license was issued, shall grant the corresponding permits and

authorizations. However, non-indigenous Panamanian craftspeople shall affix, print, write or indicate, in a clear manner, that the work is a replica, as well as its place of origin.

Article 25. For the purposes of protection, use and marketing of the collective intellectual property rights of the indigenous peoples covered by this Act, the indigenous artistic and traditional forms of expression from other countries shall enjoy the same benefits established by said Act, provided they are the result of reciprocal international agreements with said countries.

Article 26. This Act shall be regulated by the Executive via the Ministry of Commerce and Industry.

Article 27. The present Act adds paragraph 7 to Article 16, and a paragraph to Article 55 of Act 30 of November 8, 1984, as well as subparagraph j to Article 439 of the Administrative Code, and repeals all contrary provisions.

Article 28. This Act shall come into effect upon enactment.

FOR COMMUNICATION AND EXECUTION

Comparison of Panamanian legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	Article 1. The purpose of this Act is to protect the collective intellectual property rights and traditional knowledge of indigenous peoples in their creations, such as inventions, models, drawings and designs, innovations contained in the images, figures, symbols, graphics, stone carvings and other details; as well as the cultural elements of their history, music, art and traditional forms of artistic expression suitable for commercial use, via a special system to register, promote and market their rights, in order to highlight the social and cultural values of indigenous cultures and guarantee social justice for them.	
2. definition of terms- key terms used in the draft	<p>Article 2. The customs, traditions, beliefs, spirituality, religion, worldview, expressions of folklore, artistic expressions, traditional knowledge and all other traditional forms of expression of indigenous peoples are part of their cultural heritage; they may not therefore be the subject of exclusive rights of any kind on the part of third parties that have not been authorized via the intellectual property system, such as copyright, industrial designs, marks, geographical indications and other indications, unless expressly requested by the indigenous peoples. Nevertheless, the rights recognized above shall be observed and unaffected pursuant to existing legislation.</p> <p>II. Chapter II Items suitable for protection</p> <p>Article 3. That worn by the Kuna, Ngöbe and Buglé, Emberá and Wounaán, Naso and Bri-bri peoples is hereby recognized as traditional indigenous dress, such as:</p> <p>4. <i>Dule mor.</i> Consists of the combination of clothing with which Kuna men and women identify the culture, history and portrayal of their people. It is made up of the <i>morsan</i>, <i>saburedi</i>, <i>olassu</i> and <i>wini</i>.</p> <p>5. <i>Jio.</i> Consists of the combination of clothing with which Embera and Wounaán men and women identify the culture, history and portrayal of their people. The women use the <i>wua</i> (<i>paruma</i>), <i>boró bari</i>, <i>dyidi dyidi</i>, <i>kondyita</i>, <i>neta</i>, <i>parata kerá</i>, <i>manía</i>, <i>sortija</i>, <i>kipará</i> (<i>jagua</i>), <i>kanchí</i> (<i>achiote</i>) and <i>kera patura</i>. The men use the same pieces of clothing, except the <i>paruma</i>; men also use the <i>amburá</i> and <i>andíá</i> ear and chest coverings.</p>	

	<p>6. <i>Nahua</i>. Consists of the dress with which Ngöbe and Buglé women identify the culture, history and portrayal of their people. It is a one-piece, calf-length dress that is made of smooth, brightly coloured cloth and decorated with geometric appliques of contrasting colours, and it includes a wide necklace made with beads.</p> <p>The technical description of these traditional forms of dress shall be recorded in their respective registers.</p> <p>Article 4. This Act recognizes the collective rights of indigenous peoples in their musical instruments, music, dances or performances, the oral and written expressions that are part of their traditions and make up their historical, cosmological and cultural expression.</p> <p>Requests for registration of these collective rights shall be made by the respective Congresses or traditional indigenous authorities to the Directorate General of Registration of Industrial Property of the Ministry of Commerce and Industry, hereinafter DIGERPI, or to the National Copyright Directorate of the Ministry of Education, as appropriate, for approval and registration.</p> <p>Article 5. The collective rights of indigenous peoples in their traditional artistic and work tools, as well as in the technique for their manufacture, expressed in national raw materials, through the elements of nature, their processing, preparation, combination of natural dyes, including the ivory palm and semi-precious wood (<i>cocobolo</i> and <i>nazareno</i>) carvings, traditional baskets, <i>nuchus</i>, beads, leather bags, and all other traditional cultural expressions of these peoples, are hereby recognized.</p> <p>These rights shall be registered upon the request of indigenous general congresses or traditional authorities to the departments mentioned in the previous article.</p> <p>Article 6. Those objects incurring protection that may be registered as set out in this Act are hereby designated collective rights of indigenous peoples, in order to protect their originality and authenticity.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Article 10. The arts, crafts, dress and other forms of cultural expression of indigenous peoples shall be the subject of promotion and encouragement by the National Directorate General of Crafts of the Ministry of Commerce and Industry.</p> <p>The National Directorate General of Crafts or the Provincial Offices of said Ministry, with the consent of local indigenous authorities and upon request by the interested party, shall stamp, print or affix, free of charge, a certification on the work of art, item of dress, craft or other form protected by patent or copyright, which testifies to the fact that it was created using traditional indigenous methods and/or by indigenous hands. For this purpose, the office issuing the certification has the authorization to inspect the workshops, materials, finished products and processes used.</p>	
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>Article 15. The right to use and market the art, crafts and other cultural expressions based on the traditional heritage of indigenous peoples must be governed by each people's rules for use, approved and registered with DIGERPI or with the National Copyright Department of the Ministry of Education, as the case may be.</p> <p>Article 16. Folkloric dance troupes that give artistic performances on the national and international stage shall be hereby exempt from the previous article. Nevertheless, the natural or legal persons organizing artistic performances to highlight all or part of an indigenous culture shall include members of said culture in the performance. If it is not possible to hire these persons, the authorization of the respective indigenous general congress or traditional authority shall be required in order to preserve the authenticity of the performance. The National Institute of Culture shall enforce the fulfillment of this obligation.</p>	

6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building		
7. Sanctions and remedies- dealing with breaches	<p>Article 17. Subparagraph j is hereby added to Article 439 of the Administrative Code (<i>Código Fiscal</i>), as follows:</p> <p>Article 439. Shall be importable into the Republic foreign goods from all countries except those listed below: ...</p> <p>j. Non-original products, be they printed, embroidered, woven or any other article that imitates, completely or partly, the workmanship of the traditional dress of indigenous peoples, as well as said peoples' musical instruments and traditional works of art.</p> <p>Article 18. Paragraph 7 is hereby added to Article 16 of Act 30 of 1984, as follows:</p> <p>Article 16. The following acts shall constitute the crime of smuggling: ...</p> <p>1. The hidden, undeclared possession, without transitional authorization under customs law, of non-original products that imitate, in whole or in part, the workmanship of the traditional dress of the indigenous peoples of Panama, as well as the materials and musical instruments, and works of art or crafts of said peoples.</p> <p>Article 19. A paragraph is hereby added to Article 55 of Act 30 of 1984, as follows:</p> <p>Article 55. ...</p> <p>When the customs offense involves goods that imitate products belonging to the indigenous peoples of Panama, of the fifty per cent (50%) of the fine that is not transferable to the informers and apprehending parties mentioned in the present article, fifty per cent (50%) shall go to the National Treasury, and the other fifty per cent (50%) shall be earmarked for the investment expenses of the corresponding indigenous reserve or people, according to the process established by law.</p> <p>Article 20. The industrial reproduction, in whole or in part, of traditional dress and other collective rights recognized in this Act is hereby prohibited, unless authorized by the Ministry of Commerce and Industry, with the prior express consent of indigenous general congresses and councils, and as long as it does not contravene the provisions of this Act.</p> <p>Article 21. In cases not covered by customs law and industrial property law, infringements of this Act shall be sanctioned, according to severity, with fines from one thousand Balboas (B/.1,000.00) to five thousand Balboas (B/.5,000.00). For repeat offenses, the fine shall be double the above amount. The sanctions established in this standard shall be enforced in addition to the confiscation and destruction of the products used to commit the infringement.</p> <p>Of the fines levied pursuant to this Article, fifty per cent (50%) shall go to the National Treasury, and the other fifty per cent (50%) shall be earmarked for the investment expenses of the corresponding indigenous region or people.</p> <p>Article 22. The following authorities shall be empowered to apprehend the transgressors of this Act, take preventive measures with regard to the respective products and articles, and hand them over to the appropriate officials:</p> <p>The Chief of the region or the Governor of the province, in cases where the former does not exist.</p> <p>The General Assembly of the corresponding indigenous region. For this purpose, the traditional authorities may request the help and co-operation of the Police Force.</p>	
8. competent authority- establishment of a body to administer the legislation, deal with education, model	<p>Article 7. The <i>Departamento de Derechos Colectivos y Expresiones Folclóricas</i> (Department of Collective Rights and Expressions of Folklore), through which shall be granted, <i>inter alia</i>, the registration of the collective rights of indigenous peoples, is hereby created within DIGERPI.</p>	

clauses, codes of conduct, databases	<p>This registration shall be requested by indigenous general congresses or traditional authorities to protect their dress, arts, music and any other traditional rights incurring protection.</p> <p>The registration of the collective rights of indigenous peoples shall neither lapse nor have a fixed duration; application for such registration to DIGERPI shall not require the services of a lawyer and shall be exempt from all payment. Appeals against said registration shall be notified personally to the representatives of indigenous general congresses or traditional authorities.</p> <p>Article 8. The provisions concerning collective and guarantee marks contained in Act 35 of 1996 shall be applicable to the present system, insofar as they do not infringe the rights recognized in the present Act.</p> <p>Article 9. DIGERPI shall create the position of collective indigenous rights examiner, to protect the intellectual property and other traditional rights of indigenous peoples. This public servant shall be empowered to examine all applications made to DIGERPI in relation to the collective rights of indigenous peoples, to prevent registrations in violation of this Act.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p>Article 23. Small-scale non-indigenous craftspeople who earn their living producing, reproducing and selling replicas of Ngöbe and Buglé indigenous crafts and who reside in the districts of Tolé, Remedios, San Félix and San Lorenzo in the province of Chiriquí shall be exempt from the present Act. These small-scale non-indigenous craftspeople may manufacture and market these replicas, but they may not claim the collective rights of indigenous peoples recognized by this Act.</p> <p>Article 24. The non-indigenous Panamanian craftspeople who, at the time of entry into force of this Act, earn their living producing, reproducing and selling replicas of traditional indigenous crafts and are registered with the National Directorate General of Crafts, shall be allowed to carry out such activities with the consent of traditional indigenous authorities.</p> <p>The Ministry of Commerce and Industry, after checking the date of registration and the date on which the craftsperson's license was issued, shall grant the corresponding permits and authorizations. However, non-indigenous Panamanian craftspeople shall affix, print, write or indicate, in a clear manner, that the work is a replica, as well as its place of origin.</p>	
11. disclosure-permits, databases, disclosure in intellectual property applications	<p>Article 11. The Ministry of Commerce and Industry shall do what is necessary for indigenous craftspeople to participate and exhibit their work in national and international exhibitions. The National Directorate General of Crafts shall contribute to the celebration of Indigenous Craftspeople Day under the auspices of the Ministry.</p> <p>Article 12. In national and international presentations of Panamanian indigenous culture, the exhibition of indigenous people's dress, dances and traditions shall be mandatory.</p> <p>Article 13. The Ministry of Education shall include content in the school curriculum referring to indigenous artistic expressions as an integral part of national culture.</p> <p>Article 14. Competent public institutions shall be empowered to publicize and promote, in conjunction with indigenous general congresses and traditional authorities, the history, customs, values, and artistic and traditional expressions (including dress) of indigenous peoples as an integral part of national culture.</p> <p>The exhibition and sale of indigenous crafts made by students shall be allowed at</p>	

	school fairs for the benefit of the students' education center.	
12. interaction with existing laws- avoiding conflict with other laws	Article 27. The present Act adds paragraph 7 to Article 16, and a paragraph to Article 55 of Act 30 of November 8, 1984, as well as subparagraph j to Article 439 of the Administrative Code, and repeals all contrary provisions.	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with	Article 25. For the purposes of protection, use and marketing of the collective intellectual property rights of the indigenous peoples covered by this Act, the indigenous artistic and traditional forms of expression from other countries shall enjoy the same benefits established by said Act, provided they are the result of reciprocal international agreements with said countries.	
14. transitional provisions- existing uses		

32. Paraguay

Law No. 3.051 on National Culture 2006

Copyright and Related Rights (Neighboring Rights), Enforcement of IP and Related Laws, Traditional Cultural Expressions, Traditional Knowledge

Spanish text only

33. Peru

LAW N° 27811 (published in the Official Journal "El Peruano" on August 10, 2002)

LAW INTRODUCING A PROTECTION REGIME FOR THE COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES DERIVED FROM BIOLOGICAL RESOURCES

TITLE I

RECOGNITION OF THE RIGHTS OF INDIGENOUS PEOPLES IN THEIR COLLECTIVE KNOWLEDGE

Article 1.- Recognition of rights

The Peruvian State recognizes the rights and power of indigenous peoples and communities to dispose of their collective knowledge as they see fit.

TITLE II

DEFINITIONS

Article 2.- Definitions

For the purposes of this legislation:

(a) **"Indigenous peoples"** means aboriginal peoples holding rights that existed prior to the formation of the Peruvian State, maintaining a culture of their own, occupying a specific territorial area and

recognizing themselves as such. These include peoples in voluntary isolation or with which contact has not been made, and also rural and native communities. The term “indigenous” shall encompass, and may be used as a synonym of, “aboriginal,” “traditional,” “ethnic,” “ancestral,” “native” or other such word form.

(b) **“Collective knowledge”** means the accumulated, transgenerational knowledge evolved by indigenous peoples and communities concerning the properties, uses and characteristics of biological diversity. The intangible components referred to in Decision 391 of the Commission of the Cartagena Agreement include this type of collective knowledge.

(c) **“Prior informed consent”** means authorization given under this protection regime, by the representative organization of the indigenous peoples possessing collective knowledge and in accordance with provisions recognized by them, for the conduct of a particular activity that entails access to and use of the said collective knowledge, subject to the provision of sufficient information on the purposes, risks or implications of the said activity, including any uses that might be made of the knowledge, and where applicable on its value.

(d) **“License contract for the use of collective knowledge”** means an express agreement concluded between the organization of indigenous peoples possessing collective knowledge and a third party that incorporates terms and conditions for the use of the said collective knowledge. Such contracts may constitute an annex to the contract mentioned in Article 34 of Decision 391 of the Commission of the Cartagena Agreement introducing the Common Regime on Access to Genetic Resources.

(e) **“Biological resources”** means genetic resources, organisms or parts thereof, populations or any other kinds of biotic component of ecosystems that are of real or potential value or use to mankind.

TITLE III

SCOPE OF PROTECTION

Article 3.- Scope of protection afforded by this legislation

This legislation establishes a special protection regime for the collective knowledge of indigenous peoples that is connected with biological resources.

Article 4.- Exceptions to the regime

This regime shall not affect the traditional exchange between indigenous peoples of the collective knowledge protected under this regime.

TITLE IV

OBJECTIVES

Article 5.- Objectives of the regime

The following shall be the objectives of this regime:

(a) To promote respect for and the protection, preservation, wider application and development of the collective knowledge of indigenous peoples;

(b) To promote the fair and equitable distribution of the benefits derived from the use of that collective knowledge;

(c) To promote the use of the knowledge for the benefit of the indigenous peoples and mankind in general;

(d) To ensure that the use of the knowledge takes place with the prior informed consent of the indigenous peoples;

(e) To promote the strengthening and development of the potential of the indigenous peoples and of the machinery traditionally used by them to share and

distribute collectively generated benefits under the terms of this regime;
(f) To avoid situations where patents are granted for inventions made or developed on the basis of collective knowledge of the indigenous peoples of Peru without any account being taken of that knowledge as prior art in the examination of the novelty and inventiveness of the said inventions.

TITLE V GENERAL PRINCIPLES

Article 6.- Conditions of access to collective knowledge

Those interested in having access to collective knowledge for the purposes of scientific, commercial and industrial application shall apply for the prior informed consent of the representative organizations of the indigenous peoples possessing collective knowledge. The organization of the indigenous peoples whose prior informed consent has been applied for shall inform the greatest possible number of indigenous peoples possessing the knowledge that it is engaging in negotiations and shall take due account of their interests and concerns, in particular those connected with their spiritual values or religious beliefs. The information supplied shall be confined to the biological resource to which the collective knowledge under negotiation relates in order to safeguard the other party's interest in keeping the details of the negotiation secret.

Article 7.- Access for the purposes of commercial or industrial application

In the event of access for the purposes of commercial or industrial application, a license agreement shall be signed in which terms are provided that ensure due reward for the said access and in which the equitable distribution of the benefits deriving therefrom is guaranteed.

Article 8.- Percentage accruing to the Fund for the Development of Indigenous Peoples

A percentage which shall not be less than ten per cent of the value, before tax, of the gross sales resulting from the marketing of goods developed on the basis of collective knowledge shall be set aside for the Fund of the Development of Indigenous Peoples provided for in Articles 37 *et seq.* The parties may agree on a greater percentage according to the degree of direct use or incorporation of the said knowledge in the resulting end product and the degree to which the said knowledge contributed to the reduction of the cost of research and development work on derived products, among other things.

Article 9.- Role of present generations

The present generations of the indigenous peoples shall preserve, develop and administer their collective knowledge for the benefit of future generations as well as for their own benefit.

Article 10.- Collective nature of the knowledge

The protective knowledge protected under this regime shall be that which belongs to an indigenous people and not to particular individuals forming part of that people. It may belong to two or more indigenous peoples. The rights shall be independent of those that may come into being within the indigenous peoples, which may have recourse to their traditional systems for the purposes of the distribution of benefits.

Article 11.- Collective knowledge and cultural heritage

Collective knowledge forms part of the cultural heritage of indigenous peoples.

Article 12.- Inalienability and indefeasibility of rights

Because they form part of the cultural heritage, the rights of indigenous peoples in their collective knowledge shall be inalienable and indefeasible.

Article 13.- Collective knowledge in the public domain

For the purposes of this regime, it shall be understood that collective knowledge is in the public domain when it has been made accessible to persons other than the indigenous peoples by mass communication media such as publication or, when the properties, uses or characteristics of a biological resource are concerned, where it has become extensively known outside the confines of the indigenous peoples and communities. In cases where the collective knowledge has passed into the public domain within the previous 20 years, a percentage of the value, before tax, of the gross sales resulting from the marketing of the goods developed on the basis of that knowledge shall be set aside for the Fund for the Development of Indigenous Peoples provided for in Articles 37 *et seq.*

Article 14.- Representatives of indigenous peoples

For the purposes of this regime, indigenous peoples shall be represented by their representative organizations, due regard being had to the traditional forms of organization of the indigenous peoples.

TITLE VI

REGISTERS OF THE COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES

Article 15.- Registers of the collective knowledge of indigenous peoples

The collective knowledge of indigenous peoples may be entered in three types of register:

- (a) Public National Register of Collective Knowledge of Indigenous Peoples;
- (b) Confidential National Register of Collective Knowledge of Indigenous Peoples;
- (c) Local Registers of Collective Knowledge of Indigenous Peoples.

The Public National Register of Collective Knowledge of Indigenous Peoples and the Confidential National Register of Collective Knowledge of Indigenous Peoples shall be under the responsibility of INDECOPI.

Article 16.- Purpose of the Registers of Collective Knowledge

The purposes of the Registers of Collective Knowledge of Indigenous Peoples shall be the following, as the case may be:

- (a) to preserve and safeguard the collective knowledge of indigenous peoples and their rights therein;
- (b) to provide INDECOPI with such information as enables it to defend the interests of indigenous peoples where their collective knowledge is concerned.

Article 17.- Character of the Public National Register of Collective Knowledge of Indigenous Peoples

The Public National Register of Collective Knowledge of Indigenous Peoples shall contain such collective knowledge as is in the public domain. INDECOPI shall register the collective knowledge that is in the public domain in the Public National Register of Collective Knowledge of Indigenous Peoples.

Article 18.- Character of the Confidential National Register of Collective Knowledge of Indigenous Peoples

The Confidential National Register of Collective Knowledge of Indigenous Peoples may not be consulted by third parties.

Article 19.- Registration at the request of indigenous peoples

Any people may, through its representative organization, apply to INDECOPI for the registration of collective knowledge possessed by it in the Public National Register or in the Confidential National Register.

Article 20.- Applications for the registration of collective knowledge

Applications for the registration of collective knowledge of indigenous peoples shall be filed with INDECOPI through the representative organizations of the said peoples, and shall contain the following:

- (a) Identity of the indigenous people applying for registration of its knowledge;
- (b) Identity of the representative;
- (c) Designation of the biological resource to which the collective knowledge relates, it being possible to use the indigenous name;
- (d) A mention of the use or uses that are made of the biological resource concerned;
- (e) A clear and full description of the collective knowledge to be registered;
- (f) The instrument embodying the agreement of the indigenous people to the registration of the knowledge.

The application shall be accompanied by a sample or specimen of the biological resource to which the collective knowledge to be registered relates. In cases where the sample or specimen is difficult to transport or manipulate, the indigenous people applying for registration may request INDECOPI to exempt it from the submission of the said sample or specimen and to allow it to file instead photographs that allow the characteristics of the biological resource to which the collective knowledge relates to be ascertained. The said sample or specimen, or as the case may be the said photographs, shall enable INDECOPI to identify unmistakably the biological resource concerned and to enter the scientific name thereof in the file.

Article 21.- Processing of the application

INDECOPI shall satisfy itself, within a period of ten days after the filing of the application, that the said application contains all the data specified in the foregoing Article. Where anything has been omitted, the indigenous people applying for registration shall be served notice to complete the application within a period of six months, which period may be renewed at its request, with a warning that otherwise the application shall be declared abandoned. Once INDECOPI has satisfied itself that the application contains all the data specified in the foregoing Article, it shall proceed to register the collective knowledge in question.

Article 22.- Sending of representatives of INDECOPI

In order to make the registration of collective knowledge of indigenous peoples easier, INDECOPI may send duly accredited representatives to the various indigenous peoples for the purpose of gathering the information necessary for the prosecution of such applications for registration as they may wish to file.

Article 23.- Obligation on INDECOPI to send the information contained in the Public National Register to the main patent offices of the world

With a view to its opposing pending patent applications, disputing granted patents or otherwise intervening in the grant of patents for goods or processes produced or developed on the basis of

collective knowledge, INDECOPI shall send the information entered in the Public National Register to the main patent offices of the world in order that it may be treated as prior art in the examination of the novelty and inventiveness of patent applications.

Article 24.- Local registers of collective knowledge of indigenous peoples

Indigenous peoples may organize local registers of collective knowledge in accordance with their practices and customs. INDECOPI shall lend technical assistance in the organization of such registers at the request of the indigenous peoples.

TITLE VII

LICENSING

Article 25.- Compulsory registration of license contracts

License contracts shall be entered in a register kept for the purpose by INDECOPI.

Article 26.- Compulsory written form for license contracts

The representative organization of indigenous peoples in possession of collective knowledge may license third parties to use the said collective knowledge only by written contract, in the native language and in Spanish, for a renewable period of not less than one year or more than three years.

Article 27.- Contents of the license contract

For the purposes of this regime, contracts shall contain at least the following clauses:

- (a) Identification of the parties;
- (b) A description of the collective knowledge to which the contract relates;
- (c) A statement of the compensation that the indigenous peoples receive for the use of their collective knowledge; such compensation shall include an initial monetary or other equivalent payment for its sustainable development, and a percentage of not less than five per cent of the value, before tax, of the gross sales resulting from the marketing of the goods developed directly and indirectly on the basis of the said collective knowledge, as the case may be;
- (d) The provision of sufficient information on the purposes, risks and implications of the said activity, including any uses of the collective knowledge and its value where applicable;
- (e) The obligation on the licensee to inform the licensor periodically, in general terms, of progress in the research on and industrialization and marketing of the goods developed from the collective knowledge to which the license relates;
- (f) The obligation on the licensee to contribute to the improvement of the ability of the indigenous peoples to make use of the collective knowledge relating to its biological resources.

Where the contract embodies a safeguard obligation, it shall expressly so state. INDECOPI shall not register contracts that do not conform to the provisions of this Article.

Article 28.- Applications for registration of license contracts. Confidentiality of the contract

Applications for the registration of a license contract filed with INDECOPI shall enclose the following:

- (a) Identity of the indigenous peoples party to the contract and their representatives;
- (b) Identity of the other parties to the contract and their representatives;
- (c) A copy of the contract;
- (d) The instrument evidencing agreement to enter into a license contract on the part of the indigenous peoples party to the contract.

The contract may not be consulted by third parties except with the express permission of both parties.

Article 29.- Processing of the application

INDECOPI shall satisfy itself within ten days of the filing of the application that it contains all the data specified in the foregoing Article. If anything has been omitted it shall serve notice on the party who applied for the registration to complete the application within a period of six months, which period may be renewed at his request, with the warning that otherwise the application shall be declared abandoned.

Article 30.- Verification of the contents of the contract

With a view to the registration of a license INDECOPI shall, within 30 days of the filing of the application, satisfy itself that the clauses mentioned in Article 27 have been included.

Article 31.- Additional information on environmental impact

INDECOPI shall request additional information, either at the request of a party or *ex officio*, in cases where it considers that there is risk of the balance of the environment being affected in the territories inhabited by the indigenous peoples as a result of the contract filed for registration. Registration of the contract shall be refused if such a risk is detected and where the parties fail to undertake to do what is necessary to avoid it to the extent required by the national authority responsible for environmental concerns.

Article 32.- Scope of licenses for use

The licensing of the use of the collective knowledge of an indigenous people shall not prevent others from using or licensing the same knowledge, nor shall it affect the right of present and future generations to continue to use and develop collective knowledge.

Article 33.- Prohibition of sublicensing

Sublicensing shall be allowed only with the express permission of the representative organization of the indigenous peoples that granted the license.

TITLE VIII

CANCELLATION OF REGISTRATION

Article 34.- Causes of cancellation

INDECOPI may, either *ex officio* or at the request of a party, cancel a registration of collective knowledge or a license, after the parties concerned have been heard, where:

- (a) the registration or license has been granted in violation of any of the provisions of this regime;
- (b) it is shown that the essential data contained in the application are false or inaccurate.

Cancellation actions arising out of this Article may be initiated at any time.

Article 35.- Request for cancellation

The request for cancellation of a registration shall record or enclose, as the case may be, the following:

- (a) Identity of the party requesting cancellation;
- (b) Identity of the representative or agent, if any;
- (c) Registration affected by the cancellation;
- (d) A statement of the legal grounds for the action;
- (e) Evidence substantiating the grounds for cancellation invoked;
- (f) Address at which notice was served on the owner of the registration whose cancellation is requested;

- (g) Where appropriate, copies of whatever powers of attorney are necessary;
- (h) Copies of the application and its enclosures for the owner of the registration.

Article 36.- Processing of the request

The request for cancellation shall be notified to the owner of the registration, who shall be allowed a period of 30 days to make his rebuttal. After that period, INDECOPI shall settle the issue with or without the relevant rebuttal.

TITLE IX

FUND FOR THE DEVELOPMENT OF INDIGENOUS PEOPLES

Article 37.- Purpose of the Fund for the Development of Indigenous Peoples

The Fund for the Development of Indigenous Peoples and Communities is hereby created for the purpose of contributing to the comprehensive development of indigenous peoples through the financing of projects and other activities. The Fund shall enjoy technical, economic, administrative and financial autonomy.

Article 38.- Access to the resources for the Fund for the Development of Indigenous Peoples and Communities

Indigenous peoples have the right to draw on the resources of the Fund for the Development of Indigenous Peoples through their representative organizations for the purpose of development projects, subject to prior evaluation and approval by the Administrative Committee.

Article 39.- Administration of the Fund for the Development of Indigenous Peoples

The Fund for the Development of Indigenous Peoples shall be administered by five members of representative organizations of indigenous peoples and two members of the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, who shall constitute the Administrative Committee. The Committee shall to the extent possible use the machinery traditionally used — by indigenous peoples — for allocating and distributing collectively-generated benefits. The Administrative Committee shall give the representative organizations of indigenous peoples quarterly information on funds received.

Article 40.- Obligation on members of the Administrative Committee to submit sworn statements

The members of the Administrative Committee shall, on taking up their duties and annually thereafter, submit a sworn statement of assets and income to the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples.

Article 41.- Resources of the Fund for the Development of Indigenous Peoples

The resources of the Fund for the Development of Indigenous Peoples shall be derived from the State budget, international technical cooperation, donations, the percentage of economic benefits referred to in Articles 8 and 13, the fines referred to in Article 62 and other sources.

TITLE X

PROTECTION CONFERRED BY THIS REGIME

Article 42.- Rights of indigenous peoples possessing collective knowledge

Indigenous peoples possessing collective knowledge shall be protected against the disclosure, acquisition or use of that collective knowledge without their consent and in an improper manner provided that the collective knowledge is not in the public domain.

It shall likewise be protected against unauthorized disclosure where a third party has legitimately had access to collective knowledge covered by a safeguard clause.

Article 43.- Actions for violation of rights of indigenous peoples

Indigenous peoples possessing collective knowledge may bring infringement actions against persons who violate the rights specified in the foregoing Article. An infringement action shall also be permissible where there is an immediate danger of such violation. Infringement actions may be brought *ex officio* by order of INDECOPI.

Article 44.- Reversal of the burden of proof

Where infringement of the rights of an indigenous people possessing specific collective knowledge is alleged, the burden of proof shall be on the defendant.

Article 45.- Actions claiming ownership and indemnification

The representative organizations of indigenous peoples possessing collective knowledge may bring the actions claiming ownership and indemnification that are available to them under the laws in force against a third party who, in a manner contrary to the provisions of this regime, has directly or indirectly made use of the said collective knowledge.

Article 46.- Settlement of disputes between indigenous peoples

In order to settle such disputes as may arise between indigenous peoples in connection with the implementation of this regime, including those concerning the compliance, on the part of the indigenous people that has negotiated a license contract for the use of its collective knowledge, with the provisions of the second paragraph of Article 6 of this Law, they may have recourse to the law of equity and to their traditional forms of dispute settlement, it being possible to apply to a higher-ranking indigenous organization for mediation.

TITLE XI

INFRINGEMENT ACTIONS

Article 47.- Contents of the complaint

Indigenous peoples wishing to bring an infringement action shall submit an application, through their representative organization, to the Office of Inventions and New Technology, which shall contain:

- (a) the identity of the representative organization of the indigenous peoples bringing the action, and that of their representatives;
- (b) the identity and address of the party committing the infringement;
- (c) a mention of the registration number assigned to the rights of the complainant or, failing that, a description of the collective knowledge and a mention of the biological resource to which the collective knowledge at issue relates;
- (d) an account of the facts constituting the infringement, with a mention of the place and of the means actually or presumably used, and any other relevant information;
- (e) a submission or offer of proof;
- (f) an express mention of the provisional measure applied for.

Article 48.- Processing of the complaint

Once the complaint has been accepted for processing, it shall be conveyed to the defendant so that the latter may submit his rebuttal. The period for the filing of the rebuttal shall be five years

following notification, on the expiry of which the administrative authority of INDECOPI shall declare the defendant who has failed to file it to be in contempt. In the case of *ex officio* procedures, the period for the filing of rebuttals shall start on the date on which the administrative authority notifies the defendant of the circumstances being investigated, and also the nature and description of the alleged infringement. The administrative authority of INDECOPI may make such inspections and investigations as it considers necessary before sending the said notification. The complaint may be notified at the same time as an inspection is made, either at the request of the plaintiff or *ex officio*, where the administrative authority of INDECOPI considers such a step judicious.

Article 49.- Provisional measures

At any stage in the proceedings, either *ex officio* or at the request of a party, the administrative authority of INDECOPI may, within the limits of its relevant competence, order one or more of the following provisional measures in order to ensure compliance with the final ruling:

- (a) Cessation of the acts that gave rise to the action;
- (b) The seizure, confiscation or immobilization of the goods produced using the collective knowledge to which the action relates;
- (c) The adoption of the measures necessary to ensure that the customs authorities prevent the entry into the country and the departure from it of goods produced using the collective knowledge to which the action relates;
- (d) The temporary closure of the defendant's premises;
- (e) Any other measure whose purpose is to avoid the occurrence of any prejudice deriving from the act to which the action relates, or to bring about the cessation of that act.

The administrative authority of INDECOPI may, if it sees fit, order a provisional measure different from that requested by the interested party. The party against whom a provisional measure is ordered may file a request with INDECOPI to have it modified or lifted where new evidence comes to light that justifies such a step.

Article 50.- Failure to comply with a provisional measure

Where the party required to comply with a provisional measure ordered by the administrative authority of INDECOPI fails to do so, he shall be automatically subjected to a sanction not exceeding the maximum of the permitted fine, for the gradation of which due regard shall be had to the criteria used by the administrative authority of INDECOPI for handing down final rulings. That fine shall be paid within a period of five days of notification, on the expiry of which enforced collection shall be ordered. Where the party under obligation persists in failing to comply, he shall be subjected to further fines successively doubling, without limitation, the amount of the previous fine imposed until the provisional measure ordered is complied with, and without prejudice to the possibility of the party responsible being reported to the Public Prosecutor with a view to the latter ordering the appropriate criminal proceedings. The fines imposed shall not prevent the administrative authority of INDECOPI from imposing a different fine or other sanction at the end of the proceedings.

Article 51.- Conciliation

At any stage in the proceedings, until such time as the complaint is entertained, the competent administrative authority of INDECOPI may summon the parties to a conciliation hearing. If both parties arrive at an agreement on the complaint, an instrument shall be drawn up recording the agreement concerned, which will have the effect of an out-of-court settlement. The administrative

authority of INDECOPI may in any event continue with the proceedings *ex officio* if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

Article 52.- Alternative dispute settlement machinery

At any stage in the proceedings, until such time as the complaint is entertained, the parties may submit to arbitration, mediation or conciliation or mixed dispute settlement arrangements conducted by third parties. Where the parties decide to submit to arbitration, they may immediately sign the appropriate arbitration convention in accordance with the rules that the governing body of INDECOPI shall have approved for the purpose. The administrative authority of INDECOPI may in any event continue with the proceedings *ex officio* if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.

Article 53.- Evidence

The parties may submit the following forms of evidence:

- (a) Expert opinion;
- (b) Documents, including all kinds of written or printed matter, photocopies, plans, tables, drawings, x-rays, cinema film and other audio and video reproductions, computer-based communications in general and other subject matter and property that encompasses, contains or represents any fact or human activity or the result thereof;
- (c) Inspection.

Evidence different from that mentioned may be submitted as an exceptional measure, but only if, in the judgment of the competent administrative authority, it is of particular importance to the settlement of the case.

Article 54.- Inspection

In the event of an inspection being necessary, it shall be conducted by the competent administrative authority of INDECOPI. Whenever an inspection is conducted, a record shall be taken which shall be signed by the party in charge of it and also by the interested parties or those representing them, or by the appointed representative of the establishment concerned. Where the defendant, his representative or the appointed representative of the establishment refuses to sign, that fact shall be recorded.

Article 55.- Assistance of the National Police

The administrative authority of INDECOPI may, both for the administration of evidence and for the making of representations, request the intervention of the National Police, without prior notification being necessary, in order to ensure that it is able to carry out its functions.

Article 56.- Administration of evidence. Insufficiency of evidence

Where, on inspection of the information submitted, the administrative authority of INDECOPI considers it necessary to procure stronger evidence, it shall serve notice on the parties to respond to the comments made within the period that the said authority shall specify, or shall administer *ex officio* such evidence as it considers necessary. The parties shall respond to the comments in writing, and shall submit such supporting evidence as they consider appropriate.

Article 57.- Oral report

The administrative authority of INDECOPI shall notify the parties that the case is ready for settlement. The parties may request the conduct of an oral proceeding before the said authority within five days. The acceptance or refusal of the said request shall be at the discretion of the administrative authority of INDECOPI, depending on the importance and implications of the case.

Article 58.- Calculation basis for fines

The amounts of the fines imposed by the administrative authority of INDECOPI shall be calculated on the basis of the tax unit (UIT) applicable on the day of voluntary payment, or on the date on which enforced collection takes place.

Article 59.- Reduction of the fine

The fine applicable shall be reduced by 25 per cent where the infringer pays the amount thereof prior to the expiry of the period for appealing against the ruling that concluded the proceedings, provided that no appeal against the ruling has been filed.

Article 60.- Expenses for administration of evidence

The cost of experts' reports, the administration of evidence and inspections, and other costs arising from the conduct of the proceedings shall be initially borne by INDECOPI. In all cases the final rulings shall determine whether the costs should be borne by one or other of the parties and refunded to INDECOPI in addition to the payment of any fine that may have been imposed.

Article 61.- Register of sanctions

INDECOPI shall keep a register of sanctions imposed for the information of the public and also in order to detect instances of recidivism.

Article 62.- Sanctions

Violations of the rights of indigenous peoples possessing collective knowledge shall give rise to the imposition of a fine, without prejudice to such measures as may be ordered to cause the infringing acts to cease or to prevent them from being committed.

The fines that may be imposed shall be up to 150 tax units. The imposition and gradation of fines shall be determined according to the economic benefit secured by the infringer, the economic prejudice caused the indigenous peoples and communities and the conduct of the infringer throughout the proceedings. Recidivism shall be considered an aggravating circumstance, and the sanction applicable shall therefore not be less severe than the previous one. Where the defendant fails to comply within a period of three days with the terms of the ruling that concludes a proceeding, he shall be subjected to a sanction not exceeding the maximum of the fine allowed, according the criteria referred to in the foregoing Article, and enforced collection shall be ordered. Where the defendant persists in failing to comply, the fine imposed may be successively doubled without limitation until such time as compliance occurs without prejudice to the possibility of the party responsible being reported to the Public Prosecutor with a view to the latter initiating the appropriate criminal proceedings.

TITLE XII**COMPETENT NATIONAL AUTHORITY AND INDIGENOUS KNOWLEDGE PROTECTION BOARD****Article 63.- Competent National Authority**

The Office of Inventions and New Technology of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) shall be competent to hear and settle in the first instance all matters concerning the protection of the collective knowledge of indigenous peoples. The Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI shall hear and settle all appeals in the second and last administrative instance.

Article 64.- Functions of the Office of Inventions and New Technology

The following shall be the functions of the Office of Inventions and New Technology of INDECOPI:

- (a) To maintain the Register of Collective Knowledge of Indigenous Peoples and keep it up to date;
- (b) To maintain the Register of Licenses for the Use of Collective Knowledge and keep it up to date;
- (c) To assess the validity of contracts for the licensing of collective knowledge of indigenous peoples, taking due account of the opinion of the Indigenous Knowledge Protection Board;
- (d) To perform such other functions as may be entrusted to it under these provisions.

Article 65.- Indigenous Knowledge Protection Board

The Indigenous Knowledge Protection Board shall be composed of five persons specialized in the subject, three of them designated by the representative organizations of indigenous peoples and two designated by the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, whose membership of the Board shall be honorary in character.

Article 66.- Functions of the Indigenous Knowledge Protection Board

The following shall be the functions of the Indigenous Knowledge Protection Board:

- (a) To monitor and oversee the implementation of this protection regime;
- (b) To support the Administrative Committee of the Fund for the Development of Indigenous Peoples and the Office of Inventions and New Technology of INDECOPI in the performance of their functions;
- (c) To give its opinion on the validity of contracts for the licensing of the collective knowledge of indigenous peoples;
- (d) To give advice and assistance to the representatives of indigenous peoples who so request regarding matters connected with this regime, and in particular in the planning and implementation of projects within the framework thereof;
- (e) To supervise the Administrative Committee of the Fund for the Development of Indigenous Peoples in the exercise of its functions.

To that end it may demand of the Administrative Committee any kind of information relating to the Fund's administration, order inspections or audits, examine its books and documents and appoint a representative who shall attend its meetings with the right to speak but not to vote. The decision ordering the conduct of an audit shall be accompanied by a statement of reasons. It shall be empowered to impose sanctions on them, including warnings, temporary suspension from the exercise of their functions or final dismissal from their positions, where they infringe the provisions of this regime or regulations under it, or where they are implicated in cases that affect the interests of indigenous peoples and communities, without prejudice to any criminal sanctions or civil actions that may be appropriate.

TITLE` XIII**ADMINISTRATIVE APPEALS****Article 67.- Request for review**

A request for the review of decisions handed down by the Office of Inventions and New Technology may be filed within 15 days following the notification thereof, and shall be accompanied by new evidence.

Article 68.- Appeal

An appeal, which shall be solely against a decision concluding proceedings that is handed down by the Office of Inventions and New Technology, may be lodged within 15 days following notification of

the said decision. An appeal may not be lodged against first-instance rulings that impose provisional or precautionary measures.

Article 69.- Substantiation of appeals

Appeals shall be lodged when the challenge relies on a different interpretation of the evidence produced, or where purely legal questions are involved, the latter having to be substantiated before the Office of Inventions and New Technology. On verification of the requirements laid down in this Article and in the Single Text on Administrative Procedure (TUPA) of INDECOPI, the Office shall allow the appeal and raise the case to the second administrative level.

TITLE XIV

PROCEDURE BEFORE THE TRIBUNAL

Article 70.- Second-instance procedure

When the file on the case has been received by the Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI, the appeal shall be conveyed to the other party, who shall be required to submit his rebuttal within a period of 15 days.

Article 71.- Evidence and oral report

No evidence shall be allowed other than documents. Nevertheless, any of the parties may ask to speak, and shall be required to specify whether matters of fact or of law will be raised. The grant or refusal of the request shall be at the discretion of the Chamber of the Tribunal. Where the parties are summoned to an oral proceeding, it shall be conducted in the presence of those who attend it.

COMPLEMENTARY PROVISIONS

FIRST.- Independence of current intellectual property legislation.

This special protection regime is independent of that provided for in Decisions 345 of the Commission of the Cartagena Agreement and 486 of the Commission of the Andean Community, in Legislative Decrees Nos. 822 and 823 and in Supreme Decree No. 008- 96-ITINCI.

SECOND.- Submission of the license contract as a requirement for obtaining a patent.

Where a patent is applied for in respect of goods or processes produced or developed on the basis of collective knowledge, the applicant shall be obliged to submit a copy of the license contract as a prior requirement for the grant of the rights concerned, except where the collective knowledge concerned is in the public domain. Failure to comply with this obligation shall be a cause of refusal or invalidation, as the case may be, of the patent concerned.

TRANSITIONAL PROVISION

SOLE PROVISION.- Composition of the Administrative Committee of the Fund for the Development of Indigenous Peoples.

The designation of the members of the Administrative Committee of the Fund for the Development of Indigenous Peoples shall be the responsibility of the National Commission for the Andean, Amazonian and Afro- Peruvian Peoples, and shall be coordinated with the representative organizations of the indigenous peoples.

FINAL PROVISION

SOLE PROVISION.- Rules of the Fund for the Development of Indigenous Peoples.

Within a period of 90 days following the entry into force of this Law, the representative organizations of indigenous peoples shall submit draft rules to the Administrative Committee of the Fund for the Development of Indigenous Peoples, referred to in Article 39 of this Law, for approval. The said rules shall govern the organization and operation of the Fund for the Development of Indigenous Peoples, and shall determine the maximum amount or percentage of the Fund's resources that may be used to defray expenses incurred in its administration

Comparison of Peruvian law with common provisions under the Nagoya Protocol and WIPO draft agreements

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	<p>Article 1.- Recognition of rights The Peruvian State recognizes the rights and power of indigenous peoples and communities to dispose of their collective knowledge as they see fit.</p> <p>Article 5.- Objectives of the regime The following shall be the objectives of this regime: (a) To promote respect for and the protection, preservation, wider application and development of the collective knowledge of indigenous peoples; (b) To promote the fair and equitable distribution of the benefits derived from the use of that collective knowledge; (c) To promote the use of the knowledge for the benefit of the indigenous peoples and mankind in general; (d) To ensure that the use of the knowledge takes place with the prior informed consent of the indigenous peoples; (e) To promote the strengthening and development of the potential of the indigenous peoples and of the machinery traditionally used by them to share and distribute collectively generated benefits under the terms of this regime; (f) To avoid situations where patents are granted for inventions made or developed on the basis of collective knowledge of the indigenous peoples of Peru without any account being taken of that knowledge as prior art in the examination of the novelty and inventiveness of the said inventions.</p>	
2. definition of terms- key terms used in the draft	<p>TITLE II DEFINITIONS</p> <p>Article 2.- Definitions For the purposes of this legislation: (a) "Indigenous peoples" means aboriginal peoples holding rights that existed prior to the formation of the Peruvian State, maintaining a culture of their own, occupying a specific territorial area and recognizing themselves as such. These include peoples in voluntary isolation or with which contact has not been made, and also rural and native communities. The term "indigenous" shall encompass, and may be used as a synonym of, "aboriginal," "traditional," "ethnic," "ancestral," "native" or other such word form. (b) "Collective knowledge" means the accumulated, transgenerational knowledge evolved by indigenous peoples and communities concerning the properties, uses and characteristics of biological diversity. The intangible components referred to in Decision 391 of the Commission of the Cartagena Agreement include this type of collective knowledge. (c) "Prior informed consent" means authorization given under this protection regime, by the representative organization of the indigenous peoples possessing collective knowledge and in accordance with provisions recognized by them, for the conduct of a particular activity that entails access to and use of the said collective knowledge, subject to the provision of sufficient information on the purposes, risks or implications of the said activity, including any uses that might be made of the knowledge, and where applicable on its value. (d) "License contract for the use of collective knowledge" means an express agreement</p>	

	<p>concluded between the organization of indigenous peoples possessing collective knowledge and a third party that incorporates terms and conditions for the use of the said collective knowledge. Such contracts may constitute an annex to the contract mentioned in Article 34 of Decision 391 of the Commission of the Cartagena Agreement introducing the Common Regime on Access to Genetic Resources.</p> <p>(e) “Biological resources” means genetic resources, organisms or parts thereof, populations or any other kinds of biotic component of ecosystems that are of real or potential value or use to mankind.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Article 3.- Scope of protection afforded by this legislation This legislation establishes a special protection regime for the collective knowledge of indigenous peoples that is connected with biological resources.</p>	
4. beneficiaries- who should benefit	<p>Article 9.- Role of present generations The present generations of the indigenous peoples shall preserve, develop and administer their collective knowledge for the benefit of future generations as well as for their own benefit.</p> <p>Article 10.- Collective nature of the knowledge The protective knowledge protected under this regime shall be that which belongs to an indigenous people and not to particular individuals forming part of that people. It may belong to two or more indigenous peoples. The rights shall be independent of those that may come into being within the indigenous peoples, which may have recourse to their traditional systems for the purposes of the distribution of benefits.</p> <p>Article 11.- Collective knowledge and cultural heritage Collective knowledge forms part of the cultural heritage of indigenous peoples.</p> <p>Article 12.- Inalienability and indefeasibility of rights Because they form part of the cultural heritage, the rights of indigenous peoples in their collective knowledge shall be inalienable and indefeasible.</p> <p>Article 14.- Representatives of indigenous peoples For the purposes of this regime, indigenous peoples shall be represented by their representative organizations, due regard being had to the traditional forms of organization of the indigenous peoples.</p> <p>FINAL PROVISION SOLE PROVISION.- Rules of the Fund for the Development of Indigenous Peoples. Within a period of 90 days following the entry into force of this Law, the representative organizations of indigenous peoples shall submit draft rules to the Administrative Committee of the Fund for the Development of Indigenous Peoples, referred to in Article 39 of this Law, for approval. The said rules shall govern the organization and operation of the Fund for the Development of Indigenous Peoples, and shall determine the maximum amount or percentage of the Fund’s resources that may be used to defray expenses incurred in its administration</p>	
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>Article 6.- Conditions of access to collective knowledge Those interested in having access to collective knowledge for the purposes of scientific, commercial and industrial application shall apply for the prior informed consent of the representative organizations of the indigenous peoples possessing collective knowledge. The organization of the indigenous peoples whose prior informed consent has been applied for shall inform the greatest possible number of indigenous peoples possessing the knowledge that it is engaging in negotiations and shall take due account of their interests and concerns, in particular those connected with their spiritual values or religious beliefs. The information supplied shall be confined to the biological resource to which the collective knowledge under negotiation relates in order to safeguard the other party’s interest in keeping the details of the negotiation secret.</p> <p>Article 7.- Access for the purposes of commercial or industrial application In the event of access for the purposes of commercial or industrial application, a license agreement shall be signed in which terms are provided that ensure due reward for the said access and in which the equitable distribution of the benefits deriving therefrom is</p>	

	<p>guaranteed.</p> <p>TITLE VII LICENSING</p> <p>Article 25.- Compulsory registration of license contracts License contracts shall be entered in a register kept for the purpose by INDECOPI.</p> <p>Article 26.- Compulsory written form for license contracts The representative organization of indigenous peoples in possession of collective knowledge may license third parties to use the said collective knowledge only by written contract, in the native language and in Spanish, for a renewable period of not less than one year or more than three years.</p> <p>Article 27.- Contents of the license contract For the purposes of this regime, contracts shall contain at least the following clauses: (a) Identification of the parties; (b) A description of the collective knowledge to which the contract relates; (c) A statement of the compensation that the indigenous peoples receive for the use of their collective knowledge; such compensation shall include an initial monetary or other equivalent payment for its sustainable development, and a percentage of not less than five per cent of the value, before tax, of the gross sales resulting from the marketing of the goods developed directly and indirectly on the basis of the said collective knowledge, as the case may be; (d) The provision of sufficient information on the purposes, risks and implications of the said activity, including any uses of the collective knowledge and its value where applicable; (e) The obligation on the licensee to inform the licensor periodically, in general terms, of progress in the research on and industrialization and marketing of the goods developed from the collective knowledge to which the license relates; (f) The obligation on the licensee to contribute to the improvement of the ability of the indigenous peoples to make use of the collective knowledge relating to its biological resources. Where the contract embodies a safeguard obligation, it shall expressly so state. INDECOPI shall not register contracts that do not conform to the provisions of this Article.</p> <p>Article 28.- Applications for registration of license contracts. Confidentiality of the contract Applications for the registration of a license contract filed with INDECOPI shall enclose the following: (a) Identity of the indigenous peoples party to the contract and their representatives; (b) Identity of the other parties to the contract and their representatives; (c) A copy of the contract; (d) The instrument evidencing agreement to enter into a license contract on the part of the indigenous peoples party to the contract. The contract may not be consulted by third parties except with the express permission of both parties.</p> <p>Article 29.- Processing of the application INDECOPI shall satisfy itself within ten days of the filing of the application that it contains all the data specified in the foregoing Article. If anything has been omitted it shall serve notice on the party who applied for the registration to complete the application within a period of six months, which period may be renewed at his request, with the warning that otherwise the application shall be declared abandoned.</p> <p>Article 30.- Verification of the contents of the contract With a view to the registration of a license INDECOPI shall, within 30 days of the filing of the application, satisfy itself that the clauses mentioned in Article 27 have been included.</p> <p>Article 31.- Additional information on environmental impact INDECOPI shall request additional information, either at the request of a party or <i>ex officio</i>, in cases where it considers that there is risk of the balance of the environment being affected in the territories inhabited by the indigenous peoples as a result of the contract filed for registration. Registration of the contract shall be refused if such a risk is detected and where the parties fail to undertake to do what is necessary to avoid it to the extent required by the national authority responsible for environmental concerns.</p> <p>Article 32.- Scope of licenses for use The licensing of the use of the collective knowledge of an indigenous people shall not</p>	
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	<p>prevent others from using or licensing the same knowledge, nor shall it affect the right of present and future generations to continue to use and develop collective knowledge.</p> <p>Article 33.- Prohibition of sublicensing Sublicensing shall be allowed only with the express permission of the representative organization of the indigenous peoples that granted the license.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>Article 8.- Percentage accruing to the Fund for the Development of Indigenous Peoples A percentage which shall not be less than ten per cent of the value, before tax, of the gross sales resulting from the marketing of goods developed on the basis of collective knowledge shall be set aside for the Fund of the Development of Indigenous Peoples provided for in Articles 37 <i>et seq.</i> The parties may agree on a greater percentage according to the degree of direct use or incorporation of the said knowledge in the resulting end product and the degree to which the said knowledge contributed to the reduction of the cost of research and development work on derived products, among other things.</p> <p>Article 13.- Collective knowledge in the public domain For the purposes of this regime, it shall be understood that collective knowledge is in the public domain when it has been made accessible to persons other than the indigenous peoples by mass communication media such as publication or, when the properties, uses or characteristics of a biological resource are concerned, where it has become extensively known outside the confines of the indigenous peoples and communities. In cases where the collective knowledge has passed into the public domain within the previous 20 years, a percentage of the value, before tax, of the gross sales resulting from the marketing of the goods developed on the basis of that knowledge shall be set aside for the Fund for the Development of Indigenous Peoples provided for in Articles 37 <i>et seq.</i></p>	
7. Sanctions and remedies- dealing with breaches	<p>TITLE VIII CANCELLATION OF REGISTRATION</p> <p>Article 34.- Causes of cancellation INDECOPI may, either <i>ex officio</i> or at the request of a party, cancel a registration of collective knowledge or a license, after the parties concerned have been heard, where: (a) the registration or license has been granted in violation of any of the provisions of this regime; (b) it is shown that the essential data contained in the application are false or inaccurate. Cancellation actions arising out of this Article may be initiated at any time.</p> <p>Article 35.- Request for cancellation The request for cancellation of a registration shall record or enclose, as the case may be, the following: (a) Identity of the party requesting cancellation; (b) Identity of the representative or agent, if any; (c) Registration affected by the cancellation; (d) A statement of the legal grounds for the action; (e) Evidence substantiating the grounds for cancellation invoked; (f) Address at which notice was served on the owner of the registration whose cancellation is requested; (g) Where appropriate, copies of whatever powers of attorney are necessary; (h) Copies of the application and its enclosures for the owner of the registration.</p> <p>Article 36.- Processing of the request The request for cancellation shall be notified to the owner of the registration, who shall be allowed a period of 30 days to make his rebuttal. After that period, INDECOPI shall settle the issue with or without the relevant rebuttal.</p> <p>TITLE X PROTECTION CONFERRED BY THIS REGIME</p> <p>Article 42.- Rights of indigenous peoples possessing collective knowledge Indigenous peoples possessing collective knowledge shall be protected against the disclosure, acquisition or use of that collective knowledge without their consent and in an improper manner provided that the collective knowledge is not in the public domain.</p> <p>It shall likewise be protected against unauthorized disclosure where a third party has legitimately had access to collective knowledge covered by a safeguard clause.</p>	

	<p>Article 43.- Actions for violation of rights of indigenous peoples Indigenous peoples possessing collective knowledge may bring infringement actions against persons who violate the rights specified in the foregoing Article. An infringement action shall also be permissible where there is an immediate danger of such violation. Infringement actions may be brought <i>ex officio</i> by order of INDECOPI.</p> <p>Article 44.- Reversal of the burden of proof Where infringement of the rights of an indigenous people possessing specific collective knowledge is alleged, the burden of proof shall be on the defendant.</p> <p>Article 45.- Actions claiming ownership and indemnification The representative organizations of indigenous peoples possessing collective knowledge may bring the actions claiming ownership and indemnification that are available to them under the laws in force against a third party who, in a manner contrary to the provisions of this regime, has directly or indirectly made use of the said collective knowledge.</p> <p>Article 46.- Settlement of disputes between indigenous peoples In order to settle such disputes as may arise between indigenous peoples in connection with the implementation of this regime, including those concerning the compliance, on the part of the indigenous people that has negotiated a license contract for the use of its collective knowledge, with the provisions of the second paragraph of Article 6 of this Law, they may have recourse to the law of equity and to their traditional forms of dispute settlement, it being possible to apply to a higher-ranking indigenous organization for mediation.</p> <p>TITLE XI INFRINGEMENT ACTIONS</p> <p>Article 47.- Contents of the complaint Indigenous peoples wishing to bring an infringement action shall submit an application, through their representative organization, to the Office of Inventions and New Technology, which shall contain: (a) the identity of the representative organization of the indigenous peoples bringing the action, and that of their representatives; (b) the identity and address of the party committing the infringement; (c) a mention of the registration number assigned to the rights of the complainant or, failing that, a description of the collective knowledge and a mention of the biological resource to which the collective knowledge at issue relates; (d) an account of the facts constituting the infringement, with a mention of the place and of the means actually or presumably used, and any other relevant information; (e) a submission or offer of proof; (f) an express mention of the provisional measure applied for.</p> <p>Article 48.- Processing of the complaint Once the complaint has been accepted for processing, it shall be conveyed to the defendant so that the latter may submit his rebuttal. The period for the filing of the rebuttal shall be five years following notification, on the expiry of which the administrative authority of INDECOPI shall declare the defendant who has failed to file it to be in contempt. In the case of <i>ex officio</i> procedures, the period for the filing of rebuttals shall start on the date on which the administrative authority notifies the defendant of the circumstances being investigated, and also the nature and description of the alleged infringement. The administrative authority of INDECOPI may make such inspections and investigations as it considers necessary before sending the said notification. The complaint may be notified at the same time as an inspection is made, either at the request of the plaintiff or <i>ex officio</i>, where the administrative authority of INDECOPI considers such a step judicious.</p> <p>Article 49.- Provisional measures At any stage in the proceedings, either <i>ex officio</i> or at the request of a party, the administrative authority of INDECOPI may, within the limits of its relevant competence, order one or more of the following provisional measures in order to ensure compliance with the final ruling: (a) Cessation of the acts that gave rise to the action; (b) The seizure, confiscation or immobilization of the goods produced using the collective knowledge to which the action relates; (c) The adoption of the measures necessary to ensure that the customs authorities prevent the entry into the country and the departure from it of goods produced using the collective knowledge to which the action relates; (d) The temporary closure of the defendant's premises;</p>	
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	<p>(e) Any other measure whose purpose is to avoid the occurrence of any prejudice deriving from the act to which the action relates, or to bring about the cessation of that act.</p> <p>The administrative authority of INDECOPi may, if it sees fit, order a provisional measure different from that requested by the interested party. The party against whom a provisional measure is ordered may file a request with INDECOPi to have it modified or lifted where new evidence comes to light that justifies such a step.</p> <p>Article 50.- Failure to comply with a provisional measure Where the party required to comply with a provisional measure ordered by the administrative authority of INDECOPi fails to do so, he shall be automatically subjected to a sanction not exceeding the maximum of the permitted fine, for the gradation of which due regard shall be had to the criteria used by the administrative authority of INDECOPi for handing down final rulings. That fine shall be paid within a period of five days of notification, on the expiry of which enforced collection shall be ordered. Where the party under obligation persists in failing to comply, he shall be subjected to further fines successively doubling, without limitation, the amount of the previous fine imposed until the provisional measure ordered is complied with, and without prejudice to the possibility of the party responsible being reported to the Public Prosecutor with a view to the latter ordering the appropriate criminal proceedings. The fines imposed shall not prevent the administrative authority of INDECOPi from imposing a different fine or other sanction at the end of the proceedings.</p> <p>Article 51.- Conciliation At any stage in the proceedings, until such time as the complaint is entertained, the competent administrative authority of INDECOPi may summon the parties to a conciliation hearing. If both parties arrive at an agreement on the complaint, an instrument shall be drawn up recording the agreement concerned, which will have the effect of an out-of-court settlement. The administrative authority of INDECOPi may in any event continue with the proceedings <i>ex officio</i> if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.</p> <p>Article 52.- Alternative dispute settlement machinery At any stage in the proceedings, until such time as the complaint is entertained, the parties may submit to arbitration, mediation or conciliation or mixed dispute settlement arrangements conducted by third parties. Where the parties decide to submit to arbitration, they may immediately sign the appropriate arbitration convention in accordance with the rules that the governing body of INDECOPi shall have approved for the purpose. The administrative authority of INDECOPi may in any event continue with the proceedings <i>ex officio</i> if it considers, on analyzing the circumstances reported, that third-party interests might still be affected.</p> <p>Article 53.- Evidence The parties may submit the following forms of evidence: (a) Expert opinion; (b) Documents, including all kinds of written or printed matter, photocopies, plans, tables, drawings, x-rays, cinema film and other audio and video reproductions, computer-based communications in general and other subject matter and property that encompasses, contains or represents any fact or human activity or the result thereof; (c) Inspection. Evidence different from that mentioned may be submitted as an exceptional measure, but only if, in the judgment of the competent administrative authority, it is of particular importance to the settlement of the case.</p> <p>Article 54.- Inspection In the event of an inspection being necessary, it shall be conducted by the competent administrative authority of INDECOPi. Whenever an inspection is conducted, a record shall be taken which shall be signed by the party in charge of it and also by the interested parties or those representing them, or by the appointed representative of the establishment concerned. Where the defendant, his representative or the appointed representative of the establishment refuses to sign, that fact shall be recorded.</p> <p>Article 55.- Assistance of the National Police The administrative authority of INDECOPi may, both for the administration of evidence and for the making of representations, request the intervention of the National Police, without prior notification being necessary, in order to ensure that it is able to carry out its</p>	
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	<p>functions.</p> <p>Article 56.- Administration of evidence. Insufficiency of evidence Where, on inspection of the information submitted, the administrative authority of INDECOPi considers it necessary to procure stronger evidence, it shall serve notice on the parties to respond to the comments made within the period that the said authority shall specify, or shall administer <i>ex officio</i> such evidence as it considers necessary. The parties shall respond to the comments in writing, and shall submit such supporting evidence as they consider appropriate.</p> <p>Article 57.- Oral report The administrative authority of INDECOPi shall notify the parties that the case is ready for settlement. The parties may request the conduct of an oral proceeding before the said authority within five days. The acceptance or refusal of the said request shall be at the discretion of the administrative authority of INDECOPi, depending on the importance and implications of the case.</p> <p>Article 58.- Calculation basis for fines The amounts of the fines imposed by the administrative authority of INDECOPi shall be calculated on the basis of the tax unit (UIT) applicable on the day of voluntary payment, or on the date on which enforced collection takes place.</p> <p>Article 59.- Reduction of the fine The fine applicable shall be reduced by 25 per cent where the infringer pays the amount thereof prior to the expiry of the period for appealing against the ruling that concluded the proceedings, provided that no appeal against the ruling has been filed.</p> <p>Article 60.- Expenses for administration of evidence The cost of experts' reports, the administration of evidence and inspections, and other costs arising from the conduct of the proceedings shall be initially borne by INDECOPi. In all cases the final rulings shall determine whether the costs should be borne by one or other of the parties and refunded to INDECOPi in addition to the payment of any fine that may have been imposed.</p> <p>Article 61.- Register of sanctions INDECOPi shall keep a register of sanctions imposed for the information of the public and also in order to detect instances of recidivism.</p> <p>Article 62.- Sanctions Violations of the rights of indigenous peoples possessing collective knowledge shall give rise to the imposition of a fine, without prejudice to such measures as may be ordered to cause the infringing acts to cease or to prevent them from being committed.</p> <p>The fines that may be imposed shall be up to 150 tax units. The imposition and gradation of fines shall be determined according to the economic benefit secured by the infringer, the economic prejudice caused the indigenous peoples and communities and the conduct of the infringer throughout the proceedings. Recidivism shall be considered an aggravating circumstance, and the sanction applicable shall therefore not be less severe than the previous one. Where the defendant fails to comply within a period of three days with the terms of the ruling that concludes a proceeding, he shall be subjected to a sanction not exceeding the maximum of the fine allowed, according the criteria referred to in the foregoing Article, and enforced collection shall be ordered. Where the defendant persists in failing to comply, the fine imposed may be successively doubled without limitation until such time as compliance occurs without prejudice to the possibility of the party responsible being reported to the Public Prosecutor with a view to the latter initiating the appropriate criminal proceedings.</p> <p>TITLE` XIII ADMINISTRATIVE APPEALS</p> <p>Article 67.- Request for review A request for the review of decisions handed down by the Office of Inventions and New Technology may be filed within 15 days following the notification thereof, and shall be accompanied by new evidence.</p> <p>Article 68.- Appeal An appeal, which shall be solely against a decision concluding proceedings that is handed down by the Office of Inventions and New Technology, may be lodged within 15 days following notification of the said decision. An appeal may not be lodged against first-instance rulings that impose provisional or precautionary measures.</p>	
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	<p>Article 69.- Substantiation of appeals Appeals shall be lodged when the challenge relies on a different interpretation of the evidence produced, or where purely legal questions are involved, the latter having to be substantiated before the Office of Inventions and New Technology. On verification of the requirements laid down in this Article and in the Single Text on Administrative Procedure (TUPA) of INDECOPI, the Office shall allow the appeal and raise the case to the second administrative level.</p> <p>TITLE XIV PROCEDURE BEFORE THE TRIBUNAL</p> <p>Article 70.- Second-instance procedure When the file on the case has been received by the Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI, the appeal shall be conveyed to the other party, who shall be required to submit his rebuttal within a period of 15 days.</p> <p>Article 71.- Evidence and oral report No evidence shall be allowed other than documents. Nevertheless, any of the parties may ask to speak, and shall be required to specify whether matters of fact or of law will be raised. The grant or refusal of the request shall be at the discretion of the Chamber of the Tribunal. Where the parties are summoned to an oral proceeding, it shall be conducted in the presence of those who attend it.</p>	
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>TITLE IX FUND FOR THE DEVELOPMENT OF INDIGENOUS PEOPLES</p> <p>Article 37.- Purpose of the Fund for the Development of Indigenous Peoples The Fund for the Development of Indigenous Peoples and Communities is hereby created for the purpose of contributing to the comprehensive development of indigenous peoples through the financing of projects and other activities. The Fund shall enjoy technical, economic, administrative and financial autonomy.</p> <p>Article 38.- Access to the resources for the Fund for the Development of Indigenous Peoples and Communities Indigenous peoples have the right to draw on the resources of the Fund for the Development of Indigenous Peoples through their representative organizations for the purpose of development projects, subject to prior evaluation and approval by the Administrative Committee.</p> <p>Article 39.- Administration of the Fund for the Development of Indigenous Peoples The Fund for the Development of Indigenous Peoples shall be administered by five members of representative organizations of indigenous peoples and two members of the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, who shall constitute the Administrative Committee. The Committee shall to the extent possible use the machinery traditionally used — by indigenous peoples — for allocating and distributing collectively-generated benefits. The Administrative Committee shall give the representative organizations of indigenous peoples quarterly information on funds received.</p> <p>Article 40.- Obligation on members of the Administrative Committee to submit sworn statements The members of the Administrative Committee shall, on taking up their duties and annually thereafter, submit a sworn statement of assets and income to the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples.</p> <p>Article 41.- Resources of the Fund for the Development of Indigenous Peoples The resources of the Fund for the Development of Indigenous Peoples shall be derived from the State budget, international technical cooperation, donations, the percentage of economic benefits referred to in Articles 8 and 13, the fines referred to in Article 62 and other sources.</p> <p>TITLE XII COMPETENT NATIONAL AUTHORITY AND INDIGENOUS KNOWLEDGE PROTECTION BOARD</p> <p>Article 63.- Competent National Authority The Office of Inventions and New Technology of the National Institute for the Defense of Competition and Intellectual Property (INDECOPI) shall be competent to hear and settle in the first instance all matters concerning the protection of the collective knowledge of</p>	

	<p>indigenous peoples. The Intellectual Property Chamber of the Tribunal for the Defense of Competition and Intellectual Property of INDECOPI shall hear and settle all appeals in the second and last administrative instance.</p> <p>Article 64.- Functions of the Office of Inventions and New Technology The following shall be the functions of the Office of Inventions and New Technology of INDECOPI:</p> <p>(a) To maintain the Register of Collective Knowledge of Indigenous Peoples and keep it up to date;</p> <p>(b) To maintain the Register of Licenses for the Use of Collective Knowledge and keep it up to date;</p> <p>(c) To assess the validity of contracts for the licensing of collective knowledge of indigenous peoples, taking due account of the opinion of the Indigenous Knowledge Protection Board;</p> <p>(d) To perform such other functions as may be entrusted to it under these provisions.</p> <p>Article 65.- Indigenous Knowledge Protection Board The Indigenous Knowledge Protection Board shall be composed of five persons specialized in the subject, three of them designated by the representative organizations of indigenous peoples and two designated by the National Commission for the Andean, Amazonian and Afro-Peruvian Peoples, whose membership of the Board shall be honorary in character.</p> <p>Article 66.- Functions of the Indigenous Knowledge Protection Board The following shall be the functions of the Indigenous Knowledge Protection Board:</p> <p>(a) To monitor and oversee the implementation of this protection regime;</p> <p>(b) To support the Administrative Committee of the Fund for the Development of Indigenous Peoples and the Office of Inventions and New Technology of INDECOPI in the performance of their functions;</p> <p>(c) To give its opinion on the validity of contracts for the licensing of the collective knowledge of indigenous peoples;</p> <p>(d) To give advice and assistance to the representatives of indigenous peoples who so request regarding matters connected with this regime, and in particular in the planning and implementation of projects within the framework thereof;</p> <p>(e) To supervise the Administrative Committee of the Fund for the Development of Indigenous Peoples in the exercise of its functions.</p> <p>To that end it may demand of the Administrative Committee any kind of information relating to the Fund's administration, order inspections or audits, examine its books and documents and appoint a representative who shall attend its meetings with the right to speak but not to vote. The decision ordering the conduct of an audit shall be accompanied by a statement of reasons. It shall be empowered to impose sanctions on them, including warnings, temporary suspension from the exercise of their functions or final dismissal from their positions, where they infringe the provisions of this regime or regulations under it, or where they are implicated in cases that affect the interests of indigenous peoples and communities, without prejudice to any criminal sanctions or civil actions that may be appropriate.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p>Article 4.- Exceptions to the regime This regime shall not affect the traditional exchange between indigenous peoples of the collective knowledge protected under this regime.</p>	
11. disclosure-permits, databases, disclosure in intellectual	<p>TITLE VI REGISTERS OF THE COLLECTIVE KNOWLEDGE OF INDIGENOUS PEOPLES</p> <p>Article 15.- Registers of the collective knowledge of indigenous peoples The collective knowledge of indigenous peoples may be entered in three types of register:</p>	

property applications	<p>(a) Public National Register of Collective Knowledge of Indigenous Peoples; (b) Confidential National Register of Collective Knowledge of Indigenous Peoples; (c) Local Registers of Collective Knowledge of Indigenous Peoples.</p> <p>The Public National Register of Collective Knowledge of Indigenous Peoples and the Confidential National Register of Collective Knowledge of Indigenous Peoples shall be under the responsibility of INDECOPI.</p> <p>Article 16.- Purpose of the Registers of Collective Knowledge The purposes of the Registers of Collective Knowledge of Indigenous Peoples shall be the following, as the case may be: (a) to preserve and safeguard the collective knowledge of indigenous peoples and their rights therein; (b) to provide INDECOPI with such information as enables it to defend the interests of indigenous peoples where their collective knowledge is concerned.</p> <p>Article 17.- Character of the Public National Register of Collective Knowledge of Indigenous Peoples The Public National Register of Collective Knowledge of Indigenous Peoples shall contain such collective knowledge as is in the public domain. INDECOPI shall register the collective knowledge that is in the public domain in the Public National Register of Collective Knowledge of Indigenous Peoples.</p> <p>Article 18.- Character of the Confidential National Register of Collective Knowledge of Indigenous Peoples The Confidential National Register of Collective Knowledge of Indigenous Peoples may not be consulted by third parties.</p> <p>Article 19.- Registration at the request of indigenous peoples Any people may, through its representative organization, apply to INDECOPI for the registration of collective knowledge possessed by it in the Public National Register or in the Confidential National Register.</p> <p>Article 20.- Applications for the registration of collective knowledge Applications for the registration of collective knowledge of indigenous peoples shall be filed with INDECOPI through the representative organizations of the said peoples, and shall contain the following: (a) Identity of the indigenous people applying for registration of its knowledge; (b) Identity of the representative; (c) Designation of the biological resource to which the collective knowledge relates, it being possible to use the indigenous name; (d) A mention of the use or uses that are made of the biological resource concerned; (e) A clear and full description of the collective knowledge to be registered; (f) The instrument embodying the agreement of the indigenous people to the registration of the knowledge.</p> <p>The application shall be accompanied by a sample or specimen of the biological resource to which the collective knowledge to be registered relates. In cases where the sample or specimen is difficult to transport or manipulate, the indigenous people applying for registration may request INDECOPI to exempt it from the submission of the said sample or specimen and to allow it to file instead photographs that allow the characteristics of the biological resource to which the collective knowledge relates to be ascertained. The said sample or specimen, or as the case may be the said photographs, shall enable INDECOPI to identify unmistakably the biological resource concerned and to enter the scientific name thereof in the file.</p> <p>Article 21.- Processing of the application INDECOPI shall satisfy itself, within a period of ten days after the filing of the application, that the said application contains all the data specified in the foregoing Article. Where anything has been omitted, the indigenous people applying for registration shall be served notice to complete the application within a period of six months, which period may be renewed at its request, with a warning that otherwise the application shall be declared abandoned. Once INDECOPI has satisfied itself that the application contains all the data specified in the foregoing Article, it shall proceed to register the collective knowledge in question.</p> <p>Article 22.- Sending of representatives of INDECOPI</p>	
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	<p>In order to make the registration of collective knowledge of indigenous peoples easier, INDECOPI may send duly accredited representatives to the various indigenous peoples for the purpose of gathering the information necessary for the prosecution of such applications for registration as they may wish to file.</p> <p>Article 23.- Obligation on INDECOPI to send the information contained in the Public National Register to the main patent offices of the world With a view to its opposing pending patent applications, disputing granted patents or otherwise intervening in the grant of patents for goods or processes produced or developed on the basis of collective knowledge, INDECOPI shall send the information entered in the Public National Register to the main patent offices of the world in order that it may be treated as prior art in the examination of the novelty and inventiveness of patent applications.</p> <p>Article 24.- Local registers of collective knowledge of indigenous peoples Indigenous peoples may organize local registers of collective knowledge in accordance with their practices and customs. INDECOPI shall lend technical assistance in the organization of such registers at the request of the indigenous peoples.</p>	
12. interaction with existing laws-avoiding conflict with other laws	<p>COMPLEMENTARY PROVISIONS</p> <p>FIRST.- Independence of current intellectual property legislation. This special protection regime is independent of that provided for in Decisions 345 of the Commission of the Cartagena Agreement and 486 of the Commission of the Andean Community, in Legislative Decrees Nos. 822 and 823 and in Supreme Decree No. 008- 96-ITINCI.</p> <p>SECOND.- Submission of the license contract as a requirement for obtaining a patent. Where a patent is applied for in respect of goods or processes produced or developed on the basis of collective knowledge, the applicant shall be obliged to submit a copy of the license contract as a prior requirement for the grant of the rights concerned, except where the collective knowledge concerned is in the public domain. Failure to comply with this obligation shall be a cause of refusal or invalidation, as the case may be, of the patent concerned.</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses	<p>TRANSITIONAL PROVISION</p> <p>SOLE PROVISION.- Composition of the Administrative Committee of the Fund for the Development of Indigenous Peoples. The designation of the members of the Administrative Committee of the Fund for the Development of Indigenous Peoples shall be the responsibility of the National Commission for the Andean, Amazonian and Afro- Peruvian Peoples, and shall be coordinated with the representative organizations of the indigenous peoples.</p>	

34. Philippines

The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371) S. No. 1728
H. No. 9125 Republic of the Philippines Congress of the Philippines Metro Manila Tenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-eighth day of July, nineteen hundred and ninety-seven

REPUBLIC ACT NO. 8371

AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS

PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I GENERAL PROVISIONS

SECTION 1. Short Title. - This Act shall be known as "The Indigenous Peoples Rights Act of 1997".

SEC. 2. Declaration of State Policies. - The State shall recognize and promote all the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/ IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies; d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of Human rights and freedoms without distinction or discrimination;
- e) The State shall take measures, with the participation of the ICCs/ IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and
- f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

CHAPTER II DEFINITION OF TERMS

SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:

a) Ancestral Domains - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) Ancestral Lands - Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;

c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;

d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;

e) Communal Claims - refer to claims on land, resources and rights thereon; belonging to the whole community within a defined territory;

f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;

g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;

h) Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations

which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

i) Indigenous Political Structures - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature;

j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;

k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under his Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs; l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

m) Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;

n) People's Organization - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

CHAPTER III RIGHTS TO ANCESTRAL DOMAINS

SEC. 4. Concept of Ancestral Lands/Domains. - Ancestral lands/ domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

SEC. 5. Indigenous Concept of Ownership. - Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

SEC. 6. Composition of Ancestral Lands/Domains. - Ancestral lands and domains shall consist of all areas generally belonging to ICCs/ IPs as referred under Sec. 3, items (a) and

(b) of this Act.

SEC. 7. Rights to Ancestral Domains. - The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a) Right of Ownership - The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains; b) Right to Develop Lands and Natural Resources. - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

c) Right to Stay in the Territories. - The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

d) Right in Case of Displacement. - In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure

over lands to which they have been resettled: Provided furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;

e) Right to Regulate Entry of Migrants. - Right to regulate the entry of migrant settlers and organizations into the domains;

f) Right to Safe and Clean Air and Water. - For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

g) Right to Claim Parts of Reservations -The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and

h) Right to Resolve Conflict. - Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

SEC. 8. Rights to Ancestral Lands. - The right of ownership and possession of the ICCs /IPs to their ancestral lands shall be recognized and protected.

a) Right to transfer land/property. - Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

b) Right to Redemption. - In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a nonmember of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

SEC. 9. Responsibilities of ICCs/IPs to their`4ncestral Domains. -ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a) Maintain Ecological Balance. - To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b) Restore Denuded Areas. - To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c) Observe Laws. - To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

SEC. 10. Unauthorized and Unlawful Intrusion. - Unauthorized end unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent

non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

SEC. 11. Recognition of Ancestral Domain Rights. - The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/ IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

SEC. 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496. - Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/ IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this section shall be exercised within twenty (20) years from the approval of this Act.

CHAPTER IV RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

SEC. 13. Self-Governance. - The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

SEC. 14. Support for Autonomous Regions. - The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordilleras to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

SEC. 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes. - The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

SEC. 16. Right to Participate in Decision-Making - ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision making in matters which may affect their rights, lives and destinies

through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

SEC. 17. Right to Determine and Decide Priorities for Development. - The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

SEC. 18. Tribal Barangays. - The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

SEC. 19. Role of Peoples Organizations. - The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

SEC. 20. Means for Development/Empowerment of ICCs/IPs. - The Government shall establish the means for the full development/ empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

CHAPTER V SOCIAL JUSTICE AND HUMAN RIGHTS

SEC. 21. Equal Protection and Non-discrimination of ICCs/IPs. -Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

SEC. 22. Rights during Armed Conflict. - ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into the armed forces, and in particular, for use against other ICCs/IPs; nor recruit children of ICCs/ IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands,

territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

SEC. 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment. - It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as other occupationally -related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall, within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general.

ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' organizations. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

SEC. 24. Unlawful Acts Pertaining to Employment. - It shall be unlawful for any person:

- a) To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and
- b) To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

SEC. 25. Basic Services. - The ICCs/IPs have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electrical facilities, education, health and infrastructure.

SEC. 26. Women. - ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of

training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

SEC. 27. Children and Youth. - The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

SEC. 28. Integrated System of Education. - The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/ IPs.

CHAPTER VI CULTURAL INTEGRITY

SEC. 29. Protection of Indigenous Culture, Traditions and Institutions. - The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

SEC. 30. Educational Systems. - The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

SEC. 31. Recognition of Cultural Diversity. - The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

SEC. 32. Community Intellectual Rights. - ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

SEC. 33. Rights to Religious, Cultural Sites and Ceremonies. -ICCs/IPs shall have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the ICCs/IPs concerned to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

a) Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and

b) Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

SEC. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies. - ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

SEC. 35. Access to Biological and Genetic Resources. - Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

SEC. 36. Sustainable Agro-Technical Development. - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the biogenetic and resource management systems among the ICCs/IPs shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

SEC. 37. Funds for Archeological and Historical Sites. - The ICCs/ IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

CHAPTER VII NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

SEC. 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP). - To carry out the policies herein set forth, there shall be created the National Commission on ICCs/ IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-

being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.

SEC. 39. Mandate. - The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

SEC. 40. Composition. - The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommenders submitted by authentic ICCs/ IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras, Region II, the rest of Luzon, Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That at least two (2) of the seven(7) Commissioners shall be women.

SEC. 41. Qualifications, Tenure, Compensation. - The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten

(10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be members of the Philippine Bar: Provided, farther, the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.

SEC. 42. Removal from office. - Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.

SEC. 43. Appointment of Commissioners. - The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.

SEC. 44. Powers and Functions. - To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:

- a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended;
- b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development;
- c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof;

d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives;

e) To issue certificate of ancestral land/domain title;

f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs; g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws;

h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof;

i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans;

j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements;

k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act;

l) To prepare and submit the appropriate budget to the Office of the President;

m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned;

n) To decide all appeals from the decisions and acts of all the various offices within the Commission;

o) To promulgate the necessary rules and regulations for the implementation of this Act;

p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and

q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns. SEC. 45. Accessibility and Transparency. - Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or

decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.

SEC. 46. Offices within the NCIP. - The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:

a) Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral lands/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with a master plan as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;

b) Office on Policy, Planning and Research - The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs;

c) Office of Education, Culture and Health - The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and health rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which includes language and vocational training, public health and family assistance program and health subjects.

It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.

Towards this end, the NCIP shall deploy a representative in each of the said offices personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs/IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;

d) Office on Socio-Economic Services and Special Concerns. - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;

e) Office of Empowerment and Human Rights - The Office of Empowerment and Human Rights shall ensure that indigenous sociopolitical, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations, are protected and promoted;

f) Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services. It shall also administer the Ancestral Domains Fund; and

g) Legal Affairs Office- There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.

SEC. 47. Other Offices. - The NCIP shall have the power to create additional of offices it may deem necessary subject to existing rules and regulations.

SEC. 48. Regional and Field Offices. - Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field offices shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field of offices, the NCIP shall establish field offices in said provinces.

SEC. 49. (office of the Executive Director. - The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.

SEC. 50. Consultative Body. - A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.

CHAPTER VIII DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS

SEC. 51. Delineation and Recognition of Ancestral Domains. -Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/ pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the right of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.

SEC. 52. Delineation Process. - The identification and delineation of ancestral domains shall be done in accordance with the following procedures:

a) Ancestral Domains Delineated Prior to this Act.- The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ ancestral domain program prior to the enactment of this law. ICCs/IPs whose ancestral lands/domains were officially delineated prior to the enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;

b) Petition for Delineation. - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;

c) Delineation Proper. - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;

d) Proof Required. - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:

- 1) Written accounts of the ICCs/IPs customs and traditions;
- 2) Written accounts of the ICCs/IPs political structure and institution;
- 3) Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages;
- 4) Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs;
- 5) Survey plans and sketch maps;
- 6) Anthropological data;
- 7) Genealogical surveys;

- 8) Pictures and descriptive histories of traditional communal forests and hunting grounds;
- 9) Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and
- 10) Write-ups of names and places derived from the native dialect of the community.

e) Preparation of Maps. - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;

f) Report of Investigation and Other Documents. - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;

g) Notice and Publication. - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;

h)Endorsement to NCIP. - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.

i) Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies. - The Chairperson of the NCIP shall certify Blat the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified Thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;

j) Issuance of CADT. - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all dose identified in the census; and

k) Registration of CADTs. - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.

SEC. 53. Identification, Delineation and Certification of Ancestral

a) The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;

b) Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;

c) Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this Act, including tax declarations and proofs of payment of taxes;

d) The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;

e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;

f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and

g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.

SEC. 54. Fraudulent Claims. - The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.

SEC. 55. Communal Rights. - Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provided, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act. No. 386, otherwise known as the New Civil Code.

SEC. 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.

SEC. 57. Natural Resources within Ancestral Domains. - The ICCs/ IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

SEC. 58. Environmental Considerations. - Ancestral domains or portions thereof, which are found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.

SEC. 59. Certification Precondition. - All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned:

Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

SEC. 60. Exemption from Taxes. - All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private persons: Provided, That all exactions shall be used to facilitate the development and improvement of the ancestral domains.

SEC. 61. Temporary Requisition Powers. - Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three

(3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.

SEC. 62. Resolution of Conflicts. - In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen(15) days from receipt of a copy thereof

SEC. 63. Applicable Laws. - Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.

SEC. 64. Remedial Measures. - Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good." The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided further, That the action for cancellation shall be initiated within two (2) years from the effectivity of this Act: Provided, finally, that the action for reconveyance shall be within a period of ten (10) years in accordance with existing laws.

CHAPTER IX JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS

SEC. 65. Primacy of Customary Laws and Practices. - When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

SEC. 66. Jurisdiction of the NCIP. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

SEC. 67. Appeals to the Court of Appeals. - Decisions of the NCIP shall be appealable to the Court of Appeals by way of a petition for review.

SEC. 68. Execution of Decisions, Awards Orders. - Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Hearing Officer of the NCIP.

SEC. 69. Quasi-Judicial Powers of the NCIP. - The NCIP shall have the power and authority: a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;

b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;

c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.

SEC. 70. No Restraining Order or Preliminary Injunction. - No inferior court of the Philippines shall have jurisdiction to issue an restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.

CHAPTER X ANCESTRAL DOMAINS FUND

SEC. 71. Ancestral Domains Fund. - There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of One hundred thirty million pesos (P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten million pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may deem appropriate. Thereafter, such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments and grants in the form of contributions, and such endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.

CHAPTER XI PENALTIES

SEC. 72. Punishable Acts and Applicable Penalties.- Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.

SEC. 73. Persons Subject to Punishment. - If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office..

CHAPTER XII MERGER OF THE OFFICE FOR NORTHERN CULTURAL COMMUNITIES (ONCC) AND THE OFFICE FOR SOUTHERN CULTURAL COMMUNITIES (OSCC)

SEC. 74. Merger of ONCC/OSCC. - The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Staff Directors, Bureau Directors, Deputy Executive Directors and Executive Directors, except positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filling up of the newly created

positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement or gratuity, they shall have the option to select either such retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally, That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.

SEC. 75. Transition Period. - The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its finances.

SEC. 76. Transfer of Assets/Properties. - All real and personal properties which are vested in, or belonging to, the merged offices as aforestated shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents relating to the operations of the merged offices shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.

SEC. 77. Placement Committee. - Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of seven (7) commissioners and an ICCs'/IPs' representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.

CHAPTER XIII FINAL PROVISIONS

SEC. 78. Special Provision. - The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its town site reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.

SEC. 79. Appropriations. - The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.

SEC. 80. Implementing Rules and Regulations. - Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.

SEC. 81. Saving Clause. - This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.

SEC. 82. Separability Clause. - In case any provision of this Act or any portion thereof is declared unconstitutional¹ by a competent court, other provisions shall not be affected thereby.

SEC. 83. Repealing Clause. - Presidential Decree No. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 84. Effectivity. - This Act shall take effect fifteen (15) days upon its publication in the (official Gazette or in any two (2) newspapers of general circulation.

Comparison of Philippine Law with common provisions under the Nagoya Protocol and WIPO draft agreements

Common provisions	This instrument	comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	<p>SEC. 2. Declaration of State Policies. - The State shall recognize and promote all the rights of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:</p> <p>a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;</p> <p>b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;</p> <p>c) The State shall recognize, respect and protect the rights of ICCs/ IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;</p> <p>d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of Human rights and freedoms without distinction or discrimination;</p> <p>e) The State shall take measures, with the participation of the ICCs/ IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and</p> <p>f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.</p> <p>Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.</p>	
2. definition of terms- key terms used in the draft	<p>CHAPTER II DEFINITION OF TERMS</p> <p>SEC. 3. Definition of Terms. - For purposes of this Act, the following terms shall mean:</p> <p>a) Ancestral Domains - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;</p> <p>b) Ancestral Lands - Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots; c) Certificate of Ancestral Domain Title - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;</p> <p>d) Certificate of Ancestral Lands Title - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;</p>	

	<p>e) Communal Claims - refer to claims on land, resources and rights thereon; belonging to the whole community within a defined territory;</p> <p>f) Customary Laws - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;</p> <p>g) Free and Prior Informed Consent - as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community;</p> <p>h) Indigenous Cultural Communities/Indigenous Peoples - refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;</p> <p>i) Indigenous Political Structures - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal or body of similar nature;</p> <p>j) Individual Claims - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;</p> <p>k) National Commission on Indigenous Peoples (NCIP) - refers to the office created under his Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs; l) Native Title - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;</p> <p>m) Nongovernment Organization - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;</p> <p>n) People's Organization - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;</p> <p>o) Sustainable Traditional Resource Rights - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and</p> <p>p) Time Immemorial - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.</p>	
3. scope- what is covered, respect for		No separate

traditional ownership, respect for sovereignty over genetic resources, moral rights		section
4. beneficiaries- who should benefit	<p>CHAPTER III RIGHTS TO ANCESTRAL DOMAINS</p> <p>SEC. 4. Concept of Ancestral Lands/Domains. - Ancestral lands/ domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.</p> <p>SEC. 5. Indigenous Concept of Ownership. - Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.</p> <p>SEC. 6. Composition of Ancestral Lands/Domains. - Ancestral lands and domains shall consist of all areas generally belonging to ICCs/ IPs as referred under Sec. 3, items (a) and (b) of this Act.</p> <p>SEC. 7. Rights to Ancestral Domains. - The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:</p> <p>a) Right of Ownership - The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;</p> <p>b) Right to Develop Lands and Natural Resources. - Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;</p> <p>c) Right to Stay in the Territories. - The right to stay in the territory and not to be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;</p> <p>d) Right in Case of Displacement. - In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support systems: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed;</p> <p>e) Right to Regulate Entry of Migrants. - Right to regulate the entry of migrant settlers and organizations into the domains;</p> <p>f) Right to Safe and Clean Air and Water. - For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;</p> <p>g) Right to Claim Parts of Reservations -The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and</p>	

	<p>h) Right to Resolve Conflict. - Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.</p> <p>SEC. 8. Rights to Ancestral Lands. - The right of ownership and possession of the ICCs /IPs to their ancestral lands shall be recognized and protected.</p> <p>a) Right to transfer land/property. - Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.</p> <p>b) Right to Redemption. - In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a nonmember of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.</p> <p>SEC. 9. Responsibilities of ICCs/IPs to their Ancestral Domains. -ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:</p> <p>a) Maintain Ecological Balance. - To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;</p> <p>b) Restore Denuded Areas. - To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and</p> <p>c) Observe Laws. - To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.</p> <p>SEC. 10. Unauthorized and Unlawful Intrusion. - Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.</p> <p>SEC. 11. Recognition of Ancestral Domain Rights. - The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/ IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.</p> <p>SEC. 12. Option to Secure Certificate of Title Under Commonwealth Act 141, as amended, or the Land Registration Act 496. - Individual members of cultural communities, with respect to their individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since time immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/ IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.</p> <p>For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.</p> <p>The option granted under this section shall be exercised within twenty (20) years from the approval of this Act.</p> <p>RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT</p> <p>SEC. 13. Self-Governance. - The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.</p> <p>SEC. 14. Support for Autonomous Regions. - The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordilleras to use the form and content of their ways of life as may be compatible with</p>	
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	<p>the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.</p> <p>SEC. 15. Justice System, Conflict Resolution Institutions, and Peace Building Processes. - The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.</p> <p>SEC. 16. Right to Participate in Decision-Making - ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.</p> <p>SEC. 17. Right to Determine and Decide Priorities for Development. - The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.</p> <p>SEC. 18. Tribal Barangays. - The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.</p> <p>SEC. 19. Role of Peoples Organizations. - The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.</p> <p>SEC. 20. Means for Development/Empowerment of ICCs/IPs. - The Government shall establish the means for the full development/ empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.</p> <p>CHAPTER V SOCIAL JUSTICE AND HUMAN RIGHTS</p> <p>SEC. 21. Equal Protection and Non-discrimination of ICCs/IPs. -Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.</p> <p>The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.</p> <p>SEC. 22. Rights during Armed Conflict. - ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into the armed forces, and in particular, for use against other ICCs/IPs; nor recruit children of ICCs/ IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or</p>	
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	<p>relocate them in special centers for military purposes under any discriminatory condition.</p> <p>SEC. 23. Freedom from Discrimination and Right to Equal Opportunity and Treatment. - It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities for admission to employment, medical and social assistance, safety as well as other occupationally -related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.</p> <p>Towards this end, the State shall, within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by laws applicable to workers in general.</p> <p>ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' organizations. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.</p> <p>SEC. 24. Unlawful Acts Pertaining to Employment. - It shall be unlawful for any person:</p> <ol style="list-style-type: none"> To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act. <p>SEC. 25. Basic Services. - The ICCs/IPs have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government's basic services which shall include, but not limited to, water and electrical facilities, education, health and infrastructure.</p> <p>SEC. 26. Women. - ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.</p> <p>The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.</p> <p>SEC. 27. Children and Youth. - The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.</p> <p>SEC. 28. Integrated System of Education. - The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and young people of ICCs/ IPs.</p> <p>CHAPTER VI CULTURAL INTEGRITY</p> <p>SEC. 29. Protection of Indigenous Culture, Traditions and Institutions. - The State shall</p>	
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	<p>respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.</p> <p>SEC. 30. Educational Systems. - The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or private cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.</p> <p>SEC. 31. Recognition of Cultural Diversity. - The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.</p> <p>SEC. 32. Community Intellectual Rights. - ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.</p> <p>SEC. 33. Rights to Religious, Cultural Sites and Ceremonies. - ICCs/IPs shall have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial objects; and, the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the ICCs/IPs concerned to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:</p> <ol style="list-style-type: none"> Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage. <p>SEC. 34. Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies. - ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.</p> <p>SEC. 35. Access to Biological and Genetic Resources. - Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.</p> <p>SEC. 36. Sustainable Agro-Technical Development. - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the big-genetic and resource management systems among the ICCs/IPs shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.</p> <p>SEC. 37. Funds for Archeological and Historical Sites. - The ICCs/ IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the</p>	
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	<p>management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.</p> <p>CHAPTER X ANCESTRAL DOMAINS FUND</p> <p>SEC. 71. Ancestral Domains Fund. - There is hereby created a special fund, to be known as the Ancestral Domains Fund, an initial amount of One hundred thirty million pesos (P130,000,000) to cover compensation for expropriated lands, delineation and development of ancestral domains. An amount of Fifty million pesos (P50,000,000) shall be sourced from the gross income of the Philippine Charity Sweepstakes Office (PCSO) from its lotto operation, Ten million pesos (P10,000,000) from the gross receipts of the travel tax of the preceding year, the fund of the Social Reform Council intended for survey and delineation of ancestral lands/domains, and such other source as the government may deem appropriate. Thereafter, such amount shall be included in the annual General Appropriations Act. Foreign as well as local funds which are made available for the ICCs/IPs through the government of the Philippines shall be coursed through the NCIP. The NCIP may also solicit and receive donations, endowments and grants in the form of contributions, and such endowments shall be exempted from income or gift taxes and all other taxes, charges or fees imposed by the government or any political subdivision or instrumentality thereof.</p>	
<p>5. access - who speaks for country, process for granting or refusing access including</p> <p>5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made</p> <p>5b. mutually agreed terms- ensuring the bargaining process is fair and equitable</p>		Not addressed
<p>6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building</p>		Not addressed
<p>7. Sanctions and remedies- dealing with breaches</p>	<p>CHAPTER IX JURISDICTION AND PROCEDURES FOR ENFORCEMENT OF RIGHTS</p> <p>SEC. 65. Primacy of Customary Laws and Practices. - When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.</p> <p>SEC. 66. Jurisdiction of the NCIP. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: Provided, however, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.</p> <p>SEC. 67. Appeals to the Court of Appeals. - Decisions of the NCIP shall be appealable to the Court of Appeals byway of a petition for review.</p> <p>SEC. 68. Execution of Decisions, Awards Orders. - Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Of ricer of the NCIP, on its own initiative or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or</p>	

	<p>awards of the Regional Hearing Officer of the NCIP.</p> <p>SEC. 69. Quasi-Judicial Powers of the NCIP. - The NCIP shall have the power and authority:</p> <p>a) To promulgate rules and regulations governing the hearing and disposition of cases filed before it as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Act;</p> <p>b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, agreements and other document of similar nature as may be material to a just determination of the matter under investigation or hearing conducted in pursuance of this Act;</p> <p>c) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and</p> <p>d) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social or economic activity.</p> <p>SEC. 70. No Restraining Order or Preliminary Injunction. - No inferior court of the Philippines shall have jurisdiction to issue an restraining order or writ of preliminary injunction against the NCIP or any of its duly authorized or designated offices in any case, dispute or controversy arising from, necessary to, or interpretation of this Act and other pertinent laws relating to ICCs/IPs and ancestral domains.</p> <p>CHAPTER XI PENALTIES</p> <p>SEC. 72. Punishable Acts and Applicable Penalties.- Any person who commits violation of any of the provisions of this Act, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: Provided, That no such penalty shall be cruel, degrading or inhuman punishment: Provided, further, That neither shall the death penalty or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (P100,000) nor more than Five hundred thousand pesos (P500,000) or both such fine and imprisonment upon the discretion of the court. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act.</p> <p>SEC. 73. Persons Subject to Punishment. - If the offender is a juridical person, all officers such as, but not limited to, its president, manager, or head of office responsible for their unlawful act shall be criminally liable therefor, in addition to the cancellation of certificates of their registration and/or license: Provided, That if the offender is a public official, the penalty shall include perpetual disqualification to hold public office..</p>	
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases	<p>CHAPTER VII NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)</p> <p>SEC. 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP). - To carry out the policies herein set forth, there shall be created the National Commission on ICCs/ IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as their rights thereto.</p> <p>SEC. 39. Mandate. - The NCIP shall protect and promote the interest and well-being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.</p> <p>SEC. 40. Composition. - The NCIP shall be an independent agency under the Office of the President and shall be composed of seven (7) Commissioners belonging to ICCs/IPs, one (1) of whom shall be the Chairperson. The Commissioners shall be appointed by the President of the Philippines from a list of recommenders submitted by authentic ICCs/ IPs: Provided, That the seven (7) Commissioners shall be appointed specifically from each of the following ethnographic areas: Region I and the Cordilleras, Region II, the rest of Luzon, Island Groups including Mindoro, Palawan, Romblon, Panay and the rest of the Visayas; Northern and Western Mindanao; Southern and Eastern Mindanao; and Central Mindanao: Provided, That</p>	

	<p>at least two (2) of the seven(7) Commissioners shall be women.</p> <p>SEC. 41. Qualifications, Tenure, Compensation. - The Chairperson and the six (6) Commissioners must be natural born Filipino citizens, bonafide members of ICCs/IPs as certified by his/her tribe, experienced in ethnic affairs and who have worked for at least ten (10) years with an ICC/IP community and/or any government agency involved in ICC/IP, at least 35 years of age at the time of appointment, and must be of proven honesty and integrity: Provided, That at least two (2) of the seven (7) Commissioners shall be members of the Philippine Bar: Provided, farther, the members of the NCIP shall hold office for a period of three (3) years, and may be subject to re-appointment for another term: Provided, furthermore, That no person shall serve for more than two (2) terms. Appointment to any vacancy shall only be for the unexpired term of the predecessor and in no case shall a member be appointed or designated in a temporary or acting capacity: Provided, finally, That the Chairperson and the Commissioners shall be entitled to compensation in accordance with the Salary Standardization Law.</p> <p>SEC. 42. Removal from office. - Any member of the NCIP may be removed from office by the President, on his own initiative or upon recommendation by any indigenous community, before the expiration of his term for cause and after complying with due process requirement of law.</p> <p>SEC. 43. Appointment of Commissioners. - The President shall appoint the seven (7) Commissioners of the NCIP within ninety (90) days from the effectivity of this Act.</p> <p>SEC. 44. Powers and Functions. - To accomplish its mandate, the NCIP shall have the following powers, jurisdiction and function:</p> <ul style="list-style-type: none"> a) To serve as the primary government agency through which ICCs/IPs can seek government assistance and as the medium, through which such assistance may be extended; b) To review and assess the conditions of ICCs/IPs including existing laws and policies pertinent thereto and to propose relevant laws and policies to address their role in national development; c) To formulate and implement policies, plans, programs and projects for the economic, social and cultural development of the ICCs/IPs and to monitor the implementation thereof; d) To request and engage the services and support of experts from other agencies of government or employ private experts and consultants as may be required in the pursuit of its objectives; e) To issue certificate of ancestral land/domain title; f) Subject to existing laws, to enter into contracts, agreements, or arrangement, with government or private agencies or entities as may be necessary to attain the objectives of this Act, and subject to the approval of the President, to obtain loans from government lending institutions and other lending institutions to finance its programs; g) To negotiate for funds and to accept grants, donations, gifts and/or properties in whatever form and from whatever source, local and international, subject to the approval of the President of the Philippines, for the benefit of ICCs/IPs and administer the same in accordance with the terms thereof; or in the absence of any condition, in such manner consistent with the interest of ICCs/IPs as well as existing laws; h) To coordinate development programs and projects for the advancement of the ICCs/IPs and to oversee the proper implementation thereof; i) To convene periodic conventions or assemblies of IPs to review, assess as well as propose policies or plans; j) To advise the President of the Philippines on all matters relating to the ICCs/IPs and to submit within sixty (60) days after the close of each calendar year, a report of its operations and achievements; k) To submit to Congress appropriate legislative proposals intended to carry out the policies under this Act; l) To prepare and submit the appropriate budget to the Office of the President; m) To issue appropriate certification as a pre-condition to the grant of permit, lease, grant, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the consensus approval of the ICCs/IPs concerned; 	
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	<p>n) To decide all appeals from the decisions and acts of all the various offices within the Commission;</p> <p>o) To promulgate the necessary rules and regulations for the implementation of this Act;</p> <p>p) To exercise such other powers and functions as may be directed by the President of the Republic of the Philippines; and</p> <p>q) To represent the Philippine ICCs/IPs in all international conferences and conventions dealing with indigenous peoples and other related concerns. SEC. 45. Accessibility and Transparency. - Subject to such limitations as may be provided by law or by rules and regulations promulgated pursuant thereto, all official records, documents and papers pertaining to official acts, transactions or decisions, as well as research data used as basis for policy development of the Commission shall be made accessible to the public.</p> <p>SEC. 46. Offices within the NCIP. - The NCIP shall have the following offices which shall be responsible for the implementation of the policies hereinafter provided:</p> <p>a) Ancestral Domains Office - The Ancestral Domain Office shall be responsible for the identification, delineation and recognition of ancestral lands/domains. It shall also be responsible for the management of ancestral lands/domains in accordance with a master plan as well as the implementation of the ancestral domain rights of the ICCs/IPs as provided in Chapter III of this Act. It shall also issue, upon the free and prior informed consent of the ICCs/IPs concerned, certification prior to the grant of any license, lease or permit for the exploitation of natural resources affecting the interests of ICCs/IPs or their ancestral domains and to assist the ICCs/IPs in protecting the territorial integrity of all ancestral domains. It shall likewise perform such other functions as the Commission may deem appropriate and necessary;</p> <p>b) Office on Policy, Planning and Research - The Office on Policy, Planning and Research shall be responsible for the formulation of appropriate policies and programs for ICCs/IPs such as, but not limited to, the development of a Five-Year Master Plan for the ICCs/IPs. Such plan shall undergo a process such that every five years, the Commission shall endeavor to assess the plan and make ramifications in accordance with the changing situations. The Office shall also undertake the documentation of customary law and shall establish and maintain a Research Center that would serve as a depository of ethnographic information for monitoring, evaluation and policy formulation. It shall assist the legislative branch of the national government in the formulation of appropriate legislation benefiting ICCs/IPs;</p> <p>c) Office of Education, Culture and Health - The Office on Culture, Education and Health shall be responsible for the effective implementation of the education, cultural and rented rights as provided in this Act. It shall assist, promote and support community schools, both formal and non-formal, for the benefit of the local indigenous community, especially in areas where existing educational facilities are not accessible to members of the indigenous group. It shall administer all scholarship programs and other educational rights intended for ICC/IP beneficiaries in coordination with the Department of Education, Culture and Sports and the Commission on Higher Education. It shall undertake, within the limits of available appropriation, a special program which includes language and vocational training, public health and family assistance program and rented subjects.</p> <p>It shall also identify ICCs/IPs with potential training in the health profession and encourage and assist them to enroll in schools of medicine, nursing, physical therapy and other allied courses pertaining to the health profession.</p> <p>Towards this end, the NCIP shall deploy a representative in each of the said offices personally perform the foregoing task and who shall receive complaints from the ICCs/IPs and compel action from appropriate agency. It shall also monitor the activities of the National Museum and other similar government agencies generally intended to manage and preserve historical and archeological artifacts of the ICCs/IPs and shall be responsible for the implementation of such other functions as the NCIP may deem appropriate and necessary;</p> <p>d) Office on Socio-Economic Services and Special Concerns. - The Office on Socio-Economic Services and Special Concerns shall serve as the Office through which the NCIP shall coordinate with pertinent government agencies specially charged with the implementation of various basic socio-economic services, policies, plans and programs affecting the ICCs/IPs to ensure that the same are properly and directly enjoyed by them. It shall also be responsible for such other functions as the NCIP may deem appropriate and necessary;</p> <p>e) Office of Empowerment and Human Rights - The Office of Empowerment and Human</p>	
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	<p>Rights shall ensure that indigenous sociopolitical, cultural and economic rights are respected and recognized. It shall ensure that capacity building mechanisms are instituted and ICCs/IPs are afforded every opportunity, if they so choose, to participate in all levels of decision-making. It shall likewise ensure that the basic human rights, and such other rights as the NCIP may determine, subject to existing laws, rules and regulations, are protected and promoted;</p> <p>f) Administrative Office - The Administrative Office shall provide the NCIP with economical, efficient and effective services pertaining to personnel, finance, records, equipment, security, supplies and related services. It shall also administer the Ancestral Domains Fund; and</p> <p>g) Legal Affairs Office- There shall be a Legal Affairs Office which shall advise the NCIP on all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.</p> <p>SEC. 47. Other Offices. - The NCIP shall have the power to create additional of offices it may deem necessary subject to existing rules and regulations.</p> <p>SEC. 48. Regional and Field Offices. - Existing regional and field offices shall remain to function under the strengthened organizational structure of the NCIP. Other field offices shall be created wherever appropriate and the staffing pattern thereof shall be determined by the NCIP: Provided, That in provinces where there are ICCs/IPs but without field of offices, the NCIP shall establish field offices in said provinces.</p> <p>SEC. 49. (office of the Executive Director. - The NCIP shall create the Office of the Executive Director which shall serve as its secretariat. The office shall be headed by an Executive Director who shall be appointed by the President of the Republic of the Philippines upon recommendation of the NCIP on a permanent basis. The staffing pattern of the office shall be determined by the NCIP subject to existing rules and regulations.</p> <p>SEC. 50. Consultative Body. - A body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different ICCs/IPs shall be constituted by the NCIP from time to time to advise it on matters relating to the problems, aspirations and interests of the ICCs/IPs.</p> <p>CHAPTER XII MERGER OF THE OFFICE FOR NORTHERN CULTURAL COMMUNITIES (ONCC) AND THE OFFICE FOR SOUTHERN CULTURAL COMMUNITIES (OSCC)</p> <p>SEC. 74. Merger of ONCC/OSCC. - The Office for Northern Cultural Communities (ONCC) and the Office of Southern Cultural Communities (OSCC), created under Executive Order Nos. 122-B and 122-C respectively, are hereby merged as organic offices of the NCIP and shall continue to function under a revitalized and strengthened structures to achieve the objectives of the NCIP: Provided, That the positions of Staff Directors, Bureau Directors, Deputy Executive Directors and Executive Directors, except positions of Regional Directors and below, are hereby phased-out upon the effectivity of this Act: Provided, further, That officials of the phased-out offices who may be qualified may apply for reappointment with the NCIP and may be given prior rights in the filling up of the newly created positions of NCIP, subject to the qualifications set by the Placement Committee: Provided, furthermore, That in the case where an indigenous person and a non-indigenous person with similar qualifications apply for the same position, priority shall be given to the former. Officers and employees who are to be phased-out as a result of the merger of their offices shall be entitled to gratuity a rate equivalent to one and a half (1 1/2) months salary for every year of continuous and satisfactory service rendered or the equivalent nearest fraction thereof favorable to them on the basis of the highest salary received. If they are already entitled to retirement or gratuity, they shall have the option to select either such retirement benefits or the gratuity herein provided. Officers and employees who may be reinstated shall refund such retirement benefits or gratuity received: Provided, finally, That absorbed personnel must still meet the qualifications and standards set by the Civil Service and the Placement Committee herein created.</p> <p>SEC. 75. Transition Period. - The ONCC/OSCC shall have a period of six (6) months from the effectivity of this Act within which to wind up its affairs and to conduct audit of its</p>	
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	<p>finances.</p> <p>SEC. 76. Transfer of Assets/Properties. - All real and personal properties which are vested in, or belonging to, the merged offices as aforesaid shall be transferred to the NCIP without further need of conveyance, transfer or assignment and shall be held for the same purpose as they were held by the former offices: Provided, That all contracts, records and documents relating to the operations of the merged offices shall be transferred to the NCIP. All agreements and contracts entered into by the merged offices shall remain in full force and effect unless otherwise terminated, modified or amended by the NCIP.</p> <p>SEC. 77. Placement Committee. - Subject to rules on government reorganization, a Placement Committee shall be created by the NCIP, in coordination with the Civil Service Commission, which shall assist in the judicious selection and placement of personnel in order that the best qualified and most deserving persons shall be appointed in the reorganized agency. The Placement Committee shall be composed of seven (7) commissioners and an ICCs'/IPs' representative from each of the first and second level employees association in the Offices for Northern and Southern Cultural Communities (ONCC/OSCC), nongovernment organizations (NGOs) who have served the community for at least five (5) years and peoples organizations (POs) with at least five (5) years of existence. They shall be guided by the criteria of retention and appointment to be prepared by the consultative body and by the pertinent provisions of the civil service law.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		Not addressed
10. exceptions – emergencies, traditional use, conservation		Not addressed
11. disclosure-permits, databases, disclosure in intellectual property applications	<p>CHAPTER VIII DELINEATION AND RECOGNITION OF ANCESTRAL DOMAINS</p> <p>SEC. 51. Delineation and Recognition of Ancestral Domains. -Self-delineation shall be the guiding principle in the identification and delineation of ancestral domains. As such, the ICCs/IPs concerned shall have a decisive role in all the activities pertinent thereto. The Sworn Statement of the Elders as to the scope of the territories and agreements/ pacts made with neighboring ICCs/IPs, if any, will be essential to the determination of these traditional territories. The Government shall take the necessary steps to identify lands which the ICCs/IPs concerned traditionally occupy and guarantee effective protection of their rights of ownership and possession thereto. Measures shall be taken in appropriate cases to safeguard the right of the ICCs/IPs concerned to land which may no longer be exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities, particularly of ICCs/IPs who are still nomadic and/or shifting cultivators.</p> <p>SEC. 52. Delineation Process. - The identification and delineation of ancestral domains shall be done in accordance with the following procedures:</p> <p>a) Ancestral Domains Delineated Prior to this Act.- The provisions hereunder shall not apply to ancestral domains/lands already delineated according to DENR Administrative Order No. 2, series of 1993, nor to ancestral lands and domains delineated under any other community/ ancestral domain program prior to the enactment of this law. ICCs/IPs whose ancestral lands/domains were officially delineated prior to the enactment of this law shall have the right to apply for the issuance of a Certificate of Ancestral Domain Title (CADT) over the area without going through the process outlined hereunder;</p> <p>b) Petition for Delineation. - The process of delineating a specific perimeter may be initiated by the NCIP with the consent of the ICC/IP concerned, or through a Petition for Delineation filed with the NCIP, by a majority of the members of the ICCs/IPs;</p>	

	<p>c) Delineation Proper. - The official delineation of ancestral domain boundaries including census of all community members therein, shall be immediately undertaken by the Ancestral Domains Office upon filing of the application by the ICCs/IPs concerned. Delineation will be done in coordination with the community concerned and shall at all times include genuine involvement and participation by the members of the communities concerned;</p> <p>d) Proof Required. - Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and other documents directly or indirectly attesting to the possession or occupation of the area since time immemorial by such ICCs/IPs in the concept of owners which shall be any one (1) of the following authentic documents:</p> <ol style="list-style-type: none"> 1) Written accounts of the ICCs/IPs customs and traditions; 2) Written accounts of the ICCs/IPs political structure and institution; 3) Pictures showing long term occupation such as those of old improvements, burial grounds, sacred places and old villages; 4) Historical accounts, including pacts and agreements concerning boundaries entered into by the ICCs/IPs concerned with other ICCs/IPs; 5) Survey plans and sketch maps; 6) Anthropological data; 7) Genealogical surveys; 8) Pictures and descriptive histories of traditional communal forests and hunting grounds; 9) Pictures and descriptive histories of traditional landmarks such as mountains, rivers, creeks, ridges, hills, terraces and the like; and 10) Write-ups of names and places derived from the native dialect of the community. <p>e) Preparation of Maps. - On the basis of such investigation and the findings of fact based thereon, the Ancestral Domains Office shall prepare a perimeter map, complete with technical descriptions, and a description of the natural features and landmarks embraced therein;</p> <p>f) Report of Investigation and Other Documents. - A complete copy of the preliminary census and a report of investigation, shall be prepared by the Ancestral Domains Office of the NCIP;</p> <p>g) Notice and Publication. - A copy of each document, including a translation in the native language of the ICCs/IPs concerned shall be posted in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial and regional offices of the NCIP, and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspaper and radio station are not available;</p> <p>h) Endorsement to NCIP. - Within fifteen (15) days from publication, and of the inspection process, the Ancestral Domains Office shall prepare a report to the NCIP endorsing a favorable action upon a claim that is deemed to have sufficient proof. However, if the proof is deemed insufficient, the Ancestral Domains Office shall require the submission of additional evidence: Provided, That the Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification: Provided, further, That in case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP: Provided, furthermore, That in cases where there are conflicting claims among ICCs/IPs on the boundaries of ancestral domain claims, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to the section below.</p> <p>i) Turnover of Areas Within Ancestral Domains Managed by Other Government Agencies. - The Chairperson of the NCIP shall certify that the area covered is an ancestral domain. The secretaries of the Department of Agrarian Reform, Department of Environment and Natural Resources, Department of the Interior and Local Government, and Department of Justice, the Commissioner of the National Development Corporation, and any other government agency claiming jurisdiction over the area shall be notified Thereof. Such notification shall terminate any legal basis for the jurisdiction previously claimed;</p> <p>j) Issuance of CADT. - ICCs/IPs whose ancestral domains have been officially delineated and determined by the NCIP shall be issued a CADT in the name of the community concerned, containing a list of all those identified in the census; and</p> <p>k) Registration of CADTs. - The NCIP shall register issued certificates of ancestral domain titles and certificates of ancestral lands titles before the Register of Deeds in the place where the property is situated.</p> <p>SEC. 53. Identification, Delineation and Certification of Ancestral</p> <p>a) The allocation of lands within any ancestral domain to individual or indigenous corporate (family or clan) claimants shall be left to the ICCs/IPs concerned to decide in accordance with customs and traditions;</p>	
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	<p>b) Individual and indigenous corporate claimants of ancestral lands which are not within ancestral domains, may have their claims officially established by filing applications for the identification and delineation of their claims with the Ancestral Domains Office. An individual or recognized head of a family or clan may file such application in his behalf or in behalf of his family or clan, respectively;</p> <p>c) Proofs of such claims shall accompany the application form which shall include the testimony under oath of elders of the community and other documents directly or indirectly attesting to the possession or occupation of the areas since time immemorial by the individual or corporate claimants in the concept of owners which shall be any of the authentic documents enumerated under Sec. 52 (d) of this Act, including tax declarations and proofs of payment of taxes;</p> <p>d) The Ancestral Domains Office may require from each ancestral claimant the submission of such other documents, Sworn Statements and the like, which in its opinion, may shed light on the veracity of the contents of the application/claim;</p> <p>e) Upon receipt of the applications for delineation and recognition of ancestral land claims, the Ancestral Domains Office shall cause the publication of the application and a copy of each document submitted including a translation in the native language of the ICCs/IPs concerned in a prominent place therein for at least fifteen (15) days. A copy of the document shall also be posted at the local, provincial, and regional offices of the NCIP and shall be published in a newspaper of general circulation once a week for two (2) consecutive weeks to allow other claimants to file opposition thereto within fifteen (15) days from the date of such publication: Provided, That in areas where no such newspaper exists, broadcasting in a radio station will be a valid substitute: Provided, further, That mere posting shall be deemed sufficient if both newspapers and radio station are not available;</p> <p>f) Fifteen (15) days after such publication, the Ancestral Domains Office shall investigate and inspect each application, and if found to be meritorious, shall cause a parcellary survey of the area being claimed. The Ancestral Domains Office shall reject any claim that is deemed patently false or fraudulent after inspection and verification. In case of rejection, the Ancestral Domains Office shall give the applicant due notice, copy furnished all concerned, containing the grounds for denial. The denial shall be appealable to the NCIP. In case of conflicting claims among individual or indigenous corporate claimants, the Ancestral Domains Office shall cause the contending parties to meet and assist them in coming up with a preliminary resolution of the conflict, without prejudice to its full adjudication according to Sec. 62 of this Act. In all proceedings for the identification or delineation of the ancestral domains as herein provided, the Director of Lands shall represent the interest of the Republic of the Philippines; and</p> <p>g) The Ancestral Domains Office shall prepare and submit a report on each and every application surveyed and delineated to the NCIP, which shall, in turn, evaluate the report submitted. If the NCIP finds such claim meritorious, it shall issue a certificate of ancestral land, declaring and certifying the claim of each individual or corporate (family or clan) claimant over ancestral lands.</p> <p>SEC. 54. Fraudulent Claims. - The Ancestral Domains Office may, upon written request from the ICCs/IPs, review existing claims which have been fraudulently acquired by any person or community. Any claim found to be fraudulently acquired by, and issued to, any person or community may be cancelled by the NCIP after due notice and hearing of all parties concerned.</p> <p>SEC. 55. Communal Rights. - Subject to Section 56 hereof, areas within the ancestral domains, whether delineated or not, shall be presumed to be communally held: Provided, That communal rights under this Act shall not be construed as co-ownership as provided in Republic Act. No. 386, otherwise known as the New Civil Code.</p> <p>SEC. 56. Existing Property Rights Regimes. - Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected.</p> <p>SEC. 57. Natural Resources within Ancestral Domains. - The ICCs/ IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.</p> <p>SEC. 58. Environmental Considerations. - Ancestral domains or portions thereof, which are</p>	
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	<p>found to be necessary for critical watersheds, mangroves, wildlife sanctuaries, wilderness, protected areas, forest cover, or reforestation as determined by appropriate agencies with the full participation of the ICCs/IPs concerned shall be maintained, managed and developed for such purposes. The ICCs/IPs concerned shall be given the responsibility to maintain, develop, protect and conserve such areas with the full and effective assistance of government agencies. Should the ICCs/IPs decide to transfer the responsibility over the areas, said decision must be made in writing. The consent of the ICCs/IPs should be arrived at in accordance with its customary laws without prejudice to the basic requirements of existing laws on free and prior informed consent: Provided, That the transfer shall be temporary and will ultimately revert to the ICCs/IPs in accordance with a program for technology transfer: Provided, further, That no ICCs/IPs shall be displaced or relocated for the purpose enumerated under this section without the written consent of the specific persons authorized to give consent.</p> <p>SEC. 59. Certification Precondition. - All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.</p> <p>SEC. 60. Exemption from Taxes. - All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private persons: Provided, That all exactions shall be used to facilitate the development and improvement of the ancestral domains.</p> <p>SEC. 61. Temporary Requisition Powers. - Prior to the establishment of an institutional surveying capacity whereby it can effectively fulfill its mandate, but in no case beyond three (3) years after its creation, the NCIP is hereby authorized to request the Department of Environment and Natural Resources (DENR) survey teams as well as other equally capable private survey teams, through a Memorandum of Agreement (MOA), to delineate ancestral domain perimeters. The DENR Secretary shall accommodate any such request within one (1) month of its issuance: Provided, That the Memorandum of Agreement shall stipulate, among others, a provision for technology transfer to the NCIP.</p> <p>SEC. 62. Resolution of Conflicts. - In cases of conflicting interest, where there are adverse claims within the ancestral domains as delineated in the survey plan, and which can not be resolved, the NCIP shall hear and decide, after notice to the proper parties, the disputes arising from the delineation of such ancestral domains: Provided, That if the dispute is between and/or among ICCs/IPs regarding the traditional boundaries of their respective ancestral domains, customary process shall be followed. The NCIP shall promulgate the necessary rules and regulations to carry out its adjudicatory functions: Provided, further, That any decision, order, award or ruling of the NCIP on any ancestral domain dispute or on any matter pertaining to the application, implementation, enforcement and interpretation of this Act may be brought for Petition for Review to the Court of Appeals within fifteen (15) days from receipt of a copy thereof</p> <p>SEC. 63. Applicable Laws. - Customary laws, traditions and practices of the ICCs/IPs of the land where the conflict arises shall be applied first with respect to property rights, claims and ownerships, hereditary succession and settlement of land disputes. Any doubt or ambiguity in the application and interpretation of laws shall be resolved in favor of the ICCs/IPs.</p> <p>SEC. 64. Remedial Measures. - Expropriation may be resorted to in the resolution of conflicts of interest following the principle of the "common good." The NCIP shall take appropriate legal action for the cancellation of officially documented titles which were acquired illegally: Provided, That such procedure shall ensure that the rights of possessors in good faith shall be respected: Provided further, That the action for cancellation shall be initiated within two (2) years from the effectivity of this Act: Provided, finally, that the action for reconveyance shall</p>	
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	be within a period of ten (10) years in accordance with existing laws.	
12. interaction with existing laws-avoiding conflict with other laws	<p>CHAPTER XIII FINAL PROVISIONS</p> <p>SEC. 78. Special Provision. - The City of Baguio shall remain to be governed by its Charter and all lands proclaimed as part of its town site reservation shall remain as such until otherwise reclassified by appropriate legislation: Provided, That prior land rights and titles recognized and/or acquired through any judicial, administrative or other processes before the effectivity of this Act shall remain valid: Provided, further, That this provision shall not apply to any territory which becomes part of the City of Baguio after the effectivity of this Act.</p> <p>SEC. 79. Appropriations. - The amount necessary to finance the initial implementation of this Act shall be charged against the current year's appropriation of the ONCC and the OSCC. Thereafter, such sums as may be necessary for its continued implementation shall be included in the annual General Appropriations Act.</p> <p>SEC. 80. Implementing Rules and Regulations. - Within sixty (60) days immediately after appointment, the NCIP shall issue the necessary rules and regulations, in consultation with the Committees on National Cultural Communities of the House of Representatives and the Senate, for the effective implementation of this Act.</p> <p>SEC. 81. Saving Clause. - This Act will not in any manner adversely affect the rights and benefits of the ICCs/IPs under other conventions, recommendations, international treaties, national laws, awards, customs and agreements.</p> <p>SEC. 82. Separability Clause. - In case any provision of this Act or any portion thereof is declared unconstitutional by a competent court, other provisions shall not be affected thereby.</p> <p>SEC. 83. Repealing Clause. - Presidential Decree No. 410, Executive Order Nos. 122-B and 122-C, and all other laws, decrees, orders, rules and regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.</p> <p>SEC. 84. Effectivity. - This Act shall take effect fifteen (15) days upon its publication in the (official Gazette or in any two (2) newspapers of general circulation</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		Not addressed
14. transitional provisions- existing uses		Not addressed

35. Portugal

Decree Law No. 118 of 2002 Establishing a Legal Regime of Registration, Conservation, Legal Custody and Transfer of Plant Endogenous Material (Portugal).

PORTUGAL

DECREE-LAW NO. 118/2002

April 20, 2002

The sovereign rights of States over their genetic resources and the fair and equitable allocation of benefits arising from their use are specified in the Convention on Biological Diversity, under which all

Contracting Parties shall, as far as possible and as appropriate, promote the preparation of legislation and other regulatory provisions to protect species diversity and genetic resources.

Furthermore, paragraph 203(e) of the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture, adopted by the FAO International Technical Conference on Plant Genetic Resources in Leipzig in 1996, provides that governments shall consider legislative measures allowing the distribution and commercialization of local varieties.

Among these resources, and specifically with respect to plant material of agrarian, agroforest and landscape interest, local varieties constitute a distinct part within the national genetic heritage. The adaptation of those varieties is promoted by the action of successive generations of farmers who recognize the importance of such material for adding economic value to the region, particularly through sustainable rural development.

In addition to this material, the genetic wealth embodied in spontaneously occurring autochthonous material is an equally important basis for the promotion of sustainable agrarian, agroforest and landscape systems, particularly for the maintenance and development of agrobiodiversity. The establishment of a mechanism for the legal registration of the aforementioned types of material – applicants for which may be public or private bodies of any kind, such as self-supporting businesses, farmers' associations, regional development associations or individuals – which relies on an adequate description and draws on reference collections specifically designated for the purpose, constitutes a valid basis for the identification of the material and consequently for its correct conservation *in situ* and *ex situ*.

The description of this material, the identity of which shall be defined in *sui generis* terms according to the particular characteristics of the populations to which it belongs, further reinforces the grounds for formulating processes with which to protect appellations of origin and geographical indications and affords some kind of protection against any misappropriation of the material.

This instrument will likewise form the basis for the fair allocation of the benefits generated by the use of this material among the parties involved in their differentiation or maintenance or both. Finally, it will also make a positive contribution to the promotion of the secure interchange of plant genetic resources, at the same time ensuring the protection and preservation of the cultural diversity of local populations that is associated with the plant genetic resources of communities that have not had access to proper intellectual property machinery and so have seen innumerable technical contributions fall into the public domain or be appropriated by third parties without deriving any benefit therefrom.

The adoption and publication of this draft Decree-Law assumes the utmost importance and urgency on account of the obligations arising from the Convention on Biological Diversity signed by the EC on June 13, 1992, and approved on December 21, 1993, to which Portugal is party, and under which the signatory States undertook to adopt adequate legislative measures to allow the distribution and commercialization of local varieties.

Similarly, it is only through the adoption and publication of this regime of registration and protection of autochthonous plant material can measures be taken that allow certain specific plant genetic resources to be protected and safeguarded, thus ensuring the cultural diversity of local populations.

Under this Decree conditions may also be established for the collection of specific material with the aim of preventing its extinction.

Therefore:

By virtue of Article 198.1(a) of the Constitution, the Government decrees as follows:

Article 1. Object

(1) This Decree establishes the legal regime for the registration, conservation, legal safeguarding and transfer of autochthonous plant material of current or potential interest to agrarian, agroforest and landscape activity, including the local varieties and spontaneously occurring material referred to in Article 2, as well as associated knowledge, without prejudice to the provisions of Decree-Laws 316/89 of September 22 and 140/99 of April 24.

(2) The plant material covered by the application of this Decree, as defined in Articles 2(1) and (2), is considered a phylogenetic resource of the utmost importance, since its access and use depend on the provisions established in this Decree and the regulations under it, without prejudice to current special legislation.

Article 2. Scope

(1) This Decree-Law applies to all local varieties and other spontaneously occurring autochthonous material of plant species that are of current or potential interest to agricultural, agroforest or landscape activity, regardless of their genotypical composition, with the exception of varieties protected by intellectual property rights or concerning which the grant of such protection is pending.

(2) For the purposes of Articles 4 and 15, the species shall be fixed by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management on a proposal by the Directorate General for Crop Protection (DGPC) after the Technical Council of the Ministry of Agriculture, Rural Development and Fisheries on Agrarian Genetic Resources, Fisheries and Aquiculture (CoTeRGAPA) has been heard.

(3) Any plant material collected that is not included in the species referred to in paragraph (2) must be described by the collector, who shall supply free of charge a description and a representative sample of the material collected to the bodies authorizing the collection or, in their absence, to the Regional Agricultural Directorate (DRA) of the geographical region in which the collection took place.

Article 3. Traditional Knowledge

(1) Traditional knowledge comprises all intangible elements associated with the commercial or industrial utilization of local varieties and other autochthonous material developed in a non-systematic manner by local populations, either collectively or individually, which form part of the cultural and spiritual traditions of those populations. That includes, but is not limited to, knowledge of methods, processes, products and designations with applications in agriculture, food and industrial activities in general, including traditional crafts, commerce and services, informally associated with the use and preservation of local varieties and other spontaneously occurring autochthonous material covered by this Decree.

(2) That knowledge shall be protected against reproduction or commercial or industrial use or both as long as the following conditions of protection are met:

(a) the traditional knowledge shall be identified, described and registered in the Register of Plant Genetic Resources (RRGV);

(b) the description referred to above shall be so phrased that third parties may reproduce or utilize the traditional knowledge and obtain results identical to those obtained by the owner of the knowledge.

- (3) The owners of the traditional knowledge may choose to keep it confidential, in which case the regulations shall provide for publication in the registration bulletin referred to in Article 12, which shall be limited to disclosure of the existence of the knowledge and identification of the varieties to which it relates, with the protection conferred by registration being limited to cases in which it is unfairly acquired by third parties.
- (4) The registration of traditional knowledge that until it is requested has not been used in industrial activities or is not publicly known outside the population or local community in which it originated shall afford its owners the right to:
- (i) object to its direct or indirect reproduction, imitation and/or use by unauthorized third parties for commercial purposes;
 - (ii) assign, transfer or license the rights in the traditional knowledge, including transfer by succession;
 - (iii) exclude from protection any traditional knowledge that may be covered by specific industrial property registrations.
- (5) The entities defined in Article 9 of this Decree have the right to register traditional knowledge.
- (6) The registration of traditional knowledge shall be effective for a period of 50 years from the application therefor, and may be renewed for an identical period.
- (7) The provisions of Articles 7, 9, 10, 12, 13 and 14 shall apply *mutatis mutandis* to traditional knowledge.

Article 4. Registration of Plant Material

- (1) Plant material that falls within the scope of this Decree, as defined in Articles 2(1) and (2), may be registered in the RRGV, which shall be kept at the DGPC's National Center for the Registration of Protected Varieties.
- (2) Registered plant material must possess a designation and description that satisfy the conditions established by decree of the Minister of Agriculture, Rural Development and Fisheries.
- (3) The description of the plant material on which registration was based shall become the official description thereof for the purposes of this legislation.
- (4) The registration of the material referred to in paragraph (1) confers on the owner thereof the right to a share in the benefits derived from its use, as provided in Article 7.
- (5) Registration shall be granted by the Director General of Crop Protection, after CoTeRGAPA has been heard, in accordance with conditions to be defined by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.
- (6) Once registration of the specific plant material has been granted, it shall be included in the National Directory of Registrations of Plant Genetic Resources (LNRGV), for which the RRGV is responsible.

Article 5. Duration of Registration

Registration shall be valid for a period of ten years and renewed for subsequent periods of the same duration, provided that the conditions required for the registration to be granted are maintained, on pain of termination.

Article 6. Goods with an appellation of origin or geographical indication

The plant material used in making goods with a protected appellation of origin or geographical indication must be registered, in so far as they are covered by this Decree, and then be entered in the directory referred to in Article 4(6).

Article 7. Access to and Allocation of Benefits

- (1) Access to the germ plasm of the plant material referred to in Articles 2(1) and (2) for the purposes of study, research, improvement or biotechnological applications shall be subject to prior authorization by CoTeRGAPA, the owner of the registration having been heard.
- (2) The use, for industrial or biotechnological purposes, of plants or parts thereof included in the plant material referred to in Articles 2(1) and (2), either directly or through application of the active ingredients contained in them, shall also be subject to prior authorization by CoTeRGAPA, and where appropriate by the competent body of the Ministry of the Environment and Land Management, the owner of the registration having been heard.
- (3) In order to prevent them from becoming extinct, specific restrictions may apply at a local or national level to the collection or uprooting of plants of the species in question or of parts thereof, as determined by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.
- (4) Access as defined in paragraphs (1) and (2) requires a fair allocation of the benefits resulting from such use, by prior agreement with the owner of the registration.

Article 8. Commercialization

The rules governing the commercialization of seeds or propagules of plants included in the material mentioned in Articles 2(1) and (2) shall be the subject of a joint decree of the Minister of the Economy, the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.

Article 9. Applicant for Registration

- (1) An application for the registration of plant material covered by the provisions of Article 4(1) may be filed by any entity, whether public or private, individual or corporate, that fulfils the following conditions:
- (a) as required by paragraph (2) below, it represents the interests of the geographical area in which the local variety is most widely found or where the spontaneously occurring autochthonous material displays the greatest genetic variability;
- (b) it complies with the provisions of Article 10(3).
- (2) To satisfy the conditions mentioned in (1)(a) above, the applicant shall be recognized by the competent municipal chamber by means of a document affirming the entity's fitness to protect the interests referred to in paragraph (1).
- (3) The municipal chamber competent to confirm the recognition referred to above shall be that designated by CoTeRGAPA, the permanent representatives of the DRA having been heard, or by the competent body of the Ministry of the Environment and Land Management in the case of autochthonous wild species.
- (4) In order to prove that the essential conditions for meeting the requirements of paragraph (1)(b) are present, the applicant shall submit a supporting document, approved by the DRA of the area in which the plant material in question is to be maintained.

Article 10. Rights and Obligations of the Owner of the Registration

- (1) The entity owning the registration has the right to receive part of any benefits resulting from the use provided for in Articles 7(1) and (2).
- (2) The performance of any of the acts provided for in Article 7(1) in the case of registered plant material may only be authorized after the owner of the registration has been heard.
- (3) The owner of the registration shall be responsible for the maintenance *in situ* of the registered plant material and for ensuring that it remains consistent with its official description, provided for in

Article 4(3), and with the technical conditions laid down by CoTeRGAPA, and may delegate the performance of that task to others, in which case the RRGV shall be notified of the entity chosen for the purpose.

(4) For the purpose of inclusion in the reference collection or replacement of existing material, the owner of the registration shall be obliged to provide the entity responsible for the coordination of reference collections, at its request and in the place specified by it, with propagating material corresponding to the registration that has the characteristics specified by the DGPC and conforms to the official description referred to in Article 4(3).

Article 11. Reference Collection

(1) The entity responsible for the technical supervision of reference collections shall be the DGPC, and CoTeRGAPA shall promote and coordinate the establishment and maintenance of the reference collections, which must include all material registered at the regional or the national level, depending on what is most appropriate in each specific case.

(2) In the case of material registered or in the process of being registered, the owner of the reference collection may not supply it to third parties without authorization from the registration owner or applicant and a favorable ruling from CoTeRGAPA.

Article 12. Registration Bulletin

The DGPC shall from time to time publish a bulletin reporting all material submitted for registration and that which has already been registered in the LNRGV, and also traditional knowledge registered in accordance with the provisions of Article 3.

Article 13. Violations

(1) The use of plants or parts thereof that constitute plant material within the meaning of Article 2(1) and (2) in a manner contrary to the provisions of Articles 7(1), (2) and (3) and to the regulations under this Decree, and also infringement of the provisions on traditional knowledge contained in Article 3, constitute violations punishable with a fine of between €100 and €2,500.

(2) Negligence is punishable.

(3) In the event of responsibility for the violation resting with a corporate entity, the maximum amount of fines shall be €30,000.

(4) The proceeds from fines shall revert to the DGPC (20%), the National Agrarian Research Institute (10%) and the DRA concerned (10%), with the remainder going to State funds.

(5) The DRA shall be competent to manage the violation proceedings provided for in this Article, and the Director General for Crop Protection shall be competent to impose the corresponding fines and accompanying sanctions.

Article 14. Accompanying Sanctions

Depending on the seriousness of the violation and the degree of guilt of the party who committed it, the following accompanying sanctions may be imposed in addition to the fine according to the provisions of the general regime governing violations:

(a) loss of the guilty party's property;

(b) prohibition from the exercise of a profession or activity that requires a public enactment or the approval of a public authority;

(c) removal of the right to participate in fairs and markets;

(d) removal of the right to bid or to participate in tenders or public competitions in connection with the award of contracts for the execution of public works, the supply of goods and services, the rendering of public services and for the award of licenses and permits;

- (e) closure of an establishment that relies for its operation on authorization or licensing by an administrative authority;
- (f) suspension of authorizations, licenses and permits.

Article 15. Civil Liability

The imposition of the fines referred to in the preceding Article shall not prevent the owner from claiming his rights under Articles 7 and 10, and specifically the right to compensation and a share in benefits.

Article 16. Fees

Registration in the LNRGV or the RRGV is subject to the payment of fees to be fixed by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of Finance.

Article 17. Regulations

Implementing regulations under this Decree shall be enacted by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.

Comparison of Portuguese legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources	Article 1. Object (1) This Decree establishes the legal regime for the registration, conservation, legal safeguarding and transfer of autochthonous plant material of current or potential interest to agrarian, agroforest and landscape activity, including the local varieties and spontaneously occurring material referred to in Article 2, as well as associated knowledge, without prejudice to the provisions of Decree-Laws 316/89 of September 22 and 140/99 of April 24. (2) The plant material covered by the application of this Decree, as defined in Articles 2(1) and (2), is considered a phylogenetic resource of the utmost importance, since its access and use depend on the provisions established in this Decree and the regulations under it, without prejudice to current special legislation.	
2. definition of terms- key terms used in the draft		
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	Article 2. Scope (1) This Decree-Law applies to all local varieties and other spontaneously occurring autochthonous material of plant species that are of current or potential interest to agricultural, agroforest or landscape activity, regardless of their genotypical composition, with the exception of varieties protected by intellectual property rights or concerning which the grant of such protection is pending. (2) For the purposes of Articles 4 and 15, the species shall be fixed by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management on a proposal by the Directorate General for Crop Protection (DGPC) after the Technical Council of the Ministry of Agriculture, Rural Development and Fisheries on Agrarian Genetic Resources, Fisheries and Aquiculture (CoTeRGAPA) has been heard. (3) Any plant material collected that is not included in the species referred to in paragraph (2) must be described by the collector, who shall supply free of charge a description and a representative sample of the material collected to the bodies authorizing the collection or, in their absence, to the Regional Agricultural Directorate (DRA) of the geographical region in which the collection took place.	

4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable	<p>Article 7. Access to and Allocation of Benefits</p> <p>(1) Access to the germ plasm of the plant material referred to in Articles 2(1) and (2) for the purposes of study, research, improvement or biotechnological applications shall be subject to prior authorization by CoTeRGAPA, the owner of the registration having been heard.</p> <p>(2) The use, for industrial or biotechnological purposes, of plants or parts thereof included in the plant material referred to in Articles 2(1) and (2), either directly or through application of the active ingredients contained in them, shall also be subject to prior authorization by CoTeRGAPA, and where appropriate by the competent body of the Ministry of the Environment and Land Management, the owner of the registration having been heard.</p> <p>(3) In order to prevent them from becoming extinct, specific restrictions may apply at a local or national level to the collection or uprooting of plants of the species in question or of parts thereof, as determined by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.</p> <p>Article 8. Commercialization</p> <p>The rules governing the commercialization of seeds or propagules of plants included in the material mentioned in Articles 2(1) and (2) shall be the subject of a joint decree of the Minister of the Economy, the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.</p> <p>Article 9. Applicant for Registration</p> <p>(1) An application for the registration of plant material covered by the provisions of Article 4(1) may be filed by any entity, whether public or private, individual or corporate, that fulfils the following conditions:</p> <p>(a) as required by paragraph (2) below, it represents the interests of the geographical area in which the local variety is most widely found or where the spontaneously occurring autochthonous material displays the greatest genetic variability;</p> <p>(b) it complies with the provisions of Article 10(3).</p> <p>(2) To satisfy the conditions mentioned in (1)(a) above, the applicant shall be recognized by the competent municipal chamber by means of a document affirming the entity's fitness to protect the interests referred to in paragraph (1).</p> <p>(3) The municipal chamber competent to confirm the recognition referred to above shall be that designated by CoTeRGAPA, the permanent representatives of the DRA having been heard, or by the competent body of the Ministry of the Environment and Land Management in the case of autochthonous wild species.</p> <p>(4) In order to prove that the essential conditions for meeting the requirements of paragraph (1)(b) are present, the applicant shall submit a supporting document, approved by the DRA of the area in which the plant material in question is to be maintained.</p> <p>Article 10. Rights and Obligations of the Owner of the Registration</p> <p>(1) The entity owning the registration has the right to receive part of any benefits resulting from the use provided for in Articles 7(1) and (2).</p> <p>(2) The performance of any of the acts provided for in Article 7(1) in the case of registered plant material may only be authorized after the owner of the registration has been heard.</p> <p>(3) The owner of the registration shall be responsible for the maintenance <i>in situ</i> of the registered plant material and for ensuring that it remains consistent with its official description, provided for in Article 4(3), and with the technical conditions laid down by CoTeRGAPA, and may delegate the performance of that task to others, in which case the RRGV shall be notified of the entity chosen for the purpose.</p> <p>(4) For the purpose of inclusion in the reference collection or replacement of existing material, the owner of the registration shall be obliged to provide the entity responsible for the coordination of reference collections, at its request and in the place specified by it, with propagating material corresponding to the registration that has the characteristics specified by the DGPC and conforms to the official description referred to in Article 4(3).</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building	<p>Article 7 (4)</p> <p>(4) Access as defined in paragraphs (1) and (2) requires a fair allocation of the benefits resulting from such use, by prior agreement with the owner of the registration.</p>	

7. Sanctions and remedies- dealing with breaches	<p>Article 13. Violations</p> <p>(1) The use of plants or parts thereof that constitute plant material within the meaning of Article 2(1) and (2) in a manner contrary to the provisions of Articles 7(1), (2) and (3) and to the regulations under this Decree, and also infringement of the provisions on traditional knowledge contained in Article 3, constitute violations punishable with a fine of between €100 and €2,500.</p> <p>(2) Negligence is punishable.</p> <p>(3) In the event of responsibility for the violation resting with a corporate entity, the maximum amount of fines shall be €30,000.</p> <p>(4) The proceeds from fines shall revert to the DGPC (20%), the National Agrarian Research Institute (10%) and the DRA concerned (10%), with the remainder going to State funds.</p> <p>(5) The DRA shall be competent to manage the violation proceedings provided for in this Article, and the Director General for Crop Protection shall be competent to impose the corresponding fines and accompanying sanctions.</p> <p>Article 14. Accompanying Sanctions</p> <p>Depending on the seriousness of the violation and the degree of guilt of the party who committed it, the following accompanying sanctions may be imposed in addition to the fine according to the provisions of the general regime governing violations:</p> <p>(a) loss of the guilty party's property;</p> <p>(b) prohibition from the exercise of a profession or activity that requires a public enactment or the approval of a public authority;</p> <p>(c) removal of the right to participate in fairs and markets;</p> <p>(d) removal of the right to bid or to participate in tenders or public competitions in connection with the award of contracts for the execution of public works, the supply of goods and services, the rendering of public services and for the award of licenses and permits;</p> <p>(e) closure of an establishment that relies for its operation on authorization or licensing by an administrative authority;</p> <p>(f) suspension of authorizations, licenses and permits.</p> <p>Article 15. Civil Liability</p> <p>The imposition of the fines referred to in the preceding Article shall not prevent the owner from claiming his rights under Articles 7 and 10, and specifically the right to compensation and a share in benefits.</p>	
8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases		
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation		
11. disclosure- permits, databases, disclosure in intellectual property applications	<p>Article 3. Traditional Knowledge</p> <p>(1) Traditional knowledge comprises all intangible elements associated with the commercial or industrial utilization of local varieties and other autochthonous material developed in a non-systematic manner by local populations, either collectively or individually, which form part of the cultural and spiritual traditions of those populations. That includes, but is not limited to, knowledge of methods, processes, products and designations with applications in agriculture, food and industrial activities in general, including traditional crafts, commerce and services,</p>	

	<p>informally associated with the use and preservation of local varieties and other spontaneously occurring autochthonous material covered by this Decree.</p> <p>(2) That knowledge shall be protected against reproduction or commercial or industrial use or both as long as the following conditions of protection are met:</p> <p>(a) the traditional knowledge shall be identified, described and registered in the Register of Plant Genetic Resources (RRGV);</p> <p>(b) the description referred to above shall be so phrased that third parties may reproduce or utilize the traditional knowledge and obtain results identical to those obtained by the owner of the knowledge.</p> <p>(3) The owners of the traditional knowledge may choose to keep it confidential, in which case the regulations shall provide for publication in the registration bulletin referred to in Article 12, which shall be limited to disclosure of the existence of the knowledge and identification of the varieties to which it relates, with the protection conferred by registration being limited to cases in which it is unfairly acquired by third parties.</p> <p>(4) The registration of traditional knowledge that until it is requested has not been used in industrial activities or is not publicly known outside the population or local community in which it originated shall afford its owners the right to:</p> <p>(i) object to its direct or indirect reproduction, imitation and/or use by unauthorized third parties for commercial purposes;</p> <p>(ii) assign, transfer or license the rights in the traditional knowledge, including transfer by succession;</p> <p>(iii) exclude from protection any traditional knowledge that may be covered by specific industrial property registrations.</p> <p>(5) The entities defined in Article 9 of this Decree have the right to register traditional knowledge.</p> <p>(6) The registration of traditional knowledge shall be effective for a period of 50 years from the application therefor, and may be renewed for an identical period.</p> <p>(7) The provisions of Articles 7, 9, 10, 12, 13 and 14 shall apply <i>mutatis mutandis</i> to traditional knowledge.</p> <p>Article 4. Registration of Plant Material</p> <p>(1) Plant material that falls within the scope of this Decree, as defined in Articles 2(1) and (2), may be registered in the RRGV, which shall be kept at the DGPC's National Center for the Registration of Protected Varieties.</p> <p>(2) Registered plant material must possess a designation and description that satisfy the conditions established by decree of the Minister of Agriculture, Rural Development and Fisheries.</p> <p>(3) The description of the plant material on which registration was based shall become the official description thereof for the purposes of this legislation.</p> <p>(4) The registration of the material referred to in paragraph (1) confers on the owner thereof the right to a share in the benefits derived from its use, as provided in Article 7.</p> <p>(5) Registration shall be granted by the Director General of Crop Protection, after CoTeRGAPA has been heard, in accordance with conditions to be defined by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.</p> <p>(6) Once registration of the specific plant material has been granted, it shall be included in the National Directory of Registrations of Plant Genetic Resources (LNRGV), for which the RRGV is responsible.</p> <p>Article 5. Duration of Registration</p> <p>Registration shall be valid for a period of ten years and renewed for subsequent periods of the same duration, provided that the conditions required for the registration to be granted are maintained, on pain of termination.</p> <p>Article 6. Goods with an appellation of origin or geographical indication</p> <p>The plant material used in making goods with a protected appellation of origin or geographical indication must be registered, in so far as they are covered by this Decree, and then be entered in the directory referred to in Article 4(6).</p> <p>Article 11. Reference Collection</p> <p>(1) The entity responsible for the technical supervision of reference collections shall be the DGPC, and CoTeRGAPA shall promote and coordinate the establishment and maintenance of the reference collections, which must include all material registered at the regional or the national level, depending on what is most appropriate in each specific case.</p> <p>(2) In the case of material registered or in the process of being registered, the owner of the reference collection may not supply it to third parties without authorization from the registration owner or applicant and a favorable ruling from CoTeRGAPA.</p>	
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	<p>Article 12. Registration Bulletin The DGPC shall from time to time publish a bulletin reporting all material submitted for registration and that which has already been registered in the LNRGV, and also traditional knowledge registered in accordance with the provisions of Article 3.</p> <p>Article 16. Fees Registration in the LNRGV or the RRGV is subject to the payment of fees to be fixed by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of Finance.</p>	
12. interaction with existing laws- avoiding conflict with other laws	<p>Article 17. Regulations Implementing regulations under this Decree shall be enacted by joint decree of the Minister of Agriculture, Rural Development and Fisheries and the Minister of the Environment and Land Management.</p>	
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with		
14. transitional provisions- existing uses		

36. Qatar

This is a copyright Act that deals briefly with folklore

Law No. 7 of 2002 on the Protection of Copyright and Neighboring Rights

We, Hamad Bin Khalifa AlThani, Emir of the State of Qatar,

Having seen the amended Provisional Constitution, particularly Articles 23, 34 and 51 thereof, and The Qatar Penal Court promulgated by Law No. 14 of 1971, as revised, and the Law of Criminal Procedures No. 15 of 1971 as revised, Law No. 8 of 1979 on Press and Publication, and DecreeLaw No. 14 of 1982 concerning the Deposit of Works at the Qatar Public Library, and Decree Law No. 16 of 1993 concerning the organization of activities pertaining to advertising, public relations, artistic production and works of art, and DecreeLaw No. 22 of 1993 concerning organization of the Ministry of Economy and Trade, and Law No. 25 of 1995 on the Protection of Works of Intellect and Copyrights, and Decree No. 11 of 1997 concerning the establishment of the Qatari Public Broadcasting Corporation, and Emiri Order No. 1 of 2002 concerning the amendment of the Council of Ministers, Decree No. 50 of 1986 concerning the accession of the State of Qatar to the Arab Agreement for the Protection of Authors' Rights, and Decree No. 24 of 1995 concerning the accession of the State of Qatar to the Agreement establishing the World Trade Organization and the attached Related MultiLateral Trade Agreements, and The Proposal of the Minister of Economy and Trade, and The Draft Law submitted by the Council of Ministers, and Having consulted Advisory Council, Have promulgated the following Law:

Chapter I Definitions

1. In the implementation of this Law, the following words and expressions shall have the meaning given for each, unless the context requires otherwise.

Ministry: The Ministry of Economy and Trade

Minister: The Minister of Economy and Trade

Office: The Office of the Protection of Copyrights and NEIGHBORING Rights

Work: Any original artistic or literary work

Author: Any physical person who invented the work

Year: Calendar year

Publication: Reproduction of works or sound recordings to satisfy the needs of the public, subject to the consent of the Author, copyright owner or sound recording producer.

Reproduction: Production of one or more copies of work by means of printing, painting, engraving, photography, in form or in any manner, including permanent or temporary storage in electronic form.

Audiovisuaf work: Work that consists of a series of related images which imparts the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible.

Sound recording: Any exclusively oral fixation of the sounds of a performance or of other sounds, regardless of the method by which the sound or a performance are embodied and regardless of the medium in which the work is embodied; it does not include a fixation of sounds accompanying an audiovisual work.

Producer: A physical person who, or entity which, takes the initiative to, and has responsibility for making the audiovisual or oral work.

Broadcasting: Communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite.

A collective work: A work created by a number of physical persons at the initiative and under the direction of a physical person who, or legal entity which, takes the responsibility of publishing the work under his or its name provided that it is impossible to distinguish the individual contribution of each.

Work of joint authorship: A work in the making of which two or more persons participated and each of which work can be separated and distinguished.

Work of applied art: An artistic creation with utilitarian functions or incorporated in a useful article whether made handcraft or produced on an industrial scale.

Communication to the public: The transmission by wire or without wire of images or sounds, or both, of a work, a performance, a sound recording or a broadcast.

Owner of copyright: One of the following persons:

The Author

Where the economic rights are originally invested in a physical person other than the Author or a legal entity, that person or entity.

A physical person or legal entity to whom the ownership of the economic rights has been transferred.

Performers: Singers, musicians, and other persons who sing, deliver, declaim, playing, or otherwise perform literary or artistic works or expressions of folklore.

Public Performance: Performing the work, either directly or by means of any device or process, by recitation, playing, dancing, acting or otherwise performing the work. Performance is deemed to be public if it can be perceived at a place where persons outside the normal circle of the family and its closest acquaintances are or can be present.

Neighboring rights: Rights that protect performers, producers of sound recordings and broadcasting organizations.

National folklore: Any expression which consists of distinctive elements of the traditional artistic heritage, originating or developed in the State of Qatar and reflects its artistic heritage, shall be considered as national folklore, including in particular the following expressions:

- (1) oral expressions such as tales, popular poetry and riddles;
- (2) musical expressions such as popular songs accompanied by music;
- (3) motion expressions such as popular dances, plays, artistic forms and rituals, whether or not incorporated into material form;

(4) tangible expressions such as:

- (a) products or popular art particularly drawings with lines and colors, engravings, sculptures, ceramics, pottery, woodwork, mosaic, metal, jewelry, handwoven bags, knitting, carpets, textiles, and;
- (b) musical instruments;
- (c) architectural forms.

Chapter II Scope and Provisions of Protection

2. Protection under this Law is conferred to authors of original literary and artistic works, irrespective of the value, quality, purpose or mode of expression of these works.

Protection shall cover particularly the following works:

- (1) books, pamphlets and other writings;
- (2) works delivered orally such as lectures, addresses, sermons or similar works such as poems and hymns;
- (3) dramatic and dramatico musical works;
- (4) musical works, whether or not they include accompanying words;
- (5) choreographic works and pantomimes;
- (6) audiovisual works;
- (7) photographic and similar works;
- (8) works of applied art, whether handicraft or produced on an industrial scale;
- (9) works of drawing and painting with lines and colors, architecture, sculpture, decorated arts, engravings, sketches, designs and threedimensional geographic or topographic works;
- (10) computer programs. Protection shall also extend to the title of the work if it is original.

3. Notwithstanding the protection provided by the preceding Article, the following derived works shall be protected by the provision of this Law:

- (1) works of translation, summary, alteration explanation and other modifications;
- (2) collection of encyclopedias and selections if creative in the selection and arrangement of their subject matter;
- (3) data bases if creative in the arrangement of selection of their subject matter;
- (4) Collections of works and expressions of folklore if creative by reason of arrangements or selection of their subject matter.

4. The protection provided by this Law shall not cover the following works:

- (1) laws, legal provisions, administrative decisions, international treaties, official documents or any official translation thereof. However, collections of such material are protected if they involve creative work in the selection and arrangement of their subject matter.
- (2) daily news and other news of mere informatory nature.
- (3) ideas, procedures, operational methods, mathematical concepts, principles and mere data. However, any derivative expression thereof shall be covered by protection.

5. The provisions of this Law shall apply to the following:

- (1) works of Qatari Authors published within or outside the State;
- (2) works which are published for the first time inside the State, and works which are published for the first time in another State and then published in Qatar within thirty days of the first publication

date, irrespective of the nationality or place of residence of their authors;

(3) audiovisual works whose producer has his headquarters or place of residence in Qatar;

(4) architectural works constructed in Qatar, or any other artistic work incorporated in a building or any other construction situated in Qatar.

The provisions of this Law shall also apply to works protected by an international agreement or a Court in which Qatar is a party, and in accordance with its provisions.

6. No work of any kind shall be published, displayed or circulated unless accompanied by the following:

(1) Certificate of origin indicating the name of the author or the person to whom the right of exploitation has been assigned;

(2) Declaration, by the importer or the owner, regarding display or circulation, specifying the geographic area or place within which the display or circulation is authorized.

Chapter III Author's Economic and Moral Rights

Section One Economic Rights

7. The Author or the owner of the copyright shall have the exclusive right to carry out or to authorize any of the following acts:

(1) reproduction of the work;

(2) translation of the work;

(3) making excerpts, musical arrangement or other transformation of the work;

(4) distribution to the public of the work through sale;

(5) rental to the public of audiovisual works or computer programs. However, the right to rental shall not apply to rental of computer programs where the program itself is not the essential object of the rental;

(6) public performance of the work;

(7) communication of the work to the public.

1. The author may transfer any of his economic rights, provided for by this Law, to other person or persons. The transfer of the economic right shall be in writing and shall specify explicitly and separately each disposal right, indicating the duration of disposal or transfer, its manner and quantity, the purpose and the place.
2. The author shall abstain from any act that might prevent the assignee to use the right assigned to him. Nevertheless, the author may withdraw his work from circulation or introduce any modification through omission or addition to it. In the event of disagreement, the author shall be obliged to pay a fair compensation to the prejudiced party.

Section Two Moral Rights

10. The author of a work shall have the following moral rights:

(1) To have his name or pseudonym indicated on his work or not to have his name indicated on his work;

(2) To object to any distortion, deformation or any other modification of his work;

(3) To object to any distortion and to prohibit any other use of his work which would be prejudicial to his honor or reputation.

The rights provided for in the preceding Articles are imprescriptible and perpetual.

1. Any disposal of the author of his future in intellectual production shall be considered as null and void.
2. Any disposal by the author of the original copy of the work shall not be considered as an assignment of the authors' rights.
3. The author shall have the exclusive right to publish his letters. However, he may not exercise such right without the permission of the recipient, where the publication is likely to be prejudicial to the latter.
4. A person who takes photographs or of a person shall be prohibited from publishing, displaying or distributing the original picture or copy thereof without the permission of the said person; this provision shall not apply if the publication of the photograph or portrait was done on the occasion of a public event, or if relating to public figures or world known celebrities, or if authorized by public authorities for the public interest.

The person represented in the photograph may authorize its publication in newspapers and magazines and other similar publications without the authorization of the photographer, unless otherwise agreed.

These provisions shall apply irrespective of the method used to produce the photograph.

Chapter IV Duration of Protection

15. The economic rights shall be protected during the life of the Author and for fifty calendar years after his death. Protection for original, artistic or literary work shall be for the following durations:

in the case of the work of joint authorship, the rights shall be protected for fifty calendar years from the date of the death of the last surviving coauthor.

in the case of audiovisual or collective work, the rights shall be protected for fifty years as from the date on which the work was first published. For works that are not published, the term of protection shall run from the first day of the calendar year after the completion date of the work.

in the case of a work published under a pseudonym or published anonymously, the rights shall be protected for fifty calendar years from the first day of the calendar year following the date on which the work was first published. Nevertheless, where the pseudonym used by the author leaves no doubt as to the author's identity, the term of protection shall be calculated as from the first calendar year following the author's death. This provision applies where the author reveals his identity before the expiration of the protection period.

1. In case where the protection runs as from the date in which the work was published, under the provision of this Law, the date of the first publication shall be considered, irrespective of subsequent publications, unless the author has, on republication, introduced substantial changes as to consider the work new. If the work is composed of several parts or, published separately at different stages, each part or shall be considered as a separate work, in calculating the periods of protection.
2. The moral rights provided for in this Law shall be perpetual and transferable by inheritance after the Author's death. Where the author dies without an inheritor, the competent Ministry shall undertake the protection of such rights.

Chapter V Restrictions on Copyright and Neighboring Rights

18. The following uses of a protected work are permitted without the Author's authorization:

(1) using the work exclusively for personal use, through reproduction, translation, quotation, musical arrangement, acting, broadcast listening, television viewing, photography or by any other means;
(2) using the work by way of illustration for teaching, through publications, broadcasts, sound or visual recordings, films or by any other means, to the extent justified by the purpose, provided that the use is nonprofit making and the source and the name of the author are indicated. The uses provided for in the two preceding items shall not conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the author;

(3) citing paragraph of a work in another work for the purpose of illustration, demonstration or criticism, within the acceptable practice and as justified by the purpose, provided that the source and the name of the author are indicated.

19. The reproduction in a newspaper or periodical, the broadcasting or other communication to the public of an article published in a newspaper or a periodical on current political, economic, social, cultural or religious topics or a broadcast work of the same character, shall be permitted. This permission is subject to the obligation to clearly indicate the source and the name of the author, when known. Nevertheless, this exception shall not apply where the authorization right of reproduction or communication to the public is explicitly reserved by the author.

It is also permitted to reproduce any work that can be seen or heard through informatory display of current events, photography or television or any other information massmedia, provided it remains within the information objective determined, with an indication to the author's name.

20. The reproduction, in a single copy, or the adaptation of a computer program by the rightful owner of a copy of that computer program shall be allowed to the extent justified by the initial purpose, or for the purpose of preservation or replacement of an original copy or an adaptation thereof; this right shall expire in the event that the possession of the computer program ceases to be lawful.

21.—(1) The reproduction is allowed for teaching purposes in educational institutions the activities of which do not serve direct or indirect commercial gain, of articles, short works or extracts of works, to the extent justified by the purpose provided that:

(a) The act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions, and

(b) There is no collective license available for reproduction by a competent authority in the collective management of rights of which the educational institution is or should be aware.

(c) The name of the author and the title of the work shall be indicated as far as practicable on all copies.

(2) Any library or archive whose activities do not serve direct or indirect gain may make a single copy of the work by reprographic reproduction

(a) Where the reproduced work is a published article, a summary or an extract of work where reproduction is to satisfy the needs of a natural person, provided that:

the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or research, and if repeated, on separate and unrelated occasions, and

there is no collective license available for reproduction by a competent authority in the collective management of rights of which the library or archive is or should be aware.

(b) The reproduction is permitted where the copy is made with the aim of preserving the original copy or, when necessary, replacing a lost, destroyed or rendered unusable copy in the permanent collection of another similar library or archive, provided that:
it is impossible to obtain such a copy under reasonable conditions,
the act of reprographic reproduction is an isolated case.

1. Broadcasting organizations may prepare, for the purposes of their broadcasts and by their own means, a provisional recording of a protected work they are authorized to broadcast to the public. Such a copy shall be destroyed within one year from the date of its preparation with the exception of recordings of documentary nature.
2. Any physical person may, without the authorization of the Author, import a copy of a work for his own personal purposes.
3. The press or other information media may publish, without the authorization of the author, speeches, lectures, as well as legal proceedings or similar works displayed openly to the public, provided that the name of the author is clearly indicated. The author shall have the exclusive right to publish such works in one or more publications or other means as he deems appropriate.
4. Musical bands or arms forces may, without the authorization of the author, play or perform published work in as much as such playing or performance does not produce directly or indirectly any financial revenue.
5. The restrictions on economic rights provided for in this Chapter shall apply mutatis mutandis on the rights of performers, producers of sound recordings and broadcasting organizations.

27.—(a) Any Qatari citizen may obtain from the Minister or his delegate a nonexclusive and nonassignable license for the translation into Arabic of a foreign work, published in a printed form or any other form, and for the publication of this translation in a printed form or any other form, after three years from the date of the first publication of this work and provided that no translation of this work into Arabic was previously published in Qatar by the owner of the translation right or with his consent or upon the depletion of the translated editions.

(b) Any Qatari citizen may obtain from the Minister or his delegate an exclusive and nonassignable license to reproduce and publish any published work according to the following conditions:

(1) lapse of three years from the date of the first publication of any published work related to technology, natural science, physics or mathematics, or after seven years from the first publication of works of poetry, theatre, music, art books and novels, or after five years from the first publication of other published works, and

(2) copies of the work were not distributed in the State of Qatar to satisfy the needs of the public or for school or for university education by the owner of the reproduction right by or with his consent and for a price similar to the prices of similar works in the State of Qatar, and

(3) the published copy is sold according to the provisions of this paragraph for a price which is similar or less than the price provided for in item (2) of this paragraph.

(c) The translation licenses provided for in paragraph (a) of this Article are granted for the purposes of school and university education or research, whereas reproduction licenses, provide for in paragraph (b) of this Article are granted only for the use in school or university education.

(d) Where a translation or reproduction license is granted, the author of the original translated or reproduced work shall be entitled to a fair compensation in conformity with the criteria of economic rights applied for voluntary licenses between persons in the State of Qatar and persons in the author's country.

(e) The conditions and procedure of grant of licenses, provided for in this Article, are prescribed by a decision of the Minister.

Chapter VI Provisions Relating to the Work after the Death of the Author

28. The copyright provided for in this Law is wholly or partly transferable by inheritance or legal assignment.

29.—(1) When the author includes in his will the nonpublication, or publication at a fixed date for his work, his will shall be respected accordingly.

(2) Where the author, or one of the coauthors, dies without an inheritor, his share shall accrue to those who are entitled to it in accordance with the provisions of the Islamic Sharia.

1. If the inheritors or successors of the author do not exercise the rights transferred to them, and if the Minister is of the opinion that the publication of the work would be in the public interest, he may request, by registered mail, the inheritors of the author to publish the work. If they do not publish the work within a year from the date of the request, the Minister may order the publication of the work against a fair compensation to be paid to the inheritors.
2. In case of a work published by the inheritors for the first time after the death of the author, the work shall be protected for fifty years as from the date of the first publication.

Chapter VII Provisions Related to Some Works

32. National folklore shall be the public property of the State.

The State, represented by the Ministry shall protect national folklore by all legal means, and shall act as the author of folklore works in facing any deformation, modification or commercial exploitation.

33. In case several persons participate in the creation of a work, the coauthors shall be the original owners of the economic rights of that work. A coauthor may not, alone, exercise rights of authorship unless all coauthors agree to that in writing. Any dispute shall be settled by the competent tribunal. Each coauthor shall have the right to file a case against any copyright violation. This right is transmittable to the inheritors of any of the coauthors. In case several persons participate in the creation of a work and the role of each of them in the joint work is distinguishable, each person shall have the right to exploit his part separately, without prejudice to the exploitation of the joint work, unless they agree otherwise.

- 34.** In the case of a collective work, the physical or moral person who initiates and directs the work shall be the original owner of the copyright, unless otherwise provided in the contract.

35. In the case of coauthorship of a musical work, the music composer shall have the exclusive right to authorize the public performance, execution, publication, reproduction or communication to the public of the whole work, without prejudice to the rights of the author of the literary component of the work.

The same provision shall apply to choreographic works accompanied by music, shows accompanied by music and to any other similar works.

The author of the literary component of the work shall have the exclusive right to publish his own part. He may not, however, use this component at the basis of another similar work, unless otherwise agreed.

36. Coauthorship of an audiovisual work includes the following:

- (1) author of the scenario or the written idea;
- (2) author of the dialogue;
- (3) editor of the existing literary work, adapting it to the audiovisual work;
- (4) composer of the music it especially compose for the audiovisual work;
- (5) producer, if he exercises an effective control and provides positive intellectual input to realize the work in all its aspects.

Where the audiovisual work is adapted or extracted from another previous work, the author of the previous work shall be considered as a coauthor of the new work. His name shall be explicitly mentioned in reference to the adaptation or extraction.

37. If any of the coauthors of an audiovisual work fails to complete his assigned part, the remaining coauthors shall not be prevented from using the part already accomplished, notwithstanding his rights as a coauthor if his failure to complete the work was justifiable. Where his failure was of his own free will, without justifiable reasons, he shall be deprived of any rights that may accrue to him by virtue of the part he has accomplished.

38. If the authors of a literary text, scenario and dialogue, and the producer and music composer collectively create an audiovisual work, neither of them shall have the right to prevent the production or display of such work., without prejudice to the moral and economic rights of the dissenter. The author of the literary or musical component of a work may publish his work by means other than movie, theatre, radio or television, unless otherwise agreed.

39. The producer shall always be considered the publisher of the work and shall have all publication rights of the tape and its copies. He shall act, during the period of exploitation of the tape, on behalf of the coauthors of the audiovisual work and their successors, as to the terms of the display and exploitation of the tape without prejudice to the rights of the author of the literary and musical works in publishing their works by other means, unless otherwise agreed.

Chapter VIII Neighboring Rights

Section One Rights of Performers

40. Performers shall enjoy the following rights:

(1) Moral rights which will consist of the following:

- (a) The right to be identified as such with respect to their performances only if such indication would contradict with the exploitation of the performance;
- (b) The right to prevent any distortion, deformation or modification of their performance that would be prejudicial to their reputation.

(2) Economic rights which will consist of the following:

- (a) to broadcast or make their unfixed performance available to the public;
- (b) to make a fixation or a recording of their unfixed sound recordings;
- (c) to reproduce sound recordings containing unauthorized fixation of their performances;
- (d) to rent sound recordings containing their performances;
- (e) to distribute to the public through the sale of sound recordings containing their performances;

The provisions of this Article shall not deprive performers from concluding contracts with better terms for their performances.

The rights conferred by this Article shall be protected until the end of the fiftieth year following the fixation of the performance in a sound recording or in the absence of such fixation, from the end of the year in which the performance took place.

Section Two Rights of Producers of Sound Recordings

41. Producers sound recordings shall have the exclusive right to carry out or to authorize any of the following acts:

- (1) direct or indirect reproduction of a sound recording in any manner or form.
- (2) rental to the public of a copy of the sound recording.
- (3) making available to the public by sale.

The rights under subsection (1) of this article shall be protected from the publication of the sound recording until the end of the fiftieth year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth year, following the year of fixation.

Section Three Rights of Broadcasting Organizations

42. Broadcasting organizations shall have the exclusive right to carry out or to authorize any of the following acts:

- (1) rebroadcasting of their broadcasts.
- (2) communication of such to the public.
- (3) fixation of its broadcasts.
- (4) reproduction of a fixation of its broadcast.

The rights under this Article of the publication of the sound recording shall be protected for twenty years as from the year following the year in which the broadcast takes place.

43. The provision of this Law shall apply to the following:

- (1) performances of Qatari performers.
- (2) sound recordings of Qatari producers or recordings that have been recorded or published in

Qatar.

(3) broadcasts or broadcasting organizations that have their headquarters in Qatar or broadcasting organizations that broadcast through a transmitter in Qatar.

The provisions of this Law shall also apply on performances, sound recordings or broadcasts protected by any international convention to which the State is party.

Chapter IX Office of the Protection of the Copyright and Neighboring Rights

44. An office shall be established within the Department of Commercial Affairs in the Ministry, to be called "Office for the protection of the copyright and neighboring rights" vested with the enforcement of this Law. For this purpose, the Office shall undertake the following:

(1) raise authors' awareness to the optimal means to exercise their economic and moral rights and provide them with assistance;

(2) settle any disputes arising between the authors, performers and third parties, subject to the provisions of this Law, with the consent of the parties concerned.

(3) consider and follow up issues related to copyright and neighboring rights at the local, Arab and international levels, and submit relevant proposals or recommendations.

(4) examine applications to deposit works, sound recordings, performances and broadcasts, according to the provisions of this Law.

(5) propose the necessary measures to implement the provisions of this Law, particularly the appropriate procedures to deposit works, provided for in the previous item of this Article, with the Office, the publication of such deposit, and the forms or records related to the deposit.

(6) represent the country in the meetings, seminars and conferences related to copyright and neighboring rights on the local, Arab and international levels.

45. Owners of copyright and neighboring rights may submit to the Office an application to deposit their works provided for in Article 44 (4) of this Law, provided that they submit the following material with their applications:

(1) the name of author or authors in the case of joint works or the name of owners of neighboring rights;

(2) subject matter of the work or subject matter of the neighboring right;

(3) two copies of the work or the subject matter of the neighboring right;

(4) comprehensive statement of the works' specifications or the subject matter of the neighboring right;

(5) a written statement by the authors of the ownership of a work or a neighboring right and rights conferred on them.

Failure to deposit work or neighboring rights shall have no effect on its protection under this Law.

46. The Office shall deliver to the owners of rights or the owners of neighboring rights a certificate, specifying the date of deposit, the subject matter and nature of the neighboring right and the name of the holder or owner, subject to the payment of the required certification fees.

Such certificate shall be an evidence of the authenticity of the data included therein and other parties may prove otherwise. The fees for issuing deposit certificates shall be determined by a decision of the Councils of Ministers upon the proposal of the Minister.

Chapter X Preventive Measures and Sanctions

47.—(a) The Court may, upon application of the owner of the right or any of his successors or hirers, take the following procedure related to the infringement of copyright:

- (1) grant injunctions to prohibit the committing of infringement;
- (2) order the seizure of the infringing copies or any part thereof;
- (3) seizure of infringing copies and implements used in the reproduction;
- (4) ordering the appropriate indemnification;
- (5) seizure of profits attributable to the infringement.

(b) If it is proved that the plaintiff is the owner of the right and that his right has been infringed or subject to an imminent infringement, the Court may order any of the procedures provided for in subsection (a) of this Article as a conservatory measure to prevent infringement or to preserve an evidence related to the infringement.

(c) in cases where delay may prejudice the holder of the right beyond compensation or in cases where there is a proved risk of losing material which constitutes evidence related to the infringement, the Court may take any of the measures provided for in subsection (a) of this Article, as conservatory measures, without notifying the defendant and in his absence, and the prejudiced parties shall be notified by the measures taken by the Court as soon as such measures are implemented. The defendant may request a hearing, within thirty days after his notification by the measures. The Court shall decide, in such a session, to endorse, modify or repeal the conservatory measure.

(d) the petition for conservatory measures shall be submitted, according to the provisions of paragraphs (b) and (c) of this Article, with an appropriate financial deposit, to prevent abuse and secure damages for the defendant, if the petition does not prove true.

(e) upon request from the defendant, the conservatory measures taken according to the provisions of paragraphs (b) and (c) of this Article shall be repealed if the action is not filed within fifteen days from the date of the Court's order to take the measures.

(f) in the cases where the conservatory measure taken according to paragraphs (b) and (c) of this Article is repealed because of the expiry of the period for filing the action, the inability of the plaintiff or where it is proved that there is no infringement or an imminent infringement, the Court may, upon request of the defendant, order appropriate indemnification for prejudice caused by such measures.

(g) the Court may order the petitioner, who arbitrarily requested any of the measures stipulated in this Article, payment of adequate indemnification to the party against whom the measures were taken, to compensate the damages sustained as a result of such abuse.

48. Without prejudice to more severe sanction provided or under any other law, any person who publishes a work he does not own, without a certified written authorization from the author of the work, his inheritors, or his representative, shall be punished by imprisonment for a period not less than six months and not more than one year and with a fine of not less than 30,000 Riyals and not more than 100,000 Riyals, or by either punishment. Shall be subject to the same sanction any person who, contrary to the fact, claims ownership of a work he does not own.

Without prejudice to more severe sanction provided for under any other law, any publisher who, when publishing a work, modifies its real meaning, nature, subject or title in contradiction with the instructions or wish of the author of the work, shall be punished with imprisonment for a period not exceeding one year and a fine of not less than 30,000 Riyals and not more than 50,000 Riyals, or by either punishment.

50. No establishment which engage distributing, selling or reproducing copies of work, shall undertake any sale or reproduction of a work without a written authorization from the author, or his representative. The owner of the establishment who contravenes the provision of the preceding paragraph shall be punished with imprisonment for a period not exceeding one year and with a fine not less than 30,000 Ryals and not exceeding 50,000 Riyals, or by either punishment.

51. The following acts shall be considered illegal act and infringements of the rights protected under this Law:

- (1) manufacture or imports of any devices or instruments with an intention of using them through sale, rental or other means, if they were designed or meant to deactivate any devices or instruments preventing or limiting the reproduction of a work, a sound recording, or a broadcast, or if meant to undermine the quality of the work;
- (2) manufacture or import of any devices or instruments with the intention of using them through sale, rental or other means, if they can enable the reception of codified programs broadcast or communicated to the public in any other way, including programs communicated through satellite, or if they facilitate such transmission to persons not entitled to receive such programs.
- (3) remove or modify any electronic data relating to copyright administration, without authorization.
- (4) distribute works, performances, sound recordings or broadcasts, or import such works for distribution, transmission or communication to the public, or provide them to the public without authorization, knowing that electronic data relating to copyright administration were removed or modified without authorization.

Any person who commits any of the preceding infringement shall be punished by imprisonment or a period not less than six months and not more than one year.

52. In all cases specified in this Chapter it is imperative to order the confiscation of the infringing copies of the work and all implements used in the reproduction. A decision may also be taken to close down the establishment for a period of not less than one month and not more than three years. In case of recurrence, the sanctions provided for in this Chapter shall be doubled, and the Court may also order the publication of the judgment in one or more newspapers at the expense of the convicted party.

All conservatory measures and sanctions provided for in this Chapter shall apply on neighboring rights.

Chapter XI General Provisions

54. The provisions of this Law shall apply to works, performances, sound recordings or broadcasts in existence at the time of its entry into force, provided that the protection period had not lapsed under a previous legislation or the legislation in the country of origin of such works. The provisions of this Law shall not apply, however, to contracts concerning works artistic performances, sound recordings or broadcasts, which were concluded prior to its entry into force.

55. The staff of the Office of the protection of copyright and neighboring rights, who are mandated by the Minister, shall have the capacity of legal officers for controlling and certifying offenses committed in violation of the provisions of this Law. For that purpose, they are authorized to enter and inspect premises where the works are published, distributed, reproduced and produced, and to examine documents and records, and to confiscate any material, copies or the means used in any acts violating this Law.

56. The Minister shall issue the necessary regulations and decisions for the implementation of the provisions of this Law. Until that date, current regulations and decisions shall continue to be in force to the extent consistent with the provisions of this law.

57. Law No. 25 of 1995 is hereby repealed as well as any provisions inconsistent with the provisions of this Law.

58. All competent authorities, within their respective areas of competence, are liable to enforce this Law. This Law shall enter into force as from the date of its publication in the Official Gazette.

37. Republic of Korea

This is essentially a cultural heritage Act with some reference to TCE

CULTURAL HERITAGE PROTECTION ACT

CHAPTER I GENERAL PROVISIONS

Article 1 (Purposes)

The purpose of this Act is to promote the cultural edification of Korean nationals and to contribute to the development of human culture by transferring national culture and enhancing it to be utilized through the preservation of cultural heritage.

Article 2 (Definitions)

(1)

The term "cultural heritage" in this Act means artificially or naturally formed national, racial, or world heritage of outstanding historic, artistic, academic, or scenic value, which is classified into the following categories:

1.

Tangible cultural heritage: Tangible cultural works of an outstanding historic, artistic, or academic value, such as buildings, records, books, ancient documents, paintings, sculptures, artifacts, etc., and other archeological resources similar thereto;

2.

Intangible cultural heritage: Intangible cultural works of outstanding historic, artistic, or academic value, such as a drama, music, dance, game, ritual, craft skills, etc.;

3.

Monuments: Those classified into the following categories:

(a)

Historic sites, such as temple sites, ancient tombs, shell mounds, fortress ruins, old palace ruins, kiln sites, relic-containing strata, etc., and particularly commemorable facilities, of outstanding historic or academic value;

b)

Scenic sites of outstanding artistic value and excellent scenic view;

(c)

Animals (including their habitats, breeding grounds and migratory places), plants (including their wild growth areas), topography, geology, minerals, caves, biological produce, and extraordinary natural phenomena of outstanding historic, scenic, or academic value;

4.

Folklore resources: Customs or traditions related to food, clothing, housing, trades, religion, annual observances, etc., and clothing, implements, houses, etc. used therefor which are essential for understanding changes in the life of nationals.

2)

The term "designated cultural heritage" in this Act means the following:

1.

State-designated cultural heritage: Cultural heritage designated by the Administrator of the Cultural Heritage Administration pursuant to Articles 23 through 26;

2.

City/Do-designated cultural heritage: Cultural heritage designated by the Special Metropolitan City Mayor, the competent Metropolitan City Mayor or Do Governor, or the Governor of a Special Self-Governing Province (hereinafter referred to as the "Mayor/ DoGovernor") pursuant to Article 70 (1);

3.

Cultural heritage resources: Cultural heritage designated by the Mayor/ Do Governor pursuant to Article 70 (2) among those not designated pursuant to subparagraph 1 or 2.

(3)

The term "registered cultural heritage" in this Act means cultural heritage registered by the Administrator of Cultural Heritage Administration pursuant to Articles 53 among those other than designated cultural heritage.

(4)

The term "protection zone" in this Act means any area designated to protect any designated cultural heritage, excluding a tangible object fixed on the ground, or if a certain area is designated as a cultural heritage, an area where the designated cultural heritage occupies.

(5)

The term "protective facilities" in this Act means any buildings or facilities designated to protect cultural heritage. (6)

The term "historic and cultural environment" in this Act means the natural view surrounding cultural heritage, or any space of outstanding historic and cultural value that is a surrounding environment that needs to be protected together with the relevant cultural heritage.

(7)

The term "construction works" in this Act means civil works, construction works, landscaping works, or any construction works prescribed by Presidential Decree that involve a change in the original form of land or seabed.

(8)

The term "cultural heritage overseas" means any cultural heritage expatriated from the Republic of Korea, and currently located outside the territory of the Republic of Korea.

Article 3 (Basic Principle of Protection of Cultural Heritage)

The basic principle for the preservation, management, and utilization of cultural heritage is to reserve them in their original state.

Article 4 (Duties of State, Local Governments, etc.)

(1)

The State shall establish and implement comprehensive measures for the preservation, management and utilization of cultural heritage.

(2)

Local governments shall establish and implement measures for the preservation, management and utilization of cultural heritage, in consideration of the State's measures and regional characteristics.

(3)

The State and local governments shall endeavor not to damage cultural heritage, protective facilities and protection zones of the cultural heritage, and historic and cultural environment in planning and executing various development projects.

(4)

Korean nationals shall actively cooperate in the State's and local governments' measures for the preservation and management of cultural heritage.

Article 5 (Relationship with other Acts)

(1)

Unless otherwise provided for in other Acts, the preservation, management and utilization of cultural heritage shall be governed by this Act.

(2)

The repair, actual measurement, design and supervision of designated cultural heritage (including provisionally designated cultural heritage under [Article 32](#)) and the protection and investigation of buried cultural heritage shall be stipulated by separate Acts.

CHAPTER II ESTABLISHMENT AND IMPLEMENT OF PROTECTION POLICIES FOR CULTURAL HERITAGE

Article 6 (Establishment of Master Plans for Cultural Heritage)

(1)

The Administrator of the Cultural Heritage Administration shall establish a comprehensive master plan providing for the following matters (hereinafter referred to as "master plan for cultural heritage") every five years, following consultation with the competent Mayor/ Do Governor for the preservation, management and utilization of cultural heritage:

1.

Basic direction-setting and objectives for the preservation of cultural heritage;

2.

Analysis and evaluation of the former master plan for cultural heritage;

3.

Matters concerning the repair, maintenance and restoration of cultural heritage;

4.

Matters concerning a historic and cultural environment of cultural heritage;

5.

Matters concerning the safety control of cultural heritage;

6.

Matters concerning the informatization of cultural heritage data;

7.

Matters concerning raising financial resources used to preserve cultural heritage;

8.

Other necessary matters for the preservation, management and utilization of cultural heritage.

(2)

The Administrator of the Cultural Heritage Administration shall hear opinions of owners, custodians or management organizations prescribed by Presidential Decree and relevant experts in establishing a master plan for cultural heritage.

(3)

Where the Administrator of the Cultural Heritage Administration establishes a master plan for cultural heritage, he/she shall inform the competent Mayor/ Do Governor of such plan, and give public notice thereof on the Official Gazette.

(4)

The Administrator of the Cultural Heritage Administration may request the Mayor/ Do

Governor to present data on cultural heritage in his/her jurisdiction if necessary for establishing a master plan for cultural heritage.

Article 7 (Establishment of Implementation Plans for Preservation of Cultural Heritage)

(1)

The Administrator of the Cultural Heritage Administration and the Mayor/ Do Governor shall establish and implement an annual implementation plan concerning the master plan for cultural heritage.

(2)

Where the Mayor/ Do Governor has established an annual implementation plan or has completed implementing it pursuant to paragraph (1), he/she shall present the results thereof to the Administrator of the Cultural Heritage Administration.

(3)

Where the Administrator of the Cultural Heritage Administration and the Mayor/ Do Governor has established an annual implementation plan, they shall publicly announce it.

(4)

Those subject to presentation of annual implementation plans and results of their implementation, timing and procedures for presentation under paragraph (2), and methods for public announcements under paragraph (3) and other necessary matters shall be prescribed by Presidential Decree.

Article 8 (Establishment of Cultural Heritage Committee)

(1)

The Cultural Heritage Committee shall be established under the Cultural Heritage Administration to investigate and deliberate on the following matters concerning the preservation, management, and utilization of cultural heritage:

1.

Matters concerning master plans for cultural heritage;

2.

Matters concerning the designation of State-designated cultural heritage and the revocation of such designation;

3.

Matters concerning the designation of protective facilities or protection zones for any State-designated cultural heritage and revocation of such designation;

4.

Matters concerning the recognition of holders, honorary holders, or holding organizations of any important intangible cultural heritage and the revocation of such recognition;

5.

Matters concerning the alteration of the current state of any State-designated cultural heritage;

6.

Matters concerning the expatriation of any State-designated cultural heritage;

7.

Matters concerning the protection of a historic and cultural environment for State-designated cultural heritage;

8.

Matters concerning the registration of cultural heritage and cancellation of such registration;

9.

Matters concerning the excavation and evaluation of buried cultural heritage;

10.

Matters deemed important that are professional or technical matters concerning the preservation and management State-designated cultural heritage;

11.

Other matters referred to the committee by the Administrator of the Cultural Heritage Administration for deliberation on the preservation, management, and utilization of cultural heritage.

(2)

Members of the Cultural Heritage Committee shall be appointed by the Administrator of the Cultural Heritage Administration from among the following persons:

1.

A person who is or was an associate professor in the faculty related to the preservation, management and utilization of cultural heritage in a university under the Higher Education Act;

2.

A person who has been engaged in business related to the preservation, management and utilization of cultural heritage for at least ten years;

3.

An expert having abundant knowledge and experience in cultural heritage who has been engaged in business of anthropology, sociology, architecture, urban planning, tourism, environment, law, religion or the press for at least ten years.

(3)

Subcommittees may be established under the Cultural Heritage Committee to investigate and deliberate on duties classified based on the kinds of cultural heritage for the matters stipulated under each subparagraph of paragraph (1).

(4)

Any subcommittee under paragraph (3) may hold a meeting with another subcommittee (hereinafter referred to as "joint subcommittee") where necessary for investigation, deliberation, etc.

(5)

The Cultural Heritage Committee, subcommittees and joint subcommittees shall prepare meeting minutes stating the following matters. In such cases, stenographic notes or audio or video tape recording may be permitted where deemed necessary:

1.

The date, time, and venue of a meeting;

2.

Members present at a meeting;

3.

Details of deliberation and resolution.

(6)

Meeting minutes prepared under paragraph (5) shall be disclosed to the public: *Provided*, That the relevant committee may resolve not to disclose them to the public in cases prescribed by Presidential Decree, such as having influence on property gains by a specific person, or infringing on a specific person's privacy, etc.

(7)

Necessary matters concerning the organization, division of duties, operation, etc. of the Cultural Heritage Committee, subcommittees, and joint subcommittees shall be prescribed by Presidential Decree.

Article 9 (Establishment of Korea Cultural Heritage Foundation)

(1)

The Korea Cultural Heritage Foundation (hereinafter referred to as the "Cultural Heritage Foundation") shall be established as an affiliate of the Cultural Heritage Administration to protect, preserve, popularize, and enhance cultural heritage and develop traditional life-style and culture.

2)

The Cultural Heritage Foundation shall be a juristic person.

(3)

The Cultural Heritage Foundation shall have executives and necessary employees as stipulated by its articles of association.

(4)

Except as otherwise provided for in this Act, provisions governing incorporated foundations under the Civil Act shall apply *mutatis mutandis* to the Cultural Heritage Foundation.

(5)

Expenses incurred in the operation of the Cultural Heritage Foundation may be subsidized by the National Treasury.

(6)

Where deemed necessary for the Cultural Heritage Foundation to carry out its affairs, the State or a local government may permit it to use and benefit from any State-owned or public property without consideration.

CHAPTER III CREATING FOUNDATION FOR PROTECTION OF CULTURAL HERITAGE

Article 10 (Basic Investigation of Cultural Heritage)

(1)

The State and local governments may investigate the current state, management condition, etc. of existing cultural heritage, and prepare records thereon to prevent the loss of cultural heritage.

(2)

The Administrator of the Cultural Heritage Administration and the head of a local government may either directly conduct an investigation or request the owner or custodian of the relevant cultural heritage or an organization, etc. related to the investigations and excavation of cultural heritage to present relevant data where necessary for an investigation under paragraph (1).

(3)

Where the Administrator of the Cultural Heritage Administration or the head of a local government is to conduct an investigation into cultural heritage, other than designated cultural heritage, he/she shall obtain prior consent of the owner or custodian of the relevant cultural heritage.

(4)

Necessary matters concerning detailed procedures, methods, etc. for investigations of cultural heritage shall be prescribed by Presidential Decree.

Article 11 (Facilitating Informatization of Cultural Heritage)

(1)

The Administrator of the Cultural Heritage Administration shall build and operate an information system on cultural heritage to efficiently utilize investigated data under Article 10 and other necessary data for the preservation and management of cultural heritage, and to enable Korean nationals to easily access and use cultural heritage information.

(2)

The Administrator of the Cultural Heritage Administration may request the heads of the relevant central administrative agencies and local governments to present necessary data in order to build the information system on cultural heritage under paragraph (1).

(3)

The scope of building the information system on cultural heritage under paragraph (1), its operation procedures, and other necessary matters shall be prescribed by Presidential Decree.

Article 12 (Protection of Cultural Heritage during Construction Works)

Where cultural heritage is likely to be damaged, destroyed, or submerged due to construction works, or where necessary for the protection of a historic and cultural environment of cultural heritage, the implementer of such construction works shall take necessary measures in compliance with instructions by the Administrator of the Cultural Heritage Administration. In such cases, expenses incurred in taking such measures shall be borne by the implementer of the construction works.

Article 13 (Protection of Preservation Areas of Historic and Cultural Environment)

(1)

The Mayor/ Do Governor shall designate the preservation area of a historic and cultural environment by municipal ordinance, following consultation with the Administrator of the Cultural Heritage Administration in order to protect the historic and cultural environment of a designated cultural heritage (excluding cultural heritage that can be categorized as movable properties, and intangible cultural heritage; hereafter the same shall apply in this Article).

(2)

With respect to construction works to be implemented in an area outside the outer boundary (referring to the boundary of a designated protection zone) of cultural heritage and within the preservation area of a historic and cultural environment designated by the Mayor/ Do Governor, an administrative agency in charge of the authorization, permission, etc. of the construction works shall examine whether the implementation of such construction works falls under any acts that could affect the preservation of designated cultural heritage before granting authorization, permission, etc. for the construction works.

(3)

The scope of the preservation area of a historic and cultural environment shall be within 500 meters from the outer boundary, in consideration of the cultural, artistic, academic and scenic value of the relevant designated cultural heritage, its surrounding environment and other necessary matters for the protection of the cultural heritage: *Provided*, That where construction works are implemented in an area 500 meters away from the outer boundary of a designated cultural heritage due to characteristics, locational conditions, etc. of the cultural heritage and such construction works is clearly deemed to affect the cultural heritage, the scope may be set in excess of 500 meters.

(4)

Where the Administrator of the Cultural Heritage Administration or the Mayor/ Do Governor designates cultural heritage, he/she shall determine and publicly announce detailed standards for

acts that could affect the preservation of the designated cultural heritage in the preservation area of a historic and cultural environment within six months from the date on which such designation is publicly announced.

(5)

An examination under paragraph (2) may be omitted for any construction works implemented in an area for which detailed standards for acts under paragraph (4) are public announced within the extent of such standards.

Article 14 (Prevention, etc. of Fire and Disaster)

(1)

The Administrator of the Cultural Heritage Administration or the Mayor/ Do Governor shall establish and implement necessary measures for the prevention of fire, disasters and theft of designated cultural heritage.

(2)

The Administrator of the Cultural Heritage Administration and the Mayor/ Do Governor shall develop fire preparedness guidelines (hereinafter referred to as "guidelines") based on the characteristics of the respective cultural heritage, and take measures in order for the owner, custodian or management organization of each designated cultural heritage to use it.

(3)

Guidelines shall be regularly examined and supplemented at least once a year, and matters to be addressed for fire preparedness, and the scope of cultural heritage for which guidelines shall be developed shall be prescribed by Presidential Decree.

(4)

An owner, custodian and management organization of designated cultural heritage shall install fire-fighting systems and disaster-prevention systems according to the standards stipulated under the Installation, Maintenance, and Safety Control of Fire-Fighting Systems Act to prevent and suppress fire of the designated cultural heritage, and endeavor to install anti-theft devices according to the standards determined by Ordinance of the Ministry of Culture, Sports and Tourism in order to prevent any theft of the designated cultural heritage.

(5)

The State and a local government may fully or partially subsidize expenses to be incurred to any person who installs fire-fighting and disaster-prevention systems, or anti-theft devices under paragraph (4), within budgetary limits.

Article 15 (Support, etc. for Cultural Heritage Protection Activities)

The Administrator of the Cultural Heritage Administration may support or foster related organizations where deemed necessary for the protection, preservation, distribution or nhancement of cultural heritage.

Article 16 (Training of Cultural Heritage Experts)

(1)

The Administrator of the Cultural Heritage Administration may train experts to be specialized in the protection, management, maintenance, etc. of cultural heritage.

(2)

The Administrator of the Cultural Heritage Administration may pay a scholarship where deemed necessary for training of experts under paragraph (1).

(3)

Where deemed necessary to verify the education and research status of a person on scholarship under paragraph (2) (hereinafter referred to as "scholarship"), the Administrator of the Cultural Heritage Administration may order the person to present a credential or research report.

(4)

Where a person who is or has been paid the scholarship has any ground determined by Ordinance of the Ministry of Culture, Sports and Tourism, such as the suspension of undergoing education and conducting research, or changes in the details thereof, etc., he/she shall promptly report thereon to the Administrator of the Cultural Heritage Administration.

(5)

Where any ground determined by Ordinance of the Ministry of Culture, Sports and Tourism, such as the suspension of undergoing education and conducting research, or changes in the details thereof, poor performance, etc. occurs, the Administrator of the Cultural Heritage Administration may suspend the payment of the scholarship, or order the return thereof.

(6)

Necessary matters concerning persons entitled to scholarships, applications for payment of scholarships, suspension of scholarships, the return thereof, etc. under paragraphs (1) through (5) shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 17 (Facilitating, etc. Cooperation for International Exchanges of Cultural Heritage)

(1)

The State shall actively promote information and technical exchanges, human resources exchanges, joint investigations and research, and other activities concerning cultural heritage through cooperation with international organizations related to cultural heritage and other countries.

(2)

The Administrator of the Cultural Heritage Administration may fully or partially subsidize expenses incurred in promoting measures concerning cultural heritage under paragraph (1) within budgetary limits.

Article 18 (Cooperation for Exchanges of Cultural Heritage between North and South Korea)

(1)

The State shall endeavor to increase mutual exchanges and cooperation in the field of cultural heritage between North and South Korea.

(2)

The Administrator of the Cultural Heritage Administration shall investigate and research North Korea's policies, systems, current states, etc. on cultural heritage to increase mutual exchanges and cooperation in the field of cultural heritage between North and South Korea.

(3)

Where necessary for exchange and cooperation projects, investigations, research, etc. stipulated under paragraphs (1) and (2), the Administrator of the Cultural Heritage Administration may request cooperation from related organizations, etc., and may fully or partially subsidize expenses incurred therein, as prescribed by Presidential Decree.

Article 19 (Registration and Protection of World Heritage, etc.)

(1)

The Administrator of the Cultural Heritage Administration may file an application with the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the registration of Korea's important cultural heritage being as world heritage, intangible cultural heritage of humanity, or memory of the world in accordance with the Convention Concerning the Protection of the World Cultural and Natural Heritage, the Convention Concerning the Protection of Intangible Cultural Heritage or the UNESCO's programs. In such cases, the Administrator of the Cultural Heritage

Administration shall determine procedures, etc. for selecting those to be applied for, in consideration of the UNESCO's regulations.

(2)

The Administrator of the Cultural Heritage Administration shall actively endeavor to preserve not only cultural heritage registered as the World Heritage Site, Intangible Cultural Heritage of Humanity, or Memory of the World (hereafter referred to as "world heritage, etc." in this Article), but also human cultural heritage, and to enhance the prestige of cultural heritage around the world.

(3)

The State and a local government shall maintain, manage and support world heritage, etc. to the level equivalent to the State-designated cultural heritage from the date on which they are registered, and the Administrator of the Cultural Heritage Administration may order any person who engages in any activity that could affect world heritage or its historic and cultural environment to take necessary measures for the protection of world heritage and its historic and cultural environment, as prescribed by Presidential Decree.

Article 20 (Protection of Foreign Cultural Heritage)

(1)

Cultural heritage designated and protected by Acts and subordinate statutes of a foreign country (hereinafter referred to as "foreign cultural heritage") that is a party to the International Convention Concerning the Protection of the World Cultural and Natural Heritage (hereinafter referred to as the "Convention"), in which the Republic of Korea also participates as a party to preserve cultural heritage and promote friendship among states, shall be protected in accordance with the Convention and this Act.

(2)

Where a reasonable ground exists to believe that a foreign cultural heritage that is to be brought or has already brought into the Republic of Korea has been illegally expatriated from the relevant foreign country, the Administrator of the Cultural Heritage Administration may seize the cultural heritage.

(3)

The Administrator of the Cultural Heritage Administration shall keep and manage a foreign cultural heritage, if seized pursuant to paragraph (2), in a museum, etc.

(4)

The Administrator of the Cultural Heritage Administration shall promptly return a foreign cultural heritage kept in his/her custody pursuant to paragraph (3) to its owner or possessor as soon as the foreign cultural heritage is verified to have been legally expatriated from the relevant foreign country. This shall also apply where it is verified that the foreign cultural heritage has been illegally expatriated but it is obvious that the relevant foreign country has no intent to retrieve it.

(5)

Where a foreign country proves that a foreign cultural heritage brought into the Republic of Korea has been illegally expatriated from the relevant foreign country and makes a request for return of the cultural heritage in accordance with appropriate procedures provided for in the Convention, or the Administrator of the Cultural Heritage Administration performs the duty to return it in accordance with the Convention, he/she shall take necessary measures with the cooperation of related agencies so that it can be returned to the relevant foreign country, as provided for in the Convention.

Article 21 (Protection of Cultural Heritage in Emergencies)

(1)

Where deemed necessary for the protection of cultural heritage at time of war, upheaval, or any emergency equivalent thereto, the Administrator of the Cultural Heritage Administration may

relocate or bury State-owned cultural heritage, designated cultural heritage that are not State-owned cultural heritage, and provisionally designated cultural heritage under [Article 32](#) to or at a safe area, or take other necessary measures or order the owner, holder, possessor, custodian, or management organization of the relevant cultural heritage to relocate or bury it to or at a safe area, or take other necessary measures.

(2)

Where necessary for the protection of cultural heritage at time of war, upheaval, or any emergency equivalent thereto, the Administrator of the Cultural Heritage Administration may take them overseas, notwithstanding [Article 39](#). In such cases, he/she shall undergo deliberation thereon by the State Council in advance.

(3)

[Article 46](#) shall apply *mutatis mutandis* to any person who sustains loss due to measures or orders taken or performed under paragraph (1): *Provided*, That this shall not apply to *force majeure* cases, such as collateral damage in war, etc.

Article 22 (Requests for Support)

The Administrator of the Cultural Heritage Administration or a public official in receipt of his/her order may request necessary support from the heads of related agencies, where necessary for taking measures stipulated under [Article 21](#) (1).

CHAPTER IV STATE-DESIGNATED CULTURAL HERITAGE

SECTION 1 Designation

Article 23 (Designation of Treasures and National Treasures)

(1)

The Administrator of the Cultural Heritage Administration may designate more valuable cultural heritage than other similar assets as treasures, following deliberation by the Cultural Heritage Committee.

(2)

The Administrator of the Cultural Heritage Administration may designate, as national treasures, cultural heritage of greater human cultural value, which are almost without parallel, than other similar properties constituting treasures under paragraph (1), following deliberation by the Cultural Heritage Committee.

(3)

Necessary matters concerning standards, procedures, etc. for the designation of treasures and national treasures under paragraphs (1) and (2) shall be prescribed by Presidential Decree.

Article 24 (Designation of Important Intangible Cultural Heritage)

(1)

The Administrator of the Cultural Heritage Administration may designate more valuable intangible cultural heritage than other similar assets as important intangible cultural heritage, following deliberation by the Cultural Heritage Committee.

(2)

Where the Administrator of the Cultural Heritage Administration designates any intangible cultural heritage as an important intangible cultural heritage pursuant to paragraph (1), he/she shall recognize a holder (including a holding organization; hereinafter the same shall apply) of the important intangible culture heritage.

(3)

The Administrator of the Cultural Heritage Administration may additionally recognize another holder of the relevant important intangible cultural heritage, in addition to the holder recognized pursuant to paragraph (2).

(4)

Where a holder of an outstanding intangible cultural asset recognized pursuant to paragraph (2) or (3) has a difficulty in properly conducting education for transferral of his/her skills or artistic talent under Article 41-2, the Administrator of the Cultural Heritage Administration may recognize him/her as an honorary holder, following deliberation by the Cultural Heritage Committee. In such cases, where a holder of an important intangible cultural heritage is recognized as an honorary holder of the cultural heritage, the recognition as the holder of such important intangible cultural heritage shall

(5)

Necessary matters concerning standards, procedures, etc. for the designation of important intangible cultural heritage under paragraph (1), and matters concerning standards, procedures, etc. for the recognition of holders of important intangible cultural heritage and honorary holders shall be prescribed by Presidential Decree.

Article 25 (Designation of Historic Sites, Scenic Spots and Natural Monuments)

(1)

The Administrator of the Cultural Heritage Administration may designate scenic spots, or natural monuments, more valuable monuments than other similar monuments as historic sites, following deliberation by the Cultural Heritage Committee.

(2)

Necessary matters concerning standards, procedures, etc. for the designation of historic sites, scenic spots and natural monuments shall be prescribed by Presidential Decree.

Article 26 (Designation of Important Folklore Resources)

(1)

The Administrator of the Cultural Heritage Administration may designate more valuable folklore resources than other similar resources as important folklore resources, following deliberation by the Cultural Heritage Committee.

(2)

Necessary matters concerning standards, procedures, etc. for the designation of important folklore resources shall be prescribed by Presidential Decree.

Article 27 (Designation of Protective Facilities or Protection Zones)

(1)

Where specifically necessary to protect a certain cultural heritage in granting designation pursuant to Article 23, 25 or 26, the Administrator of the Cultural Heritage Administration may designate protective facilities or protection zones therefor.

(2)

Where deemed necessary due to a change, etc. in artificial or natural conditions, the Administrator of the Cultural Heritage Administration may adjust protective facilities or protection zones designated pursuant to paragraph (1).

(3)

Where the Administrator of the Cultural Heritage Administration has designated or adjusted protective facilities or protection zones pursuant to paragraphs (1) and (2), he/she shall review whether such designation or adjustment is appropriate before every tenth anniversary of such designation or adjustment passes, in consideration of the following matters: *Provided*, That the

period for review may be extended up to the period prescribed by Presidential Decree, if it is impossible to review the appropriateness in a timely manner due to any extenuating circumstance:

1.
The value of the cultural heritage worthy of preservation;
2.
The effects of the designation of protective facilities or protection zones on the exercise of property rights;
3.
The environment surrounding the protective facilities or protection zones.
- (4)
Necessary matters concerning the designation and adjustment, the review of appropriateness, and other relevant matters under paragraphs (1) through (3) shall be prescribed by Presidential Decree.

Article 28 (Public Announcement and Notice of Designation or Recognition)

(1)

Where the Administrator of the Cultural Heritage Administration designates any asset as State-designated cultural heritage (including its protective facilities and protection zones), or recognizes any person as a holder or honorary holder of any important intangible cultural heritage pursuant to Articles 23 through 27, he/she shall publicly announce the purport thereof in the Official Gazette, and shall promptly notify the owner, holder, or honorary holder of the cultural heritage of such designation or recognition.

(2)

In cases under paragraph (1), where no owner of a designated cultural heritage exists, or it is not clearly known who the owner of such asset is, notice shall be given to the possessor or custodian of the cultural heritage.

Article 29 (Issuance of Letters of Designation or Recognition)

(1)

Where the Administrator of the Cultural Heritage Administration designates cultural heritage as a national treasure, treasure, or important folklore resource pursuant to Article 23 or 26, he/she shall issue a letter of designation of the cultural heritage to the owner.

(2)

Where the Administrator of the Cultural Heritage Administration recognizes any person as a holder or an honorary holder of an important intangible cultural heritage pursuant to Article 24 (2) through (4), he/she shall issue to the person a letter of recognition as a holder or an honorary holder of an important intangible cultural heritage.

Article 30 (Time Designation or Recognition Becomes Effective)

The designation or recognition under Articles 23 through 27 shall become effective on the date the owner, holder, honorary holder, possessor, or custodian of the cultural heritage is notified of the designation or recognition, while it shall become effective to any person, other than those named above, on the date public notice thereon is given in the Official Gazette.

Article 31 (Revocation of Designation or Recognition)

(1)

Where cultural heritage designated under Article 23, 25 or 26 loses its value as State-designated cultural heritage, or such designation needs to be revoked based on its valuation, the Administrator

of the Cultural Heritage Administration may revoke the designation, following deliberation by the Cultural Heritage Committee.

(2)

Where a holder of important intangible cultural heritage falls under any of the following subparagraphs, the Administrator of the Cultural Heritage Administration may revoke the recognition as a holder of the important intangible cultural heritage, following deliberation by the Cultural Heritage Committee:

1.

Where he/she is inappropriate for a holder of the important intangible cultural heritage due to his/her physical or mental disability, etc.;

2.

Where he/she is sentenced to a fine or heavier punishment in connection with public performance, exhibition, examination, etc. of traditional culture and the sentence becomes final and conclusive;

3.

Where he/she emigrates to a foreign country or acquires a foreign nationality;

4.

Where any other grounds prescribed by Presidential Decree exist.

(3)

Where an individual among holders or honorary holders of an important intangible cultural heritage is deceased, the recognition of the deceased as a holder or an honorary holder of the cultural heritage is revoked, while if all individual holders of an important intangible cultural heritage deceased, the designation of the important intangible cultural heritage may be revoked, following deliberation by the Cultural Heritage Committee.

(4)

Where the result of examination under Article 27 (3) reveals that the designation of protective facilities or protection zones is inappropriate, or any other special ground exists, the Administrator of the Cultural Heritage Administration shall either revoke the designation of the protective facilities or protection zones or adjust the scope thereof. Where the designation of State-designated cultural heritage is revoked, the designation of the protective facilities or protection zones therefor shall also be revoked without delay.

(5)

Articles 28 and 30 shall apply *mutatis mutandis* to the public announcement and notice concerning the revocation of the designation and recognition of cultural heritage under paragraphs (1) through (4), and the time such revocation becomes effective.

(6)

Where the owner of a national treasure, treasure, or an outstanding folklore resource is notified of the revocation under paragraph (5) and Article 28, he/she shall return the letter of designation of the relevant cultural heritage to the Administrator of the Cultural Heritage Administration within 30 days from the date on which such notice is given.

(7)

Where the holder of important intangible cultural heritage is notified of the revocation under paragraph (5) and Article 10, he/she shall return the letter of recognition to the Administrator of the Cultural Heritage Administration within 30 days from the date on which such notice is given: *Provided*, That this shall not apply where an individual among holders of an important intangible cultural heritage is deceased.

Article 32 (Provisional Designation)

(1)

Where there exists an urgent need to protect cultural heritage deemed worthy of designation pursuant to Article 23, 25 or 26, but there is insufficient time to undergo deliberation thereon by the Cultural Heritage Committee, the Administrator of the Cultural Heritage Administration may provisionally designate the cultural heritage as an important cultural heritage.

(2)

The provisional designation under paragraph (1) shall become effective on the date on which such designation is notified to the owner, possessor, or custodian of a provisionally designated cultural heritage (hereinafter referred to as "provisionally designated cultural heritage").

(3)

The provisional designation under paragraph (1) shall be deemed revoked where the designation under Article 23, 25 or 26 is not granted within six months from the date of the provisional designation.

(4)

Articles 28 and 29 (1) shall apply *mutatis mutandis* to the notification of the provisional designation and the issuance of a letter of provisional designation under paragraph (1), but the public announcement in the Official Gazette under Article 28 (1) is not required for such case.

SECTION 2 Management and Protection

Article 33 (Management Principles by Owners)

(1)

The owner of State-designated cultural heritage shall manage and protect the State-designated cultural heritage under good stewardship.

(2)

The owner of State-designated cultural heritage may appoint a custodian to be in charge of managing and protecting the State-designated cultural heritage on his/her behalf, as occasion demands.

Article 34 (Management by Managing Organizations)

(1)

Where the identity of an owner of State-designated cultural heritage is unknown or it is deemed difficult or inappropriate to leave the management of the State-designated cultural heritage with its owner or custodian, the Administrator of the Cultural Heritage Administration may designate a local government, juristic person or organization competent to manage the cultural heritage as a management organization for the management of the State-designated cultural heritage. In such cases, the management organization of cultural heritage not directly managed by the State among State-designated cultural heritage shall be the competent Special Self-Governing Province, or the competent *Si/ Gun/ Gu* (*Gu* refers to an autonomous *Gu*; hereinafter the same shall apply): *Provided*, That where cultural heritage extends over two or more *Sis/Guns/Gus*, the competent Special Metropolitan City, Metropolitan City or *Do* (excluding a Special Self-Governing Province) shall be its management organization.

(2)

A local government designated as a management organization may entrust a juristic person or organization competent to manage the relevant cultural heritage with management affairs thereof, following consultation with the Administrator of the Cultural Heritage Administration.

(3)

Where the Administrator of the Cultural Heritage Administration intends to designate a management organization pursuant to paragraph (1), he/she shall hear the opinion of the owner of the relevant cultural heritage, or a local government, juristic person or organization he/she intends to designate.

(4)

Where the Administrator of the Cultural Heritage Administration designates a management organization pursuant to paragraph (1), he/she shall promptly publicly announce the purport thereof in the Official Gazette, and shall notify the owner or custodian of State-designated cultural heritage and the relevant local government.

(5)

No one shall interfere with management activities of a management organization designated pursuant to paragraph (1).

(6)

Expenses incurred in managing State-designated cultural heritage by a management organization shall be borne by the management organization, unless otherwise specifically provided for in this Act, but the State or the competent local government may bear the expenses if the management organization is incapable of bearing such expenses.

(7)

Article 30 shall apply *mutatis mutandis* to the time the designation of a management organization under paragraph (1) becomes effective.

Article 35 (Matters to be Permitted)

(1)

A person who intends to perform any of the following activities for State-designated cultural heritage (excluding important intangible cultural heritage; hereafter the same shall apply in this Article) shall obtain permission from the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree. This shall also apply where he/she intends to change any permitted matter:

1.

Altering (including making a specimen or stuffing a natural monument) the current state of State-designated cultural heritage (including its protective facilities and protection zone, and a dead natural monument), which is an act determined by Ordinance of the Ministry of Culture, Sports and Tourism;

2.

Acts determined by Ordinance of the Ministry of Culture, Sports and Tourism that could affect the preservation of State-designated cultural heritage (excluding cultural heritage that can be categorized as movable properties);

3.

Taking a rubbed copy, a photoprint, or a photograph of State-designated cultural heritage in a manner that could affect the preservation of the cultural heritage;

4.

Capturing or collecting an animal, a plant, or a mineral within an area designated or provisionally designated as a scenic place or a natural monument or within its protection zone, or taking the captured or collected animal, plant, or mineral out of such area or protection zone;

(2)

Where the permission from the Administrator of the Cultural Heritage Administration is obtained pursuant to paragraph (1) 2 in an area where the preservation area of a historic and cultural environment of State-designated cultural heritage overlaps with that of a City/ Do-designated cultural heritage, permission from the Mayor/ Do Governor under Article 74 (2) shall be deemed obtained.

(3)

The Administrator of the Cultural Heritage Administration may entrust the Mayor/ Do Governor with affairs for permission for changes in insignificant matters determined by Ordinance of the Ministry

of Culture, Sports and Tourism, among permitted matters concerning acts that could affect the preservation of State-designated cultural heritage under paragraph (1) 2.

Article 36 (Requirements for Permission)

The Administrator of the Cultural Heritage Administration in receipt of an application for permission under Article 35 (1) shall grant permission only where an act subject to application for permission meets the following requirements:

a

1.

Where such act does not affect the preservation and management of cultural heritage;

2.

Where such act does not damage a historic or cultural environment of cultural heritage;

3.

Where such act is in compliance with the master plan for cultural heritage and the annual implementation plan under Article 7.

Article 37 (Revocation of Permitted Matters)

(1)

Where a person who obtains permission under Article 35 (1) and (3), the proviso to Article 39 (1), and Article 39 (2) falls under any of the following cases, the Administrator of the Cultural Heritage Administration may revoke the permission:

1.

Where he/she violates permitted matters or conditions of permission;

2.

Where he/she obtains permission by false or other illegal means;

3.

Where he/she is unable to fulfill permitted matters, or deemed likely to evidently undermine the public interest.

(2)

Where a person who obtains permission under Article 35 (1) fails to file a commencement report and a period of permission expires, the permission shall be deemed revoked.

Article 38 (Medical Treatment, etc. of Animals Designated as Natural Monuments)

(1)

Where an animal designated as a natural monument is in peril, the Mayor/ Do Governor may permit transportation for rescue, medication, surgical operation, fostering, training for adaption to the wild, etc. (hereinafter referred to as "medical treatment") to be conducted at an animal clinic he/she designates.

(2)

Where the Mayor/ Do Governor designates an animal clinic pursuant to paragraph (1), he/she shall select it from among any of the following institutions that have expertise in cultural heritage or experience in activities for the protection of natural monuments or in medical treatment for wild animals, and the procedure for such designation and other necessary matters shall be prescribed by municipal ordinance of the competent local government:

1.

A veterinary hospital established by a veterinarian license holder under the Veterinarians Act;

2.

A livestock industry-related institution that belongs to a local government employs a veterinarian license holder under the Veterinarians Act;

3.

A management organization or an organization for the protection of animals that employs a veterinarian license holder under the Veterinarians Act as its members.

(3)

Where it is necessary to urgently protect an animal designated as a natural monument in peril, the Administrator of the Cultural Heritage Administration may permit an animal clinic to provide medical treatment first without obtaining permission for the alteration of the current state and to report the results thereof later, notwithstanding Article 35 (1).

(4)

The State or a local government may reimburse the expenses incurred in providing medical treatment to an animal clinic that provides medical treatment to an animal designated as a natural monument. In such cases, business affairs related to the reimbursement of expenses for medical treatment of animals designated as natural monuments may be entrusted to an organization related to the medical treatment and protection of natural monuments as prescribed by Ordinance of the Ministry of Culture, Sports and Tourism, and the procedure for reimbursing expenses for medical treatment and other necessary measures shall be prescribed by Ordinance of the Ministry of Culture, Sports and Tourism.

(5)

Where an animal clinic falls under any of the following subparagraphs, the Mayor/ Do Governor may revoke the designation thereof:

1.

Where it obtains the designation by false or illegal means;

2.

Where it fails to meet the requirements for designation under paragraph (2);

3.

Where it kills or maims an animal designated as a natural monument under medical treatment by intention or gross negligence;

4.

Where it fails to report the results of medical treatment under paragraph (3) or submits a false report;

5.

Where it submits a false invoice to claim the expenses for medical treatment under paragraph (4);

6.

Where it violates an order issued by the Administrator of the Cultural Heritage Administration or the head of the competent local government under Article 42 (1).

(6)

Where the Mayor/ Do Governor designates an animal clinic or revokes the designation thereof pursuant to paragraph (2), he/she shall report it to the Administrator of the Cultural Heritage Administration.

Article 39 (Prohibition of Exportation, etc.)

(1)

No national treasure, treasure, natural monument, or any outstanding folklore resource shall be exported or expatriated from the Republic of Korea: *Provided*, That this shall not apply where any up to two years, only if deemed necessary for achieving the original purpose of taking overseas and for safety, etc. of cultural heritage.

(2)

Where a person who has obtained permission for expatriation pursuant to the proviso to paragraph (1) applies for the extension of the period therefor, the Administrator of the Cultural Heritage Administration may permit extension of the period for expatriation by up to two years, only if deemed necessary for achieving the original purpose of taking overseas and for safety, etc. of cultural heritage.

(3)

Notwithstanding paragraph (1), exportation may be permitted with permission from the Administrator of the Cultural Heritage Administration in any of the following cases:

1.

Where a natural monument is made in a specimen, stuffs, etc. with permission under Article 35 (1)

1;

2.

A natural monument proliferated at specific facilities for the purposes of research or exhibitions.

Article 40 (Matters to be Reported)

Where any of the following cases occurs, an owner, holder, custodian, or management organization of State-designated cultural heritage (including its protective facilities and protection zone; hereafter the same shall apply in this Article) shall report the facts and circumstances thereof to the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree:

Provided, That the owner and custodian shall jointly sign the report in cases under subparagraph 1, while the former and new owners shall jointly sign the report in cases under subparagraph 2:

1.

Where a custodian is appointed or dismissed;

2.

Where the owner of State-designated cultural heritage changes;

3.

Where the name or address of the owner, holder, or custodian changes;

4.

Where the name of land, lot number, land category, or area, etc. of the place where State-designated cultural heritage is located changes;

5.

Where the place of safekeeping cultural heritage changes;

6.

Where all or part of State-designated cultural heritage is destroyed, washed away, stolen, or damaged;

7.

Where the alteration in the current state of cultural heritage is commenced or completed with permission (including changed permission) under Article 35 (1) 1;

8.

Where cultural heritage permitted under Article 35 (1) 4 or 39(1) is expatriated from and then repatriated into the Republic of Korea;

9.

Where he/she has owned a specimen or stuffed a natural monument from before the species of an animal or plant is designated as a natural monument.

(2)

Where a person who implements construction works in a preservation area of a historic and cultural environment commences or completes permitted matters after having obtained permission under Article 35 (1) 2 (including changed permission) in the preservation area of a historic and cultural

environment, he/she shall report the fact and the circumstances thereof to the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree.

Article 41 (Protection and Development of Important Intangible Cultural Heritage)

(1)

The State shall protect and develop important intangible cultural heritage for succession to and development of the traditional culture.

(2)

The Administrator of the Cultural Heritage Administration shall require holders of important intangible cultural heritage to conduct education for transferal of skills or artistic talent they have (hereinafter referred to as "skills or artistic talent") in order to transfer and preserve important intangible cultural heritage: *Provided*, That this shall not apply where any extraordinary grounds prescribed by Presidential Decree exist.

(3)

The State or a local government may bear expenses incurred in the education for transferal of skills or artistic talent under paragraph (2) within budgetary limits, and may permit the gratuitous use of State or public property that is established or acquired for education for transferal of skills or artistic talent.

(4)

The Administrator of the Cultural Heritage Administration may award a scholarship to the persons who undergo education for transferal of skills or artistic talent.

(5)

The Administrator of the Cultural Heritage Administration may provide honorary holders of important intangible cultural heritage with special subsidies.

(6)

Necessary matters concerning education for transferal of skills or artistic talent, and the person obtains permission from the Administrator of the Cultural Heritage Administration under the condition that it may be expatriated for the purpose of international cultural exchange, such as an overseas exhibition, etc. of the cultural heritage, but shall be repatriated into the Republic of Korea within two years from the date on which it is expatriated.

(2)

Where a person who has obtained permission for expatriation pursuant to the proviso to paragraph (1) applies for the extension of the period therefor, the Administrator of the Cultural Heritage Administration may permit extension of the period for expatriation by payment of scholarships and special subsidies under paragraphs (2), (4), and (5) shall be prescribed by Presidential Decree.

Article 42 (Administrative Orders)

(1)

Where the Administrator of the Cultural Heritage Administration or the head of a local government deems it necessary to manage and protect State-designated cultural heritage (including its protective facilities and protection zone; hereafter the same shall apply in this Article), he/she may order to take the following measures:

1.

Prohibition or restriction on certain activities by an owner, custodian, or management organization of State-designated cultural heritage where the management condition of the State-designated cultural heritage is not appropriate for the preservation of the cultural heritage or where deemed specifically necessary to do so;

2.

Repair, installation of other necessary facilities, or removal of any obstacle by the owner, custodian, or management organization of State-designated cultural heritage;

3.

An urgent measure necessary for the preservation of cultural heritage by the owner, holder, custodian, or management organization of State-designated cultural heritage;

4.

Suspension of an act or a measure to restore to the original state issued to a person who has altered the current state of State-designated cultural heritage without obtaining permission required under each subparagraph of Article 35 (1), or has done an act that could affect the preservation the State-designated cultural heritage.

(2)

Where an owner, holder, custodian, or management organization of State-designated cultural heritage fails to perform an order issued pursuant to paragraph (1) 1 through 3 or it is deemed inappropriate to require the owner, holder, custodian, or management organization of State-designated cultural heritage to take measures under paragraph (1) 1 through 3, the Administrator of the Cultural Heritage Administration or the head of a local government may directly take measures under paragraph (1) 1 through 3 at the cost of the State.

(3)

Where a person in receipt of an order under paragraph (1) 4 fails to perform it, the Administrator of the Cultural Heritage Administration or the head of a local government may vicariously execute it, as stipulated in the Administrative Vicarious Execution Act, and collect expenses incurred therein from the violator.

(4)

Where the head of the competent local government issues an order under paragraph (1), he/she shall report it to the Administrator of the Cultural Heritage Administration.

Article 43 (Preparation and Preservation of Records)

(1)

The Administrator of the Cultural Heritage Administration, and the Governor of the competent Special Self-Governing Province, the head of the competent *Si/ Gun/ Gu*, and the head of each management organization shall prepare and preserve records concerning the preservation, management, and details of changes in State-designated cultural heritage.

(2)

Where deemed necessary for the preservation and management of State-designated cultural heritage, the Administrator of the Cultural Heritage Administration may authorize a person or research institute that has expertise in cultural heritage to keep records on State-designated cultural heritage.

Article 44 (Regular Investigations)

(1)

The Administrator of the Cultural Heritage Administration shall investigate the current state, management, repair and actual circumstances of transferal of State-designated cultural heritage, and other conditions of environmental preservation on a regular basis.

(2)

Where the Administrator of the Cultural Heritage Administration deems it necessary to conduct a further investigation after a regular investigation under paragraph (1), he/she may require public officials under his/her control to reinvestigate the State-designated cultural heritage in question.

(3)

Whenever an investigation is to be conducted pursuant to paragraphs (1) and (2), the purport thereof shall first be communicated, in advance, to the owner, holder, custodian or management organization of the cultural heritage concerned: *Provided*, That a post-notice may be issued in urgent cases. (4)

Public officials who conduct an investigation under paragraphs (1) and (2) may request cooperation from the owner, holder, custodian or management organization by making the cultural heritage concerned available, presenting data on the current state to the extent necessary for the investigation, and allowing access to the place where the cultural heritage is located, and may also take a measurement, excavate the ground, remove obstacles, and do other necessary acts for the investigation to the extent not damaging the current state of the cultural heritage: *Provided*, That the consent of the owner, holder, custodian or management organization is required where such acts are conducted before sunrise or after sunset.

(5)

Public officials who conduct an investigation pursuant to paragraph (4) shall carry a certificate indicating their authority and produce it to related persons.

(6)

The Administrator of the Cultural Heritage Administration may delegate all or part of regular investigations and re-investigations under paragraphs (1) and (2) to a local government, or entrust such investigations to a specialized institution or organization, as prescribed by Presidential Decree.

(7)

The Administrator of the Cultural Heritage Administration shall reflect the results of regular investigations and re-investigations under paragraphs (1) and (2) in the management of State-designated cultural heritage, as stipulated in the following:

1.

Designation of cultural heritage and revocation of such designation;

2.

Designation of protective facilities or protection zones and revocation of such designation;

3.

Recognition of holders of important intangible cultural heritage and revocation of such recognition;

4.

Repair and restoration of cultural heritage;

5.

Restriction and prohibition of acts for the preservation of cultural heritage or installation, removal, or relocation of facilities;

6.

Other necessary matters for the management of cultural heritage.

Article 45 (Ex Officio Investigations)

(1)

Where deemed necessary, the Administrator of the Cultural Heritage Administration may require public officials under his/her control to investigate the current state, management, repair and actual circumstances of transferal of cultural heritage, and other conditions of environmental preservation.

(2)

Where an *ex officio* investigation is conducted pursuant to paragraph (1), Article 44 (3) through (5) shall apply *mutatis mutandis* to a notice of investigation, the extent of a request for cooperation in investigations, the scope of acts necessary for investigations, the duty to carry and present a certificate for investigations, and other relevant matters.

Article 46 (Compensation for Loss)

The State shall compensate for any loss incurred by any of the following persons:

T1.

A person who sustains any loss by performing an order issued under Article 42 (1) 1 through 3;

2.

A person who sustains any loss as a consequence of the measures under Article 42(2);

3.

A person who sustains any loss due to investigations under Article 44 (4) (including cases applied *mutatis mutandis* under Article 45 (2))

Article 47 (Application Mutatis Mutandis of Matters to be Permitted to Provisionally Designated Cultural Heritage)

Articles 35 (1), 37, 39, 40 (1) (limited to subparagraphs 2 through 4 and 6 through 8 of the same paragraph), 42 (1) 1 and 3, and 46 shall apply *mutatis mutandis* to the management and protection of provisionally designated cultural heritage.

SECTION 3 Making Available to Public and Admission Fees

Article 48 (Making Cultural Heritage Available to Public) (1)

State-designated cultural heritage (excluding important intangible cultural heritage; hereafter the same shall apply in this Article) shall be made available to the public if any extenuating circumstance exists, except where making certain cultural heritage available to the public is restricted pursuant to paragraph (2).

(2)

Where necessary to preserve cultural heritage and to prevent its damage, the Administrator of the Cultural Heritage Administration may place a restriction on making the cultural heritage fully or partially available to the public. In such cases, the Administrator of the Cultural Heritage Administration shall hear the opinion of the owner (referring to a management organization where such organization is designated) of the cultural heritage in question.

(3)

Where the Administrator of the Cultural Heritage Administration places a restriction on making state-designated cultural heritage available to the public pursuant to paragraph (2), he/she shall give public notice on the location of the area where the cultural heritage is located, the period during which making it available to the public is restricted, the area subject to the restriction, and other relevant matters, as determined by Ordinance of the Ministry of Culture, Sports and Tourism, and shall inform an owner, holder, custodian, or management organization of the cultural heritage concerned, the competent Mayor/ Do Governor, and the head of the competent *Si/ Gun/ Gu* thereof.

(4)

The Administrator of the Cultural Heritage Administration shall promptly lift the restriction measure as soon as the grounds for a restriction on making state-designated cultural heritage available to the public under paragraph (2) cease to exist. In such cases, the Administrator of the Cultural Heritage Administration shall give public notice thereon, as determined by Ordinance of the Ministry of Culture, Sports and Tourism, and shall inform the owner, holder, custodian, or management organization of the cultural heritage concerned, the competent Mayor/ Do Governor, and the head of the competent *Si/ Gun/ Gu* thereof.

(5)

A person who intends to enter an area restricted from being made available to public pursuant to paragraphs (2) and (3) shall obtain permission from the Administrator of the Cultural Heritage Administration by clearly stating the reason therefor.

Article 49 (Collection of Admission Fees)

(1)

An owner or holder of any cultural heritage who makes the cultural heritage available to the public may collect admission fees from visitors: *Provided*, That where a management organization is designated, the management organization shall be the collecting authority.

(2)

Admission fees under paragraph (1) shall be determined by the owner, holder, or management organization of the cultural heritage concerned.

Article 50 (Public Disclosure of Skills or Artistic Talent by Holders of Important Intangible Cultural Heritage)

(1)

Unless any extraordinary grounds prescribed by Presidential Decree exist, a holder of an important intangible cultural heritage shall disclose skills or artistic talent of the important intangible cultural heritage to the public at least once a year.

(2)

The method of public disclosure of skills or artistic talent of important intangible cultural heritage under paragraph (1), and other relevant matters shall be prescribed by Presidential Decree.

(3)

The State or a local government may fully or partially subsidize expenses incurred for the public disclosure under paragraph (1) within budgetary limits.

SECTION 4 Subsidies and Subsidization of Expenses

Article 51 (Subsidies)

1)

The State may fully or partially subsidize the following expenses:

1.

Expenses incurred in managing cultural heritage by a management organization under Article 34 (1);

2.

Expenses incurred in taking measures stipulated under Article 42(1) 1 through 3;

3.

Expenses incurred in managing, protecting, repairing, utilizing State-designated cultural heritage or in preparing records thereon, in addition to cases under subparagraphs 1 and 2;

4.

Expenses incurred in protecting and developing important intangible cultural heritage.

(2)

The Administrator of the Cultural Heritage Administration may supervise the repair of cultural heritage or any other works where he/she provides subsidies pursuant to paragraph (1).

(3)

Subsidies under paragraph (1) 2 through 4 shall be granted through the Mayor/ Do Governor, and shall be managed and spent in compliance with the instruction of the Mayor/ Do Governor:

Provided, That such subsidies may be directly granted to an owner, holder, custodian or management organization, and may be managed and spent in compliance with the instructions of the Administrator of the Cultural Heritage Administration where the he/she deems it necessary to do so.

Article 52 (Expenses Borne by Local Governments)

A local government may bear or subsidize expenses incurred in managing, protecting, repairing or utilizing State-designated cultural heritage that are located in its jurisdiction, but not owned or managed by the local government.

CHAPTER V REGISTERED CULTURAL HERITAGE

Article 53 (Registration of Cultural Heritage)

(1)

The Administrator of the Cultural Heritage Administration may register certain cultural heritage for which measures for preservation and utilization are specifically required, among those other than designated cultural heritage, following deliberation by the Cultural Heritage Committee.

(2)

Necessary matters concerning standards and procedures for registration of registered cultural heritage and matters to be registered, and other relevant matters shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 54 (Management of Registered Cultural Heritage)

(1)

A person who manages a registered cultural heritage, including an owner, custodian, etc. of the registered cultural heritage, shall endeavor to preserve the original form of the registered cultural heritage.

(2)

Where the identity of an owner of a registered cultural heritage is unknown or its owner or custodian is unable to manage the registered cultural heritage, the Administrator of the Cultural Heritage Administration may designate a person to manage the registered cultural heritage, from among the competent local government and juristic persons or organizations competent to manage the registered cultural heritage to assign it to manage the cultural heritage.

(3)

The owner or custodian of a registered cultural heritage or a person designated pursuant to paragraph (2) (hereinafter referred to "management organization of a registered cultural heritage") may request the Administrator of the Cultural Heritage Administration to provide technical instruction in connection with the management and repair of the registered cultural heritage, as determined by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 55 (Matters to be Reported concerning Registered Cultural Heritage)

(1) Where any of the following cases occurs in connection with a registered cultural heritage, the owner or custodian of the registered cultural heritage or a management organization of the registered cultural heritage shall report the facts and circumstances thereof to the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree: *Provided*, That the owner and custodian shall jointly sign the report in cases under subparagraph 1, while the former and new owners shall jointly sign the report in cases under

subparagraph 2:

1.

Where a custodian is appointed or dismissed;

2.

Where the owner of a registered cultural heritage changes;

3.

Where the address of the owner or custodian changes;

4.

Where the name of land, lot number, land category, or area, etc. of the place where a registered cultural heritage is located changes;

5.

Where the place of safekeeping registered cultural heritage is changed;

6.

Where all or part of registered cultural heritage is destroyed, washed away, stolen, or damaged;

7.

Where the alteration in the current state of cultural heritage commences or is completed by obtaining permission (including permission for change) under [Article 56 \(2\)](#);

8.

Where cultural heritage permitted under the proviso to [Article 39 \(1\)](#) that is applied *mutatis mutandis* under [Article 59 \(2\)](#) is expatriated from and then repatriated into the Republic of Korea;

Article 56 (Alteration of Current State of Registered Cultural Heritage)

(1)

A person who intends to perform any of the following acts in connection with a registered cultural heritage, he/she shall report to the Governor of the competent Special Self-Governing Province, or the head of the competent *Si/ Gun/ Gu* by 30 days prior to the date on which he/she intends to alter it:

1.

Altering the exterior of a registered cultural heritage (excluding cultural heritage categorizable as movable properties) that is determined by Ordinance of the Ministry of Culture, Sports and Tourism;

2.

Relocating a registered cultural heritage (excluding cultural heritage categorizable as movable properties) to another place or removing it;

3.

Repairing or preserving cultural heritage categorizable as movable properties.

(2)

Notwithstanding paragraph (1), a person who intends to alter the current state of any of the following registered cultural heritage, he/she shall obtain permission from the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree. This shall also apply to any change in permitted matters:

1.

Registered cultural heritage to which special cases concerning the building-to-land ratio or the floor-area ratio of a building under [Article 57](#) is applicable;

2.

Registered cultural heritage to which the State grants a subsidy under [Article 51](#) that is applied *mutatis mutandis* under [Article 59 \(2\)](#);

3.

Registered cultural heritage, the owner of which is the State or a local government.

(3)

The Governor of a Special Self-Governing Province or the head of a *Si/ Gun/ Gu* in receipt of a report under paragraph (1) shall report the fact to the Administrator of the Cultural Heritage Administration via the Mayor/ DoGovernor (excluding the Governor of a Special Self-Governing Province).

(4)

Where necessary for the protection of a registered cultural heritage, the Administrator of the Cultural Heritage Administration may provide instruction, advice, recommendation, etc. with respect to the alteration of the current state of the registered cultural heritage reported under paragraph (1).

(1).

Article 57 (Special Cases concerning Building-to-Land Ratios and Floor Space Ratios of Registered Cultural Heritage)

Notwithstanding [Articles 77 through 79 of the National Land Planning and Utilization Act](#), the building-to-land ratio and the floor space ratio applicable to a site where a building, which is a registered cultural heritage, is located may be alleviated, as prescribed by Presidential Decree, by up

to 150 percent of the building-to-land ratio and the floor space ratio applicable to the relevant specific-use area, etc.

Article 58 (Cancellation of Registration)

(1)

Where a registered cultural heritage no longer needs to be preserved or utilized or any specific ground exists, the Administrator of the Cultural Heritage Administration may cancel the registration thereof, following deliberation by the Cultural Heritage Committee.

(2)

Where a registered cultural heritage is designated as a designated cultural heritage, the registration thereof becomes invalid.

(3)

Where the owner of a registered cultural heritage is notified of the cancellation of registration, he/she shall return its registration certificate to the Administrator of the Cultural Heritage Administration within 30 days from the date on which he/she is notified thereof.

Article 59 (Provisions Applicable Mutatis Mutandis)

(1)

Articles 28 through 30 shall apply *mutatis mutandis* to the public announcement and notice of the registration of registered cultural heritage and the revocation thereof, issuance of the registration certificates, and timing the registration or the revocation of such registration becomes effective. In such cases, the term "State-designated cultural heritage" shall be construed as "registered cultural heritage," the term "designation" as "registration," and the term "letter of designation" as "registration certificate."

(2)

Articles 33, 34 (2) through (7), 37, 39, 43, 45, 51 (1) 1 and 3, 51 (2) and (3), 52 and 81 shall apply *mutatis mutandis* to management principles by owners of registered cultural heritage, the management by management organizations of registered cultural heritage, the revocation of registration thereof and prohibition of exportation, etc, the preparation and preservation of records on registered cultural heritage, *ex officio* investigations on the current state, etc. of registered cultural heritage, grant of subsidies by the State, defrayment of expenses by local governments, succession to rights and obligations when the owner changes. In such cases, the term "State-designated cultural heritage" shall be construed as "registered cultural heritage," and the term "management organization" as "management organization of registered cultural heritage." registration thereof becomes invalid.

(3)

Where the owner of a registered cultural heritage is notified of the cancellation of registration, he/she shall return its registration certificate to the Administrator of the Cultural Heritage Administration within 30 days from the date on which he/she is notified thereof.

Article 59 (Provisions Applicable Mutatis Mutandis)

(1)

Articles 28 through 30 shall apply *mutatis mutandis* to the public announcement and notice of the registration of registered cultural heritage and the revocation thereof, issuance of the registration certificates, and timing the registration or the revocation of such registration becomes effective. In such cases, the term "State-designated cultural heritage" shall be construed as "registered cultural heritage," the term "designation" as "registration," and the term "letter of designation" as "registration certificate."

(2)

Articles 33, 34 (2) through (7), 37, 39, 43, 45, 51 (1) 1 and 3, 51 (2) and (3), 52 and 81 shall apply *mutatis mutandis* to management principles by owners of registered cultural heritage, the management by management organizations of registered cultural heritage, the revocation of registration thereof and prohibition of exportation, etc, the preparation and preservation of records on registered cultural heritage, *ex officio* investigations on the current state, etc. of registered cultural heritage, grant of subsidies by the State, defrayment of expenses by local governments, succession to rights and obligations when the owner changes. In such cases, the term "State-designated cultural heritage" shall be construed as "registered cultural heritage," and the term "management organization" as "management organization of registered cultural heritage."

CHAPTER VI ORDINARY MOVABLE CULTURAL HERITAGE

Article 60 (Prohibition of Exportation, etc. of Ordinary Movable Cultural Heritage)

(1)

Article 39 (1) and (2) shall apply *mutatis mutandis* to cultural heritage categorizable as movable properties (hereinafter referred to as "ordinary movable cultural heritage"), among cultural heritage that are neither designated nor registered under this Act: *Provided*, That this shall not apply to any of the following cases where the permission by the Administrator of the Cultural Heritage Administration is obtained for the purpose of international cultural exchange, including an overseas exhibition, etc. of an ordinary movable cultural heritage:

1.

Where a museum, etc. established under the Museum and Art Gallery Support Act repatriates ordinary movable cultural heritage expatriated to a foreign museum, etc. into the Republic of Korea within ten years from the date on which it was expatriated;

2.

Where a museum or an organization related to cultural heritage that is officially recognized by a foreign government takes an ordinary movable cultural heritage purchased or donated in the Republic of Korea with intent to exhibit it in a museum, etc. in its own country.

(2)

Where a person who has obtained permission under the proviso to paragraph (1) falls under any subparagraph of Article 37 (1), the Administrator of the Cultural Heritage Administration may revoke the permission.

(3)

Necessary matters concerning procedures, etc. for exportation or expatriation of cultural heritage under paragraph (1) 2 shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

(4)

Where a person who has obtained permission under the proviso to paragraph (1) repatriates the permitted ordinary movable cultural heritage after it was expatriated, he/she shall report thereon to the Administrator of the Cultural Heritage Administration.

(5)

Where a person intends to export or expatriate any movable asset that could be mistaken as an ordinary movable cultural heritage, he/she shall have it verified by the Administrator of the Cultural Heritage Administration in advance.

(6)

Necessary matters concerning the scope of ordinary movable cultural heritage and the verification, etc. thereof under paragraph (1) and paragraph (5) shall be prescribed by Presidential Decree.

Article 61 (Investigation on Ordinary Movable Cultural Heritage)

(1)

Where deemed necessary, the Administrator of the Cultural Heritage Administration may require public officials under his/her control to investigate the current state of an ordinary movable cultural heritage possessed by a State agency or local government, its management, repair, and other preservative conditions thereof. In such cases, the head of the State agency or local government shall cooperate in the investigation.

(2)

Where the Administrator of the Cultural Heritage Administration deems that the preservation and management of cultural heritage is inappropriate based on the results of an investigation conducted under paragraph (1), he/she may request the head of the relevant agency or local government to prepare a scheme for the preservation and management of the cultural heritage.

(3)

The head of a State agency or local government in receipt of a request by the Administrator of the Cultural Heritage Administration under paragraph (2) shall prepare a scheme for the preservation and management of the cultural heritage, and shall report it to the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree.

(4)

Article 44 (3) through (5) shall apply *mutatis mutandis* to notice on investigations, requests for cooperation in investigations, and other matters necessary for such investigations where the Administrator of the Cultural Heritage Administration conducts investigations under paragraph (1).

CHAPTER VII SPECIALCASES CONCERNING STATE-OWNED CULTURAL HERITAGE

Article 62 (Managing Authority and Office of General Administration)

(1)

Notwithstanding Article 8 of the State Property Act and Article 7 of the Commodity Management Act, cultural heritage owned by the State (hereinafter referred to as "State-owned cultural heritage") shall be managed and comprehensively controlled by the Administrator of the Cultural Heritage Administration: *Provided*, That where a State-owned cultural heritage is an administrative property managed by the head of any central government agency (referring to the head of a central administrative agency under the National Finance Act; hereinafter the same shall apply) other than the Administrator of the Cultural Heritage Administration or it is specially necessary for the head of any central government agency other than the Administrator of the Cultural Heritage Administration to manage such cultural heritage, the Administrator of the Cultural Heritage Administration shall designate a managing authority, following consultation with the head of the competent agency and the Minister of Strategy and Finance.

(2)

Where the Administrator of the Cultural Heritage Administration designates a managing authority pursuant to the proviso to paragraph (1), he/she shall hear the opinion of the Cultural Heritage Committee.

(3)

The Administrator of the Cultural Heritage Administration may delegate the management of State-owned cultural heritage that do not fall under the proviso to paragraph (1) to a local government, or entrust the management of such assets to a non-profit corporation or non-profit organization that is not a corporation. In such cases, the profits accrued from the management of State-owned cultural heritage shall be the revenue of the person to whom the management is delegated or entrusted.

Article 63 (Free Administrative Exchanges between Accounts)

The Administrator of the Cultural Heritage Administration may receive any State-owned cultural heritage for management from an account of another managing authority through an administrative exchange without consideration, notwithstanding Article 17 of the State Property Act.

Article 64 (Special Cases concerning Procedures and Methods)

(1)

Where the Administrator of the Cultural Heritage Administration designates or provisionally designates State-owned cultural asset, the managing authority of which is otherwise designated pursuant to the proviso to Article 62 (1), or revokes the designation or provisional designation thereof, notice to the owner or possessor of the cultural heritage required under this Act shall be given to the managing authority of the cultural heritage.

(2)

Where Articles 40, 42, 45 and 49 are applied to any State-owned cultural heritage under the control of a managing authority, the managing authority of which is otherwise designated pursuant to the proviso to Article 62 (1), the term "owner of cultural heritage" refers to the managing authority of the cultural heritage.

Article 65 (Restriction on Dispositions)

Where a managing authority under the proviso to Article 62 (1) intends to perform an act other than those stipulated under the subparagraphs Article 35 (1) in connection with a State-designated or provisionally designated cultural heritage under its control, it shall obtain the consent of the Administrator of the Cultural Heritage Administration in advance.

Article 66 (Prohibition of Transfer or Establishment of Private Rights)

Unless otherwise specifically provided for in this Act, no State-owned cultural heritage (including its site) may be transferred to any other person, nor may any private right be created therein: *Provided*, That the use of such cultural heritage may be permitted under certain terms and conditions only in necessary cases for any public or official purpose or for public service if it is determined that this does not create problems in managing and protecting the cultural heritage.

p cultural heritage, following prior consultation with the Administrator of the Cultural Heritage Administration, and persons recognized as holders of such intangible cultural heritage shall be chosen from among those who are not holders of important intangible cultural heritage.

(2)

The Mayor/ *Do* Governor may designate, as cultural heritage resources, cultural heritage not designated pursuant to paragraph (1) but deemed necessary for preservation of folk culture.

(3)

The Administrator of the Cultural Heritage Administration may recommend the Mayor/ *Do* Governor to designate cultural heritage deemed necessary following deliberation by the Cultural Heritage Committee as the City/ *Do*-designated cultural heritage or cultural heritage resources (including its protective facilities and protection zone; hereinafter the same shall apply), and preserve so-designated cultural heritage. In such cases, the Mayor/ *Do* Governor shall take procedures for designating cultural heritage and report the results thereof to the Administrator of the Cultural Heritage Administration unless extenuating circumstances exist.

(4)

Where a City/ *Do*-designated cultural heritage or cultural heritage resource is designated pursuant to paragraphs (1) through (3), the name of the competent Special Metropolitan City, the competent Metropolitan City or *Do*, or the competent Special Self-Governing Province shall be indicated before

the word "designated" in their names, to inform that they have been designated by the Special Metropolitan City, the Metropolitan City or *Do*, or the Special Self-Governing Province.

(5)

Necessary matters concerning procedures for designating the City/ *Do*-designated cultural heritage or the cultural heritage resources and revoking such designation, their management, protection and development, and making them available to the public shall be prescribed by municipal ordinance of the relevant local government.

(6)

Where cultural heritage is deemed worthy of preservation among intangible cultural heritage transferred from North Korean regions, the Administrator of the Cultural Heritage Administration, the *Do* Governor appointed pursuant to Article 5 of the Act on Special Measures for Five North Korean *Dos*, or the chairperson of the Committee on Five North Korean *Dos* established pursuant to Article 7 of the aforesaid Act may recommend the Mayor/ *Do* Governor having jurisdiction over the area in which such cultural heritage is currently transferred to designate them as the City/ *Do*-designated cultural heritage.

CHAPTER VIII CULTURAL HERITAGE LOCATED OVERSEAS

Article 67 (Protection of Cultural Heritage Located Overseas)

The State shall endeavor to protect, recover and utilize cultural heritage overseas, and secure an organization and a budget necessary therefor.

Article 68 (Investigations and Research of Cultural Heritage Located Overseas)

(1)

The Administrator of the Cultural Heritage Administration may investigate and research the current state of cultural heritage overseas, its preservation and management conditions, details on how it is expatriated, and other relevant matters.

(2)

The Administrator of the Cultural Heritage Administration may request related agencies, including museums, the Korea Foundation, the National Institute of Korean History, universities, etc. to present data and information necessary for the efficient execution of investigations and research under paragraph (1), and related agencies in receipt of a request shall comply therewith.

Article 69 (Support for Activities for Protecting and Recovering Cultural Heritage Located Overseas)

The Administrator of the Cultural Heritage Administration may support or foster related agencies or organizations where necessary for the protection and recovery of cultural heritage overseas.

CHAPTER IX CITY/DO-DESIGNATED CULTURAL HERITAGE

Article 70 (Designation of City/Do-Designated Cultural Heritage)

(1)

The Mayor/ *Do* Governor may designate, as City/ *Do*-designated cultural heritage, cultural heritage deemed worthy of preservation, among those within his/her jurisdiction that are not designated as State-designated cultural heritage: *Provided*, That the Mayor/ *Do* Governor may designate important intangible cultural heritage as City/ *Do*-designated cultural heritage, following prior consultation with the Administrator of the Cultural Heritage Administration, and persons recognized as holders of such intangible cultural heritage shall be chosen from among those who are not holders of important intangible cultural heritage.

(2)

The Mayor/ *Do* Governor may designate, as cultural heritage resources, cultural heritage not designated pursuant to paragraph (1) but deemed necessary for preservation of folk culture.

(3)

The Administrator of the Cultural Heritage Administration may recommend the Mayor/ *Do* Governor to designate cultural heritage deemed necessary following deliberation by the Cultural Heritage Committee as the City/ *Do*-designated cultural heritage or cultural heritage resources (including its protective facilities and protection zone; hereinafter the same shall apply), and preserve so-designated cultural heritage. In such cases, the Mayor/ *Do* Governor shall take procedures for designating cultural heritage and report the results thereof to the Administrator of the Cultural Heritage Administration unless extenuating circumstances exist.

(4)

Where a City/ *Do*-designated cultural heritage or cultural heritage resource is designated pursuant to paragraphs (1) through (3), the name of the competent Special Metropolitan City, the competent Metropolitan City or *Do*, or the competent Special Self-Governing Province shall be indicated before the word "designated" in their names, to inform that they have been designated by the Special Metropolitan City, the Metropolitan City or *Do*, or the Special Self-Governing Province.

(5)

Necessary matters concerning procedures for designating the City/ *Do*-designated cultural heritage or the cultural heritage resources and revoking such designation, their management, protection and development, and making them available to the public shall be prescribed by municipal ordinance of the relevant local government.

(6)

Where cultural heritage is deemed worthy of preservation among intangible cultural heritage transferred from North Korean regions, the Administrator of the Cultural Heritage Administration, the *Do* Governor appointed pursuant to Article 5 of the Act on Special Measures for Five North Korean *Dos*, or the chairperson of the Committee on Five North Korean *Dos* established pursuant to Article 7 of the aforesaid Act may recommend the Mayor/ *Do* Governor having jurisdiction over the area in which such cultural heritage is currently transferred to designate them as the City/ *Do*-designated cultural heritage.

Article 71 (Establishment of City/ *Do* Cultural Heritage Committees)

(1)

A Cultural Heritage Committee (hereinafter referred to as "City/ *Do* Cultural Heritage Committee") shall be established under respective Cities/*Dos* to investigate and deliberate on matters concerning the preservation, management, and utilization of cultural heritage within the jurisdiction of the Mayor/ *Do* Governor.

(2)

Matters concerning the organization and operation of City/ *Do* Cultural Heritage Committees and other relevant matters shall be prescribed by municipal ordinances, but the following matters shall be included therein:

1.

Matters concerning investigations of and deliberation on the preservation, management, and utilization of cultural heritage;

2.

Matters concerning the commissioning and dismissal of committee members;

3.

Matters concerning the establishment and operation of subcommittees;

4.

Matters concerning the commissioning and dismissal of expert committee members.

(3)

Where the Mayor/ *Do* Governor intends to request the Administrator of the Cultural Heritage Administration to designate any cultural heritage within his/her jurisdiction as State-designated cultural heritage (including its protective facilities and protection zone) or to revoke such designation, he/she shall undergo deliberation thereon by the City/ *Do* Cultural Heritage Committee.

Article 72 (Burden of Expenses)

(1)

Where City/ *Do*-designated cultural heritage or cultural heritage resources designated pursuant to Article 70 (1) and (2) are State-owned or public properties, expenses incurred in the preservation thereof shall be borne by the State or the competent local government.

(2)

The State or a local government may fully or partially subsidize expenses incurred in the preservation, management, repair, utilization of, and the preparation of records on City/ *Do*-designated cultural heritage or cultural heritage resources that are not State-owned or public assets, and the protection and development of intangible cultural heritage.

Article 73 (Reporting, etc.)

(1)

Where any of the following cases occurs, the Mayor/ *Do* Governor shall report thereon to the Administrator of the Cultural Heritage Administration, as prescribed by Presidential Decree:

1.

Where he/she designates any cultural heritage or cultural heritage resource as a City/ *Do*-designated cultural heritage or cultural heritage resource, or revokes such designation;

2.

Where he/she changes the place where a City/ *Do*-designated cultural heritage or cultural heritage resource is located or kept;

3.

Where a City/ *Do*-designated cultural heritage or cultural heritage resource has been completely or partially destroyed, washed away, stolen, or damaged;

(2)

Where the act under paragraph (1) 1 or 2 is deemed inappropriate, the Administrator of the Cultural Heritage Administration order the relevant person to take corrective or necessary measures.

Article 74 (Provisions Applicable *Mutatis Mutandis*)

(1)

Article 39 (1) and (2) shall apply *mutatis mutandis* to exportation and expatriation of City/ *Do*-designated cultural heritage and cultural heritage resources.

(2)

Articles 27, 31 (1) and (4), Articles 32 through 34, 35 (1), 36, 37, 40, 41 (3), 42 through 45 and 48 through 50 shall apply *mutatis mutandis* to the designation of City/ *Do*-designated cultural heritage and cultural heritage resources, the revocation of such designation, and management thereof. In such cases, the term "Administrator of the Cultural Heritage Administration" shall be construed as "Mayor/ *Do* Governor," the term "Presidential Decree" as "municipal ordinance of the competent City/ *Do*," and the term "State" as "local government." 2.

A person who has majored in an academic field, such as history, archaeology, anthropology, art history, folklore, bibliography, traditional craft or management of cultural heritage in a junior college or higher universities (including graduate schools) for at least one year;

3.

A person who has been employed by a cultural heritage dealer and who has dealt with cultural heritage for at least three years.

(2)

Necessary matters concerning the scope of museums and art galleries and majors under paragraph (1) and other relevant matters shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

CHAPTER X CULTURAL HERITAGE TRADE BUSINESS, ETC.

Article 75 (Permission for Trade and other Business Activities)

(1)

A person who intends to engage in business of trading or exchanging tangible cultural heritage or tangible folklore resources (including any person who engages in such business on commission) that are categorized into movable properties shall obtain permission for cultural heritage trade business from the Governor of a Special Self-Governing Province or the head of the competent *Si/ Gun/ Gu*, as prescribed by Presidential Decree.

(2)

A person who has obtained permission under paragraph (1) (hereinafter referred to as "cultural heritage dealer") shall report the current status on the preservation of cultural heritage and the actual state of their trade or exchanges to the Governor of a Special Self-Governing Province or the head of the competent *Si/ Gun/ Gu*, as prescribed by Presidential Decree.

(3)

The Governor of a Special Self-Governing Province or the head of the competent *Si/ Gun/ Gu* in receipt of a report under paragraph (2) shall submit a report on the reported matters to the Administrator of the Cultural Heritage Administration on a regular basis, as prescribed by Presidential Decree.

Article 76 (Qualifications)

(1)

A person who intends to obtain permission for cultural heritage trade business pursuant to Article 75 (1) shall be any of the following:

1.

A person who has worked for the State, a local government, a museum or an art gallery in charge of cultural heritage for at least two years;

2.

A person who has majored in an academic field, such as history, archaeology, anthropology, art history, folklore, bibliography, traditional craft or management of cultural heritage in a junior college or higher universities (including graduate schools) for at least one year;

3.

A person who has been employed by a cultural heritage dealer and who has dealt with cultural heritage for at least three years.

(2)

Necessary matters concerning the scope of museums and art galleries and majors under paragraph (1) and other relevant matters shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 77 (Disqualifications)

No person falling under any of the following subparagraphs shall be a cultural heritage dealer:

1.

A person declared incompetent or quasi-incompetent;

2.

A person in whose case three years have not passed since a sentence of imprisonment without prison labor or a heavier punishment imposed upon him/her, in violation of this Act, or Article 347 or 362 of the Criminal Act, was completely executed or discharged;

3.

A person in whose case three years have not passed since his/her permission was revoked pursuant to Article 80.

Article 78 (Matters to be Observed)

Cultural heritage dealers shall prepare account books on trade, exchanges, etc., as determined by Ordinance of the Ministry of Culture, Sports and Tourism to keep records on details of transactions, and shall photograph and attach the photographs of actual objects so that the relevant cultural heritage can be verified.

Article 79 (Duty to Report Closure of Business)

Where a person who has obtained permission under Article 75 (1) closes his/her cultural heritage trade business, he/she shall submit a report on the closure of business to the Governor of a Special Self-Governing Province, or the head of the competent *Si/ Gun/ Gu* within three months, as determined by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 80 (Revocation, etc. of Permission)

(1)

Where a cultural heritage dealer falls under any of the following subparagraphs, the Governor of a Special Self-Governing Province, or the head of the competent *Si/ Gun/ Gu* shall revoke his/her permission or order the dealer to suspend all or part of his/her business within the specified period of up to one year: *Provided*, That where a cultural heritage dealer falls under subparagraphs 1 through 3, the permission shall be revoked:

1.

Where he/she obtains permission by false or other illegal means;

2.

Where he/she is sentenced to a fine or a heavier punishment, in violation of Articles 90 and 92, and Article 31 of the Act on the Protection and Investigation of Buried Cultural Heritage;

3.

Where he/she continues the business during the period of business suspension;

4.

Where he/she violates matters to be observed pursuant to Article 78.

(2)

Detailed standards for administrative dispositions under paragraph (1) shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

CHAPTER XI SUPPLEMENTARY PROVISIONS

Article 81 (Succession to Rights and Duties)

(1)

Where the owner of State-designated cultural heritage (including its protective facilities and protection zone, and provisionally designated cultural heritage) is transferred to another person, the new owner shall succeed to the rights and obligations of the former owner under this Act or an order, instruction or any other disposition issued or made by the Administrator of Cultural Heritage Administration pursuant to this Act.

(2)

Paragraph (1) shall apply *mutatis mutandis* to a management organization and an owner, where a management organization is designated pursuant to Article 34 or such designation is revoked: *Provided*, That this shall not apply to any rights and obligations exclusive to the owner.

Article 82 (Delegation and Entrustment of Authority)

The authority of the Administrator of the Cultural Heritage Administration under this Act may be partially delegated to the Mayor/ Do Governor or the head of the competent *Si/ Gun/ Gu*, or entrusted to an agency, corporation, organization, etc. that is established for the protection, preservation, distribution, utilization, etc. of cultural heritage, as prescribed by Presidential Decree.

Article 83 (Expropriation or Use of Land)

(1)

The Administrator of the Cultural Heritage Administration or the head of a local government may expropriate or use the land, buildings, trees, bamboo, or other structures within a designated cultural heritage property or its protection zone pursuant to the Act on Acquisition of and Compensation for Land, etc. for Public Works, where necessary for the protection and management of cultural heritage,

(2)

Where any designation is made pursuant to Articles 23, 25 through 27 and 70, the project shall be deemed to be approved and the project approved deemed to be publicly announced under Articles 20 and 22 of the Act on Acquisition of and Compensation for Land, etc. for Public Works. In such cases, the valid period of project approval under Article 23 of the same Act is not applicable.

Article 84 (Loan, Use, etc. of State or Public Property)

(1)

Notwithstanding the State Property Act and the Public Property and Commodity Management Act, the State and a local government may permit to lend use and benefit from, or sell State-owned property or public property through a private contract, where deemed necessary for the preservation, management, utilization and transferal of cultural heritage

(2)

Details and terms and conditions of loan, use of and benefit from, or sale of State-owned property or public property under paragraph (1) shall be governed by the State Property Act and the Public Property and Commodity Management Act.

Article 85 (Disaster Prevention Day for Cultural Heritage)

(1)

February 10 of each year is designated as the disaster prevention day for cultural heritage to safely preserve cultural heritage from disasters, such as a fire, etc., and to raise Korean nationals' awareness on the safe management of cultural heritage.

(2)

The State and a local government shall conduct projects and events such as safety inspections, disaster prevention drills, etc. on cultural heritage to suit the underlying spirit of the disaster prevention day for cultural heritage.

(3)

Necessary matters concerning the events to be held on the disaster prevention day for cultural heritage shall be otherwise determined by the Administrator of the Cultural Heritage Administration or the Mayor/ Do Governor.

Article 86 (Bounties)

(1)

The Administrator of the Cultural Heritage Administration shall a bounty, within budgetary limits, to any person who informs any investigation agencies of a person who committed or attempted a crime stipulated under Articles 90 through 92 of the Act and Article 31 of the Act on the Protection and Investigation of Buried Cultural Heritage once he/she has been sentenced to the suspension of indictment or his/her conviction has been final and conclusive, and any person who contributes to the arrest of such person.

(2)

Necessary matters concerning the scope of investigation agencies, handling of information provided, the payment of bounties, including standards. etc. for payment thereof shall be prescribed by Presidential Decree.

Article 87 (Relationship to other Acts)

(1)

Where the Administrator of the Cultural Heritage Administration intends to perform any of the following acts over an area, the size of which is equal to or larger than that prescribed by Presidential Decree within a park area under the Natural Parks Act, he/she shall consult with the pertinent park management authority:

1.

Where he/she designates a certain area as a historic site, scenic area, or natural monument pursuant to Article 25;

2.

Where he/she designates a protection zone pursuant to Article 27;

3.

Where he/she grants permission or changed permission pursuant to Article 35 (1).

(2)

Where the permission is granted pursuant to Article 35 (1) (including cases applied *mutatis mutandis* under Article 74 (2)), any of the following permission shall be deemed granted:

1.

Permission for acts in a park area under Article 23 of the Natural Parks Act;

2.

Permission to occupy for use and use an urban park, urban natural park area or greenbelt under Articles 24, 27 and 38 of the Act on Urban Parks, Greenbelts, etc.

(3)

Where an area designated and announced as State-designated or City/ Do-designated cultural heritage, or its protective facilities or protection zone under Articles 23, 25 through 27 or 70 (1) is in an urban area stipulated under subparagraph 1 of Article 6 of the National Land Planning and Utilization Act, the area shall be deemed designated and announced as a conservation district under Article 37 (1) 6 of the same Act.

(4)

The provisions governing *bona fide* acquisition under Article 249 of the Civil Act shall not apply to transactions, such as trade, etc. of any of the following cultural heritage: *Provided*, That where a transferee purchases cultural heritage in good faith through auction or from a cultural heritage dealer, etc., the victim or the person who loses the cultural heritage may pay to the transferee the price that the transferee has paid and claim the return thereof:

1.

Cultural heritage designated by the Administrator of the Cultural Heritage Administration or the Mayor/ Do Governor;

2.

Cultural heritage publicly announced as a stolen or lost article;

3.

Cultural heritage with an essential part thereof or record showing its source deliberately mutilated.
(5)

Necessary matters concerning public announcements under para graph (4) shall be determined by Ordinance of the Ministry of Culture, Sports and Tourism.

Article 88 (Hearings)

Where the Administrator of the Cultural Heritage Administration, the Mayor/ *Do* Governor, or the head of a *Si/ Gun/ Gu* intends to take any of the following dispositions, he/she shall hold hearing:

a

1.

Revocation of permission where a person who has obtained permission under Article 35 (1), 39, 56 (2) or the proviso to Article 60 (1) violates any provision or condition of permission;

2.

Revocation of the designation of an animal clinic under Article 38(5);

3.

Revocation of permission or suspension of business of a cultural heritage dealer pursuant to Article 80.

Article 89 (Legal Fiction of Public Officials in Application of Penal Provisions)

Any of the following persons shall be deemed a public official in applying Articles 129 through 32 of the Criminal Act:

1.

A member of the Cultural Heritage Committee (including a member of City/ *Do* Cultural Heritage Committees under Article 71 (1)) that investigates and deliberate on matters concerning the

CHAPTER XII PENAL PROVISIONS

Article 90 (Crime of Exportation, etc. without Permission)

(1)

A person who exports or expatriates any designated or provisionally designated cultural heritage, in violation of the main sentence of Article 39 (1) (including cases applied *mutatis mutandis* under Articles 59 (2) and 74 (1)), or who fails to repatriate cultural heritage expatriated under the proviso to Article 39 (1) and (2) (including cases applied *mutatis mutandis* under Articles 59 (2) and 74 (1)) by the specified deadline shall be punished by imprisonment for not less than five years, and the relevant cultural heritage shall be confiscated.

(2)

A person who exports or expatriates any cultural heritage, or who fails to repatriate any cultural heritage expatriated, in violation of Article 60 (1), shall be punished by imprisonment for not less than three years, and the relevant cultural heritage shall be confiscated.

(3)

A person who transfers, or acquires cultural heritage, or intermediates a transaction of cultural heritage with knowledge that the cultural heritage would be exported or expatriated, in violation of paragraph (1) or (2), shall be punished by imprisonment for not less than three years, and the relevant cultural heritage shall be confiscated.

Article 91 (Crime of Enticement to Make False Designation, etc.)

A person who entices another person to designate cultural heritage as a designated or provisionally designated cultural heritage by false or other illegal means shall be punished by imprisonment for not less than five years.

Article 92 (Crime of Infliction of Damages, Concealment, etc.)

(1)

A person who causes damage to, steals, conceals, or impairs the utility of State-designated cultural heritage (excluding an important intangible cultural heritage) in any other means shall be punished by imprisonment for not less than three years.

(2)

A person falling under any of the following subparagraphs shall be punished by imprisonment for not less than two years:

1.

A person who causes damage to, steals, conceals, or impairs the utility of any designated or provisionally designated cultural heritage other than those stipulated in paragraph (1);

2.

A person who causes damage to, steals, conceals, or impairs the utility of any ordinary movable cultural heritage with knowledge that it is an ordinary movable cultural heritage.

(3)

Any of following persons shall be punished by imprisonment for not less than two years, or by a fine of not less than 20 million won but not more than 150 million won:

1.

A person who makes a specimen or stuffs a natural monument without obtaining permission for the alteration of the current state, or changed permission under Article 35 (1) 1;

2.

A person who acquires, transfers, takes over, or transports cultural heritage with knowledge of a violation of paragraph (1) or (2) or subparagraph 1;

3.

A person who mediates an act under subparagraph 2.

(4)

Even where an act that had impaired the utility of a designated or provisionally designated cultural heritage or an ordinary movable cultural heritage by causing damage, theft, or concealment, or by any other means committed by a third person before the concealment under paragraphs (1) and (2) has not been punished, the person who committed such concealment shall be sentenced to the punishment stipulated under the said paragraphs.

(5)

Any cultural heritage falling under paragraphs (1) through (4) shall be confiscated, but where such confiscation is not possible, the appraised value of the relevant cultural heritage shall be collected: *Provided*, That this shall not apply where a person who conceals cultural heritage under paragraph (4) acquires it in good faith.

Article 93 (Aggravated Crimes)

(1)

A person who commits a crime stipulated under Articles 90 through 92 by demonstrating the force of an organization or a large number of people or carrying a dangerous object in preservation of management of cultural heritage pursuant to Article 8 (1);

2.

A person who carries out business affairs on the payment of expenses for medical treatment of animals designated as natural monuments on commission pursuant to Article 38 (4);

3.

A person who investigates cultural heritage under entrustment pursuant to Article 44(6);

4.

A person who is engaged in affairs entrusted by the Administrator of the Cultural Heritage Administration pursuant to Article 82.

Article 94 (Application Mutatis Mutandis of the Criminal Act)

A person who commits arson, inundation, or destruction of any of the following structures shall be punished by applying *mutatis mutandis* Article 165, 178, or 367 of the Criminal Act and the corresponding provisions related to the aforesaid Articles in the aforesaid Act, and the punishment shall be aggravated by half that stipulated under each corresponding provision;

1.

A structure that is a designated or provisionally designated cultural heritage;

2.

A structure for the protection of a designated or provisionally designated cultural heritage.

Article 95 (Crimes of Inundation of Historic Sites)

A person who damages a historic site, scenic area, natural monument, or its protection zone designated or provisionally designated by the Administrator of the Cultural Heritage Administration by inundating it shall be punished by imprisonment for not less than two years, but not more than ten years.

Article 96 (Other Crimes of Inundation)

A person who damages any designated or provisionally designated cultural heritage other than those stipulated under Article 95 or the protection zone of such cultural heritage by inundating it shall be punished by imprisonment for not more than ten years, or by a fine not exceeding 100 million won.

Article 97 (Attempted Criminals, etc.)

1)

An attempted criminal under Articles 90 through 92, 93 (1), 95 and 96 shall be punished.

(2)

A person who prepares himself/herself or plots to commit a crime under Articles 90 through 92, 93 (1), 95 and 96 shall be punished by imprisonment for not more than two years, or by a fine not exceeding 20 million won.

Article 98 (Criminal Negligence)

(1)

A person who commits a crime under Article 95 or 96 by negligence shall be punished by a fine not exceeding ten million won.

(2)

A person who commits a crime under Article 95 or 96 due to malpractice or gross negligence shall be punished by imprisonment without labor for not more than three years, or by a fine not exceeding 30 million won.

Article 99 (Unpermitted Conduct)

(1)

A person falling under any of the following subparagraphs shall be punished by imprisonment for not more than five years, or by a fine not exceeding 50 million won:

1.

A person who alters the current state of a designated or provisionally designated cultural heritage (including its protective facility and protection zone, and a dead natural monument), or who does an act that could affect the preservation thereof, in violation of Article 35 (1) 1 or 2 (including cases applied *mutatis mutandis* under Articles 47 and 74 (2)):

2.

A person who captures or collects an animal, plant, or mineral in an area designated or provisionally designated as a scenic area or natural monument, or its protection zone, or takes the captured or collected animal, plant, or mineral out of such area without permission, in violation of Article 35 (1) 4 (including cases applied *mutatis mutandis* under Article 74 (2)):

3.

A person engaged in any business without permission, in violation of Article 75 (1).

(2)

A person falling under any of the following subparagraphs shall be punished by imprisonment for not more than two years, or by a fine not exceeding 20 million won:

1.

A person who owns the relevant cultural heritage in cases of a violation under each subparagraph of paragraph (1);

2.

A person who alters the current state of a registered cultural heritage without permission or revised permission, in violation of Article 56 (2).

Article 100 (Crimes of Violating Administrative Orders)

A person falling under any of the following subparagraphs shall be punished by imprisonment for not more than three years, or by a fine not exceeding 30 million won, and the relevant object shall be confiscated in cases under subparagraph 2:

1.

A person who violates an order issued pursuant to Article 21 (1) or 42 (1) (including cases applied *mutatis mutandis* under Article 74 (2)) without any justifiable ground;

2.

A person who brings in or sprays any substance harmful to the growth of any habitat, breeding area, or migratory area of an animal designated or provisionally designated as a natural monument (including a natural monument designated as a City/ Do designated cultural heritage).

Article 101 (Crimes of Interfering with Management Activities)

A person falling under any of the following subparagraphs shall be punished by imprisonment or not more than two years, or by a fine not exceeding 20 million won:

1.

A person who fails to comply with an instruction under Article 12 without any justifiable ground;

2.

A person who interferes with a management organization in its management activities, in violation of Article 34 (5) (including cases applied *mutatis mutandis* under Article 74 (2)), or who interferes with a managing authority of designated or provisionally designated cultural heritage in its management activities, without any justifiable grounds;

3.

A person who does activities stipulated under Article 35 (1) 3 (including cases applied *mutatis mutandis* under Article 74 (2)) without permission;

4.

A person who refuses to provide cooperation or to do necessary activities required under the main sentence of Article 44 (4) (including cases applied *mutatis mutandis* under Articles 45 (2) and 74 (2));

5.

A person responsible for managing and protecting a designated or provisionally designated cultural heritage, who destroys or damages the relevant cultural heritage due to gross negligence;

6.

A person who files a false report;

7.

A person who intentionally destroys, moves or removes, or otherwise spoils a boundary marker of an area designated as cultural heritage or its protection zone by making it impossible to discern the boundaries of such area;

8.

A person who makes cultural heritage available to the public, in violation of any restriction placed thereon by the Administrator of the Cultural Heritage Administration under Article 48 (2), or who enters cultural heritage without permission under paragraph (5) of the same Article (including cases applied *mutatis mutandis* under Article 74 (2));

Article 102 (Joint Penal Provisions)

Where a representative of a corporation, or an agent, employee or other servant of the corporation or an individual commits an offence under Articles 94 through 96, or Articles 98 through 101 in connection with the business of the corporation or the individual, not only shall such violator be punished, but also the corporation or the individual shall be punished by a fine not exceeding 300 million won: *Provided*, That this shall not apply where such corporation or individual has not been negligent in giving due attention and supervision concerning the relevant business in order to prevent such violation.

Article 103 (Fines for Negligence)

(1)

A person falling under any of the following subparagraphs shall be punished by a fine for negligence not exceeding five million won:

1.

A person who fails to report under Article 40 (1) 6 through 9 (including cases applied *mutatis mutandis* pursuant to Article 74 (2));

2.

A person who fails to report under subparagraph 6 of Article 55;

3.

A person who fails to report under Article 56(1);

4.

A person who fails to comply with matters to be observed under Article 78;

5.

A person who fails to report the closure of business under Article 79.

(2)

A person who fails to report under Article 40 (1) 5 (including cases applied *mutatis mutandis* pursuant to Article 74 (2)) shall be punished by a fine for negligence not exceeding four million won.

(3)

A person who fails to report under Article 40 (1) 7 or paragraph 2 of the same Article (including cases applied *mutatis mutandis* pursuant to Article 74(2)) shall be punished by a fine for negligence not exceeding three million won.

(4)

A person falling under any of the following subparagraphs shall be punished by a fine for negligence not exceeding two million won:

1.

A person who fails to report under Article 40 (1) 1 through 4 (including cases applied *mutatis mutandis* pursuant to Article 74 (2));

2.

A person who fails to report under subparagraphs 1 through 5, 7 or 8 of Article 55;

3.

A person who fails to report under Article 60(4).

Article 104 (Imposition and Collection of Fines for Negligence)

Fines for negligence under Article 103 shall be imposed and collected by the Administrator of the Cultural Heritage Administration, the Mayor/ *Do* Governor, or the head of the competent *i/ Gun/ Gu*, as prescribed by Presidential Decree.

S subordinate statute as at the time this Act enters into force shall be deemed a citation of the provisions of this Act in lieu of the former provisions, if provisions corresponding thereto exist herein.

38. Republic of Moldova

Code of Science & Innovation of the Republic of Moldova No. 259-XV of July 15, 2004

Copyright and Related Rights (Neighboring Rights), Domain Names, Enforcement of IP and Related Laws, Industrial Designs, Industrial Property, IP Regulatory Body, Layout Designs of Integrated Circuits, Other, Patents (Inventions), Plant Variety Protection, Trade Names, Trademarks, Traditional Knowledge (TK), Undisclosed Information (Trade Secrets), Utility Models

Law on the Folkloric Art & Crafts No. 135-XV of March 20, 2003

Copyright and Related Rights (Neighboring Rights), Traditional Cultural Expressions, Traditional Knowledge (TK)

Moldovan texts only

39. Russian Federation

Order No. 169 of September 9, 2009 of the Federal Service for Law Enforcement in the Field of the Protection of Cultural Heritage Approving Reporting Forms for Accredited Collective Rights Management Organization

Relates to Traditional Cultural Expressions, Traditional Knowledge (TK)

Russian text only

40. Samoa

This is a copyright Act that deals briefly with TCE

COPYRIGHT ACT 1998 No. 25

AN ACT to make provision for the protection of copyright and other similar rights.

[Assent date: 16 July 1998]

[Commencement date: 1 September 1998]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART I

PRELIMINARY

1. Short title, commencement and application - (1) This Act may be cited as the Copyright Act 1998..

(2) This Act comes into force on a date to be nominated by the Minister.

(3) The provisions of this Act apply also to works, performances, sound recordings and broadcasts dating back to before the date of the coming into effect of this Act,

PROVIDED THAT the term of protection had not expired by law or under the legislation of the country of origin of such works, performances, sound recordings or broadcasts that are to be protected under an international treaty to which Samoa is party, and to that extent this Act shall have retrospective effect:

PROVIDED THAT this Act does not affect the terms or validity of contracts on works, performances, sound recordings and broadcasts concluded before the entering into force of this Act.

2. Interpretation - In this Act, unless the context otherwise requires:

“audiovisual work” means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible;

“author” means the physical person who has created the work;

“broadcaster” means a person licensed under the Broadcasting Act 2010 to provide a broadcasting service (as defined in that Act) by which a subscription broadcast service is delivered;

“broadcasting” means the communication of a work, a performance or a sound recording to the public by radio, television or other transmission, including transmission by satellite or via the internet;

“CEO” means the Chief Executive Officer of the Ministry responsible for Commerce, Industry and Labour and includes any person who is duly authorised to act on his or her behalf;

“Channel provider” means a person who:

(a) packages a channel (which might include programmes produced by the person); and

(b) supplies a broadcaster with the channel; and

(c) carries on a business that involves the supply of the channel, - where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is broadcast as part of a subscription broadcast;

“collective work” means a work created by two or more physical persons at the initiative and under the direction of a physical person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his, her or its own name and that the identity of the contributing physical persons will not be indicated;

“communication to the public” means the transmission of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times;

“computer” means an electronic or similar device having information-processing capabilities; and a “computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, or causing a computer to perform or achieve a particular task or result;

“Court” means the Supreme Court of Samoa;

“economic rights” means the rights referred to in section 6:

“expression of folklore”(Repealed by s2 of Act 2011, No.10))

“infringement” means any act that violates any rights protected under this Act;

“moral rights” means the rights referred to in section 7;

“Minister” means the Minister responsible for Commerce, Industry and Labour;

“owner of copyright” means:

(a) where the economic rights are vested in the author, the author;

(b) where the economic rights are originally vested in a physical person other than the author or a legal entity, that person or entity;

(c) where the ownership of the economic rights has been transferred to a physical person or legal entity, that person or entity;

“performers” includes singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or traditional cultural expressions;

“photographic work” means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture extracted from an audiovisual work shall not be considered a “photographic work” but a part of the audiovisual work concerned;

“producer” of an audiovisual work or a sound recording, means the physical person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

“public display” means the showing of the original or a copy of the work:

(a) directly; or

(b) by means of a film, slide, television image or otherwise on screen; or

(c) by means of any other device or process; or

(d) in the case of an audiovisual work, the showing of individual images nonsequentially, - at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places or times, and where the work can be displayed without communication to the public within the meaning of communication to the public;

“public lending” means the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, such as a public library or archive;

“public performance” means:

(a) in the case of a work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;

(b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and

(c) in the case of sound recording, making the recording sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performances can be perceived without the need for communication to the public within the meaning of communication:

“published” refers to a work or a sound recording:

(a) copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies; or

(b) which have been made available to the public by means of an electronic retrieval system, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of sound recording, with the consent of the producer of the sound recording or his or her successor in title;

“rental” means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit-making purposes;

“reproduction” means the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of the work or sound recording in electronic form;

“sound recording” means any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied; it does not include a fixation of sounds and images, such as the sound track of an audiovisual work;

“subscription broadcast” means a broadcasting service for which a person must pay money to receive the service;

“traditional cultural expression” means a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means;

“work” means any literary or artistic work under section 3(1);

“work of applied art” means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

“work of joint authorship” means a work to the creation of which two or more authors have contributed, provided the work does not qualify as a “collective work” as herein defined.

PART IA COPYRIGHT

3. Works protected - (1) Literary and artistic works (hereinafter referred to as “works”) are original intellectual creations in the literary and artistic domain, including in particular:

- (a) books, pamphlets, articles, computer programs and other writings;
- (b) speeches, lectures, addresses, sermons and other oral works;
- (c) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) stage productions of works mentioned in paragraph (c) and of traditional cultural expressions that are apt for such productions;
- (e) musical works, with or without accompanying words;
- (f) audiovisual works;
- (g) works of architecture;
- (h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (i) photographic works;
- (j) works of applied art;
- (k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

4. Derivative works - (1) The following shall also be protected as works:

(a) translations, adaptations, arrangements and other transformations or modifications of works; and

(b) collections of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, coordination or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) is without prejudice to any protection for pre-existing work incorporated in or utilized for the making of such a work.

5. Subject matter not protected - Despite sections 3 and 4, no protection shall extend under this Act to:

(a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work; or

(b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof.

6. Economic Rights - (1) Subject to the provisions of sections 8 to 15, the author or other owner of copyright shall have the exclusive right to carry out or to authorise the following acts in relation to the work:

(a) reproduction of the work;

(b) translation of the work;

(c) adaptation, arrangement or other transformation of the work;

(d) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;

(f) importation of copies of the work, even where the imported copies were made with the authorisation of the author or other owner of copyright;

(g) public display of the original or a copy of the work;

(h) public performance of the work;

(i) broadcasting of the work;

(j) other communication to the public of the work.

(2) The rights of rental and lending under subsection (1)(e) do not apply to rental or lending of computer programs where the program itself is not the essential object of the rental or lending.

(3) The rights under this section do not extend to acts in respect of works which have been put on the market anywhere in the world by the copyright owner or with the copyright owner's consent.

7. Moral rights - (1) Independently of an author's economic rights, and even where the author is no longer the owner of the economic rights, the author of a work, has the right:

(a) to have the author's name indicated prominently on the copies and in connection with any public use of his or her work, as far as practicable; and

(b) to not have his or her name indicated on the copies and in connection with any public use of his or her work, and the right to use a pseudonym; and

(c) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his or her work which would be prejudicial to his or her honour or reputation.

(2) None of the rights mentioned in subsection (1) are transmissible during the life of the author, but the right to exercise any of those rights are transmissible by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1):

PROVIDED THAT such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under subsection (1)(c) specifies the nature and extent of the modification or other action in respect of which the right is waived.

(4) Following the death of the author, the physical person or legal entity upon whom or which the moral rights have devolved has the right to waive the said rights.

8. Private reproduction for personal purposes - (1) Despite section 6(1)(a), and subject to subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorisation of the author or owner of copyright, where the reproduction is made by a physical person exclusively for his or her own personal purposes.

(2) The permission under subsection (1) does not extend to reproduction:

(a) of a work of architecture in the form of building or other construction;

(b) of the whole or a substantial part of a data base;

(c) of a computer program, except as provided in section 13; and

(d) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

8A. Reproduction for purposes of research or private study - (1) Despite section 6(1)(a), but subject to subsection (2), a person reproducing a work for the purposes of research or private study is not to be regarded as infringing any of the copyright in that work.

(2) Despite subsection (1), if a person reproducing the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time, that person will not be regarded as reproducing the work for the purposes of subsection (1).

8B. Use of work for Parliamentary or judicial proceedings or inquiries - (1) Despite section 6(1)(a), the copyright in a work is not infringed by reproducing or using the material for the purposes of:

(a) any Parliamentary or judicial proceedings or for the purposes of reporting any such proceedings; or

(b) any inquiry conducted under any enactment, or for the purposes of reporting the proceedings of any such inquiry.

(2) The issuing to the public of the report of any inquiry referred to in subsection (1)(b) does not infringe the copyright of any work that is reproduced in the report.

8C. Incidental inclusion of copyright material - (1) Despite section 6(1)(a), but subject to subsection (2), the copyright in a work is not infringed by its incidental inclusion in an artistic work, a sound recording, an audio-visual work or a broadcast or by the publication, playing, performance or other use of the work.

(2) Despite subsection (1), if a musical work or words spoken or sung to music are deliberately included in another work, that act is not to be regarded as being incidentally included.

8D. Use of work for demonstration purposes - Despite section 6(1)(a), the copyright in a literary or musical work is not infringed by the use of the work in a good faith demonstration of a radio or television receiver or computer or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

8E. Acts done under statutory authority - Despite section 6(1)(a), the copyright in a work is not infringed by the doing of anything that is specifically authorised by any enactment.

8F. Prescribed dealings in copyright works - (1) Despite section 6(1)(a), but subject to subsection (2), in addition to any other reproduction permitted under this Act, the reproduction of a work is to be permitted in such manner and circumstances as may be prescribed.

(2) Despite subsection (1), any regulations made under this section and section 35 must not:

- (a) permit any reproduction to be in conflict with a normal exploitation of the work; or
- (b) unreasonably prejudice the legitimate interests of the owner of the copyright.”.

9. Quotation - Despite section 6(1)(a), the reproduction in the form of quotation, of a short part of a published work shall be permitted without authorisation of the author or other owner of copyright:

PROVIDED THAT the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose. The quotation shall be accompanied by an indication of source and the name of the author, if his or her name appears in the work from which the quotation is taken.

10. Reproduction for teaching - (1) Despite 6(1)(a), the following acts are permitted without authorisation of the author, or other owner of copyright:

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings:

PROVIDED THAT reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;

- (b) the reproduction, for face-to-face teaching in educational institutions, the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose,

PROVIDED THAT:

- (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and
- (ii) there is no collective licence available (that is, offered by a collective administration organisation of which the educational institution is or should be aware) under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

11. Reproduction by libraries and archives - Despite section 6(1)(a), any library or archive whose activities do not serve direct or indirect financial gain may, without the authorisation of the author or other owner of copyright, make, from time to time, a single copy of the work by reproduction:

- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person:

PROVIDED THAT:

- (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
- (ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
- (iii) there is no collective licence available (that is, offered by a collective administration organisation of which the library or archive is or should be aware) under which such copies can be made; or
- (b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive: unusable in the permanent collection of another similar library or archive:

PROVIDED THAT – it is impossible to obtain such a copy under reasonable conditions; and the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

12. Reproduction, broadcasting and other communication to the public for information purposes - Despite section 6(1)(a), (h) and (i), the following acts shall be permitted in respect of a work without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

(a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character:

PROVIDED THAT this permission shall not apply where the right to authorise reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;

(b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;

(c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information;

(d) the reproduction, broadcasting, public performance or other communication to the public of church hymns or gospel music as well as any translation, adaptation and other transformation thereof for non-commercial purposes.

13. Reproduction and adaptation of computer programs - (1) Despite section 6(1)(a) and (c), the reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorisation of the author or other owner of copyright:

PROVIDED THAT the copy or adaptation is necessary:

(a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;

(b) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the copy of the computer program is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

14. Repealed by s6 of Act 2011, No.10.

15. Display of works - Despite section 6(1)(f), the public display of originals or copies of works shall be permitted without the authorisation of the author:

PROVIDED THAT–

(a) the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process; and

(b) the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his or her successor in title.

16. Duration of Copyright - (1) Subject to subsections (2) to (5), the economic and moral rights shall be protected during the life of the author and for 75 years after his or her death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for 75 years after his or her death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for 75 years from the date of which the work was first published or, failing such an event within 75 years from the making of the work, from its making.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for 75 years from the date on which the work was first published:

PROVIDED THAT where the author's identity is revealed or is no longer in doubt before the expiration of the period, the provisions of subsection (1) or (2) shall apply, as the case may be.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for 25 years from the making of the work.

(6) Every period provided for under subsections (1) to (5) runs to the end of the calendar year in which it would otherwise expire.

17. Original ownership of economic rights - (1) Subject to subsections (2) to (5), the original owner of economic rights is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he or she has created.

(3) With respect to a collective work, the physical person or legal entity at the initiative and under the direction of whom or which the work has been created shall be the original owner of the economic rights.

(4) With respect to a work created by an author employed by a physical person or legal entity in the course of his or her employment, the original owner of the economic rights shall be the employer, unless provided otherwise in a contract.

(5) With respect to an audiovisual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract. The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be subject of acts covered by their economic rights separately from the audiovisual work.

18. Presumption of authorship and of representation of the author - The physical person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

19. Assignment and license of authors' rights - (1) Economic rights shall be assignable in whole or in part.

(2) An assignment of an economic right, and any licence to do an act subject to authorisation by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

(3) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorisation by the author or other owner of copyright, shall not include or be taken to include the assignment or licence of any other rights not explicitly referred to therein.

PART II PROTECTION OF PERFORMERS, ETC

20. Acts requiring authorisation of performers - (1) In this Part, "fixation" means the result of any process aimed at recording or presenting a performance in a permanent form.

(2) Subject to section 24, a performer has the exclusive right to carry out or to authorise any of the following acts:

(a) the broadcasting or other communication to the public of his or her performance, except where the broadcasting or the other communication:

(i) is made from a fixation of the performance, other than a fixation made under section 24; or

(ii) is a rebroadcasting made or authorised by the organisation initially broadcasting the performance;

(b) the fixation of his or her unfixed performance;

(c) the reproduction of a fixation of his or her performance.

(3) Once the performer has authorised the incorporation of his or her performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

(4) Nothing in this section is to be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of their performances.

(5) The rights under this section shall be protected from the moment in which the performance takes place until the end of the 75th calendar year following the year in which the performance takes place.

21. Acts requiring authorisation of producers of sound recordings - (1) Subject to section 24, a producer of a sound recording has the exclusive right to carry out or to authorise any of the following acts:

(a) direct or indirect reproduction of the sound recording;

(b) importation of copies of the sound recording, even where the imported copies were made with the authorisation of the producer;

(c) adaptation or other transformation of the sound recording;

(d) rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent.

(2) The rights under subsection (1) shall be protected from the publication of the sound recording until the end of the 75th calendar year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the 75th calendar year following the year of fixation.

22. Equitable remuneration for use of sound recordings - (1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public, or is publicly performed a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the 50th calendar year following the year of publication or, if the sound recording has not been published, from the date of fixation of the sound recording until the end of the 50th calendar year following the year of fixation.

23. Acts requiring authorisation of broadcasting organisations - (1) Subject to section 24, a broadcasting organisation shall have the exclusive right to carry out or to authorise any of the following acts:

- (a) the re-broadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast;
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the 75th calendar year following the year in which the broadcast takes place.

23A. Unauthorised commercial use of subscription broadcasts - (1) No person shall, without the authorisation of the broadcaster of a subscription broadcast, use the broadcast, or sounds or images from the broadcast, by way of trade or with the intention of obtaining a commercial advantage or profit, where:

- (a) the use prejudicially affects any of the following persons:
 - (i) anyone with an interest in the copyright in the broadcast;
 - (ii) anyone with an interest in the copyright in any content of the broadcast;
 - (iii) the channel provider who supplied the broadcaster with the channel for the broadcast; and
- (b) the person knows, or ought reasonably to know, that the use is not authorised by the broadcaster.

(2) An interested person may initiate proceedings in the Supreme Court in order to prevent a contravention of subsection (1) or seek any other remedy arising out of a contravention of subsection (1).

24. Limitations on protection - This Part does not apply where the acts referred to in this Part are related to:

- (a) the use by a physical person exclusively for his or her own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (c) use solely for the purpose of face-to-face teaching activities or for scientific research;
- (d) cases where, under Part IA, a work can be used without the authorisation of the author or other owner of copyright.

PART III ENFORCEMENT OF RIGHTS

25. Injunctions and other remedies - (1) The Court has jurisdiction:

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Act;
- (b) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation;
- (c) to order the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to the copies to which paragraph (b) applies.

(2) The provisions of the Criminal Procedure Act 1972 dealing with search and seizure apply to infringements of rights under this Act.

(3) Part VIIIA of the Customs Act 1977 applies to articles and implements protected under this Act.

26. Civil remedies - (1) The owner of any right arising in Samoa and protected under this Act, whose right has been infringed is entitled to payment, by the infringer, of damages for the prejudice suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including reasonable legal costs. The amount of damages shall be fixed by the Court, taking into account the importance of the material and moral prejudice suffered by the owner of the right, as well as the extent of the infringer's profits attributable to the infringement:

PROVIDED THAT where the infringer did not know or had no reasonable reason to know that he, she or it was engaged in infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.

(2) Unless the Court is satisfied that exceptional circumstances exist, damages for the prejudice suffered by an owner of a copyright arising overseas, as a consequence of an act of infringement in Samoa shall not exceed the profit gained by the person in infringing the copyright.

(3) Where infringing copies exist, the Court shall have the authority to order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise. This provision shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(4) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimise the risks of further infringements, including surrender to the owner of the right.

(5) Where there is a danger that acts of infringement may be continued, the Court may expressly order that such acts not be committed. It is an offence to breach such an order and the penalty is a fine not exceeding 50 penalty units.

26A. Powers of entry and search - (1) Subject to subsection (2), the CEO may, pursuant to a warrant issued by the Supreme Court:

- (a) enter and search any building, vessel or vehicle;
- (b) stop and search any person; or
- (c) pass across any land.

(2) The CEO, after obtaining the prior written approval of the Attorney-General, may only exercise powers under subsection (1) without a warrant:

- (a) where there is no time to apply for a warrant; and
- (b) if the CEO believes, on reasonable grounds that an infringement of any rights granted under this Act is occurring or has occurred or an offence is being or has been committed against this Act.

27. Criminal sanctions - (1) An infringement of a right protected under this Act, if committed wilfully or by gross negligence and for profit-making purposes, shall be punished by a fine of not exceeding 250 penalty units where the offence involves the breach of a copyright relating to a computer or computer program, and in every other case, or by imprisonment for a term not exceeding 5 years or both. The amount of the fine shall be fixed by the Court, taking into particular account the defendant's profits attributable to the infringement.

(2) The Court has the authority to increase up to double the penalties specified in subsection (1), where the defendant has been convicted for a second or further act of infringement within 5 years of a previous conviction for a infringement.

(3) The Court shall apply the measures and remedies referred to in sections 25 and 26 also in criminal proceedings, if no decision has yet been taken on such remedies in a civil proceeding.

(4) Proceedings under this section may only be taken with the authority of the Attorney-General who, when exercising this discretion, may take into account any relevant consideration, including:

- (a) the public interest in such prosecution; and
 - (b) the resources of the State to effectively take such prosecution; and
 - (c) the nature of the right and interest sought to be protected and its relevance to Samoa.
- 27A. Presumptions** - (1) The presumptions specified in this section apply in any proceedings, whether civil or criminal, for infringement of the copyright in any work.
- (2) Copyright is presumed to subsist in a work until the contrary is proved.
 - (3) Except as otherwise provided in this section, where the subsistence of the copyright in a work is proved or admitted, or is presumed under subsection (2), the plaintiff is presumed to be the owner until the contrary is proved.
 - (4) Where:
 - (a) a name purporting to be that of the author of a work or of the owner appears on copies of the work; or
 - (b) a copy of a work bears or incorporates a statement, label or other mark indicating that a person is the author of the work or the owner, -
 that name, statement, label or mark is admissible as evidence of the fact stated or indicated which is to be presumed to be correct, unless the contrary is proved.
 - (5) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a work in accordance with subsection (4) shall, unless the contrary is proved, be presumed not to have made the work in the course of employment referred to in section 17(4).
 - (6) Where a work purports to be a work of joint authorship, subsections (2), (3), (4) and (5) apply in relation to each person purporting to be one of the authors of the work.
 - (7) Subject to subsection (8), where no name purporting to be that of the author of the work or of the owner, appears on the work or where the work does not bear or incorporate a statement, label or other mark in accordance with subsection (4), a person named in accordance with subsection (8)(b) is presumed to have been the author of the work or the owner, at the time when the work was first lawfully made available to the public, unless the contrary is proved.
 - (8) Despite subsection (7), a presumption will only be made where:
 - (a) the work qualifies for copyright protection by reference to the country, territory, state or area, in which it was first lawfully made available to the public; and
 - (b) either:
 - (i) a name purporting to be that of the person who first lawfully made available to the public the work appears on copies of the work as first so made available; or
 - (ii) copies of the work bear or incorporate a statement, label or other mark indicating that a named person first lawfully made available to the public the work.
 - (9) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it is to be presumed, unless the contrary is proved:
 - (a) that the work is an original work; and
 - (b) that the claims made by the plaintiff as to the date on which the work was first lawfully made available to the public and as to the country, territory, state or area in which the work was first so made available are correct.
 - (10) The presumptions in subsections (2) to (9) apply to the same extent in any action relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.
 - (11) In this section "owner" includes an exclusive licensee of the copyright.

28. Remedies for unlawful acts - (1) The following acts shall be considered unlawful and, in the application of sections 25 to 27, shall be assimilated to infringements of the rights of authors and other owners of copyright:

- (a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as “copy-protection or copy-management device or means”);
- (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program.
- (2) In the application of sections 25 to 27, any illicit device and means mentioned in subsection (1) shall be assimilated to infringing copies of works.
- (3) The author of, or other owner of copyright in, a work shall also be entitled to the damages for infringement provided for by section 26(1) or (2), as applicable where:
 - (a) authorised copies of the work have been made and offered for sale or rental in an electronic form combined with a copy-protection or copy-management device or means, and a device or means specifically designed or adapted to circumvent the device or means is made or imported for sale or rental;
 - (b) the work is authorised for inclusion in an encrypted program broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the program by those who are not entitled to receive the program is made or imported for sale or rental.

PART IV

PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS

29. Rights protected - (1) Traditional cultural expressions are protected against:

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when such expressions are made either for commercial purposes or outside their traditional or customary context.
- (2) Subsection (1) does not apply where the acts referred to therein are related to:
 - (a) the use by a physical person exclusively for his or her own personal purposes;
 - (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
 - (c) use solely for the purpose of face-to-face teaching or for scientific research;
 - (d) cases where under Part IA, a work can be used without the authorisation of the author or other owner of copyright.
- (3) In all printed publications, and in connection with any communication to the public of any identifiable traditional cultural expressions its source shall be indicated in an appropriate manner and in conformity with fair practice, by mentioning the community or place from where the expression utilized has been derived.
- (4) The right to authorise acts referred to in subsection (1) shall vest in a competent authority to be determined by the Minister.
- (5) All monies collected in relation to this Part shall be used for purposes of cultural development.

30. Infringement of traditional cultural expressions - A person who, without the consent of the competent authority referred to in section 29(4), uses a traditional cultural expression in a manner not permitted by section 29 commits an offence in breach of a duty under law, and is liable to the competent authority referred to in section 29(4) for damages, injunctions and any other remedies as the Court may deem fit.

PART V

MISCELLANEOUS

31. Scope of application - (1) The provisions of this Act concerning the protection of literary and artistic works apply to:

- (a) works of authors who are nationals of, or have their permanent place of residence in Samoa; and
- (b) works first published in Samoa, and works first published in another country and also published in Samoa within 30 days, irrespective of the nationality or residence of their authors.

(2) The provisions of this Act also apply to works that are protected in Samoa by virtue of and in accordance with any international convention or other international agreement to which Samoa is party.

32. Protection of performers - (1) The provisions of this Act on the protection of performers apply to:

- (a) performers who are nationals of Samoa;
- (b) performers who are not nationals of Samoa but whose performances:
 - (i) take place within the territory of Samoa; or
 - (ii) are incorporated in sound recordings that are protected under this Act; or
 - (iii) have not been fixed in a sound recording but are included in broadcasts qualifying for protection under this Act.

(2) The provisions of this Act on the protection of sound recordings apply to:

- (a) sound recordings the producers of which are nationals of Samoa; and
- (b) sound recordings first fixed in Samoa; and
- (c) sound recordings first published in Samoa.

(3) The provisions of this Act on the protection of broad-casts apply to:

- (a) broadcasts of broadcasting organisations the headquarters of which are situated in Samoa; and
- (b) broadcasts transmitted from transmitters situated in Samoa.

(4) The provisions in this Act also apply to performers, producers of sound recordings and broadcasting organisations protected by virtue of and in accordance with any international convention or other international agreement to which Samoa is party.

33. Repealed by s11 of Act 2011, No.10.

34. Miscellaneous provisions - (1) Any existing provisions of legislation relating to the protection of literary and artistic works, performers, producers of phonograms and broadcasting organisations cease to have effect, insofar as they are inconsistent with any provision of this Act.

(2) The Minister may authorise one or more non-government organisations to administer rights on behalf of the owners of such rights and determining the conditions under which such organisations work.

35. Regulations - The Head of State, acting on the advice of Cabinet, may make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act.

REVISION NOTES 2008-2011

This Act has been revised under section 5 of the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.

- (b) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
- (i) "Every" and "any" changed to "a" or "each" where appropriate
- (ii) "shall be" changed to "is" and "shall be deemed" changed to "is taken"
- (iii) "shall have" changed to "has"
- (iv) "shall be guilty" changed to "commits"
- (v) "notwithstanding" changed to "despite"
- (vi) "pursuant to" changed to "under"
- (vii) Numbers in words changed to figures
- (viii) "hereby" and "from time to time" (or "at any time" or "at all times") removed

41. South Africa

Act No 28 of 2013 Intellectual Property Laws Amendment Act 2013

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This Act provides for recognition of particular manifestations of indigenous knowledge as intellectual property by amending the Performer's Protection Act, The Copyright Act, the Trade Marks Act and The Designs Act. It provides for the establishment of a National Council in respect of indigenous knowledge, a National database for recording indigenous knowledge and a National Trust and National Trust Fund with respect to indigenous knowledge. As such this is not *sui generis* legislation that fits with the common provisions.

42. Sudan

Listed as relevant in Wipolex but no mention of traditional knowledge or genetic resources

SUDAN Patent Law no. 58 of 1971

Part One: Preliminary Provisions Chapter One: Title and Definitions

1. Title: This Act may be cited as "The Patents Act, 1971."
2. Definitions: In this Act, unless the context otherwise requires:
 - (a) "The Court" means the High Court;
 - (b) "Minister" means the Attorney General;

(c) “patent Office” means the Office that the Minister shall establish to perform the functions assigned to it under this Act.

Chapter Two: Terms of Patentability

3. Patentable Inventions:

(1) Any invention which is new, involves an inventive step and is capable of industrial application shall be patentable.

(2) Any invention constituting an improvement upon a patented invention shall be patentable if it is new, involves an inventive step and is capable of industrial application.

(3) Principles and discoveries of a scientific nature shall not be considered to be inventions.

4. Novelty:

(1) An invention is new if it is not anticipated by prior art, prior art being constituted by everything disclosed to the public, anywhere and at any time whatsoever, by means of a written or oral disclosure, by use, or in any other way, before the date of the filing of the patent application or the priority date validly claimed in respect thereof.

(2) An invention shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of the application for a patent, the inventor or his successor in title has exhibited it in an official or officially recognized international exhibition.

1. **Inventive Step:** An invention shall be considered as involving an inventive step if it does not obviously follow from the state of the art, either as to the method, the application, the combination of methods, or the products which it concerns, or as to the industrial results it produces.
2. **Industrial Applications:** An invention shall be considered as capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.
3. **Exceptions to Patentability:** Patents may not be validly obtained in respect of inventions the publication or working of which would be contrary to public order or morality, provided that the working of an invention shall not be considered as contrary to public order or morality merely because such working is prohibited by law or regulation.

Chapter Three: Right to the Grant of a Patent

8. The Right to a Patent:

(1) subject to Section 10, the right to a patent shall belong to the inventor or his successor in title.

(2) If two or more persons have jointly made an invention, the right to a patent shall belong to them or their successors in title jointly and equally; a person who has merely assisted in the execution of an invention without having contributed any inventive activity shall not, however, be deemed to be an inventor or co-inventor.

(3) The person who is the first to file an application for a patent, or is the first validly to claim the earliest priority for an application for the same invention, shall, subject to the provisions of Sections 9 and 10, be deemed to be the inventor or successor in title of the inventor.

Usurpation: where the applicant has obtained the essential elements of an invention which is the subject of his application from the invention of another person, without the latter having consented to the applicant's doing so and to his filing an application for a patent, the person whose invention has been unlawfully usurped may demand that the application or the patent granted in respect of the application be transferred to him.

10. Inventions Made Pursuant to Commission or by an Employee:

(1) Subject to the legal provisions governing commission and employment contracts, and in the absence of contractual provisions to the contrary, the right to a patent for an invention made in execution of such a contract shall belong to the person having commissioned the work or to the employer.

(2) The preceding subsection shall apply when an employment contract does not require the employee to exercise any inventive activity, but when the employee has made the invention using data or means made available to him through his employment.

(3) In the circumstances provided for in subsection (2) the employee-inventor shall have a right to remuneration taking into account his salary and the importance of the patented invention, which remuneration shall, in the absence of agreement between the parties, be fixed by the court. In the circumstances provided for in subsection (1), the employee-inventor shall have a similar right if the invention is of very exceptional importance and the employment contract requires the exercise of inventive activity.

(4) The advantages conferred on the employee-inventor by the provisions of the preceding subsection shall not be reduced by contract.

11. Rights of the True Inventor to be Named as Such:

(1) The true inventor shall be entitled to be named as such in the patent.

(2) The preceding subsection may not be contravened by contract.

Chapter Four: Grant of Patent

12. Terms of Applications:

(1) An application for a patent shall be made to the Patent Application Office and shall contain:

(a) the complete name and address of the applicant and, if the applicant's address is outside the Democratic Republic of the Sudan, the indication of an address for service within the Democratic Republic of the Sudan;

(b) a description of the invention with the drawings, if any, referred to therein;

(c) one or more claims.

(2) Where appropriate, the application for the patent shall be accompanied by a declaration, signed by the true inventor, requesting that he be mentioned as such in the patent and giving his name and address.

(3) Where the application is made by an agent, it shall be accompanied by a signed power of attorney; authentication or certification of the signature shall not be necessary.

(4) The details of the formal requirements with which an application for a patent must comply shall be prescribed in the Regulations.

13. Contents of the Description and Claims:

(1) The description shall disclose the invention in a of the manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(2) The claim or claims shall define the matter for which protection is sought.

(3) The claims shall not exceed the contents of the description.

14. Unity of the Invention:

(1) An application for a patent shall relate to one invention only.

(2) Subject to the preceding subsection, an application for a patent may include, in particular:

(a) apart from claims for one or more products, claims for one or more manufacturing processes for the product or products, and claims for one or more applications of the product or products;

(b) apart from claims for one or more manufacturing processes, claims for means of working the process or processes, claims for the product or products which result from that working, and claims for the application of such products.

Right of Priority: The applicant for a patent who wishes to avail himself of the priority of an earlier application made in another country shall be required to append to his application a written declaration indicating the date and number of the earlier application, the country in which he or his predecessor in title made such application and the name of the applicant, and shall, within a period of three months from the date of the later application, furnish a copy of the earlier application, certified as correct by the Patent Office of the country where it was made.

Payment of Fees: An application for a patent shall not be accepted unless the fee prescribed for this effect has been paid.

1. Examination of Application as to Form:

(1) The Patent Office shall examine the application as to its conformity with Sections 12, 14, 15 and 16.

(2) Where the provisions of Sections 12 or 16 have not been complied with, a patent shall not be granted; where the provisions of Section 15 have not been complied with, the Patent Office shall not mention in the patent the priority claimed.

(3) Where the application does not fulfill the requirements of Section 14, the applicant shall be invited by the Patent Office to restrict the application so that it relates to only one invention. At the same time, the Patent Office shall notify the applicant that, within a period of three months, he may file, for the rest of the application, one or more divisional applications, which shall benefit from the date of the filing of the original application, and, if relevant, from the priority date claimed under Section

15. Where the applicant does not comply with this invitation to restrict the original application to one invention, no patent shall be granted.

18. Grant of Patent without Examination as to the Substance of the Application:

(1) where the examination referred to in Section 17 shows that the application satisfies the requirements of Sections 12, 14, and 16, the patent, as applied for, shall be granted without further examination, particularly without examination of the question whether the subject of the application is patentable within the terms of Sections 3 to 7, and whether, for the same invention, an application benefiting from an earlier priority has been made in the Democratic Republic of the Sudan or whether a patent has been granted as a result of such application.

(2) where the examination referred to in Section 17 shows that the provisions of Section 15 have been complied with, the Patent Office shall mention in the patent the priority claimed.

(3) Patents are granted at the risk of the patentee and without guarantee as to their validity.

19. Issuance and Registration of Patents:

(1) A patent shall be granted by the issuance of letters patent to the patentee. The patent must contain the number thereof in order of grant; the name and address of the patentee and, if his address is outside the Democratic Republic of the Sudan, an address for service in the Democratic Republic of the Sudan; the dates of the application and grant; indication, if priority is claimed, of this fact, and the number, date and country of the application, basis of the priority claimed; the description of the invention, the claims and the drawings, if any, relating to the description; and, finally, the name and address of the true inventor if he has requested to be mentioned in the patent.

(2) The Patent Office shall maintain a Register in which shall be recorded patents granted, numbered in their order of grant, and, in regard to each patent, where appropriate, its lapse for non-payment of annual fees, and all transactions to be recorded by virtue of the present Act.

(3) The Patent Office shall record the changes of address or of address for service which shall be notified to it by the registered owner of the patent.

(4) Communications to be made to the registered owner of the patent by virtue of the present Act shall be sent to him at his most recently recorded address and at the same time to his most recently recorded address for service.

20. Publication of Patents:

(1) The Patent Office shall publish in the Gazette as soon as possible all patents granted in the order of their grant, mentioning the contents of the patent in accordance with Section 19(1), with the exception of the description and the drawings. The publication of the claims of the patent may, to the extent permitted and in the manner prescribed in the Regulations, be replaced by a summary of the claims, without prejudice to the scope of the patent and its validity.

(2) Patents registered at the Patent Office may be consulted free of charge at that Office, and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in regard to any patent.

Chapter Five: Rights Conferred by the Patent

21. Nature of Rights Conferred: The patent shall confer upon its registered owner the right to preclude third parties from the following acts:

- (a) when the patent has been granted in respect of a product:
 - (i) making importing, offering for sale, selling, and using the product,
 - (ii) stocking such product for the purposes of offering for sale, selling, or using
- (b) when the patent has been granted in respect of a process:
 - (i) applying the process,
 - (ii) doing any of the acts referred to in (a) above in respect to a product obtained directly by means of the process.

22. Scope of Protection:

(1) The scope of the protection conferred by the patent shall be determined by the terms of the claims.

(2) The description and the drawings included in the patent shall be used to interpret the claims.

23. Limitation of Rights Under the Patent:

(1) The rights under a patent shall only extend to acts done for industrial or commercial purposes.

(2) The rights under a patent shall not extend to acts in respect of the product covered by the patent after the product has been lawfully sold in the Democratic Republic of the Sudan nevertheless, insofar as the patent also concerns a special application of the product, this application shall continue to be reserved to the registered owner of the patent.

24. Rights Derived from Prior Manufacture Use: Any person who, at the date of the filing of the patent application by another person, or at the date of priority claimed in respect of such validly application, was, in good faith, manufacturing the product or applying the process, which is the subject of the invention, or had made serious preparations with a view to such manufacture or use, shall, despite the patent, have the right to continue such acts and, with respect to products obtained thereby, to perform the other acts referred to in section 21. This right is only transferable with the undertaking which is the beneficiary of the right.

Chapter Six: Duration of Patent and Fees

25. Duration of Patent and Fees:

(1) A patent shall expire at the end of the twentieth year from the date of the filing of the application, subject to the payment of the annual fees as prescribed in the Regulations.

(2) A period of grace of six months shall be granted for the payment of the annual fees upon payment of a surcharge as prescribed in the Regulation.

(3) The lapse of a patent for non-payment of fees shall be published in the Gazette by the Patent Office as soon as Possible.

Chapter Seven: Transfer of Patent Applications and Patents; Joint Ownership of Patents

26. Assignment and Transfer of Patent Applications and Patents:

(1) Patent applications and patents may be assigned or transferred by succession.

(2) The assignment of patent applications and patents shall be made in writing and shall require the signatures of the contracting parties.

(3) Assignments, or transfers by succession, of patent applications and patents shall be registered in the Patent Office on payment of a fee as prescribed in the Regulations; assignments shall have no effect against third parties until such registration.

27. Joint Ownership of Patents: In the absence of any provision to the contrary between the parties, joint owners of a patent may, separately, transfer their parts, exploit the patented invention, and exercise the rights granted under Section 21, but may only jointly grant a license to a third party to exploit the patent.

Chapter Eight: Contractual Licenses

28. License Contracts:

(1) The applicant for or owner of a patent may, by contract, grant to some other person or undertaking a license to exploit his invention.

(2) A license contract must be in writing and shall require the signatures of the contracting parties.

(3) Every license contract must be registered in the Patent Office, on payment of a fee as prescribed in the Regulations; the license shall have no effect against third parties until such registration.

29. Right of Licensor to Grant Further Licenses

(1) In the absence of any provision to the contrary in the license contract, the grant of a license shall not prevent the licensor from granting further licenses to third persons, or from exploiting the invention himself.

(2) The grant of an exclusive license shall prevent the licensor from granting licenses to third persons and, in the absence of any provision to the contrary in the license contract, from exploiting the invention himself.

30. Rights of Licensee: In the absence of any provision to the contrary in the license contract, the licensee shall be entitled to exploit the invention during the whole duration of the patent, in the entire territory of the Democratic Republic of the Sudan, through any application of the invention, and in respect to all the acts referred to in Section 21.

Non-Assignability of Licenses:

In the absence of any provision to the contrary in the license contract, a license contract shall not be assignable to third parties and the licensee shall not be entitled to grant sublicenses.

1. License Contracts Involving Payments Abroad: In view of the country's needs and its economic development, the Minister may, by order, provide that on pain of invalidity, license contracts or certain categories of them, and amendments or renewals of such contracts, which involve the payment of royalties abroad, shall require his previous approval.

2. Invalid Clauses in License Contracts:

(1) Clauses in license contracts or relating to such contracts shall be null and void insofar as they impose upon the licensee, in the industrial or commercial field, restrictions not deriving from the rights conferred by the patent.

(2) The following in particular shall be deemed not to constitute such restrictions:

(a) limitations concerning the degree, extent, quantity, territory or duration of exploitation of the subject of the patent;

(b) limitations justified by the interest of the licensor in the technically flawless exploitation of the subject of the patent;

(c) the obligation imposed upon the licensee to abstain from all acts capable of impeding or preventing the grant of the patent or prejudicing its validity.

Chapter Nine: Compulsory Licenses

34. Compulsory License for Non-Working and Similar Reasons:

(1) At any time after the expiration of a period of four years from the date of the filing of an application for a patent, or three years from the date of the grant of a patent, whichever period expires last, any person interested may, in accordance with the conditions specified in Section 44, apply for the grant of a compulsory license upon one or more of the following grounds:

(a) that the patented invention, capable of being worked within the Democratic Republic of the Sudan, has not been so worked within the terms of subsection (3);

(b) that the working of the patented invention within the Democratic Republic of the Sudan does not meet on reasonable terms the demand for the product;

(c) that the working of the patented invention within the Democratic Republic of the Sudan is being prevented or hindered by the importation of the patented article;

(d) that, by reason of the refusal of the registered owner of the patent to grant licenses on reasonable terms, the establishment or development of industrial or commercial activities in the Democratic Republic of the Sudan is unfairly and substantially prejudiced.

(2) In all the above cases, a compulsory license shall not be granted if the owner of the patent proves that his actions in respect of the patented invention are legitimately justifiable in the circumstances. Importation shall not constitute a legitimate reason.

(3) The working of a patented invention under this Section means the manufacture of a patented article, the application of a patented process, or the use in manufacture of a patented machine, by an effective and serious establishment existing within the Democratic Republic of the Sudan, and on a scale which is adequate and reasonable in the circumstances.

(4) A compulsory license shall permit the licensee to perform some or all the acts referred to in Section 21 with the exception of importation.

35. Compulsory License for Products and Processes Declared to be of Vital Importance for the Defense or Economy of the Country or for Public Health: The Minister may, by order, provide that,

for certain patented products or processes, or for certain categories of such products and processes, which are declared by that order of vital importance for the defense or the economy of the Democratic Republic of the Sudan or for public health, compulsory licenses may be granted, in the conditions provided for in Section 34, even before the expiration of the period mentioned in subsection (1) of that Section and even for importation into the Democratic Republic of the Sudan.

36. Compulsory Licenses Based Upon Inter-Dependence of Patents:

(1) If an invention protected by a patent within the Democratic Republic of the Sudan cannot be worked without infringing rights deriving from a patent granted on a prior application or benefiting from an earlier priority, a compulsory license may, upon application, be granted under the conditions specified in Section 44 to the registered owner of the later patent, to the extent necessary for the working of his invention, insofar as such invention serves industrial purposes different from those of the invention forming the subject of the earlier patent, or constitutes noteworthy technical progress in relation to it.

(2) If the two inventions serve the same industrial purpose, a compulsory license shall be granted only if a license is granted in respect of the later patent to the registered owner of the earlier patent, if he so requests.

1. Refusal of Contractual License: Any person who applies for a compulsory license under Sections 34, 35 or 36 must furnish proof showing that he has previously approached the registered owner of the patent, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him on reasonable terms and within a reasonable time.
2. Guarantee Required from Applicant for a Compulsory License: In the cases provided for in Sections 34 and 35, a compulsory license shall be granted only to an applicant offering the necessary guarantees to work the invention sufficiently to remedy the deficiencies or to satisfy the requirements which gave rise to the application for the compulsory license.

3. Scope of Compulsory Licenses:

(1) Compulsory licenses shall be non-exclusive.

(2) The terms of a compulsory license, fixed in accordance with Section 44, may contain obligations and restrictions both for the licensee and for the registered owner of the patent.

1. Compensation: A compulsory license shall only be granted subject to the payment of adequate royalties commensurate with the extent to which the invention is worked.

2. Transfer of Compulsory License:

(1) A compulsory license may only be transferred with the undertaking of the licensee or with that portion of his undertaking which uses the patented invention. Any such transfer shall, on pain of invalidity, require the authorization of the authority which granted the compulsory license.

(2) Sections 42 and 44 shall be applicable to the transfer of a compulsory license.

(3) The grantee of a compulsory license shall not be entitled to grant sublicenses.

Registration of Compulsory License: Every compulsory license shall, either at the request of the interested party or following notification to the Patent Office provided for in subsection 44(4), be registered at the Patent Office without fee. The license shall have no effect as against third parties until such registration.

1. Amendment and Cancellation of Compulsory License:

(1) Upon the request of the registered owner of the patent or of the licensee of the compulsory license, the terms of the license may be amended by the authority which granted it when new facts so justify, in particular when the registered owner of the patent grants contractual licenses on terms more favorable to the contractual licensees.

(2) At the request of the registered owner of the patent, the compulsory license may be cancelled if the licensee does not comply with the prescribed terms of the license or if the conditions which justified the grant of the compulsory license have ceased to exist; in the latter case, a reasonable time shall be given to the licensee to cease working the invention if an immediate stoppage would cause serious damage to him.

(3) Sections 42 and 44 shall be applicable to the amendment and cancellation of compulsory licenses.

44. Procedure:

(1) Any application for a compulsory license shall be made to the Court.

(2) The Registrar of the Court shall invite, by registered letter, the applicant for the compulsory license and the registered owner of the patent to appear or to be represented before the Court within a reasonable time; the Court shall hear the party or parties or their representatives who have appeared. before granting a compulsory license, the Court shall seek the advice of the Minister, who may delegate a representative to intervene at the hearing and to make any pertinent observations.

(3) The Court shall first decide whether a compulsory license may be granted. If it finds that it may be granted, it will give the parties reasonable time to agree on the terms. If there is no agreement between the parties when the time limit expires, the Court shall fix the terms, including the amount of royalties referred to in section 40. The terms of a compulsory license, including those relating to royalties, shall be considered to constitute a valid contract between the parties.

(4) The decision of the Court granting a compulsory license shall be notified by the Registrar of the Court to each of the parties involved and to the Patent Office.

Chapter 10: Licenses of Right

45. Licenses of Right:

(1) Any registered owner of a patent not precluded by the terms of any previously registered license from granting further licenses may apply to the Patent Office to have, in respect of his patent, the mention 'licenses of right' entered in the Register. The mention shall be entered in the Register, and this fact shall be published by the Patent Office as soon as possible.

(2) The entry of this mention in the Register shall entitle any person to obtain a license to exploit the said patent upon such terms as shall, in the absence of agreement, be fixed by the Court.

(3) The amount of the annual fees payable in respect of any patent after the date on which the mention "licenses of right" has been entered in the Register shall be reduced by one half.

(4) The registered owner of the patent may, at any time, apply to the Patent Office to cancel the entry "licenses of rights." If no license is in force, or if all licensees agree thereto, the Patent Office shall cancel the entry, after payment of all fees and annual fees which would have been payable if the entry had not been made in the Register.

(5) The provisions of Sections 26(3), 30, 32 and 33, shall be applicable equally to licenses or right.

(6) The grantee of a license of right may neither assign it nor grant sublicenses under it.

Chapter Eleven: Surrender and Nullity

46. Surrender of Patent:

(1) A patent may be surrendered by its registered owner by written declaration addressed to the Patent Office.

(2) The surrender may be limited to one or more claims of the patent.

(3) The surrender shall be immediately registered and published by the Patent Office. Surrender shall be effective only after it has been registered.

(4) If a contractual license or a license of right is registered at the Patent Office, surrender of the patent shall only be registered upon the submission of a declaration by which the registered licensee consents to the surrender.

47. Nullity of Patent:

(1) On the request of any person including any competent Patent authority, the Court shall declare a patent null and void in the following circumstances:

(a) Where the subject of the patent is not patentable within the terms of Sections 3 to 7;

(b) Where the description of the invention or the claim or claims in the patent do not satisfy the requirements of section 13;

(c) where, for the same invention, a patent has been granted in the Democratic Republic of the Sudan as the result of a prior application or of an application benefiting from an earlier priority.

(2) Where the provisions of the preceding subsection affect only part of the patent, nullity shall be declared in the form of a corresponding limitation of the claim or claims of the patent.

(3) The Court may require the registered owner of the patent to submit to it for the purpose of examination:

(a) the list of publications or earlier patents which may have been referred to in connection with either a patent application filed for the same invention by the registered owner himself or his predecessor in title with the Patent Office of another country or any proceedings relating to the patent in question,

(b) the list of publications or patents mentioned in any report sent to the registered owner of the patent or his predecessor in title by a governmental or intergovernmental search institute.

48. Effects of Declaration of Nullity:

(1) A patent declared to be null and void shall be regarded as having been null and void from the date of its grant. Nevertheless, where licenses have been granted, nullity shall not entail the repayment of royalties by the licensee insofar as he has effectively profited from the license.

(2) When the declaration of nullity becomes final, the Registrar of the Court shall notify it to the Patent Office which shall enter it in the Register and publish it as soon as possible.

Chapter Twelve: Infringement of Rights Under the Patent

49. Civil Sanctions:

(1) A registered owner of a patent whose rights under Sections 21 and 22 are threatened with infringement, or are infringed, may institute legal proceedings designed to prevent the infringement or to prohibit its continuation.

(2) In the case of infringement of these rights, the registered owner of the patent may also claim damages and the application of any other sanctions provided for in the civil law, such as seizure and destruction of the infringing products or machinery used for the making of such products.

50. Penal Sanctions:

(1) Any intentional infringement of the rights of a registered owner of a patent under Sections 21 and 22 shall constitute an offense.

(2) Such offense shall be punishable by a fine not exceeding one thousand Pounds or by imprisonment not exceeding one year, or both. The maximum penalties shall be doubled in the event of recidivism, i.e. when, in the course of the five preceding years, the offender has been convicted of another infringement of a patent.

1. **Presumption of Use of a Patented Process:** If a patent is in respect of a process for the manufacture of a new product, the same product, manufactured by a third party, shall, in the absence of proof to the contrary, be presumed to have been manufactured by that process.

2. **Legal Proceedings by Licensee:**

(1) Any licensee under a contractual or compulsory license, or a license of right, may, by registered letter, require the licensor to introduce the legal actions necessary to obtain civil or penal sanctions in respect of any infringement of the patent indicated by the licensee.

(2) If the licensor refuses or neglects to introduce the said legal actions within three months of the request, the licensee under the registered license may introduce them in his own name, without prejudice to the right of the licensor to intervene in such actions.

Part Two: Technical Know-How

53. Conditions of Protection of Technical Know-How:

(1) Subject to any right conferred by patents in force and the provisions of subsection (2) of the present Section, any person may freely use manufacturing processes or knowledge concerning the use and application of industrial techniques.

(2) Nevertheless, provided that these processes and knowledge have not been published or made available to the public, they shall be protected against unlawful use, disclosure or communication by third parties, on condition that the person who has developed them has taken the necessary steps to preserve their secret character.

Unlawful Acts: Any use, disclosure or communication, without the consent of the owner, of the processes and knowledge referred to in Section 53(2) by any person who is aware of their secret character, or who could not fail to be aware of such character, shall be deemed to be unlawful, and Sections 49 and 50 shall be applicable in respect of those unlawful acts.

1. Independent Acquisition: Any person who has developed, by his own means, manufacturing processes or knowledge concerning the use and application of industrial techniques and any person who has legally acquired those processes and that knowledge from the former shall, even if another person has kept secret the same processes and Knowledge, be entitled to use, disclose or communicate them to third parties.

2. Transfers and Licenses:

(1) The processes and knowledge referred to in subsections (1) and (2) of Section 53 may be transferred and may form the subject of a license contract.

(2) Sections 26(2) 28(2), 29, 30, 31 and 32 shall be applicable by analogy.

Part Three: General Provisions

1. if an enterprise commits an infringement under this Act, any person acting as a member of the Administration Board, as Director General or Secretary, or any person having a similar activity or who appears to be the executor of such task in that enterprise on the date of the infringement, shall be considered to be an infringer unless he provides proof that the relevant infringement had not been committed with his consent or was not due to his negligence and that he had used his best efforts to avoid the infringement within the limits of his competence under the given circumstances in effect.
2. Power of Minister to Promulgate Regulations: The Minister may prescribe Regulations in order to perform the purposes of this Act, once the Minister of the Treasury and the Minister of Economy, Commerce and Supply have approved the prescribed fees.

43. Sweden

Cultural Heritage (etc.) Act (1988:950)

Traditional Cultural Expressions, Traditional Knowledge (TK)

Swedish text only

44. Switzerland

No clear relevance- no provisions relevant to the common provisions

Federal Act on Patents for Inventions

First Title: General Provisions

Section 1: Requirements for Obtaining a Patent and Effects of the Patent

Art. 1

- 1 Patents for inventions are granted for new inventions applicable in industry.
- 2 Anything that is obvious having regard to the state of the art (Art. 7 para. 2) is not patentable as an invention.
- 3 Patents are granted without the guarantee of the State.

Art. 1a

- 1 The human body as such, at all stages of its formation and development, including the embryo, is not patentable.
- 2 Elements of the human body in their natural environment are not patentable. An element of the human body is, however, patentable as an invention if it is produced by means of a technical process, a beneficial technical effect is indicated and the further requirements of Article 1 are fulfilled; Article 2 remains reserved.

Art. 1b

- 1 A naturally occurring sequence or partial sequence of a gene is not patentable as such.
- 2 Sequences that are derived from a naturally occurring sequence or partial sequence of a gene may, however, be patented as an invention if they are produced by means of a technical process, their function is specifically indicated, and the further requirements of Article 1 are fulfilled; Article 2 remains reserved.

Art. 2

- 1 Inventions whose exploitation is contrary to human dignity or that disregard the integrity of living organisms or that are in any other way contrary to public policy or morality are not patentable. In particular, no patent may be granted for:
 - a. processes for cloning human beings and the clones obtained thereby;
 - b. processes for forming hybrid organisms by using human germ cells, human totipotent cells or human embryonic stem cells and the entities obtained thereby;
 - c. processes of parthenogenesis by using human germinal material and the parthenogenetic entities obtained thereby;
 - d. processes for modifying the germ line genetic identity of human beings and the germ line cells obtained thereby;
 - e. unmodified human embryonic stem cells and stem cell lines;
 - f. the use of human embryos for non-medical purposes;

g. processes for modifying the genetic identity of animals which are likely to cause them suffering without being justified by overriding interests worthy of protection, and also animals resulting from such processes;

2 Also excluded from patentability are:

- a. methods for treatment by surgery or therapy and diagnostic methods practised on the human or animal body;
- b. plant varieties and animal varieties or essentially biological processes for the production of plants or animals; however, subject to the reservation of paragraph 1, microbiological or other technical processes and the products obtained thereby as well as inventions that concern plants or animals are patentable provided that their application is not technically confined to a single plant or animal variety.

Art. 3

1 The inventor, his successor in title, or a third party owning the invention under any other title has the right to the grant of the patent.

2 Where several inventors have made an invention jointly, they have this right jointly.

3 Where two or more inventors have made the invention independently of each other, the person who makes the earlier application or whose application has the earliest priority date has this right.

Art. 4

In the procedure before the Swiss Federal Institute of Intellectual Property (the Institute),¹² the patent applicant is deemed entitled to request the grant of the patent.

Art. 5

1 The patent applicant must provide the Institute with written confirmation of the name of the inventor.

2 The person named by the patent applicant shall be mentioned as the inventor in the Patent Register, in the publication of the patent application and in the grant of the patent, as well as in the patent specification.

3 Paragraph 2 applies by analogy if a third party produces an enforceable judgment establishing that he and not the person named by the patent applicant is the inventor.

Art. 6

1 If the inventor named by the patent applicant waives his right to the measures provided for in Article 5 paragraph 2, these measures shall not be taken.

2 A declaration made beforehand by the inventor waiving the right to be mentioned as such has no legal effect.

Art. 7

1 An invention is considered to be new if it does not form part of the state of the art.

2 The state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way prior to the filing or priority date.

3 With regard to novelty, the state of the art also includes the content of an earlier application or application with earlier priority designating Switzerland in the version originally filed, and with a filing or priority date that precedes the date mentioned in paragraph 2, and which was only made available to the public on or after that date, provided that:

- a. in the case of an international application, the requirements of Article 138 are fulfilled;
- b. in the case of a European application based on an international application, the requirements of Article 153 paragraph 5 of the European Patent Convention of 5 October 1973 in its revised version of 29 November 2000 are fulfilled;
- c. in the case of a European application, the fees for the valid designation of Switzerland as per Article 79 paragraph 2 of the European Patent Convention of 5 October 1973 in its revised version of 29 November 2000 have been paid.

Art. 7a**Art. 7b**

Where the invention has been made available to the public in the six months prior to the application date or priority date, this disclosure does not form part of the state of the art when it is due to, or a consequence of:

- a. an evident abuse in relation to the patent applicant or his legal predecessor, or
- b. the fact that the patent applicant or his legal predecessor has displayed the invention at an official or officially

recognised international exhibition falling within the terms of the Convention on International Exhibitions of 22 November 1928, and he has declared the fact at the time of filing and has produced sufficient supporting evidence in due time.

Art. 7c

Any substance or composition that forms part of the state of the art as such, but not in relation to its use in a surgical, therapeutic or diagnostic method specified in Article 2 paragraph 2 letter a23 is deemed to be new provided it is intended solely for such use.

Art. 7d

Any substance or composition that forms part of the state of the art as such, but not in relation to a specific use in a surgical, therapeutic or diagnostic method specified in Article 2 paragraph 2 letter a that is

distinct from the first medical use specified in Article 7c is deemed to be new provided it is intended for use in the manufacture of a means to a surgical, therapeutic or diagnostic end.

Art. 8

1 The patent confers on its proprietor the right to prohibit others from commercially using the invention.

2 Use includes, in particular, manufacturing, storage, offering, placing on the market, importing, exporting and carrying in transit, as well as possession for any of these purposes.

3 Carrying in transit may only be prohibited if the proprietor of the patent is permitted to prohibit importation into the country of destination.

Art. 8a

1 If the invention concerns a manufacturing process, the effects of the patent also extend to the products directly obtained by that process.

2 If the products directly obtained by the process concern biological material, the effects of the patent also extend to products obtained by propagating the biological material and which demonstrate the same characteristics. Article 9a paragraph 3 remains reserved.

Art. 8b

If the invention concerns a product that consists of or contains genetic information, the effects of the patent extend to any material in which the product is incorporated and in which the genetic information is

contained and performs its function. Article 1a paragraph 1 and 9a paragraph 3 remain reserved.

Art. 8c

The protection conferred by a claim to a nucleotide sequence that is derived from a naturally occurring sequence or partial sequence of a gene is limited to the sequence segments that perform the function specifically described in the patent.

Art. 9

1 The effects of the patent do not extend to:

- a. acts undertaken within the private sphere for non-commercial purposes;

- b. acts undertaken for research or experimental purposes in order to obtain knowledge about the subject-matter of the invention including its uses; in particular, any scientific research concerning the subject-matter of the invention is permitted;
- c. acts necessary for obtaining marketing authorisation for a medicinal product in Switzerland or in countries with equivalent medicinal product control;
- d. the use of the invention for teaching purposes at educational institutions;
- e. the use of biological material for the purpose of the production or the discovery and development of a plant variety;
- f. biological material that is obtained in the field of agriculture due to chance or is technically unavoidable.

Art. 9a

1 If the proprietor of the patent has placed patent-protected goods on the market in Switzerland or within the European Economic Area, or consented to their placing on the market in Switzerland or within the

European Economic Area, these goods may be imported and used or resold commercially in Switzerland or within the European Economic Area, the first and each subsequent person who acquires the apparatus is entitled to use this process.

3 If the proprietor of the patent has placed patent-protected biological material on the market in Switzerland or within the European Economic Area, or consented to its placing on the market in Switzerland or within the European Economic Area, this material may be imported and propagated in Switzerland, provided this is necessary for its intended use. The material so obtained may not be used for further propagation. Article 35a remains reserved.

4 If the proprietor of the patent has placed patent-protected goods on the market outside the European Economic Area or consented to their placing on the market outside the European Economic Area and if the patent protection for the functional characteristics of the goods is only of subordinate importance, the goods may be imported commercially. Subordinate importance is presumed unless the proprietor of the patent provides *prima facie* evidence to the contrary.

5 Irrespective of the provisions of paragraphs 1–4, the consent of the proprietor of the patent for the placing on the market of patent-protected goods is reserved if their price in Switzerland or in the country in which they are placed on the market is fixed by the state.

Art. 10

Art. 11

1 Products that are protected by a patent, or their packaging, may be marked as being patented with the Federal Cross and the number of the patent. The Federal Council may prescribe additional indications.

2 The proprietor of the patent may require any prior user or any licensee to affix the patent mark on the products manufactured by them or on the packaging of such products.

3 If the prior user or licensee does not comply with the requirement of the proprietor of the patent, he is liable to the latter for any resulting losses without prejudice to the proprietor's right to require the use of the patent mark.

Art. 12

1 Any person who issues or offers for sale his business papers, notices of any kind, products or goods bearing any other notice referring to patent protection must inform any third party on request of the number

of the patent application or the patent to which the notice refers.

2 Any person who accuses third parties of infringing his rights or warns them against such infringement must, on request, give them the same information.

Art. 13

1 Any person who is involved in administrative proceedings provided for in this Act and does not have a residence or principle place of business in Switzerland, must designate an address for service in Switzerland. An address for service in Switzerland is not required for:

- a. filing a patent application for the purpose of being accorded a filing date;
- b. paying fees, filing translations and filing and handling requests after the grant of the patent, in so far as the requests do not give rise to any objections.

2 The provisions concerning the practice of the profession of attorney remain reserved.

Art. 14

1 The maximum term of the patent is 20 years from the filing date of the application.

Art. 15

1 The patent lapses:

- a. if the proprietor surrenders it by written declaration to the Institute;
- b. if a renewal fee that has become due is not paid within the prescribed time.

Art. 16

Patent applicants or proprietors who are Swiss nationals may rely on the provisions of the binding text for Switzerland of the Paris Convention for the Protection of Industrial Property of 20 March 1883, where those provisions are more favourable than the provisions of this Act.

Section 2: Right of Priority

Art. 17

1 Where an invention is the subject of a regular filing of an application for a patent for an invention, a utility model or an inventor's certificate, and where the filing takes place in or with effect in a country that is a party to the Paris Convention for the Protection of Industrial Property of 20 March 1883 or the Agreement Establishing the World

Trade Organization of 15 April 1994⁴⁷, (Appendix 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights), it shall give rise to a right of priority in accordance with Article 4 of the Paris Convention. This right may be claimed for a patent application filed in Switzerland for the same invention within 12 months from the date of the first filing.

1bis The first filing in a country that grants reciprocity to Switzerland has the same effect as the first filing in a country that is party to the Paris Convention for the Protection of Industrial Property.

1ter Except as otherwise provided by this Act or by the Ordinance, paragraph 1 above and Article 4 of the Paris Convention for the Protection of Industrial Property of 20 March 1883 apply by analogy to a first filing in Switzerland.

2 The effect of the priority right is that the application may not be prejudiced by any circumstances that have arisen since the date of the first filing.

Art. 18

1 ...

2 The right of priority may be claimed by the first applicant or the person who has acquired the right belonging to the first applicant to file a patent application in Switzerland for the same invention.

3 If the first filing, the filing in Switzerland or both were effected by a person who was not entitled to the grant of the patent, the entitled person may claim the priority deriving from that first filing.

Art. 19

1 Any person claiming a right of priority must file a declaration of priority and a priority document with the Institute.

2 The right of priority is forfeited if the time limits and formal requirements laid down by the Ordinance are not complied with.

Art. 20

1 Acceptance of a priority claim in the procedure for the grant of the patent does not relieve the proprietor of the patent of the obligation to prove the existence of such right in the case of legal proceedings.

2 The filing on the basis of which priority is claimed is presumed to be the first filing (Article 17 para. 1 and 1bis).

Art. 20a

Where an inventor or his successor in title has obtained two patents with the same filing date or priority date for the same invention, the effects of the patent based on the earlier application cease insofar as the scope of protection afforded by the two patents is the same.

Art. 21-23

Section 3:

Modifications concerning the Validity of the Patent

Art. 24

1 The proprietor of the patent may partially surrender the patent by requesting the Institute to:

- revoke a patent claim (Art. 51 and 55); or
- limit an independent claim by combining one or more patent claims, which are dependent on it; or
- limit an independent claim in some other way; in such cases, the limited claim must refer to the same invention and define an embodiment that is included in the specification of the published patent and in the version of the patent application that determined the date of filing.

2

Art. 25

1 If, as a result of a partial surrender, patent claims remain that may not exist in the same patent in accordance with Articles 52 and 55, the patent shall be limited accordingly.

2 The proprietor of the patent may apply for the issue of one or more new patents to cover the dropped patent claims; such new patents are given the filing date of the original patent.

3 Following registration of the partial surrender in the Patent Register, the Institute shall set a time limit for the proprietor of the patent to apply for the issue of new patents in accordance with paragraph 2; after this time limit has expired, an application is no longer accepted.

Art. 26

1 The court shall, on application, declare the nullity of the patent if:

- the subject-matter of the patent is not patentable under Articles 1, 1a, 1b and 2;
- the invention is not described in the patent specification in a manner sufficiently clear and precise for it to be carried out by a person skilled in the art;
- the subject-matter of the patent goes beyond the content of the patent application in the version that determined the filing date;
- the proprietor of the patent is neither the inventor nor his successor in title, nor has a right to the grant of the patent on other legal grounds.

2 Where a patent is granted with recognition of priority, and the application claiming the priority does not lead to a patent, the court may require the proprietor of the patent to state the grounds and to present evidence; if the information is withheld, the court has full discretion in its judgment of this.

Art. 27

1 Where a ground for nullity applies to only a part of the patented invention, the court shall limit the patent accordingly.

2 The court shall give the parties an opportunity to be heard on the proposed new version of the patent claim; it may also request the opinion of the Institute.

3 Article 25 applies by analogy.

Art. 28

Any person with a proven interest may bring a nullity action, with the exception of an action under Article 26 paragraph 1 letter d, which may be brought only by an entitled person.

Art. 28a

The effects of the granted patent shall be deemed not to have occurred from the outset insofar as the proprietor of the patent surrenders the patent or the court declares the nullity of the patent based on a nullity action.

Section 4:**Modifications concerning the Right to the Grant of the Patent and the Right to the Patent; Grant of Licences****Art. 29**

1 When the patent application has been filed by an applicant who, under Article 3, is not entitled to the grant of the patent, the entitled person may apply for assignment of the patent application or, if the patent has already been granted, he may apply for assignment of the patent or file an action for nullity.

2 ...

3 If an assignment is ordered, licences or other rights granted to third parties in the intervening period lapse; however, if they have used the invention commercially in Switzerland in good faith or have made special preparations to do so, these third parties are entitled to be granted a non-exclusive licence.

4 Any claims for damages are reserved.

5 Article 40e applies by analogy.

Art. 30

1 If the plaintiff cannot prove his right to all claims of the patent, assignment of the patent application or of the patent shall be subject to the deletion of the patent claims to which the plaintiff has not proved his right.⁷¹

2 Article 25 applies by analogy.

Art. 31

1 An action for assignment must be filed within two years from the official date of the publication of the patent specification.

2 An action against a defendant acting in bad faith has no filing deadline.

Art. 32

1 Where public interest so dictates, the Federal Council may expropriate all or part of the patent.

2 The former proprietor of an expropriated patent is entitled to full compensation which, in the event of any dispute, is fixed by the Federal Supreme Court; the provisions of Section II of the Compulsory

Purchase Act of 20 June 1930 apply by analogy.

Art. 33

1 The right to the grant of the patent and the right to the patent passes to the heirs; these rights may be assigned to third parties either wholly or in part.

2 Where the said rights are owned by two or more persons, each entitled person may exercise the rights only with the consent of the others; however, each one may independently dispose of his part or bring an action for infringement of the patent.

2bis The transfer of a patent application and of the patent by legal act is valid only if evidenced in writing.

3 A patent may be transferred without the transfer being recorded in the Patent Register; however, until an entry is made, any action provided for in this Act may be taken against the former proprietor of the patent.

4 Rights of third parties not recorded in the Patent Register are invalid against persons who have acquired the rights to the patent in good faith.

Art. 34

1 The patent applicant or the proprietor of the patent may grant third parties the right to use the invention (grant of licences).

2 Where the patent application or the patent is owned by two or more persons, a licence may not be granted without the consent of all entitled persons.

3 Licences of third parties not recorded in the Patent Register are invalid against persons who have acquired in good faith the rights to the patent.

Section 5: Legal Restrictions on Rights conferred by the Patent

Art. 35

1 A patent may not be invoked against any person who, prior to the filing or priority date of the patent application, was commercially using the invention in good faith in Switzerland or had made special preparations for that purpose.

2 Any such person under paragraph 1 may use the invention for the purposes of their trade or business; this right may be transferred or bequeathed only together with the trade or business.

3 A patent has no effect with regard to vehicles which are only temporarily in Switzerland, nor to equipment attached to these vehicles.

Art. 35a

1 Farmers who have acquired plant reproduction material placed on the market by the proprietor of the patent or with his consent may reproduce, on their own farm, the product from this material cultivated on their own farm.

2 Farmers who have acquired animal reproductive material or animals placed on the market by the proprietor of the patent or with his consent may reproduce, on their own farm, the animals obtained through reproduction of this material or these animals on their own farm.

3 Farmers are required to obtain the consent of the proprietor of the patent when they wish to give the product of their harvest or the animal or animal reproductive material obtained to third parties for reproduction purposes.

4 Contractual agreements which limit or revoke the farmers' privilege in the area of food and feed production are null and void.

Art. 35b

The Federal Council determines the plant species included under the farmers' privilege; in so doing, it shall in particular take into consideration their importance as raw materials for food and feed.

Art. 36

1 If a patented invention cannot be used without infringing a prior patent, the proprietor of the later patent has the right to a nonexclusive licence to the extent required to use his invention, provided that the invention represents an important technical advance of considerable economic significance in relation to the invention that is the subject-matter of the prior patent.

2 A licence to use the invention that is the subject-matter of the prior patent may only be transferred jointly with the later patent.

3 The proprietor of the prior patent may make the grant of a licence conditional on the proprietor of the later patent granting him a licence to use his invention in return.

Art. 36a

1 When a plant variety right may not be claimed or used without infringing an earlier-granted patent, the plant breeder or the owner of the plant variety has the right to a non-exclusive licence to the extent required to obtain and use his plant variety right, provided that the plant variety represents an important advance of considerable economic significance in comparison to the patent-protected invention.

For varieties for agriculture and food, the criteria under the Seed Ordinance of 7 December 1998 serve as a reference point.

2 The proprietor of the patent may make the grant of a licence conditional on the owner of the plant variety granting him a licence to use his plant variety right in return.

Art. 37

1 Three years from the date of the grant of the patent, or at the earliest four years after filing the patent application, any person with a legitimate interest may apply to the court for the grant of a non-exclusive licence to use the invention if the proprietor of the patent has not sufficiently exploited it in Switzerland by the time of the action and cannot justify such a failure. Importing is also considered domestic exploitation.

2

3 At the request of the plaintiff, the court may grant a licence immediately after the action has been filed without prejudice to the final judgment providing that, in addition to the conditions set out in paragraph 1, the plaintiff provides *prima facie* evidence that he has an interest in the immediate use of the invention and that he provides adequate security to the defendant; the defendant shall be given the opportunity to be heard beforehand.

Art. 38

1 If the grant of licences does not suffice to meet the demand of the domestic market, any person with a proven interest may bring an action for the cancellation of the patent after a period of two years from the grant of the first licence under Article 37 paragraph 1.

2 If the legislation of the country of which the proprietor of the patent is a national or in which he is resident allows an action for cancellation of the patent for failure to exploit the invention in that country as early as three years after the grant of the patent, such an action shall be allowed instead of the action for the grant of a licence, subject to the conditions specified in Article 37 for the grant of licences.

Art. 39

The Federal Council may decree Articles 37 and 38 to be inapplicable with regard to nationals of countries granting reciprocity.

Art. 40

1 Where public interest so dictates, the person to whom the proprietor of the patent has, without sufficient reason, refused to grant the licence requested, may apply to the court for the grant of a licence to use the invention.

2

Art. 40a

For inventions in the field of semi-conductor technology, a nonexclusive licence may only be granted to remedy a practice held to be anti-competitive in court or administrative proceedings.

Art. 40b

Any person who intends to use a patented biotechnological invention as an instrument or means for research is entitled to a non-exclusive licence.

Art. 40c

For inventions concerning a diagnostic product or procedure for humans, a non-exclusive licence shall be granted to remedy a practice held to be anti-competitive in court or administrative proceedings.

Art. 40d

1 Any person may bring an action before the court to be granted a nonexclusive licence for the manufacture of patent-protected pharmaceutical products and for their export to a country that has insufficient or no production capacity of its own in the pharmaceutical sector and which requires

these products to combat public health problems, in particular those related to HIV/AIDS, tuberculosis, malaria and other epidemics (beneficiary country).

2 Countries that have declared in the World Trade Organization (WTO) that they wholly or partly renounce their claim to a licence in accordance with paragraph 1 are excluded from being beneficiary countries in accordance with the terms of their declaration. All other countries that fulfil the requirements of paragraph 1 may be beneficiary countries.

3 The licence in accordance with paragraph 1 is limited to the production of the pharmaceutical product in the quantity that meets the requirements of the beneficiary country; the total quantity must be exported to the beneficiary country.

4 The owner of the licence in accordance with paragraph 1, as well as any manufacturer that produces products under licence, must ensure that they are clearly identified as products that have been produced under a licence in accordance with paragraph 1, and that the products are distinguished by their packaging or by their special colouring or shape from patent-protected products, provided this does not have a significant impact on the price of the products in the beneficiary country.

5 The Federal Council shall regulate the requirements for the grant of licences in accordance with paragraph 1. In particular, it shall stipulate the information or notifications the responsible court must possess in order to be able to decide on the grant of the licence in accordance with paragraph 1, and shall regulate the measures in accordance with paragraph 4.

Art. 40e

1 The licences provided for in Articles 36–40d are granted only if efforts by the applicant to obtain a contractual licence on appropriate market terms within a reasonable period of time have been unsuccessful; in the case of a licence in accordance with Article 40d, a period of 30 working days is regarded as reasonable. Such efforts are not required in situations of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

2 The scope and term of the licence are limited to the purpose for which it has been granted.

3 The licence may only be transferred with that part of the enterprise which uses the licence. This also applies to sub-licences.

4 The licence is primarily granted for supplying the domestic market.

Article 40d remains reserved.

5 The proprietor of the patent has the right to appropriate remuneration. In assessing the remuneration, the circumstances of the individual case and the economic value of the licence are taken into account. In the case of a licence under Article 40d, the remuneration is determined by taking into account the economic value of the licence in the importing country, its level of development and the urgency in public health and humanitarian terms. The Federal Council shall specify the method of calculation.

6 The court shall decide on the grant and revocation of licences, on their scope and duration as well as on the remuneration payable. In particular, it shall revoke an entitled person's licence on request if the circumstances that led to its being granted no longer apply and it is not expected that they will arise again. Appropriate protection of the legal interests of the entitled person remains reserved.

Where a licence is granted under Article 40d, legal remedies have no suspensive effect.

Section 6: Fees

Art. 41

The obtainment and maintenance of a patent and the processing of special requests are subject to the payment of the relevant fees prescribed in the Ordinance.

Art. 42-44

Art. 45-46

Section 7: Further Processing and Re-Establishment of Rights

Art. 46a

1 If the patent applicant or the proprietor of the patent fails to observe a time limit prescribed by legislation or a time limit set by the Institute, he may file a request for further processing with the Institute.

2 He must file the request within two months of receiving notice from the Institute of failure to observe the time limit, and six months at the latest from the expiry of the said time limit.⁹⁹ He must also carry out in full, within these time limits, the omitted act, supplement where necessary the patent application and pay the fee for further processing.

3 Acceptance of the request for further processing has the effect of restoring the situation that would have resulted from carrying out the act in good time. Article 48 remains reserved.

4 Further processing is ruled out in the case of failure to observe:

- a. time limits that do not have to be observed vis-à-vis the Institute;
- b. time limits for filing a request for further processing (para. 2);
- c. time limits for filing a request for re-establishment of rights (Art. 47 para. 2);
- d. time limits for filing a patent application accompanied by a claim for the right of priority and for the declaration of priority (Art. 17 and 19);
- e.
- f. the time limit for the modification of technical documents (Art. 58 para. 1);
- g.
- h. time limits for applying for the grant of a supplementary protection certificate (Art. 140f para. 1, Art. 146 para. 2, and Art. 147 para. 3);
- i. any other time limit laid down by ordinance where failure to comply with that time limit excludes further processing.

Art. 47

1 Where the patent applicant or proprietor of the patent provides *prima facie* evidence of having been prevented, through no fault on his part, from observing a time limit prescribed by this Act or the Implementing Ordinance or one set by the Institute, he shall be granted, on request, the re-establishment of his rights.

2 The request shall be filed with the authority for which the act should have been carried out within two months of the removal of the cause of non-compliance with the time limit, and at the latest within one year of expiry of the unobserved time limit; at the same time, the omitted act must be carried out.

3 Re-establishment of rights shall be ruled out in respect of paragraph 2 above (time limit for the request for re-establishment of rights).

4 Acceptance of the request shall have the effect of restoring the situation that would have resulted from carrying out the act in good time; Article 48 shall remain reserved.

Art. 48

1 The patent may not be invoked against any person who, during the following periods, has commercially used an invention in good faith in Switzerland or who has made special preparations for that purpose:

- a. between the last day of the time limit stipulated for payment of a patent renewal fee and the day on which a request for further processing (Art. 46a) or a request for re-establishment of rights (Art. 47) was filed;
- b. between the last day of the priority period (Art. 17 para. 1) and the day on which the patent application was filed.

2 This prior user right is governed by Article 35 paragraph 2.

3 Any person claiming a prior user right based on paragraph 1 letter a must pay the proprietor of the patent appropriate compensation from the date on which the patent is revived.

4 In the event of dispute, the court shall decide on the existence and on the extent of the rights claimed by prior use and on the amount of compensation to be paid in accordance with paragraph 3.

Section 8 Representation and Supervision

Art. 48a

1 There is no obligation to be represented before the administrative authorities in proceedings under this Act.

2 Any party who does not want to represent himself in proceedings under this Act before the administrative authorities must be represented by a representative with an address for service in Switzerland.

Art. 48b

Article 13 of the Patent Attorney Act of 20 March 2009 applies by analogy to representatives who are not registered in the Patent Attorney Register.

Second Title: Grant of the Patent

Section 1: The Patent Application

Art. 49

1 Any person who wishes to obtain a patent for an invention must file a patent application with the Institute.

2 The patent application must contain:

- a. a request for the grant of a patent;
- b. a description of the invention and, where a claim is made for a sequence derived from a sequence or partial sequence of a gene, a specific description of the function it performs;
- c. one or more patent claims;
- d. the drawings to which the description or claims of the patent refer;
- e. an abstract.

3

Art. 49a

1 The patent application must contain information on the source:

- a. of the genetic resource to which the inventor or the patent applicant had access, provided the invention is directly based on this resource;
- b. of traditional knowledge of indigenous or local communities of genetic resources to which the inventor or the patent applicant had access, provided the invention is directly based on this knowledge.

2 If the source is unknown to the inventor or the patent applicant, the patent applicant must confirm this in writing.

Art. 50

1 The invention must be described in the patent application in such a manner that it can be carried out by a person skilled in the art.

2

Art. 50a

1 If an invention that relates to the manufacture or use of biological material cannot be sufficiently described, then the description must be completed by depositing a sample of the biological material and, in the description, by providing details of the essential characteristics of the biological material as well as a reference to the deposit.

2 If, in the case of an invention that relates to biological material as a product, the production process cannot be sufficiently described, then the description must be completed or replaced by depositing a sample of the biological material and, in the description, by a reference to the deposit.

3 The invention is deemed to be disclosed in accordance with Article 50 only if the sample of the biological material has been deposited at the latest on the filing date with a recognised depositary

institution and the patent application as originally filed contains details of the biological material and reference to its deposit.

4 The Federal Council shall regulate in detail the requirements for depositing samples, for the details of biological material and for the reference to the deposit, together with access to the samples deposited.

Art. 51

1 The invention must be defined in one or more patent claims.

2 The claims of the patent shall determine the scope of protection conferred by the patent.

3 The description and drawings must be used to interpret the patent claims.

Art. 52

1 Each independent claim may define one invention only, namely:

a. a process, or

b. a product, a means for performing a process or an apparatus, or

c. an application of a process, or

d. a use for a product.

2 A patent may contain several independent claims when they define a set of inventions that are linked to each other in such a way that they constitute a single overall inventive concept.

Art. 53-54

Art. 55

Special embodiments defined by an independent claim may be the subject of dependent claims.

Art. 55a

Article 55b The abstract serves the sole purpose of providing technical information.

Art. 56

1 The date of filing is the day on which the last of the following items are filed:

a. an express or implied application for the grant of a patent;

b. information allowing the identity of the patent applicant to be established;

c. an item which appears to be a description.

2 For posted applications, the date of filing is the day on which it was given to the Swiss postal service for delivery to the Institute.

3 The Federal Council shall regulate the particulars, in particular the language in which the items under paragraph 1 must be filed, the date of filing and publication, whether a missing part of the description or the drawing may be filed afterwards, as well as the replacement of the description or the drawings with a reference to a patent application filed earlier.

Art. 57

1 A patent application resulting from the division of an earlier application shall be given the same filing date as the earlier application:

a. if, at the time of its filing, it is expressly designated as being a divisional application;

b. if, at the time of filing of the divisional application, the earlier application was still pending; and

c. insofar as its subject-matter does not extend beyond the content of the earlier application as originally filed.

2

Art. 58

1 Until the examination procedure has been completed, the patent applicant must be given the opportunity to modify the technical documents on at least one occasion.

2 The technical documents may not be modified such that the subjectmatter of the modified patent application extends beyond the content of the technical documents originally filed.

Art. 58a

1 The Institute shall publish patent applications:

a. immediately after the expiry of a period of 18 months from the filing date or, if priority has been claimed, from the priority date;

b. at the request of the applicant, before the expiry of the period specified in letter a.

2 The publication shall contain the description, the patent claims and, if applicable, the drawings, as well as the abstract, provided it is available for publication prior to completion of the technical preparations for publication, and if applicable, the report on the state of the art or the international-type search as specified in Article 59 paragraph 5. If the report on the state of the art or the international-type search as specified in Article 59 paragraph 5 is not published with the patent application, they shall be published separately.

Section 2: The Examination Procedure

Art. 59

1 If the subject-matter of the patent application does not fall within Articles 1, 1a, 1b and 2 or does so only in part, the Institute shall inform the patent applicant accordingly, stating the reasons, and shall set him a time limit within which to respond.

2 If the patent application does not meet the other requirements of this Act or the Ordinance, the Institute shall set a time limit for the patent applicant by which the deficiencies must be remedied.

3

4 The Institute shall not examine whether the invention is new or whether it is obvious having regard to the state of the art.

5 In return for the payment of a fee, the applicant may:

a. instruct the Institute to provide a report on the state of the art within 14 months of the filing date, or, if priority has been claimed, of the priority date; or

b. request the Institute to arrange an international-type search within 6 months of the filing date of a first filing.

6 If no clarification has been carried out in accordance with paragraph 5, any person entitled to inspect the dossier in accordance with Article 65 may, in return for the payment of a fee, instruct the Institute to provide a report on the state of the art.

Art. 59a

1 If the requirements for the grant of a patent are fulfilled, the Institute shall inform the patent applicant that the examination procedure has been completed.

2

3 The Institute shall reject the patent application if:

a. the application has not been withdrawn even though a patent may not be granted for the reasons stated in Article 59 paragraph 1; or

b. the deficiencies mentioned in Article 59 paragraph 2 have not been remedied.

Art. 59b

Art. 59c

1 Within nine months of the publication of the entry in the Patent Register, any person may give notice of opposition to the Institute to a patent which has been granted by the latter. The notice of opposition

must be filed in a written reasoned statement.

2 Opposition may only be filed on the grounds that the subject-matter of the patent is not patentable under Articles 1a, 1b and 2.

3 If the Institute finds in favour of the opposition in its entirety or in part, it may revoke the patent or maintain it as amended. The decision regarding an opposition is subject to appeal to the Federal Administrative Court.

4 The Federal Council shall regulate the particulars, in particular the procedure.

Art. 59d

Section 3:

Patent Register; Publications by the Institute; Electronic Administrative Communication¹⁴³

Art. 60

1 The Institute shall grant the patent by registering it in the Patent Register.

1bis The Patent Register shall, in particular, contain the following particulars: number of the patent, classification symbol, title of the invention, date of filing, name and domicile of the proprietor of the patent and, where applicable, priority data, name and business address of the representative and name of the inventor.

2 Any modifications concerning the validity of the patent or the right to the patent must be entered in the Patent Register.

3

Art. 61

1 The Institute shall publish:

- a. the patent application with the particulars listed in Article 58a paragraph 2;
- b. the registration of the patent in the Patent Register, with the particulars listed in Article 60 paragraph 1bis;
- c. the cancellation of the patent in the Patent Register;
- d. any modifications registered in the Register concerning the validity of the patent and the right to the patent.

2

3 The Institute shall determine the organ of publication.

Art. 62

Art. 63

1 The Institute shall publish a patent specification for each patent granted.

2 This shall contain the description, the patent claims, the abstract, the drawings if any, and the particulars recorded in the Register (Art. 60 para. 1bis).

Art. 63a

Art. 64

1 As soon as the patent specification is ready for publication, the Institute shall issue a patent certificate.

2 This consists of an attestation confirming the legal conditions for obtaining a patent have been met and a copy of the patent specification.

Art. 65

1 Following publication of the patent application, any person may inspect the dossier. The Federal Council may restrict the right of inspection only if manufacturing or trade secrets or other overriding interests so require.

2 The Federal Council shall regulate the cases in which inspection of the dossier is permitted prior to the publication of the patent application. It shall also regulate, in particular, the inspection of patent applications that were rejected or withdrawn before publication.

Art. 65a

1 The Federal Council may authorise the Institute to regulate electronic communication in accordance with the general provisions on the administration of federal justice.

2 The dossier and the files may be maintained and stored in electronic form.

3 The Patent Register may be maintained in electronic form.

4 The Institute may make its data accessible, particularly online, to third parties; it may demand remuneration for this service.

5 The Institute's publications may be produced in electronic form; the electronic version, however, shall only be authoritative if the data is published exclusively in electronic form.

Third Title: Legal Protection

Section 1: Common Provisions for Protection under Civil and Criminal Law

Art. 66

In accordance with the following provisions, the following persons may be held liable under civil and criminal law:

- a. any person who uses a patented invention unlawfully; imitation is also deemed to constitute use;
- b. any person who refuses to notify the authority concerned of the origin and quantity of products in his possession which are unlawfully manufactured or placed on the market, and to name the recipients and disclose the extent of any distribution to commercial and industrial customers;
- c. any person who removes the patent mark from products or their packaging without authorisation from the proprietor of the patent or the licensee;
- d. any person who abets any of the said offences, participates in them, or aids or facilitates the performance of any of these acts.

Art. 67

1 If the invention concerns a process for the manufacture of a new product, every product of the same composition shall be presumed to have been made by the patented process until proof to the contrary has been provided.

2 Paragraph 1 applies by analogy to a process for the manufacture of a known product if the proprietor of the patent provides *prima facie* evidence of an infringement of the patent.

Art. 68

1 The parties' manufacturing or trade secrets must be safeguarded.

2 Evidence which would disclose such secrets may be made available to the other party only to such an extent as is compatible with the safeguarding of the secrets.

Art. 69

1 In the event of a conviction, the court may order the forfeiture and sale or destruction of the unlawfully manufactured products or equipment, devices and other means that primarily serve their manufacture.

2 The net proceeds from the sale shall firstly be used for the payment of the fine, then the payment of the investigation and court costs, and finally for the payment of a final unappealable award of damages to the injured party and to cover their litigation costs; any surplus shall go to the former owner of the goods sold.

3 Even in the event of the dismissal of the action or an acquittal, the court may order the destruction of the equipment, devices and other means intended primarily for the infringement of the patent.

Art. 70

1 The court may authorise the successful party to publish the judgment at the expense of the opposing party; the court shall determine the form, extent and timing of the publication.

2 In criminal cases (Art. 81–82), publication of the judgment is governed by Article 68 of the Swiss Criminal Code

Art. 70a

The courts shall provide the Institute with full official copies of the final judgments free of charge.

Art. 71

Any person who brings an action under Articles 72, 73, 74 or 81 and subsequently brings a further action against the same party for the same or a similar act on the basis of another patent must bear the court costs and the other party's costs for the new procedure if he does not provide *prima facie* evidence that in the prior action he was, through no fault on his part, unable to invoke the other patent.

Section 2:

Special Provisions for Protection under Civil Law

Art. 72

1 Any person who is threatened with or has his rights infringed by an act referred to in Article 66 may demand an injunction or that the unlawful situation be remedied.

2

Art. 73

1 Any person who performs an act referred to in Article 66 either wilfully or through negligence shall be required to pay damages to the injured party according to the provisions of the Code of Obligations.

2

3 An action for damages may only be brought after the patent has been granted; the defendant may, however, be held liable for loss or damage caused from the time when he first obtained knowledge of the content of the patent application, but at the latest from the publication of the application.

4

Art. 74

Any person demonstrating an interest may bring an action to obtain a declaratory judgment on the existence or non-existence of a circumstance or legal relationship governed by this Act, in particular:

1. that a particular patent is valid;
2. that the defendant has performed an act referred to in Article 66;
3. that the plaintiff has not performed any act referred to in Article 66;
4. that a particular patent is not enforceable against the plaintiff by virtue of a legal provision;
5. that with regard to two particular patents, the requirements of Article 36 for the grant of a licence are or are not fulfilled;
6. that the plaintiff has made the invention, which is the subjectmatter of a particular patent application or patent;
7. that a particular patent, which violates the double patenting prohibition, has become invalid.

Art. 75

1 Any person who holds an exclusive licence, irrespective of the registration of the licence in the Register, is entitled to bring an action as specified in Articles 72 or 73 independently, provided this is not expressly excluded by the licence agreement.

2 Any licensee may join an action under Article 73 in order to claim their own loss or damages.

Art. 76

Art. 77

1 Any person requesting preliminary measures may, in particular, request that the court orders:

- a. measures to secure evidence, to preserve the existing state of affairs or to provisionally enforce claims for injunctive relief and remedy;
 - b. a precise description to be made:
 1. of the allegedly unlawful processes used,
 2. of the allegedly unlawful products manufactured as well as the means used to manufacture them;
- or
- c. the seizure of these objects.

2 If a party requests a description to be made, it must provide *prima facie* evidence that an existing claim has been infringed or an infringement is suspected.

3 If the opposing party claims that a manufacturing or trade secret is involved, the court shall take the necessary measures to safeguard it. It may exclude the applicant party from participating in the procedure for making the description.

4 The procedure for making the description, with or without seizure, shall be carried out by a member of the Federal Patent Court, who may call on the assistance of an expert if necessary. It shall be carried out, where necessary, in collaboration with the competent cantonal instances.

5 Before the applicant party is notified of the description, the opposing party shall be given the opportunity to comment.

Art. 78

Art. 79 and 80

Section 3:

Special Provisions for Protection under Criminal Law

Art. 81

1 Any person who wilfully commits an act specified in Article 66 is, on complaint by the injured party, liable to a custodial sentence not exceeding one year or to a monetary penalty.

2 The right to file a complaint shall lapse after six months from the day on which the injured party became aware of the identity of the offender.

3 If the offender acts for commercial gain, he shall be prosecuted *ex officio*. The penalty is a custodial sentence not exceeding five years or a monetary penalty. The custodial sentence shall be combined with a monetary penalty.

Art. 81a

1 Any person who wilfully provides false information under Article 49a is liable to a fine of up to 100,000 francs.

2 The court may order the publication of the judgment.

Art. 82

1 Any person who wilfully offers for sale or distributes his business documents, notices or advertisements of any nature, products or goods bearing a designation that creates the erroneous belief that the products or goods have patent protection is liable to a fine.

2 The court may order the publication of the judgment.

Art. 83

The general provisions of the Swiss Criminal Code apply unless this Act provides otherwise.

Art. 84

1 The competent authorities for the prosecution and judgment of an offence are those of the place where the act was committed or of the place where the act occurred; where more than one place comes into consideration, or where several joint offenders are concerned, the competent authorities are those of the place where the investigation was first commenced.

2 The competent authorities for the prosecution and judgment of instigators and accomplices are those which are competent for the prosecution and judgment of the main offender.

Art. 85

1 The prosecution and judgment of an offence is a matter for the cantonal authorities.

2 Judgments, penalty orders issued by administrative authorities and decisions to dismiss proceedings must be communicated without delay, free of charge and with full copies of documents to the Office of the Attorney General of Switzerland.

Art. 86

1 If the person under investigation pleads the nullity of the patent as a defence, the court may allow him an appropriate time limit within which to file a nullity action, giving appropriate notice of the penalty for failure to do so; if the patent has not been examined with regard to novelty and inventive step and if the court has any doubt as to the validity of the patent, or if the person under investigation has provided *prima facie* evidence that the defence of nullity of the patent appears justified, the court may allow the injured party an appropriate period within which to file an action for declaration of the validity of the patent, likewise giving appropriate notice of the penalty for failure to do so.

2 Where the action is raised within the stated period, the criminal proceedings shall be suspended until a final decision on the action has been issued; the limitation period for prosecution is suspended during this time.

3

Section 4:184 Assistance Provided by the Customs Administration

Art. 86a

1 The Customs Administration is authorised to notify the proprietor of a patent that is valid in Switzerland if there is any suspicion of the imminent import, export or transit of goods that infringe that patent.

2 In such cases, the Customs Administration is authorised to withhold the goods for three working days in order that the person entitled may file an application in accordance with Article 86b paragraph 1.

Art. 86b

1 If the proprietor or a licensee of a patent that is valid in Switzerland entitled to institute proceedings has clear indications of the imminent import, export, or transit of goods which infringe that patent, he may request the Customs Administration in writing to refuse the release of the goods.

2 The applicant must provide all the information available to him that is necessary for the Customs Administration's decision; this includes a precise description of the goods.

3 The Customs Administration shall make the final decision on the application. It may charge a fee to cover the administrative costs.

Art. 86c

1 If the Customs Administration, as a result of an application under Article 86b paragraph 1, has grounds to suspect that certain goods intended for import, export or transit infringe a patent valid in Switzerland, then it shall notify the applicant and the declarant, holder or owner of the goods accordingly.

2 It shall withhold the goods for a maximum of ten working days from the time of notification pursuant to paragraph 1, so that the applicant may obtain preliminary measures.

3 Where justified by circumstances, it may withhold the goods for a maximum of ten additional working days.

Art. 86d

1 While the goods are being withheld, the Customs Administration is authorised to hand over or deliver to the applicant, on request, samples for examination or to permit the applicant to inspect the goods being withheld.

2 The samples are collected and delivered at the expense of the applicant.

3 They must be returned after the examination has been carried out, if this is reasonable. If samples are retained by the applicant, they are subject to the provisions of customs legislation.

Art. 86e

1 At the same time as notification is made in accordance with Article 86c paragraph 1, the Customs Administration shall inform the declarant, holder or owner of the goods of the possible handover of samples or the opportunity to inspect them in accordance with Article 86d paragraph 1.

2 The declarant, holder or owner may request to be present at the inspection in order to safeguard his manufacturing or trade secrets.

3 The Customs Administration may refuse to hand over samples on a reasoned request from the declarant, holder or owner.

Art. 86f

1 When making an application under Article 86b paragraph 1, the applicant may submit a written request to the Customs Administration to destroy the goods.

2 If an application for destruction is made, the Customs Administration shall notify the declarant, holder or owner of the goods accordingly as part of the notification made under Article 86c paragraph 1.

3 The application for destruction does not result in the time limits for obtaining preliminary measures under Article 86c paragraphs 2 and 3 being extended.

Art. 86g

1 The destruction of the goods requires the consent of the declarant, holder or owner.

2 Consent is deemed to be given if the declarant, holder or owner does not expressly object to the destruction within the time limits given under Article 86c paragraphs 2 and 3.

Art. 86h

Before the destruction of the goods, the Customs Administration shall remove samples and hold them in safekeeping as evidence in any actions for damages.

Art. 86i

1 If the destruction of the goods proves to be unjustified, the applicant is exclusively liable for the resultant loss.

2 If the declarant, holder or owner has given express written consent for the destruction, no claims for damages may be made against the applicant if the destruction later proves to be unjustified.

Art. 86j

1 The destruction of the goods is carried out at the expense of the applicant.

2 The costs for collecting and safekeeping samples under Article 86h are decided by the court in connection with the assessment of claims for damages in accordance with Article 86i paragraph 1.

Art. 86k

1 If it is anticipated that withholding the goods may lead to a loss being incurred, the Customs Administration may make the withholding of the goods dependent on the applicant providing them with an accountability statement. As an alternative to this statement and where justified by the circumstances, the Customs Administration may request the applicant to provide appropriate security.

2 The applicant shall be liable for any losses incurred from withholding the goods and from collecting the samples if preliminary measures are not ordered or prove to be unjustified.

Fourth Title: ...

Art. 87-90

Art. 91-94

Art. 95

Art. 96-101

Art. 102-103

Art. 104-106

Art. 106a

Art. 107-108

Fifth Title:

European Patent Applications and European Patents

Section 1: Applicable Law

Art. 109

1 This Title applies to European patent applications and European patents with effect in Switzerland.

2 The other provisions of this Act apply except where the Convention of 5 October 1973¹⁹⁶ on the Grant of European Patents (European Patent Convention) or this Title provides otherwise.

3 The text of the European Patent Convention that binds Switzerland takes precedence over this Act.

Section 2:

Effects of the European Patent Application and the European Patent and Modifications concerning the Validity of the European Patent

Art. 110

European patent applications for which a filing date has been assigned and European patents have the same effect in Switzerland as patent applications filed in due form with the Institute and patents granted by this Institute.

Art. 110a

A modification concerning the validity of a European patent due to a final decision resulting from a procedure before the European Patent Office has the same effect as a final judgment in a procedure in Switzerland.

Art. 111

1 Published European patent applications do not confer on the applicant the protection conferred by Article 64 of the European Patent Convention.

2 However, the injured party may, in an action for damages, claim the loss or damage caused by the defendant from the moment at which the latter became aware of the content of the European patent application, but at the latest from the date of publication of the application by the European Patent Office.

Art. 112-116**Section 3: Administration of the European Patent****Art. 117**

As soon as the mention of the grant of the European patent has been published in the European Patent Bulletin, the Institute shall record it in the Swiss Register of European Patents along with the particulars noted in the European Patent Register.

Art. 118

The Institute shall publish registrations made in the Swiss Register of European Patents.

Art. 119**Art. 120****Section 4:****Conversion of the European Patent Application****Art. 121**

1 The European patent application may be converted into a Swiss patent application:

- a in the case provided for in Article 135 paragraph 1 letter a of the European Patent Convention;
- b. in the case of failure to observe the time limit in accordance with Article 14 paragraph 2 of the European Patent Convention, where the original application was filed in Italian;
- c..

2

Art. 122

1 Where the request for conversion is filed in due form and sent in good time to the Institute, the patent application is deemed to have been filed on the date of filing of the European patent application.

2 The documents accompanying the European patent application or European patent that were filed with the European Patent Office are deemed to have been filed at the same time with the Institute.

3 The rights attached to the European patent application remain valid.

Art. 123

Where the language in which the original text of the European patent application is written is not an official Swiss language, the Institute shall allow the patent applicant a time limit within which to file a translation in an official Swiss language.

Art. 124

1 The provisions in force for Swiss patent applications apply to the patent application arising from the conversion, subject to Article 137 paragraph 1 of the European Patent Convention.

2 The claims of a patent application resulting from the conversion of a European patent may not be drafted in such a way that the extent of protection conferred by the patent is extended.

Section 5:

Provisions for Protection under Civil and Criminal Law

Art. 125

1 Where, for one and the same invention, a Swiss patent and a European patent with effect in Switzerland have been granted to the same inventor or to his successor in title with the same filing or priority date, the Swiss patent has no further effect as from the date on which:

- a. the opposition period against the European patent has expired without an opposition being filed; or
- b. the European patent has been maintained in opposition proceedings by final decision.

2 Article 27 applies by analogy.

Art. 126

1 Where, for one and the same invention, a patent resulting from a Swiss or international patent application (Art. 131 et seq.) and a patent resulting from a converted European patent application have been granted to the same inventor or to his successor in title with the same filing or priority date, the first patent has no further effect from the date on which the patent resulting from the converted European patent application was granted.

2 Article 27 applies by analogy.

Art. 127

A partial surrender of the European patent may not be requested so long as opposition to this patent may be filed with the European Patent Office or a final decision has not yet been taken with regard to an opposition, a limitation or a revocation.

Art. 128

The court may suspend proceedings, and in particular defer judgment where:

- a. the European Patent Office has not yet taken a final decision on a limitation or revocation of the European patent
- b. the validity of the European patent is disputed and one party provides evidence that opposition may still be filed with the European Patent Office or that a final decision has not yet been taken with regard to an opposition;
- c. the European Patent Office has not yet taken a final decision regarding a petition for review of the decision under Article 112a of the European Patent Convention.

Art. 129

1 If, in the case under Article 86, the person under investigation pleads the nullity of the European patent as a defence, the court may allow him, insofar as opposition to the patent may still be filed with the European

Patent Office or intervention in opposition proceedings is still permitted, an appropriate time limit for the filing of opposition or for intervention in opposition proceedings.

2 Article 86 paragraph 2 applies by analogy.

Section 6:

Requests for Legal Cooperation by the European Patent Office

Art. 130

The Swiss Federal Institute of Intellectual Property shall receive requests for legal cooperation by the European Patent Office and transmit them to the competent authority.

Sixth Title: International Patent Applications

Section 1: Applicable Law

Art. 131

1 This Title applies to international applications under the Patent Cooperation Treaty of 19 June 1970, for which the Institute acts as Receiving Office, Designated Office or Elected Office.

2 The other provisions of this Act apply except where the Patent Cooperation Treaty or this Title provide otherwise.

3 The text of the European Patent Convention that binds Switzerland takes precedence over this Act.

Section 2: Applications filed in Switzerland

Art. 132

The Institute acts as Receiving Office under Article 2 of the Patent Cooperation Treaty in respect of international applications filed by Swiss nationals or persons having their principle place of business or domicile in Switzerland.

Art. 133

1 The Patent Cooperation Treaty, supplemented by this Act, applies to the procedure before the Institute acting as Receiving Office.

2 In addition to the fees prescribed by the Patent Cooperation Treaty, the international application shall give rise to the payment of a transmittal fee collected by the Institute.

3 Article 13 does not apply.

Section 3: Applications designating Switzerland; Elected Office

Art. 1343

The Institute acts as Designated Office and Elected Office under Article 2 of the Patent Cooperation Treaty in respect of international applications which seek protection for an invention in Switzerland, where such applications do not have the effect of a European patent application.

Art. 135

An international application for which the Institute acts as Designated Office has the same effect in Switzerland as a Swiss patent application filed in due form with the Institute if a filing date has been assigned to it.

Art. 136

The right of priority under Article 17 may also be claimed for an international application if the first application has been filed in Switzerland or only in respect of Switzerland.

Art. 137

Articles 111 and 112 of this Act apply by analogy to international applications published under Article 21 of the Patent Cooperation Treaty for which the Institute is the Designated Office.

Art. 138

Within 30 months of the filing or priority date, the applicant must:

- a. provide written confirmation of the name of the inventor;
- b. provide information on the source (Art. 49a);
- c. pay the filing fee;
- d. file a translation in an official Swiss language, provided the international application is not made in such a language.

Art. 139

Art. 140

1 Where, in respect of one and the same invention, two patents having the same priority date have been granted to the same inventor or to his successor in title, the patent resulting from the national application ceases to have effect as of the date of the grant of the patent resulting from the international application, irrespective of whether the priority of the national application is claimed for the patent resulting from the international application or whether the priority of the international application is claimed for the patent resulting from the national application.

2 Article 27 applies accordingly.

Seventh Title: Supplementary Protection Certificates

Section 1: Supplementary Protection Certificates for Medicinal Products

Art. 140a

1 The Institute shall on application grant a supplementary protection certificate (certificate) for the active ingredients or combination of active ingredients of medicinal products.

2 Active ingredients or combinations of active ingredients are referred to in this Section as products.

Art. 140b

1 The certificate is granted if, at the time of the application:

- a. the product as such, a process for manufacturing it or a use of it is protected by a patent;
- b. official authorisation has been granted for placing the product on the market in Switzerland as a medicinal product.

2 It is granted based on the first authorisation.

Art. 140c

1 The proprietor of the patent has the right to the certificate.

2 Only one certificate shall be granted for each product.

3 In the event that two or more proprietors of a patent file applications for the same product based on different patents and no certificate has yet been granted, the certificate may be granted to each applicant.

Art. 140d

1 The protection of a certificate extends, within the limits of the scope of protection conferred by the patent, to any use of the product as a medicinal product that has been authorised before the expiry of the certificate.

2 The certificate grants the same rights as the patent and is subject to the same restrictions.

Art. 140e

1 The certificate takes effect on expiry of the maximum term of the patent for a period equal to the period which elapses between the date of filing under Article 56 and the date of the first authorisation to place the product on the market as a medicinal product in Switzerland, minus five years.

2 It is valid for no more than five years.

3 The Federal Council may specify that the authorisation granted in the European Economic Area (EEA) constitutes the first authorisation within the meaning of paragraph 1 if it is granted earlier than the first authorisation in Switzerland.

Art. 140f

1 The application for the grant of a certificate must be filed:

- a. within six months of the first authorisation to place the product on the market in Switzerland as a medicinal product;
- b. within six months of the grant of the patent if this was granted later than the first authorisation.

2 In the event that the time limit is not met, the Institute shall refuse the application.

Art. 140g

The Institute grants the certificate by entering it in the Patent Register.

Art. 140h

1 The certificate is subject to the payment of an application fee and renewal fees.

2 The renewal fees must be paid in advance in one single payment for the full term of the certificate.

3 ...

Art. 140i

1 The certificate lapses where:

- a. the owner surrenders it by a written declaration to the Institute;
- b. the annual fees have not been paid in due time;
- c. the authorisation to place the product on the market as a medicinal product is withdrawn.

2 If the authorisation is suspended, the certificate is also suspended. Suspension does not interrupt the term of the certificate.

3 The authority that grants authorisations shall notify the Institute of any withdrawal or suspension of the authorisation.

Art. 140k

1 The certificate is null and void where:

a. 248 it was granted contrary to Article 140b, Article 140c paragraph 2, Article 146 paragraph 1 or Article 147 paragraph 1;

b. the patent lapses before its maximum term expires (Article 15);

c. the patent is declared null and void;

d. the patent is limited to the extent that the product for which the certificate was granted is no longer covered by the claims;

e. after the lapse of the patent, grounds exist which would have justified the declaration of nullity of the patent under letter c or a limitation under letter d.

2 Any person may bring an action to have the certificate declared null and void before the authority responsible for declaring the nullity of the patent.

Art. 140l

1 The Federal Council shall lay down the procedure for the grant of certificates and for their entry in the Patent Register and the Institute's publications.

2 It shall take account of the regulations of the European Community.

Art. 140m

Insofar as the provisions concerning the certificate do not contain any regulations, the provisions of the first, second, third and fifth Titles of this Act apply by analogy.

Section 2: Supplementary Protection Certificates for Plant Protection Products

Art. 140n

1 The Institute shall on application grant a supplementary protection certificate (certificate) for active ingredients or combination of active ingredients of plant protection products.

2 Articles 140a paragraph 2 to 140m apply by analogy.

Final Title: Final and Transitional Provisions

Art. 141l

1 The Federal Council shall take the necessary measures to implement this Act.

2 It may, in particular, enact regulations on the formation of the examining sections and opposition divisions, on the scope of their business and procedures as well as on time limits and fees.

Art. 142

Patents that have not yet lapsed when the Amendment to this Act of 22 June 2007 comes into force are subject to the new law from that date. Grounds for nullity continue to be governed by the previous law.

Art. 143

1 Patent applications that are pending when the Amendment to this Act of 22 June 2007 comes into force are subject to the new law from that date.

2 However, the following are also governed by the previous law:

a. non-prejudicial disclosures at international exhibitions;

b. patentability, if the requirements are more favourable under the previous law.

Art. 144

Art. 145

1 Liability under civil law is regulated by the provisions in force at the time of the act concerned.

2 Article 75 and Article 77 paragraph 5 apply only to licence agreements that have been concluded or confirmed after the Amendment to this Act of 22 June 2007 comes into force.

Art. 146

1 A supplementary protection certificate may be granted for any product which, on the Amendment to this Act of 9 October 1998 coming into force, is protected by a patent and for which an authorisation to place it on the market in accordance with Article 140b was granted after 1 January 1985.

2 The application for the grant of a certificate must be filed within the six months of the Amendment to this Act of 9 October 1998 coming into force. In the event that the time limit is not met, the Institute shall refuse the application.

Art. 147

1 Certificates may also be granted on the basis of patents that have lapsed at the end of their maximum term between 8 February 1997 and the Amendment to this Act of 9 October 1998²⁶² coming into force.

2 The term of protection of the certificate is calculated in accordance with Article 140e; its effects do not begin until the publication of the application for the grant of a certificate.

3 The application must be filed within two months of the Amendment to this Act of 9 October 1998 coming into force. In the event that the time limit is not met, the Institute shall refuse the application.

4 Article 48 paragraphs 1, 2 and 4 apply correspondingly for the time period between the lapse of the patent and the publication of the application.

Art. 148

1 No translation of the patent specifications under Article 113 paragraph 1 is required for European patents which are not published in one of the official Swiss languages if the mention of the grant of the European patent, or in the case of the maintenance of the patent in amended form the publication of the decision regarding an opposition, or in the case of a limitation of the patent the mention of the limitation has been published in the European Patent Bulletin less than three months prior to the Amendment to this Act of 16 December 2005 coming into force.

2 Articles 114 and 116 also apply after the Amendment to this Act of 16 December 2005 comes into force to translations which have either been sent to the defendant in accordance with Article 112, or made public by the Institute or which have been submitted to the Institute under Article 113.

45. Tajikistan

Law of the Republic of Tajikistan on Popular Art Crafts 2003

Copyright and Related Rights (Neighboring Rights), Traditional Cultural Expressions, Traditional Knowledge (TK)

Russian and Tajik texts only

46. Thailand

Tentative translation

ACT ON PROTECTION AND PROMOTION OF TRADITIONAL THAI MEDICINAL INTELLIGENCE, H.E. 2542

Whereas it is expedient to have a law on protection and promotion of traditional Thai medicinal intelligence;

This Act contains certain provisions that restrict the rights and liberties of the people, which are permissible under section 29, along with section 35, section 48 and section 50 of the Constitution of the Kingdom of Thailand;

Be it, therefore, enacted by His Majesty the King. by and with the advice and consent of the National Assembly. as follows:

Section 1. This Act shall be called the "Act on Promotion and Protection of Traditional Thai Medicinal Intelligence, B.E. 2542."

Section 2. This Act shall come into force as from 180 days after the date of its publication in the Government Gazette.

Section 3. In this Act, "traditional Thai medicinal Intelligence" means the basic knowledge and capability concerned with traditional Thai medicine;

"traditional Thai medicine" means the medicinal procedures concerned with examination. diagnosis, therapy. treatment or prevention or, promotion and rehabilitation of the health of humans or animals, obstetrics, traditional Thai massage, and also includes the production of traditional Thai drugs and the invention of medical devices<on the basis of knowledge or text that has been passed on from generation to generation;>

"text on traditional Thai medicine" means technical knowledge concerned with traditional Thai medicine which has been written or recorded in Thai books, palm leaf, stone inscription or other materials or that have not been recorded but passed on from generation to generation;

"Thai traditional drugs" means medicines obtained directly from herbs or derived from mixture. blended or transformed herbs. and also includes Thai traditional drugs under laws on drugs;

"formula on traditional Thai drugs" means a formula stated as the production process and ingredients which contain Thai traditional drugs, no matter what form the ingredients are;

"herbs" means plants, animals, bacteria, minerals, extracts of plants or animals used, or transformed or mixed or blended as drugs or food for diagnosis, therapy, treatment or prevention of diseases, or for promotion of the health of humans or animals. 1be meaning also includes the origin or the areas in which the products exist;

"controlled herbs" means herbs that have been announced as controlled herbs under the Ministerial Notification;

"conservation areas" means national reserved forests and other conservation areas for reservation and protection of natural resources, as stated by law;

"original extracts" means natural extracts that have not been mixed or new substances obtained from addition of molecules under scientific procedures;

"rough transformation" means the mixture, blend or transformation of herbs or the quality of herbs in order to obtain substances as a whole by original procedures and newly developed procedures without differentiating the pure ingredients of different substances;

"<successor of > formula on traditional Thai drugs or text on traditional Thai medicine" means persons who have been passed on with the text on traditional Thai medicine or formulas on traditional Thai drugs from the discoverer, the improver, or the developer of the substance, or those who have learnt from generation to generation from the discoverer, the improver or the developer of the substance, or those who were given the above mentioned from others;

"right holder" means those who have registered their intellectual property rights on traditional Thai medical intelligence under this Act;

"sales" means selling, disposition, distribution or exchange and also includes possession for sales;

"export" means to bring or export out of the country.

"transform" means to dispense or transform, or change the quality of the herbs;

"members" means the members of the Committee on Protection and Promotion of Traditional Thai Medicinal Intelligence;

"Committee" means the Committee on Protection and Promotion of Traditional Thai Medicinal Intelligence;

"licensing authority" means the Permanent Secretary or person assigned by the Permanent Secretary;

"registrar" means the central registrar or the provincial registrar, as the case may be;

"competent officials" means the licensing authority, the registrar, and the person appointed for the execution of this Act by the Minister;

"Permanent Secretary" means the Permanent Secretary of the Ministry of Public Health;

"Minister" means the Minister having charge and control of the execution of this Act.

Section 4. The Minister of Public Health shall have charge and control of the execution of this Act and shall have the authority to appoint competent officials, issue Ministerial Regulations to specify fees not exceeding the rate annexed to this Act, and outline other activities, including issuance of rules and notifications for the execution of this Act.

The Ministerial Regulations, Rules and Notifications shall come into force upon their publication in the Government Gazette.

CHAPTER I The Committee on Protection and Promotion of Tradition Thai Medicinal Intelligence

Section 5. There shall be the Committee on Protection and Promotion of Traditional Thai Medicinal Intelligence comprising of the Permanent Secretary of the Ministry of Public Health as chairman, the Director-General of the Medical Services Department, Director-General of the Intellectual Property Rights Department, Director-General of the Livestock Department, Director-General of the Forestry Department, Director-General of the Department of Agriculture, Director-General of the Medical Sciences Department, Secretary-General of the Food and Drug Administration, Secretary-General of the Environment Policy and Planning Office, and Director of the Medical Registration Division as members *ex officio*, and the equal number of the qualified members appointed by the Minister, on the basis of selection from the practitioners, those with knowledge, capability and experience in traditional Thai medicine, the production or sales of traditional Thai drugs and plantation or transformation of herbs. The Director of the Institute for Traditional Thai Medicine shall be a member and secretary of the Committee.

The selection of the qualified members under the first paragraph shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 6. The Committee shall have the following power and duties to:

- (1) provide consultation or advice to the Minister in issuing the Ministerial Regulations, Rules or Notifications under this Act;
- (2) promote and develop the use of intellectual traditional Thai medicine and herbs;
- (3) outline measures to strengthen stability and coordination between government agencies, state enterprises, communities and non government organizations on issues concerned with protection and promotion of intellectuals on traditional Thai medicine and herbs;
- (4) approve the withdrawal or registration (of intellectual property rights on traditional Thai medicine under section 39 (3);
- (5) consider the appeal against the order or decision of the registrar or the licensing authority under this Act;
- (6) lay down rules concerned with standards and procedures on lodging an appeal and consideration of appeal, registration of intellectual property rights on traditional Thai medicine, the administration and arrangement of benefits and expenses of the fund. and works concerned with protection and promotion of intellectuals on traditional Thai medicine and herbs;
- (7) perform other activities as stated in this Act or under other laws as the authority of the Committee;
- (8) perform other activities as assigned by the Minister.

Section 7. The qualified members appointed by the Minister shall hold office for a term of two years as from the day of the appointment. In case the qualified members vacate office before the end of their term subject to section 5 paragraph two, the Minister may appoint another person with similar qualifications as the qualified member. and the appointee shall hold office for the remaining term of the member he or she replaces.

The qualified members who vacates office at the expiration of term may be re-appointed.

Section 8. Apart from vacating office at the expiration of term under section 7 the qualified members appointed by the Minister shall vacate office upon :

- (1) deaths;
- (2) resignation;
- (3) being a bankrupt;
- (4) being incompetent or quasi-incompetent person;
- (5) being removed by the Minister for the reason of negligence or dishonest to the duty or indulge in unacceptable behavior;
- (6) being imprisoned by a final judgement, except for an offence committed through negligence or petty offence;
- (7) termination from being a practitioner in case the person was appointed under that criteria.

Section 9. At the meetings of the Committee, the presence of not less than one half of the total number of members is required to constitute a quorum. If the chairman of the Committee is unable to attend any of the committee meeting sessions, the members shall select one among themselves to preside over the meeting. The decision of the meeting shall be by majority of votes. Each member shall have one vote. In case of an equality of votes, the person presiding over the meeting shall have an additional vote as the casting vote.

Section 10. The Committee shall have the power to appoint a sub-committee to consider or carry out any particular work as assigned by the Committee.

Section 9 shall apply *mutatis mutandis* the meeting of the subcommittee.

Section 11. In carrying out their duties under this Act, the Committee and sub-committee shall have the power to order any person to give or submit any evidence to supplement their considerations.

Section 12. There shall be the -Institute for Traditional Thai Medicine under the Office of the Permanent Secretary, the Ministry of Public Health, having the authority to carry out duties concerned with protection and promotion of education, training, research, studies and development of intelligence on traditional Thai medicine and herbs and shall also be responsible for the administrative and technical works of the Committee.

Section 13. The Director of the Institute for Traditional Thai Medicine shall be the central registrar and the provincial health chiefs are the provincial registrars.

CHAPTER 2

Protection and Promotion of Intelligence on Traditional Thai Medicine

Section 14. The intellectual property rights on traditional Thai medicine to be protected under this Act shall be the right to intellectual property over the formula of traditional Thai drugs and text on traditional Thai medicine.

Section 15. The Institute for Traditional Thai Medicine shall be responsible for compiling information on traditional Thai medical intelligence concerned with formulas of traditional Thai drugs and text on traditional Thai medicine from throughout the country for registration. The registration of intellectual property rights on formulas of traditional Thai drugs and text on traditional Thai medicine under paragraph one shall be in accordance with the Rules issued by the Committee.

Section 16. There shall be three types of traditional Thai medicinal intellectual property rights as follows:

- (1) the national formula of traditional Thai drugs or the national text on traditional Thai Medicine;
- (2) general formula of traditional Thai drugs or general traditional Thai medicine document; and
- (3) personal formula of traditional Thai drugs or personal text on traditional Thai medicine.

Section 17. The Minister has the power to notify that formulas on traditional Thai drugs or text on traditional Thai medicine that is of benefit, or has special medical or public health value as the national formula on traditional Thai drug, or the national text on traditional Thai medicine, as the case may be.

The Notification under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 18. The Minister has the power to notify the formulas of traditional Thai drugs or text on traditional Thai medicine that have been widely used or whose intellectual property protection has expired under section 33, as general formula of traditional Thai drugs or general text on traditional Thai medicine, as the case may be.

The Notification issued under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 19. Whoever wishes to use the national traditional Thai drugs for registration and permission for production of drugs according to the Drug Law, or wishes to use it for research on improvement or development of new drug formulas for commercial benefit, or wish to research the national text on traditional Thai Drugs for development and improvement for commercial benefit, shall forward their application to obtain benefits and pay fees and the remuneration for making use there of to the licensing authority.

The application and permission, limitations to the rights and the remuneration shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial regulation.

Section 20. Personal formula of traditional Thai drugs or personal text on traditional Thai medicine under section 16(3) may be registered for protection of intellectual property rights and may be promoted according to the provisions of this Act by applying for registration to the registrar.

The application for registration of intellectual property rights on traditional Thai medicine under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in Ministerial Regulation.

Section 21. The persons who have the right to register for protection of intellectual property rights according to section 20 must be of Thai nationality and shall have the following qualifications:

- (1) being an inventor of the formula on traditional Thai drugs or text on traditional Thai medicine;
- (2) being an improver of formula on traditional Thai drugs or text on traditional Thai medicine; or
- (3) being an inheritor of the formula on traditional Thai drugs or text on traditional Thai medicine.

Section 22. Registration for protection of intellectual property rights on traditional Thai medicine is prohibited if the registrar is of the opinion that:

- (1) the drug formula belongs to the national formula on traditional Thai drugs, or national text on traditional Thai medicine, or is a general formula on traditional Thai drug, or general text on traditional Thai medicine, or
- (2) the drug formula is a personal formula on traditional Thai drug that has been developed on non medical basis like the use of extracts of plants, animals or micro organisms that have not be obtained from natural extracts or the transformation that is not considered rough transformation.

Section 23. Any application for registration of intellectual property rights on traditional Thai medicine that is not made according to the requirements prescribed in the Ministerial Regulation issued under section 20 paragraph two be called for changes by the registrar within 30 days beginning from the date the applicant receives the request for changes.

If the applicant does not comply with the request of the registrar within the specified period mentioned in paragraph one, the registration shall be revoked.

Section 24. After examining the application, if the registrar is of the opinion that the applicant is qualified under section 21 and the application therefor is not prohibited under section 22, the registrar shall without delay, announce the application at the Registration Office and at the office of the local administration organizations.

Section 25. In case many people jointly apply for registration on protection of intellectual property rights traditional Thai medicine the registrar shall specify a date for inquiry and inform all the applicants.

Under the inquiry to be carried out according to paragraph one, the registrar may request any applicant for further questioning, more information or documents. After the inquiry has been made and the Permanent Secretary has made the decision, the registrar shall notify all the applicants the decision thereof the registrar.

The inquiry and consideration on the rulings shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 26. In case there is a separate application for protection of intellectual property rights on the same traditional Thai medicine by different applicants, the person who forwarded the application first shall have the right to register. If the application is forwarded at the same time, on the same date, the applicants shall have to decide on whether they would settle with anyone person having full right over the registration or that they would jointly have equal rights within the time period specified by the registrar. If the case shall not be settled within the period specified by the registrar, the parties shall bring the case to the court within 90 days as from the date on which the registrar's specified time period ends. If the case is not taken to court within the specified time period, the application for registration shall be revoked.

Section 27. If after examining the application for registration, the registrar is of the opinion that the applicant is not qualified according to section 21 and the intellectual property rights on traditional Thai medicine applied for is prohibited under section 22, the registrar shall refuse the registration and issue a letter to inform the applicant within 30 days from the date on which the refusal was made.

Section 28. In case the applicant for registration appeals against the ruling of the registrar according to section 27, and if the Committee rules that the rulings of the registrar is incorrect, the registrar shall proceed with the application process

Section 29. After making publication on the application forwarded for registration according to section 24, people who feel they have the right over the intellectual property rights on traditional Thai medicine shall forward their objection to the registrar and provide evidence within 60 days from the date on which the publication was made under section 24.

Section 30. Before making the ruling, the registrar shall request the applicant and the person who object the registration to explain or provide evidence to supplement the consideration. When the registrar has ruled on the application, a letter shall be issued to inform the applicant and the person who objected the application of the ruling of the registrar and the reasons thereof within 30 days from the ruling date.

Section 31. In case there is no objection as mentioned under section 29, or in case there is an objector and a final ruling has been made to enable the applicant or the objector have the right to register the registrar shall issue an order authorizing the registration of protection of intellectual property rights on traditional Thai medicine to the applicant or the objector.

Once the order for registration of intellectual property rights on traditional Thai medicine has been

issued under paragraph one, the registrar shall issue a letter to inform the applicant or the objector of the application and ask for payment of fees for registration within 30 days from the date the letter is received.

If the applicant for registration or the objector does not pay the fees within the time period specified, the registration will be revoked.

The registration certificate for intellectual property rights on traditional Thai medicine shall be in the form as prescribed in the Ministerial Regulation.

Section 32. In case the Permanent Secretary rules according to Section 25 (2) that many people jointly have the right to register, or in case many people apply for registration of the same product and have joint ownership of the intellectual property rights on traditional Thai medicine, of a final ruling on joint ownership of the intellectual property rights on traditional Thai medicine is made by the court in accordance with section 26, the concerned parties should have equal rights for registration over protection of intellectual property rights on traditional Thai medicine.

In the joint registration on protection of intellectual property rights on traditional Thai medicine, the concerned parties shall jointly outline a memorandum as to how they would jointly share the registration rights and forward it to the registrar along with the registration.

Section 33. The right to intellectual property on traditional Thai medicine under this section should be valid for a life time of the bearer of the registration and extend for another 50 years from time the owner of the registration has deceased.

In case there is joint ownership of the registration right under section 32, the intellectual property rights on traditional Thai medicine shall be valid for a life time of the bearer and extended for another 50 years from the date on which the last joint owner of the registration deceases .

At the end of the period specified under paragraph one or two the Minister shall publish in the Government Gazette, specifying the formula on traditional Thai drug or text on traditional Thai medicine as a general formula on traditional Thai drug or general text on traditional Thai medicine in accordance with to section 16 (2), as the case may be

Section 34. The right holder would have sole ownership on the production of the drug and have sole right over the research, distribution, improvement or development of formulas on traditional Thai drugs or intellectual property rights of traditional Thai medicine under the registered text on traditional Thai medicine.

Section 37. The registrar has the right to revoke the registration of intellectual property rights on traditional Thai medicine under the following cases:

- (1) the right holder misuses the right against the public order and good morals;
- (2) the right holder violates or does not comply with the conditions or limitations outlined by the registrar in registration of the intellectual property rights on that traditional Thai medicine; or
- (3) the right holder exercised the right that may cause severe damage to the registered intellectual property on traditional Thai medicine.

Section 38. The concerned party or the public prosecutor may file complaints with the court to revoke registration over intellectual property right on traditional Thai medicine that had been registered in contrary to unfairly under section 21 or section 22.

Section 39. Before revoking the registration of intellectual property rights on traditional Thai medicine under section 37, the registrar shall conduct an inquiry and inform the right holder, so that the person can provide an explanation within 30 days from the acknowledgement date.

In conducting an inquiry under paragraph one the registrar may permit the concerned parties explain or provide evidence required for consideration.

After having conducted an inquiry if the registrar is of the opinion that the registration of the intellectual property rights on traditional Thai medicine shall be revoked, the registrar shall seek approval from the Committee. After the Committee has approved the revoke the registration of intellectual property rights on traditional Thai medicine, the registrar shall order the revoke and issue a letter stating the decision made and the reasons therefor to the right holder within 30 days from the date on which the order was issued by the registrar.

Section 40. The right holder whose registration has been revoked under section 39 may re-apply for a registration in accordance with section 20 after the expiration of one year from the date the registration of intellectual property rights on traditional Thai medicine has been revoked.

Section 41. In case the person permitted with the intellectual property right on traditional Thai medicine exercise their rights against public order or good morals or violate or not comply with the conditions specified in the Ministerial Regulation issued under section 36 paragraph two or exercise their rights which may cause serious damage to intellectual property right on traditional Thai medicine that has been registered, the registrar shall have the power to revoke the permission to the intellectual property rights on the traditional Thai medicine.

The revoke of the permission to the intellectual property right on traditional Thai medicine under this section shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

Section 42. Before ordering the revoke on the permission of intellectual property rights on traditional Thai medicine under section 41, the registrar shall issue a letter to inform the right holder on traditional Thai medicine to give a statement within 15 days from the date on which the letter from the registrar has been received, and section 39 paragraph two shall apply herewith *mutatis mutandis*.

When the registrar issues an order revoking the permission of intellectual property right on traditional Thai medicine, a letter shall be issued to inform the right holder and the person to whom the permission of intellectual property rights of traditional Thai medicine has been granted within 30 days from the date of the issuance of the revoking order.

Section 43. Persons with the nationality of other nations who agree to permit persons with Thai nationality to have the protection of intellectual property rights on traditional Thai medicine may seek registration of intellectual property rights protection on the local traditional medicine in their country under this Act.

The application for registration, the issuance of a certificate of registration, and the revocation of the registration under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

CHAPTER 3

Protection of Herbs

Section 44. For the purpose of herbs protection the Minister with the advice of the Committee, shall have the power to issue a Notification in the Government Gazette to specify the kind, characteristic, type, and names of herbs that are of study and research value, or have important economic significance or may become extinct, as Controlled herbs.

Section 45. For the purpose of the protection of controlled herbs, the Minister shall with the advice of the Committee notify in the Government Gazette:

- (1) specifying the amount or quantity of controlled herbs under possession to make use of, under care, under conservation or under transportation which needs to be informed the registrar;
- (2) specifying rules, procedure and conditions in informing under (1);
- (3) specifying rules, procedure and conditions on the possession, to make use of, under care, under conservation or for transportation of controlled herbs;
- (4) specifying rules, procedure and conditions on studying and researching the controlled herbs;
- (5) specifying rules, procedure and conditions for exporting controlled herbs for commercial and noncommercial purposes, or distribution or transformation of controlled herbs for commercial purposes;
- (6) specifying other requirements to conserve, prevent or prohibit or reduce dangers or damage that may be caused to controlled herbs.

Section 46. No person shall research or export controlled herbs or sell or transform them for commercial purposes, unless a licence has been obtained from the licensing authority.

The application for a license and the issuance thereof under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation. The licence issued under paragraph one shall be valid up to 31 December of the third year as from the year in which the licence is issued.

Section 47. The licence issued under section 46 shall cover the employees or representative of the licensee. It shall be deemed that the act of the employee or representative of the licensee under paragraph one is the act of the licensee unless the licensee can prove that the act has been committed without his or her knowledge or beyond his or her control.

Section 48. The provisions of section 46 shall not apply to research on controlled herbs which have been carried out by state agencies but such agencies must inform the registrar and comply with the rules, procedure and conditions prescribed by the Minister under section 45(4).

Section 49. The application for renewal of a licence issued under section 46 shall be made by the licensee before the expiration of the licence, and upon such application, the licensee can continue his or her business until the licensing authority refuses the renewal thereof.

The application for renewal of a licence and the permission thereof shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

Section 50. In case the licence issued under section 46 is lost or destroyed, the licensee may apply for a licence substitute within 30 days from the date of knowledge of the loss or destruction.

The application for and the issuance of the licence substitute shall be in accordance with the rules, procedure and conditions, prescribed in the Ministerial Regulation.

Section 51. The person who possesses controlled herbs beyond the amount or quantity notified by the Minister under section 45(1) on the date on which the Notification on controlled herbs is made in the Government Gazette, shall inform the registrar of the possession of controlled herbs as required under this Act, within the period of time specified in the Notification.

Section 52. In case any licensee under section 46 does not comply with this Act or the Ministerial Regulations. Rules of Notifications issued under this Act, the licensing authority shall have the power to suspend the licence for not more than 90 days each time.

The licensee whose licence has been suspended must stop all the performances permitted under the licence and, within the suspension period, no application for other licence under this Act shall be made.

Section 53. The licensing authority shall have the power to revoke the order suspending the licence before the period specified, when satisfied that the licensee whose the licence has been revoked has complied with the provisions of this Act or the Ministerial Regulations, Rules or Notifications issued under this Act.

Section 54. If the licensee under section 46 does not comply with the provisions of this Act or Ministerial Regulations, Rules or Notifications issued under this Act and indulges in severe fault, the licensing authority shall have the power to revoke the licence.

The licensee whose the licence has been revoked must stop all the performances permitted under the licence and shall not apply for any other licence under this Act until a period of two years, from the date the licence is revoked has elapsed and the licensing authority may issue such other licence as he or she deems appropriate.

Section 55. The order to suspend the licence under section 52 and the order to revoke the licence under section 54 shall be made in writing and notified the licensee. In case the licensee can not be found or the licensee refuse to accept the document, the order shall be posted at a conspicuous areas that can be easily seen at the place specified in the licence and it is deemed that the licensee has acknowledged the order from the date on which the order has been posted.

Section 56. The licensee whose the licence has been revoked under section 54 may sell the controlled herbs under their possession to other licensees or other person who the licensing authority deems appropriate, within 60 days from the date the notice is acknowledged. In case an appeal is made, the days shall be counted from the date on which the decision is made by the Committee, unless the licensing authority has extended the time period, but it shall not more than 60 days.

Section 57. For the purpose of conserving herbs and the areas from where the herbs naturally originate in the ecological system, or has biological diversity, or may have been easily effected by humans, in areas which have been specified as conservation areas, the Minister, with advice of the

Committee, shall outline a plan entitled "Plan for Conservation of Herbs" to be forwarded to the Council of Ministers for approval.

Plans for conservation of herbs according to paragraph one may be made as a short term plan, medium term plan or long term plan according to appropriateness and has to include work plans and procedures leading to the following matters:

- (1) stipulation of conditions in permitting a person to enter conservation areas as specified under the law on such matter for the compliance of the government agency concerned in order to conserve natural resources or the value of herbs or not to effect the natural, ecological system, or biological diversity in the areas where the herbs originated;
- (2) laying down of procedures in handling particularly with the areas from where the herbs originated and also outlining the duties and responsibilities of the government agency concerned, for maximum benefit in coordination, in order to bring about efficiency in conserving the nature, the ecological system, biological diversity and the value of the herbs in that area;
- (3) survey and research on herbs and the areas from where they originate for benefits in outlining procedures to conserve herbs and the place of their origin;
- (4) the inspection, follow-up and analysis in entering into the conservation areas for benefits in carrying out the works as planned and enforcement of the laws concerned.

Plans for conservation of herbs under paragraph one shall be published in the Government Gazette.

Section 58. For benefits in outlining plans for conservation of herbs under section 57, the competent officials shall have the power to enter the specified conservation areas in order to inspect and research the herbs and the areas from where the herbs originate. This shall have to be done with support and coordination from other concerned state authorities, as specified by Rules prescribed by the Council of Ministers.

Section 59. After the publication of the plan on conservation of herbs under section 57, the protection and management of conservation area shall be carried out according to the plan on conservation of herbs and the law on such matter.

Section 60. If any conservation area is inappropriately managed or has problems concerned with inappropriate conservation of herbs, or has caused destruction of herbs, or areas in which the herbs originated, leading to severe crisis which needs to be tackled immediately and the state authorities concerned do not have the authority to do so under the law, or can not solve the problem, the Minister, with the advice of the Committee shall propose the Council of Ministers to permit the Ministry of Public Health to take action in conservation as outlined under the Plan for Conservation of Herbs as stated under section 57, as necessary and appropriate, to control and solve the problems.

Section 61. In case any area in which the herbs originated have natural ecology system or biological diversity that may be destroyed or may be easily effected by humans or the entry into the area for use of herbs has caused risk to extinction, or degradation or reduction of species of herbs, or the state aims at increasing public involvement in the management, development and making use of herbs in the area, and the area has not been notified as conservation area, the Minister, with the advice of the Committee, has the power to issue Ministerial Regulation notifying the area as a herb conservation area.

The land within the specified area shall to be notified as herb conservation area under paragraph one shall not be the area under the right ownership or possession under the Land Code of individuals who are not the state entities.

The Ministerial Regulation under paragraph one shall have a plan indicating the land area specified as herb conservation area attached therewith.

Section 62. In issuing a Ministerial Regulation according to section 61, at least one or many of the following protection measures shall be outlined in the Ministerial Regulation:

- (1) The use of herb should maintain nature and value of the herb, or should not effect the natural ecology or biological diversity in the area;
- (2) Any act that may be of danger or cause effects that could lead to change in the ecology system within the area, or biological diversity, or effect the value of the herbs, shall be prohibited;
- (3) The imposition of specific management measures for those areas, along with outlining duties and areas of responsibility of the state, for effective cooperation and coordination in working towards conservation of natural resources and maintaining the value of the herbs, or the ecological system or biological diversity within the area.
- (4) Outlining of other conservation measures as seen necessary and appropriate with the environment in the area.

Section 63. In the herb conservation areas, no person shall own or possess land, or plant or construct anything, or cut, clear, burn or destroy trees or other plants, or destroy biological diversity or the ecology system, or carry out digging of minerals, stones, sailor change in the water ways or any act that results in pollution or causes flood or running dry of water, stream, canals, ponds, or causes danger to herbs, except for the act that is done to administer the area with the objective of conserving herhs or to make use of herbs, with permission from the licensing authority.

The application for and the issuance of the pennit under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

The permit iswed under paragraph one shall be valid up to 31 December of the third year since the year in which the permit is issued.

Section 49 and section 50, and section 52 up to section 55 shall apply *mutatis mutandis* to the renewal of permit, application for the substitute, suspension and revocation of the permit issued under paragraph one.

Section 64. In order to support the participation of the private sector in conservation, promotion and development of herbs, the owner or the possessor of the land from where the herbs originate or the land used for plantation of the herbs have the right to register the land with the registrar, in order to obtain assistance or support under this Act.

The obtainment of registration, the issuance of certificate of registration· and the revocation of the registration shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.

Section 65. The owner or the possessor of the land that has been registered under section 64 has the right to obtain assistance or support as prescribed in the Rules issued by the Minister.

CHAPTER 4 Conservation

Section 66. In case the registrar rejects the application for registration of intellectual property rights on traditional Thai medicine under section 27, the person who seeks registration has the right to appeal the order with the Committee within 30 days from the date on which the order was received from the registrar.

Section 67. In case the registrar has made a decision on the right of the applicant over the registration for intellectual property rights under section 30 paragraph two, the applicant or the objector, as the case may be has the right to appeal to the Committee within 30 days from the date of receiving the decision of the registrar.

Section 68. In case the registrar issues an order revoking the registration on intellectual property rights on traditional medicine as stated under section 39 paragraph three, the right holder has the right to appeal the order to the Minister within 30 days from the date on which the notice has been received from the registrar.

The decision of the Minister shall be final.

The appeal under paragraph one shall not entail a stay of the execution the order to revoke the registration of intellectual property rights on traditional Thai medicine.

Section 69. In case the registrar issues an order to revoke the permission to exercise the intellectual property rights on traditional Thai medicine under section 41, the person who has the right to exercise the rights thereof may appeal the order to the Conunittee within 30 days from the date the notice of the registrar has been received.

The appeal under paragraph one shall not entail a stay of the execution of the revoke order on permission to exercise the intellectual property rights on traditional Thai medicine.

Section 70. In case the licensing authority orders the suspension of the permit under section 52 or orders the revocation of the permit under section 54, the person whose permit has been suspended or revoked has the right to appeal the order to the Committee within 30 days from the date the notice from the registrar has been received.

The appeal under paragraph one shall not entail a stay of the execution of the suspension or revocation of the permit.

Section 71. The decisions of the Committee under section 66, section 67, section 69 and section 70 shall be final.

Section 72. The appeal and procedure to consider the appeal shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.

CHAPTER 5 Competent Officials

Section 73. In carrying out their duties, the competent officials shall have the power to:

- (1) enter any place during the working hours to inspect and control of the execution of this Act;
- (2) inspect any place or vehicles between the time when the Sun rises until the Sun sets or during working hours, in case there is suspicion that this Act has been violated, and in case there is a

reasonable ground to believe that the delay in issuing search warrant may lead to removal or hide or destruction of documents or products concerned with the commission of offence, and if the inspection during the specified time is not complete, it can be continued;

(3) confiscate or take into custody the documents or products concerned with violation of this Act, as evidence in taking action against the case;

(4) request for any person for questioning or submitting documents or evidence in case there is a reasonable ground to believe that the statements, documents or evidence is of benefit to find or use as evidence in proving the violation of this Act;

(5) request any person to move out of the herb conservation area or avoid any act in violation of section 63.

In carrying out their duties in accordance with paragraph one, the concerned parties shall facilitate the competent officials as necessary.

Section 74. In carrying out their duties, the competent officials must produce their identity cards for identification.

The identity cards of the competent officials shall be in the form as prescribed by the Minister by publication it in the Government Gazette.

Section 75. In carrying out their duties under this Act, the competent officials shall be the officials under the Penal Code.

CHAPTER 6 Fund on Traditional Thai Medicine Intelligence

Section 76. A fund entitled "Fund on traditional Thai Medicine Intelligence shall be set up in the Office of the Permanent Secretary, Ministry of Public Health, as a revolving fund for expenses concerned with works on conservation and promotion of intelligence on traditional Thai medicine. The fund shall include the following money and property;

(1) subsidy from the state;

(2) money or property received from the private sector from within and outside the country, foreign governments or international organizations;

(3) interests and benefits obtained from the fund

(4) other earnings obtained from the functioning of the fund.

The earnings of the fund shall not be considered as earnings that must be remitted to the Finance Ministry under the law on the treasury balance and the law on the budgetary procedures.

The Office of the Permanent Secretary, Ministry of Public Health is responsible for maintaining the money and property of the fund, and shall withdraw the money in the fund in accordance with the provisions of this Act.

The administration, management of benefits and use of money in the fund shall be in accordance with the rules prescribed by the Committee, with the approval of the Finance Ministry.

CHAPTER 7 Penalties

Section 77. Any person who violates the orders of the Committee or Sub-committee appointed under section 11 together with section 6(5) or order of the registrar under section 39 paragraph two or the order of the competent officials under section 73(4) shall be liable to imprisonment for a term or not more than one month, or a fine of not more than 2,000 baht or both.

Section 78. Any person who violates section 19, section 46, section 52 paragraph two, section 54 paragraph two, or section 63 paragraph one or does not comply with the orders of the competent officials under section 73(5) shall be liable to imprisonment for a term of not more than one year or a fine of not more than 20,000 baht or both.

Section 79. Any person who violates section 51 shall be liable to imprisonment for a term of not more than six months, or a fine of not more than 10,000 baht, or both.

Section 80. Any person who violates the protection measures specified under the Ministerial Regulation issued under section 62(2) shall be liable to imprisonment for a term of not more than two years, or a fine of not more than 40,000 baht, or both.

Section 81. Any person who does not facilitate the competent officials under section 73 paragraph two shall be liable to a fine of not more than 2,000 baht.

Section 82. In case the wrongdoer who has to be liable under this Act is a juristic person, the managing director, manager, or representative of the juristic person shall be liable to the penalty imposed thereto, unless they can prove that the act of the juristic person have been committed without their knowledge or consent.

Countersigned by:

Chuan Leekpai

Prime Minister.

RATE OF FEES

- (1) Licence to research on the controlled herbs or the renewal thereof 10,000 baht each
- (2) Licence for sales, export or transformation of controlled herbs for commercial purpose or the renewal thereof 20,000 baht each
- (3) Permit to administer the herbs control area or make use of herbs therein for commercial purpose or the renewal thereof 10,000 baht each
- (4) Substitute of the licence or permit under (1) (2) or (3) 100 baht each
- (5) Certificate of registration of land of herbs origin 1,000 baht each
- (6) Substitute of the certificate of registration of land of herbs origin 100 baht each
- (7) Permit for making use of formula of the national traditional Thai drugs or national traditional Thai medicine under section 19 20,000 baht each
- (8) Objection of the registration of intellectual property rights on traditional Thai medicine 500 baht each
- (9) Certificate of registration of intellectual property rights on traditional Thai medicine 1,000 baht each
- (10) Substitute of the registration certificate of intellectual property rights on traditional Thai medicine 100 baht each
- (11) Application form for a licence or permit or the renewal thereof or for the registration, under this Act 500 baht each

Comparison of Thai legislation with common provisions under the Nagoya Protocol and WIPO draft agreements

This Act is largely concerned with regulation of traditional medicine and associated intellectual property rights. There are some provisions that reflect the issues addressed by the common provisions but the Act does not deal with access to traditional knowledge and benefit sharing per se

Common provisions	This instrument	Comments
1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources		
2. definition of terms- key terms used in the draft	<p>Section 3. In this Act, "traditional Thai medicinal Intelligence" means the basic knowledge and capability concerned with traditional Thai medicine;</p> <p>"traditional Thai medicine" means the medicinal procedures concerned with examination, diagnosis, therapy, treatment or prevention or, promotion and rehabilitation of the health of humans or animals, obstetrics, traditional Thai massage, and also includes the production of traditional Thai drugs and the invention of medical devices<on the basis of knowledge or text that has been passed on from generation to generation;></p> <p>"text on traditional Thai medicine" means technical knowledge concerned with traditional Thai medicine which has been written or recorded in Thai books, palm leaf, stone inscription or other materials or that have not been recorded but passed on from generation to generation;</p> <p>"Thai traditional drugs" means medicines obtained directly from herbs or derived from mixture, blended or transformed herbs, and also includes Thai traditional drugs under laws on drugs;</p> <p>"formula on traditional Thai drugs" means a formula stated as the production process and ingredients which contain Thai traditional drugs, no matter what form the ingredients are;</p> <p>"herbs" means plants, animals, bacteria, minerals, extracts of plants or animals used, or transformed or mixed or blended as drugs or food for diagnosis, therapy, treatment or prevention of diseases, or for promotion of the health of humans or animals. 1be meaning also includes the origin or the areas in which the products exist;</p> <p>"controlled herbs" means herbs that have been announced as controlled herbs under the Ministerial Notification;</p> <p>"conservation areas" means national reserved forests and other conservation areas for reservation and protection of natural resources, as stated by law;</p> <p>"original extracts" means natural extracts that have not been mixed or new substances obtained from addition of molecules under scientific procedures;</p> <p>"rough transformation" means the mixture, blend or transformation of herbs or the quality of herbs in order to obtain substances as a whole by original procedures and newly developed procedures without differentiating the pure ingredients of different substances;</p> <p>"<successor of > formula on traditional Thai drugs or text on traditional Thai medicine" means persons who have been passed on with the text on traditional Thai medicine or formulas on traditional Thai drugs from the discoverer, the improver, or the developer of the substance, or those who have learnt from generation to generation from the discoverer, the improver or the developer of the substance, or those who were given the above mentioned from others;</p> <p>"right holder" means those who have registered their intellectual property rights on traditional Thai medical intelligence under this Act;</p> <p>"sales" means selling, disposition, distribution or exchange and also includes possession for sales;</p> <p>"export" means to bring or export out of the country.</p> <p>"transform" means to dispense or transform, or change the quality of the herbs;</p> <p>"members" means the members of the Committee on Protection and Promotion of Traditional Thai Medicinal Intelligence;</p> <p>"Committee" means the Committee on Protection and Promotion of Traditional Thai Medicinal Intelligence;</p>	

	<p>"licensing authority" means the Permanent Secretary or person assigned by the Permanent Secretary;</p> <p>"registrar" means the central registrar or the provincial registrar, as the case may be;</p> <p>"competent officials" means the licensing authority, the registrar, and the person appointed for the execution of this Act by the Minister;</p> <p>"Permanent Secretary" means the Permanent Secretary of the Ministry of Public Health;</p> <p>"Minister" means the Minister having charge and control of the execution of this Act.</p> <p>Section 15. The Institute for Traditional Thai Medicine shall be responsible for compiling information on traditional Thai medical intelligence concerned with formulas of traditional Thai drugs and text on traditional Thai medicine from throughout the country for registration. The registration of intellectual property rights on formulas of traditional Thai drugs and text on traditional Thai medicine under paragraph one shall be in accordance with the Rules issued by the Committee.</p>	
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights	<p>Section 14. The intellectual property rights on traditional Thai medicine to be protected under this Act shall be the right to intellectual property over the formula of traditional Thai drugs and text on traditional Thai medicine.</p> <p>Section 16. There shall be three types of traditional Thai medicinal intellectual property rights as follows:</p> <p>(1) the national formula of traditional Thai drugs or the national text on traditional Thai Medicine;</p> <p>(2) general formula of traditional Thai drugs or general traditional Thai medicine document; and</p> <p>(3) personal formula of traditional Thai drugs or personal text on traditional Thai medicine.</p> <p>Protection of Herbs</p> <p>Section 44. For the purpose of herbs protection the Minister with the advice of the Committee. shall have the power to issue a Notification in the Government Gazette to specify the kind, characteristic, type, and names of herbs that are of study and research value, or have important economic significance or may become extinct, as Controlled herbs.</p> <p>Section 45. For the purpose of the protection of controlled herbs, the Minister shall with the advice of the Committee notify in the Government Gazette:</p> <p>(1) specifying the amount or quantity of controlled herbs under possession to make use of, under care, under conservation or under transportation which needs to be informed the registrar;</p> <p>(2) specifying rules, procedure and conditions in informing under (1);</p> <p>(3) specifying rules, procedure and conditions on the possession, to make use of, under care, under conservation or for transportation of controlled herbs;</p> <p>(4) specifying rules, procedure and conditions on studying and researching the controlled herbs;</p> <p>(5) specifying rules. procedure and conditions for exporting controlled herbs for commercial and noncommercial purposes, or distribution or transformation of controlled herbs for commercial purposes;</p> <p>(6) specifying other requirements to conserve, prevent or prohibit or reduce dangers or damage that may be caused to controlled herbs.</p>	
4. beneficiaries- who should benefit		
5. access - who speaks for country, process for granting or refusing access including 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made 5b. mutually agreed	<p>Section 17. The Minister has the power to notify that formulas on traditional Thai drugs or text on traditional Thai medicine that is of benefit, or has special medical or public health value as the national formula on traditional Thai drug, or the national text on traditional Thai medicine, as the case may be.</p> <p>The Notification under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.</p> <p>Section 18. The Minister has the power to notify the formulas of traditional Thai drugs or text on traditional Thai medicine that have been widely used or whose intellectual property protection has expired under section 33, as general formula of traditional Thai drugs or general text on traditional Thai medicine, as the case may be.</p>	

<p>terms- ensuring the bargaining process is fair and equitable</p>	<p>The Notification issued under paragraph one shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.</p> <p>Section 19. Whoever wishes to use the national traditional Thai drugs for registration and permission for production of drugs according to the Drug Law, or wishes to use it for research on improvement or development of new drug formulas for commercial benefit, or wish to research the national text on traditional Thai Drugs for development and improvement for commercial benefit, shall forward their application to obtain benefits and pay fees and the remuneration for making use there of to the licensing authority. The application and permission, limitations to the rights and the remuneration shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial regulation.</p> <p>Section 20. Personal formula of traditional Thai drugs or personal text on traditional Thai medicine under section 16(3) may be registered for protection of intellectual property rights and may be promoted according to the provisions of this Act by applying for registration to the registrar.</p> <p>The application for registration of intellectual property rights on traditional Thai medicine under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in Ministerial Regulation.</p> <p>Section 21. The persons who have the right to register for protection of intellectual property rights according to section 20 must be of Thai nationality and shall have the following qualifications:</p> <ul style="list-style-type: none"> (1) being an inventor of the formula on traditional Thai drugs or text on traditional Thai medicine; (2) being an improver of formula on traditional Thai drugs or text on traditional Thai medicine; or (3) being an inheritor of the formula on traditional Thai drugs or text on traditional Thai medicine. <p>Section 22. Registration for protection of intellectual property rights on traditional Thai medicine is prohibited if the registrar is of the opinion that:</p> <ul style="list-style-type: none"> (1) the drug formula belongs to the national formula on traditional Thai drugs, or national text on traditional Thai medicine, or is a general formula on traditional Thai drug, or general text on traditional Thai medicine, or (2) the drug formula is a personal formula on traditional Thai drug that has been developed on non medical basis like the use of extracts of plants, animals or micro organisms that have not be obtained from natural extracts or the transformation that is not considered rough transformation. <p>Section 23. Any application for registration of intellectual property rights on traditional Thai medicine that is not made according to the requirements prescribed in the Ministerial Regulation issued under section 20 paragraph two be called for changes by the registrar within 30 days beginning from the date the applicant receives the request for changes.</p> <p>If the applicant does not comply with the request of the registrar within the specified period mentioned in paragraph one, the registration shall be revoked.</p> <p>Section 24. After examining the application, if the registrar is of the opinion that the applicant is qualified under section 21 and the application therefor is not prohibited under section 22, the registrar shall without delay, announce the application at the Registration Office and at the office of the local administration organizations.</p> <p>Section 25. In case many people jointly apply for registration on protection of intellectual property rights traditional Thai medicine the registrar shall specify a date for inquiry and inform all the applicants.</p> <p>Under the inquiry to be carried out according to paragraph one, the registrar may request any applicant for further questioning, more information or documents. After the inquiry has been made and the Permanent Secretary has made the decision, the registrar shall notify all the applicants the decision thereof the registrar.</p> <p>The inquiry and consideration on the rulings shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.</p>	
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	<p>Section 26. In case there is a separate application for protection of intellectual property rights on the same traditional Thai medicine by different applicants, the person who forwarded the application first shall have the right to register. If the application is forwarded at the same time, on the same date, the applicants shall have to decide on whether they would settle with anyone person having full right over the registration or that they would jointly have equal rights within the time period specified by the registrar. If the case shall not be settled within the period specified by the registrar, the parties shall bring the case to the court within 90 days as from the date on which the registrar's specified time period ends. If the case is not take to court within the specified time period, the application for registration shall be revoked.</p> <p>Section 27. If after examining the application for registration, the registrar is of the opinion that the applicant is not qualified according to section 21 and the intellectual property rights on traditional Thai medicine applied for is prohibited under section 22, the registrar shall refuse the registration and issue a letter to inform the applicant within 30 days from the date on which the refusal was made.</p> <p>Section 28. In case the applicant for registration appeals against the ruling of the registrar according to section 27, and if the Committee rules that the rulings of the registrar is incorrect, the registrar shall proceed with the application process</p> <p>Section 29. After making publication on the application forwarded for registration according to section 24, people who feel they have the right over the intellectual property rights on traditional Thai medicine shall forward their objection to the registrar and provide evidence within 60 days from the date on which the publication was made under section 24.</p> <p>Section 30. Before making the ruling, the registrar shall request the applicant and the person who object the registration to explain or provide evidence to supplement the consideration. When the registrar has ruled on the application, a letter shall be issued to inform the applicant and the person who objected the application of the ruling of the registrar and the reasons thereof within 30 days from the ruling date.</p> <p>Section 31. In case there is no objection as mentioned under section 29, or in case there is an objector and a final ruling has been made to enable the applicant or the objector have the right to register the registrar shall issue an order authorizing the registration of protection of intellectual property rights on traditional Thai medicine to the applicant or the objector.</p> <p>Once the order for registration of intellectual property rights on traditional Thai medicine has been issued under paragraph one, the registrar shall issue a letter to inform the applicant or the objector of the application and ask for payment of fees for registration within 30 days from the date the letter is received.</p> <p>If the applicant for registration or the objector does not pay the fees within the time period specified, the registration will be revoked.</p> <p>The registration certificate for intellectual property rights on traditional Thai medicine shall be in the form as prescribed in the Ministerial Regulation.</p> <p>Section 32. In case the Permanent Secretary rules according to Section 25 (2) that many people jointly have the right to register. or in case many people apply for registration of the same product and have joint ownership of the intellectual property rights on traditional Thai medicine, of a final ruling on joint ownership of the intellectual property rights on traditional Thai medicine is made by the court in accordance with section 26, the concerned parties should have equal rights for registration over protection of intellectual property rights on traditional Thai medicine.</p> <p>In the joint registration on protection of intellectual property rights on traditional Thai medicine. the concerned parties shall jointly outline a memorandum as to how they would jointly share the registration rights and forward it to the registrar along with the registration.</p> <p>Section 33. The right to intellectual property on traditional Thai medicine under this section should be valid for a life time of the bearer of the registration and extend for another 50 years from time the owner of the registration has deceased.</p> <p>In case there is joint ownership of the registration right under section 32, the intellectual property rights on traditional Thai medicine shall be valid for a life time of the bearer and extended for another 50 years from the date on which the last joint owner of the</p>	
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	<p>registration ceases .</p> <p>At the end of the period specified under paragraph one or two the Minister shall publish in the Government Gazette, specifying the formula on traditional Thai drug or text on traditional Thai medicine as a general formula on traditional Thai drug or general text on traditional Thai medicine in accordance with to section 16 (2), as the case may be</p> <p>Section 34. The right holder would have sole ownership on the production of the drug and have sole right over the research, distribution, improvement or development of formulas on traditional Thai drugs or intellectual property rights of traditional Thai medicine under the registered text on traditional Thai medicine.</p> <p>The provisions of paragraph one shall not apply to:</p> <p>(1) any act that is of benefit for studies, findings, tests or research according to the regulation specified by the Minister; or</p> <p>(2) preparation of specific drugs according to prescription of holders of registration certificate on traditional Thai medicine, or</p> <p>(3) production of drugs for household use or production of drugs by state hospitals or government or state agencies, for use in state hospitals, or the use of text on traditional Thai medicine for benefits in treatment of patients in state hospitals, provided that it shall be in accordance with the Rules issued by the Minister.</p> <p>Section 35. The intellectual property right on traditional Thai medicine under this section shall not be transferred to others, except for the case in which it is passed on by succession.</p> <p>The successor on traditional Thai medicine through inheritance according to paragraph one must forward their request for registration to the registrar within 2 years from the date the right holder deceases.</p> <p>In case there is no request for registration of rights on traditional Thai medicine passed on by inheritance within the time period specified in paragraph two the right to be protected under this Act shall be terminated and section 33 (3) shall apply herewith <i>mutatis mutandis</i>.</p> <p>Section 36. The right holder may permit any person to use their right under section 34. The permit for use of the right under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.</p> <p>Section 46. No person shall research or export controlled herbs or sell or transform them for commercial purposes, unless a licence has been obtained from the licensing authority.</p> <p>The application for a license and the issuance thereof under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation. The licence issued under paragraph one shall be valid up to 31 December of the third year as from the year in which the licence is issued.</p> <p>Section 47. The licence issued under section 46 shall cover the employees or representative of the licensee. It shall be deemed that the act of the employee or representative of the licensee under paragraph one is the act of the licensee unless the licensee can prove that the act has been committed without his or her knowledge or beyond his or her control.</p> <p>Section 48. The provisions of section 46 shall not apply to research on controlled herbs which have been carried out by state agencies but such agencies must inform the registrar and comply with the rules, procedure and conditions prescribed by the Minister under section 45(4).</p> <p>Section 49. The application for renewal of a licence issued under section 46 shall be made by the licensee before the expiration of the licence, and upon such application, the licensee can continue his or her business until the licensing authority refuses the renewal thereof.</p> <p>The application for renewal of a licence and the permission thereof shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.</p> <p>Section 50. In case the licence issued under section 46 is lost or destroyed, the licensee may apply for a licence substitute within 30 days from the date of knowledge of the loss or destruction.</p> <p>The application for and the issuance of the licence substitute shall be in accordance with the rules, procedure and conditions, prescribed in the Ministerial Regulation.</p>	
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	<p>Section 51. The person who possesses controlled herbs beyond the amount or quantity notified by the Minister under section 45(1) on the date on which the Notification On controlled herbs is made in the Government Gazette, shall inform the registrar of the possession of controlled herbs as required under this Act, within the period of time specified in the Notification.</p>	
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building		
7. Sanctions and remedies- dealing with breaches	<p>Section 37. The registrar has the right to revoke the registration of intellectual property rights on traditional Thai medicine under the following cases:</p> <p>(1) the right holder misuses the right against the public order and good morals;</p> <p>(2) the right holder violates or does not comply with the conditions or limitations outlined by the registrar in registration of the intellectual property rights on that traditional Thai medicine; or</p> <p>(3) the right holder exercised the right that may cause severe damage to the registered intellectual property on traditional Thai medicine.</p> <p>Section 38. The concerned party or the public prosecutor may file complaints with the court to revoke registration over intellectual property right on traditional Thai medicine that had been registered in contrary to unfairly under section 21 or section 22.</p> <p>Section 39. Before revoking the registration of intellectual property rights on traditional Thai medicine under section 37, the registrar shall conduct an inquiry and inform the right holder, so that the person can provide an explanation within 30 days from the acknowledgement date.</p> <p>In conducting an inquiry under paragraph one the registrar may permit the concerned parties explain or provide evidence required for consideration.</p> <p>After having conducted an inquiry if the registrar is of the opinion that the registration of the intellectual property rights on traditional Thai medicine shall be revoked, the registrar shall seek approval from the Committee. After the Committee has approved the registrar shall revoke the registration of intellectual property rights on traditional Thai medicine, the registrar shall order the revoke and issue a letter stating the decision made and the reasons therefor to the right holder within 30 days from the date on which the order was issued by the registrar.</p> <p>Section 40. The right holder whose registration has been revoked under section 39 may re-apply for a registration in accordance with section 20 after the expiration of one year from the date the registration of intellectual property rights on traditional Thai medicine has been revoked.</p> <p>Section 41. In case the person permitted with the intellectual property right on traditional Thai medicine exercise their rights against public order or good morals or violate or not comply with the conditions specified in the Ministerial Regulation issued under section 36 paragraph two or exercise their rights which may cause serious damage to intellectual property right on traditional Thai medicine that has been registered, the registrar shall have the power to revoke the permission to the intellectual property rights on the traditional Thai medicine.</p> <p>The revoke of the permission to the intellectual property right on traditional Thai medicine under this section shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.</p> <p>Section 42. Before ordering the revoke on the permission of intellectual property rights on traditional Thai medicine under section 41, the registrar shall issue a letter to inform the right holder on traditional Thai medicine to give a statement within 15 days from the date on which the letter from the registrar has been received, and section 39 paragraph two shall apply herewith <i>mutatis mutandis</i>.</p>	

	<p>When the registrar issues an order revoking the permission of intellectual property right on traditional Thai medicine, a letter shall be issued to inform the right holder and the person to whom the permission of intellectual property rights of traditional Thai medicine has been granted within 30 days from the date of the issuance of the revoking order.</p> <p>Section 52. In case any licensee under section 46 does not comply with this Act or the Ministerial Regulations. Rules Of Notifications issued under this Act, the licensing authority shall have the power to suspend the licence for not more than 90 days each time.</p> <p>The licensee whose licence has been suspended must to stop all the performances permitted under the licence and, within the suspension period, no application for other licence under this Act shall be made.</p> <p>Section 53. The licensing authority shall have the power to revoke the order suspending the licence before the period specified, when satisfied that the licensee whose the licence has been revoked has complied with the provisions of this Act or the Ministerial Regulations, Rules or Notifications issued under this Act.</p> <p>Section 54. If the licensee under section 46 does not comply with the provisions of this Act or Ministerial Regulations, Rules or Notifications issued under this Act and indulges in severe fault, the licensing authority shall have the power revoke the licence.</p> <p>The licensee whose the licence has been revoked must stop all the performances permitted under the licence and shall not apply for any other licence under this Act until a period of two years, from the date the licence is revoked has elapsed and the licensing authority may issue such other licence as he or she deems appropriate.</p> <p>Section 55. The order to suspend the licence under section 52 and the order to revoke the licence under section 54 shall be made in writing and notified the licensee. In case the licensee can not be found or the licensee refuse to accept the document, the order shall be posted at a conspicuous areas that can be easily seen at the place specified in the licence and it is deemed that the licensee has acknowledged the order from the date on which the order has been posted.</p> <p>Section 56. The licensee whose the licence has been revoked under section 54 may sell the controlled herbs under their possession to other licensees or other person who the licensing authority deems appropriate, within 60 days from the date the notice is acknowledged. In case an appeal is made, the days shall be counted from the date on which the decision is made by the Committee, unless the licensing authority has extended the time period, but it shall not more than 60 days.</p> <p>Section 66. In case the registrar rejects the application for registration of intellectual property rights on traditional Thai medicine under section 27, the person who seeks registration has the right to appeal the order with the Committee within 30 days from the date on which the order was received from the registrar.</p> <p>Section 67. In case the registrar has made a decision on the right of the applicant over the registration for intellectual property rights under section 30 paragraph two, the applicant or the objector, as the case may be has the right to appeal to the Committee within 30 days from the date of receiving the decision of the registrar.</p> <p>Section 68. In case the registrar issues an order revoking the registration on intellectual property rights on traditional medicine as stated under section 39 paragraph three, the right holder has the right to appeal the order to the Minister within 30 days from the date on which the notice has been received from the registrar.</p> <p>The decision of the Minister shall be final.</p> <p>The appeal under paragraph one shall not entail a stay of the execution the order to revoke the registration of intellectual property rights on traditional Thai medicine.</p> <p>Section 69. In case the registrar issues an order to revoke the permission to exercise the intellectual property rights on traditional Thai medicine under section 41, the person who has the right to exercise the rights thereof may appeal the order to the Committee within 30 days from the date the notice of the registrar has been received.</p> <p>The appeal under paragraph one shall not entail a stay of the execution of the revoke order</p>	
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	<p>on permission to exercise the intellectual property rights on traditional Thai medicine.</p> <p>Section 70. In case the licensing authority orders the suspension of the permit under section 52 or orders the revocation of the permit under section 54, the person whose permit has been suspended or revoked has the right to appeal the order to the Committee within 30 days from the date the notice from the registrar has been received.</p> <p>The appeal under paragraph one shall not entail a stay of the execution of the suspension or revocation of the permit.</p> <p>Section 71. The decisions of the Committee under section 66, section 67, section 69 and section 70 shall be final.</p> <p>Section 72. The appeal and procedure to consider the appeal shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.</p> <p>Section 77. Any person who violates the orders of the Committee or Sub-committee appointed under section 11 together with section 6(5) or order of the registrar under section 39 paragraph two or the order of the competent officials under section 73(4) shall be liable to imprisonment for a term or not more than one month, or a fine of not more than 2,000 baht or both.</p> <p>Section 78. Any person who violates section 19, section 46, section 52 paragraph two, section 54 paragraph two, or section 63 paragraph one or does not comply with the orders of the competent officials under section 73(5) shall be liable to imprisonment for a term of not more than one year or a fine of not more than 20, 000 baht or both.</p> <p>Section 79. Any person who violates section 51 shall be liable to imprisonment for a term of not more than six months, or a fine of not more than 10,000 baht, or both.</p> <p>Section 80. Any person who violates the protection measures specified under the Ministerial Regulation issued under section 62(2) shall be liable to imprisonment for a term of not more than two years, or a fine of not more than 40,000 baht, or both.</p> <p>Section 81. Any person who does not facilitate the competent officials under section 73 paragraph two shall be liable to a fine of not more than 2,000 baht.</p> <p>Section 82. In case the wrongdoer who has to be liable under this Act is a juristic person, the managing director, manager, or representative of the juristic person shall be liable to the penalty imposed thereto, unless they can prove that the act of the juristic person have been committed without their knowledge or consent.</p>	
<p>8. competent authority- establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases</p>	<p>Section 5. There shall be the Committee on Protection and Promotion of Traditional Thai Medicinal Intelligence comprising of the Permanent Secretary of the Ministry of Public Health as chairman, the Director-General of the Medical Services Department, Director-General of the Intellectual Property Rights Department, Director-General of the Livestock Department, Director-General of the Forestry Department, Director-General of the Department of Agriculture, Director-General of the Medical Sciences Department, Secretary-General of the Food and Drug Administration, Secretary-General of the Environment Policy and Planning Office, and Director of the Medical Registration Division as members <i>ex officio</i>, and the equal number of the qualified members appointed by the Minister, on the basis of selection from the practitioners, those with knowledge, capability and experience in traditional Thai medicine, the production or sales of traditional Thai drugs and plantation or transformation of herbs. The Director of the Institute for Traditional Thai Medicine shall be a member and secretary of the Committee.</p> <p>The selection of the qualified members under the first paragraph shall be in accordance with the rules and procedure prescribed in the Ministerial Regulation.</p> <p>Section 6. The Committee shall have the following power and duties to:</p> <p>(1) provide consultation or advice to the Minister in issuing the Ministerial Regulations, Rules or Notifications under this Act;</p> <p>(2) promote and develop the use of intellectual traditional Thai medicine and herbs;</p> <p>(3) outline measures to strengthen stability and coordination between government agencies, state enterprises, communities and non government organizations on issues</p>	

	<p>concerned with protection and promotion of intellectuals on traditional Thai medicine and herbs;</p> <p>(4) approve the withdrawal or registration (of intellectual property rights on traditional Thai medicine under section 39 (3);</p> <p>(5) consider the appeal against the order or decision of the registrar or the licensing authority under this Act;</p> <p>(6) lay down rules concerned with standards and procedures on lodging an appeal and consideration of appeal, registration of intellectual property rights on traditional Thai medicine, the administration and arrangement of benefits and expenses of the fund. and works concerned with protection and promotion of intellectuals on traditional Thai medicine and herbs;</p> <p>(7) perform other activities as stated in this Act or under other laws as the authority of the Committee;</p> <p>(8) perform other activities as assigned by the Minister.</p> <p>Section 7. The qualified members appointed by the Minister shall hold office for a term of two years as from the day of the appointment. In case the qualified members vacate office before the end of their term subject to section 5 paragraph two, the Minister may appoint another person with similar qualifications as the qualified member. and the appointee shall hold office for the remaining term of the member he or she replaces.</p> <p>The qualified members who vacates office at the expiration of term may be re-appointed.</p> <p>Section 8. Apart from vacating office at the expiration of term under section 7 the qualified members appointed by the Minister shall vacate office upon :</p> <p>(1) deaths;</p> <p>(2) resignation;</p> <p>(3) being a bankrupt;</p> <p>(4) being incompetent or quasi-incompetent person;</p> <p>(5) being removed by the Minister for the reason of negligence or dishonest to the duty or indulge in unacceptable behavior;</p> <p>(6) being imprisoned by a final judgement, except for an offence committed through negligence or petty offence;</p> <p>(7) termination from being a practitioner in case the person was appointed under that criteria.</p> <p>Section 9. At the meetings of the Committee, the presence of not less than one half of the total number of members is required to constitute a quorum. If the chairman of the Committee is unable to attend any of the committee meeting sessions, the members shall select one among themselves to preside over the meeting. The decision of the meeting shall be by majority of votes. Each member shall have one vote. In case of an equality of votes, the person presiding over the meeting shall have an additional vote as the casting vote.</p> <p>Section 10. The Committee shall have the power to appoint a sub-committee to consider or carry out any particular work as assigned by the Committee.</p> <p>Section 9 shall apply <i>mutatis mutandis</i> the meeting of the subcommittee.</p> <p>Section 11. In carrying out their duties under this Act, the Committee and sub-committee shall have the power to order any person to give or submit any evidence to supplement their considerations.</p> <p>Section 12. There shall be the -Institute for Traditional Thai Medicine under the Office of the Permanent Secretary, the Ministry of Public Health, having the authority to carry out duties concerned with protection and promotion of education, training, research, studies and development of intelligence on traditional Thai medicine and herbs and shall also be responsible for the administrative and technical works of the Committee.</p> <p>Section 13. The Director of the Institute for Traditional Thai Medicine shall be the central registrar and the provincial health chiefs are the provincial registrars.</p> <p>Section 73. In carrying out their duties, the competent officials shall have the power to:</p> <p>(1) enter any place during the working hours to inspect and control of the execution of this Act;</p> <p>(2) inspect any place or vehicles between the time when the Sun rises until the Sun sets or during working hours, in case there is suspicion that this Act has been violated, and in case there is a reasonable ground to believe that the delay in issuing search warrant may lead to removal or hide or destruction of documents or products concerned with the commission of</p>	
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	<p>offence, and if the inspection during the specified time is not complete, it can be continued;</p> <p>(3) confiscate or take into custody the documents or products concerned with violation of this Act, as evidence in taking action against the case;</p> <p>(4) request for any person for questioning or submitting documents or evidence in case there is a reasonable ground to believe that the statements, documents or evidence is of benefit to find or use as evidence in proving the violation of this Act;</p> <p>(5) request any person to move out of the herb conservation area or avoid any act in violation of section 63.</p> <p>In carrying out their duties in accordance with paragraph one, the concerned parties shall facilitate the competent officials as necessary.</p> <p>Section 74. In carrying out their duties, the competent officials must produce their identity cards for identification.</p> <p>The identity cards of the competent officials shall be in the form as prescribed by the Minister by publication it in the Government Gazette.</p> <p>Section 75. In carrying out their duties under this Act, the competent officials shall be the officials under the Penal Code.</p> <p>CHAPTER 6 Fund on Traditional Thai Medicine Intelligence</p> <p>Section 76. A fund entitled "Fund on traditional Thai Medicine Intelligence shall be set up in the Office of the Permanent Secretary, Ministry of Public Health, as a revolving fund for expenses concerned with works on conservation and promotion of intelligence on traditional Thai medicine.</p> <p>The fund shall include the following money and property;</p> <p>(1) subsidy from the state;</p> <p>(2) money or property received from the private sector from within and outside the country, foreign governments or international organizations;</p> <p>(3) interests and benefits obtained from the fund</p> <p>(4) other earnings obtained from the functioning of the fund.</p> <p>The earnings of the fund shall not be considered as earnings that must be remitted to the Finance Ministry under the law on the treasury balance and the law on the budgetary procedures.</p> <p>The Office of the Permanent Secretary, Ministry of Public Health is responsible for maintaining the money and property of the fund, and shall withdraw the money in the fund in accordance with the provisions of this Act.</p> <p>The administration, management of benefits and use of money in the fund shall be in accordance with the rules prescribed by the Committee, with the approval of the Finance Ministry.</p>	
9. no single owner-addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group		
10. exceptions – emergencies, traditional use, conservation	<p>Section 57. For the purpose of conserving herbs and the areas from where the herbs naturally originate in the ecological system, or has biological diversity, or may have been easily effected by humans, in areas which have been specified as conservation areas, the Minister, with advice of the Committee, shall outline a plan entitled "Plan for Conservation of Herbs" to be forwarded to the Council of Ministers for approval.</p> <p>Plans for conservation of herbs according to paragraph one may be made as a short term plan, medium term plan or long term plan according to appropriateness and has to include work plans and procedures leading to the following matters:</p> <p>(1) stipulation of conditions in permitting a person to enter conservation areas as specified under the law on such matter for the compliance of the government agency concerned in</p>	

	<p>order to conserve natural resources or the value of herbs or not to effect the natural, ecological system, or biological diversity in the areas where the herbs originated;</p> <p>(2) laying down of procedures in handling particularly with the areas from where the herbs originated and also outlining the duties and responsibilities of the government agency concerned, for maximum benefit in coordination, in order to bring about efficiency in conserving the nature, the ecological system, biological diversity and the value of the herbs in that area;</p> <p>(3) survey and research on herbs and the areas from where they originate for benefits in outlining procedures to conserve herbs and the place of their origin;</p> <p>(4) the inspection, follow-up and analysis in entering into the conservation areas for benefits in carrying out the works as planned and enforcement of the laws concerned.</p> <p>Plans for conservation of herbs under paragraph one shall be published in the Government Gazette.</p> <p>Section 58. For benefits in outlining plans for conservation of herbs under section 57, the competent officials shall have the power to enter the specified conservation areas in order to inspect and research the herbs and the areas from where the herbs originate. This shall have to be done with support and coordination from other concerned state authorities, as specified by Rules prescribed by the Council of Ministers.</p> <p>Section 59. After the publication of the plan on conservation of herbs under section 57, the protection and management of conservation area shall be carried out according to the plan on conservation of herbs and the law on such matter.</p> <p>Section 60. If any conservation area is inappropriately managed or has problems concerned with inappropriate conservation of herbs, or has caused destruction of herbs, or areas in which the herbs originated, leading to severe crisis which needs to be tackled immediately and the state authorities concerned do not have the authority to do so under the law, or can not solve the problem, the Minister, with the advice of the Conunittee shall propose the Council of Ministers to permit the Ministry of Public Health to take action in conservation as outlined under the Plan for Conservation of Herbs as stated under section 57, as necessary and appropriate, to control and solve the problems.</p> <p>Section 61. In case any area in which the herbs originated have natural ecology system or biological diversity that may be destroyed or may be easily effected by humans or the entry into the area for use of herbs has caused risk to extinction, or degradation or reduction of species of herbs, or the state aims at increasing public involvement in the management, development and making use of herbs in the area, and the area has not been notified as conservation area, the Minister, with the advice of the Committee, has the power to issue Ministerial Regulation notifying the area as a herb conservation area.</p> <p>The land within the specified area shall to be notified as herb conservation area under paragraph one shall not be the area under the right ownership or possession under the Land Code of individuals who are not the state entities.</p> <p>The Ministerial Regulation under paragraph one shall have a plan indicating the land area specified as herb conservation area attached therewith.</p> <p>Section 62. In issuing a Ministerial Regulation according to section 61, at least one or many of the following protection measures shall be outlined in the Ministerial Regulation:</p> <p>(1) The use of herb should maintain nature and value of the herb, or should not effect the natural ecology or biological diversity in the area;</p> <p>(2) Any act that may be of danger or cause effects that could lead to change in the ecology system within the area, or biological diversity, or effect the value of the herbs, shall be prohibited;</p> <p>(3) The imposition of specific management measures for those areas, along with outlining duties and areas of responsibility of the state, for effective cooperation and coordination in working towards conservation of natural resources and maintaining the value of the herbs, or the ecological system or biological diversity within the area.</p> <p>(4) Outlining of other conservation measures as seen necessary and appropriate with the environment in the area.</p> <p>Section 63. In the herb conservation areas, no person shall own or possess land, or plant or construct anything, or cut, clear, burn or destroy trees or other plants, or destroy biological</p>	
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	<p>diversity or the ecology system, or carry out digging of minerals, stones, sailor change in the water ways or any act that results in pollution or causes flood or running dry of water, stream, canals, ponds, or causes danger to herbs, except for the act that is done to administer the area with the objective of conserving herbs or to make use of herbs, with permission from the licensing authority.</p> <p>The application for and the issuance of the pennit under paragraph one shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.</p> <p>The permit iswed under paragraph one shall be valid up to 31 December of the third year since the year in which the permit is issued.</p> <p>Section 49 and section 50, and section 52 up to section 55 shall apply <i>mutatis mutandis</i> to the renewal of permit, application for the substitute, suspension and revocation of the permit issued under paragraph one.</p> <p>Section 64. In order to support the participation of the private sector in conservation, promotion and development of herbs, the owner or the possessor of the land from where the herbs originate or the land used for plantation of the herbs have the right to register the land with the registrar, in order to obtain assistance or support under this Act.</p> <p>The obtainment of registration, the issuance of certificate of registration· and the revocation of the registration shall be in accordance with the rules, procedure and conditions prescribed in the Ministerial Regulation.</p> <p>Section 65. The owner or the possessor of the land that has been registered under section 64 has the right to obtain assistance or support as prescribed in the Rules issued by the Minister.</p>	
11. disclosure- permits, databases, disclosure in intellectual property applications		
12. interaction with existing laws- avoiding conflict with other laws		
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with	<p>Section 43. Persons with the nationality of other nations who agree to permit persons with Thai nationality to have the protection of intellectual property rights on traditional Thai medicine may seek registration of intellectual property rights protection on the local traditional medicine in their country under this Act.</p> <p>The application for registration. the issuance of a certificate of registration, and the revocation of the registration under paragraph one shall be in accordance with the rules. procedure and conditions prescribed the Ministerial Regulation.</p>	
14. transitional provisions- existing uses		

47. The former Yugoslav republic of Macedonia

Some mention of TCE but no relevant provisions relating to the common provisions

Customs Law TITLE 1

GENERAL PROVISIONS

CHAPTER 1 SCOPE AND BASIC DEFINITIONS

Article 1

(1) This Law regulates the rights and obligations of the persons and of the customs authorities in regard to the goods in passenger and goods circulation between the customs area of the Republic of Macedonia and foreign customs areas.

(2) The customs authority is the sole authorised authority competent for enforcement of the provisions of this Law and the rules arising from this Law.

(3) The provisions of this Law apply without prejudice to rules regulating other fields for trade with other countries.

Article 2

(1) The provisions of this Law and the rules arising from this Law apply uniformly throughout the entire customs area of the Republic of Macedonia, unless otherwise provided for under this Law, other law or an international agreement ratified by the Republic of Macedonia.

(2) Certain provisions of the customs rules may also apply outside the customs area of the Republic of Macedonia in accordance with international agreements ratified by the Republic of Macedonia.

Article 3

The customs area of the Republic of Macedonia (hereinafter referred to as the 'customs area') includes the territory, territorial waters and the air space over the territories of the Republic of Macedonia. The customs area is defined with a customs line identical to the frontier line. In accordance with international agreements the customs area may also stretch onto parts of the territories of other states.

Article 4

The terms used in this Law have the following meaning:

'Person' means a natural person or a legal person;

'A person registered in the Republic of Macedonia' means:

a citizen of the Republic of Macedonia with residence in the Republic of Macedonia or a foreign citizen who is granted approved stay in the Republic of Macedonia in accordance with law and a legal person that has a registered office, in accordance with law, in the Republic of Macedonia.

'Customs authority' is an organisational unit of the Customs Administration determined by law, responsible for applying customs or other rules where all or part of the prescribed formalities may be completed.

'Decision' means any official act adopted by the customs authority pertaining to customs rules regulating a particular case, such act having legal effect on one or more specific or identifiable persons. This term covers, *inter alia*, binding information within the meaning of Article 11 of this Law;

'Customs status' means the status of goods as domestic or foreign.

'Domestic goods' means goods:

wholly obtained in the customs area of the Republic of Macedonia under the conditions referred to in Article 22 of this Law and not incorporating goods imported from other countries. Goods obtained

from goods placed under a suspensive arrangement shall not be deemed to have status of domestic goods,

imported from other countries and released for free circulation and — obtained or produced in the customs area of the Republic of Macedonia, either from goods referred to in the second indent alone or from goods referred to in the first and second indent of this item;

‘Foreign goods’ means goods other than those referred to in item 6 of this Article. Domestic goods shall also receive a status of foreign goods when they are removed from the customs area.

‘Customs debt’ means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the regulations of the Republic of Macedonia;

‘Import duties’ means customs duty and other duties having an effect equivalent to customs duty payable on the importation of goods;

‘Export duties’ means customs duty and other duties having an effect equivalent to customs duties payable on the exportation of goods;

‘Debtor’ means any person liable for payment of a customs debt.

‘Customs supervision’ means general measures taken by the customs authority with a view to ensuring that customs rules and, where appropriate, other regulations applicable to goods subject to customs supervision are observed;

‘Customs control’ means the performance of specific acts such as: examining goods; verifying the existence, reliability and accuracy of documents; examining the accounts of undertakings and other records; examining and searching of means of transport; examining and searching of personal luggage and other goods carried by or on persons; carrying out official procedures and other similar actions with a view to ensuring that customs rules and, where appropriate, other regulations applicable to goods subject to customs supervision are observed;

‘Customs-approved treatment or use of goods’ means: a) the placing of goods under a customs procedure; b) their entry into a free zone or free warehouse; c) their re-exportation from the customs area; d) the destruction of goods and e) their abandonment to the state;

‘Customs procedure’ means: a) release of goods for free circulation; b) transit; c) customs warehousing; d) inward processing; e) processing under customs control; f) temporary import; g) outward processing and h) exportation;

‘Customs formalities’ are all actions that shall be performed by the parties and the customs authority with the purpose of observing the customs rules;

‘Customs declaration’ means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure;

‘Declarant’ means the person lodging the customs declaration in his own name or the person in whose name the customs declaration is lodged;

‘Presentation of goods to the customs authority’ means the notification to the customs authority, in the manner laid down, of the arrival of goods at the customs authority’s premises or at any other place designated or approved by the customs authority;

‘Release of goods’ means the act whereby the customs authority makes goods available for the purposes stipulated by the customs procedure under which they are placed;

‘Holder of the procedure’ means the person on whose behalf the customs declaration was made or the person to whom the rights and obligations of the abovementioned person in respect of a customs procedure have been transferred;

‘Holder of the authorisation’ means the person to whom an authorisation has been granted;

‘Taxation elements’ means the customs rate and amount of duties in accordance with the Customs Tariff and tariff classification of the goods, origin of goods, customs value of the goods, as well as the amount, nature and condition of the goods;

‘Customs clearance’ means any official action of placing the goods under a customs procedure or of

carrying out formalities for re-exportation of goods in a normal procedure in accordance with Article 72 to 85 of this Law or under a simplified procedure in accordance with Article 88 paragraph (1) item b) or c) of this Law;

‘Lodging a customs declaration’ means the presenting of a customs declaration in the prescribed form and manner, on behalf of the declarant to the competent customs authority for the carrying out of the relevant customs procedure;

‘Acceptance of a customs declaration’ means the establishing, on behalf of the customs authority, that the customs declaration is in accordance with Articles 72 and 73 of this Law and the entering of such declaration, on behalf of the customs authority, in the prescribed records;

‘Holding of goods’ means using the goods or the simple holding of the goods;

‘Risk’ means the possibility of an evasion of duties or endangering of the security and safety of the Republic of Macedonia, in respect to public health, living environment and consumers, to occur, also including the provision of proper application of the measures concerning the entering and exiting of goods in and from the Republic of Macedonia and

‘Risk Management’ means systematic identification and application of all measures necessary for limiting the exposure to risk. This also includes actions, such as gathering of data and information, risk analysis and risk assessment, providing for and taking of measures and regular supervision and reconsideration of the results of the measures taken, based on international and domestic sources and strategies.

CHAPTER 2 GENERAL PROVISIONS REGULATING THE RIGHTS AND OBLIGATIONS OF PERSONS WITH REGARD TO CUSTOMS RULES

Section 1 Right of representation

Article 5

(1) Under the conditions set out in Article 74 paragraph (2) and paragraph (3) of this Law, any person may appoint an authorised person to represent him in his dealings before the customs authority in order to perform the acts and formalities laid down by customs rules.

(2) Such representation may be:

a) direct, in which case the representative shall carry out acts in the name of and on behalf of another person or

b) indirect, in which case the representative shall act in his own name but on behalf of another person.

(3) The representative must state before the customs authority that he is acting on behalf of the person he is representing, specify whether the representation is direct or indirect, and be empowered to take actions as an authorised person. The person that fails to state before the customs authority that the actions taken are in the name or on behalf of another person or which shall state that the actions taken are in the name or on behalf of another person without being authorised for doing so shall be considered to be taking actions in his own name and on his own behalf.

(4) The customs authority may require the person stating that he is acting in the name of or on behalf of another person to produce evidence of his powers to act as representative.

Article 6

(1) Representation activities in customs procedures, in the meaning of Article 5 of this Law, may be carried out by any legal person that has received authorisation for representation activities in customs procedures.

(2) Authorisations for carrying out representation activities in customs procedures may be granted to a legal person complying with the following conditions: -to have a registered office in the customs area of the Republic of Macedonia, -to be registered as a representative in customs affairs in the customs area of the Republic of Macedonia and -to have at least one employee with a customs licence for representation.

(3) A customs licence may be granted to a natural person that fulfils the following conditions: -has at least one year of working experience in the field of customs affairs, in case of professional university education in the field of customs affairs, -has at least secondary professional education and at least two years of working experience in the field of customs affairs and has passed a special professional exam for carrying out representation in customs procedures.

(4) The Central Administration of the Customs Administration shall be responsible for the carrying out of the exams, for which there are certain costs and fees.

(5) Authorisations for representation activities in customs affairs and customs licences for carrying out representation shall be granted and withdrawn by the Central Administration of the Customs Administration of the Republic of Macedonia.

(6) The Minister of Finance shall proscribe the programme and contents of the special exam referred to in paragraph (3) of this Article and shall determine the costs and fees for the carrying out of the professional exam.

(7) The Minister of Finance shall in further detail determine the manner of proving compliance with the conditions set out in paragraphs (2) and (3) of this Article for obtaining an authorisation for carrying out representation activities in customs procedures and a customs licence for carrying out representation.

(8) The Central Administration of the Customs Administration shall withdraw the customs licence for representation in case the representative (natural person) repeatedly acts illegally, inaccurately and unprofessionally, provided he has been notified of this in writing and by giving the grounds for such warning note on the illegal, inaccurate and unprofessional acting in the last three years.

(9) The Central Administration of the Customs Administration shall withdraw the authorisation for carrying out representation activities in customs procedures based on the opinion of a Commission established by the Minister of Finance provided the representative (legal person) repeatedly acts illegally, inaccurately and unprofessionally, provided he has been notified of this in writing and by giving the grounds for such warning note on the illegal, inaccurate and unprofessional acting in the last three years.

(10) The Central Administration of the Customs Administration shall withdraw the customs licence for representation where the representative has an irrevocable and executive ruling for a criminal act in the field of economic or illegal traffic in his record.

(11) When a customs licence or authorisation for carrying out representation work is withdrawn in accordance with paragraphs (8) and (9) of this Article, a new customs licence or new authorisation for representation may be granted in the period of two years from the day it was withdrawn. Where the customs licence for carrying out representation is withdrawn in accordance with paragraph (10) of this Article, a new customs licence for carrying out representation may be granted in the period of two years from the day it was withdrawn.

Section 2 Acts relating to the application of customs rules

Article 7

- (1) If not otherwise provided for in this Law, the customs authority conducting the customs procedure shall apply the Law on General Administrative Procedure.
- (2) Provided the customs authority in the customs procedure accepts the request fully, it may approve it in the form of a note affixed on such a request.
- (3) An appeal against the decision taken by the customs authority in the administrative procedure may be expressed to the Minister of Finance within a period of 8 days from the day of communication of the decision.
- (4) The appeal shall not cause suspension of the implementation of the decision.
- (5) By way of derogation from paragraph (4) of this Article, the customs authority may suspend the implementation of such a decision completely or partially, for a period that may not exceed 180 days, where sufficient proof and facts are submitted that indicate that the appeal is justified or that greater damage is to be feared for the party with the carrying out of the decision, while the suspension is justified. Where the decision relates to the calculation of import or export duties, suspension of implementation of that decision may be approved only provided the duties are subject to the provision of appropriate guarantee.

Section 3 Application of other rules

Article 8

The provisions of this Law do not apply for payment of import duties or for implementation of customs procedures provided such payments or implementation of the procedures is regulated otherwise under international agreements entered into by, accepted or ratified by the Republic of Macedonia.

Article 9

- (1) The custom authority collects import and export duties as well as other charges and taxes in accordance with the rules governing such charges and taxes.
- (2) Provided the actions of the customs authority on payment and lodging of a security for these duties and taxes are not provided for with the rules referred to in paragraph (1) of this Article, the customs authority shall apply the provisions laid down in the customs rules.

Section 4 Information

Article 10

- (1) Any interested person may request information concerning the application of customs legislation from the customs authority. Such request may be refused where it does not relate to an actually envisaged import or export operation.
- (2) The information of paragraph (1) of this Article shall be supplied free of charge to the applicant by the customs authority within 15 days from the day of making the application. Where costs are incurred by the customs authority, in particular as a result of analyses or expertises on goods, or as a result of the return of the goods to the applicants, a relevant amount may be charged.

Article 11

(1) The customs authority shall issue binding tariff information and binding origin information upon a written request.

(2) Binding tariff information or binding origin information shall be binding on the customs authority as against the holder of the information only in respect of the tariff classification or determination of the origin of goods. Binding tariff information or binding origin information shall be binding on the customs authority only in respect of goods on which customs formalities are completed after the date on which the information was supplied. In matters of origin, the formalities in question shall be those relating to the application of the provisions of Articles 24 and 26 paragraph (2) item b) of

this Law.

(3) The holder of such information, upon request by the customs authority, must be able to prove that: -for tariff purposes: the goods declared correspond in every respect to those described in the information and -for origin purposes: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information.

(4) The binding tariff information and the binding origin information shall be valid for a period of three years in the case of origin, starting from the date of issue. Binding information shall be annulled where it is based on inaccurate or incomplete information from the applicant. The holder of the information shall be notified of the annulment.

(5) Binding information shall cease to be valid: a) in the case of tariff information: 1) where the rules in force are adopted or amended and the information no longer conforms to them; 2) where the information it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 19 of this Law:

-at national level, by reason of amendments and supplements to the explanatory notes to the nomenclature of the Customs Tariff or by a judgment passed by a competent court and

-at international level, by reason of a classification opinion or an amendment or supplement of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organisation established in 1952 under the name 'the Customs Cooperation Council' and

3) where the information is revoked or amended, provided that the revocation or amendment is notified to the holder of the information.

The date on which binding information ceases to be valid for the cases referred to in item a) under 1 and 2 of this paragraph shall be the date of official publication of the said measures and b) in the case of origin information:

1) where rules are adopted or amended or an agreement is concluded by the Republic of Macedonia and the information no longer conforms to the rules in force;

2) where it is no longer compatible with: -at national level, the explanatory notes or opinions adopted for the purposes of interpreting rules or with a judgment of a competent court and -at international level, the Agreement on Rules of Origin established in the World Trade Organisation (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement and 3) where it is revoked or amended provided the holder is informed of such revocation or amendment. The date on which binding information ceases to be valid for the cases referred to in item b) under 1 and 2 of this paragraph shall be the date when the abovementioned measures are officially published.

(6) The holder of binding information which ceases to be valid pursuant to paragraph (5) item a) under 2 and 3 or item b) under 2 and 3 of this Article may still use that information for a period of six months from the date of official publication or notification. This right may be used only provided that the holder of information concluded a binding contract for the purchase or sale of the goods in question, on the basis of the binding information, before the measure with which the binding information ceases to be valid was adopted. In the case of paragraph (5) item a) under 1 and item b) under 1 of this Article, the rules or agreement may lay down a period within which the first sentence of this paragraph shall apply.

(7) The classification or determination of origin in binding information may be applied under the conditions laid down in paragraph (6) of this Article, solely for the purpose of determining import or export duties.

Part 5 Other Provisions

Article 12

(1) For the services rendered in the customs procedure, the customs authority shall collect fees, the amount of which shall not exceed the actual costs and shall not be indirect protection of domestic goods or taxation of the import or export for fiscal purposes.

(2) The type and the amount of the customs fees referred to in paragraph (1) of this Article are laid down by the Minister of Finance.

Article 13

(1) The customs authority may carry out all measures of customs supervision and all controls it deems necessary to ensure appropriate application of the customs rules and other regulations.

(2) Customs supervision and customs control shall be carried out selectively, based on risk analysis, in order to identify the risk and to determine its size and to develop the necessary measures for risk assessment based on the criteria developed on national level.

(3) In exceptional circumstances such as to avoid the interference of traffic through the border crossings or interference of the carrying out of the customs procedures inside the customs area, the Minister of Finance may temporarily determine simplifications for the carrying out of the measures of customs supervision and control.

Article 14

For the purposes of applying customs rules and other regulations, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods shall provide the customs authority with all the requisite documents and information, irrespective of the data medium used, and all the requisite assistance at its request and by any time limit prescribed in accordance with those rules and regulations.

Article 15

(1) Any person carrying on a business in the Republic of Macedonia who is obliged to keep accounts in accordance with law shall, in accordance with the requirements of that business, keep accounts of the assets and liabilities and of all matters relating to that business. The related books of account, documents and other data media shall be kept in such a manner that his rights and obligations and the information of relevance to the levying of import duties shall at all times be clear.

(2) The prescribed accounts of paragraph (1) of this Article shall be kept, filed, recorded and prepared in accordance with law.

(3) The information recorded on a data medium may be transferred to and stored on a different data medium provided the information is transferred accurately and completely and is available throughout the period it must be kept.

(4) The persons that shall in accordance with customs rules keep accounts must keep the accounts in a manner allowing a link with the tax account and other accounts referred to in paragraph (1) of this Article.

(5) All customs documents related to the accounts shall also be considered to be such accounts as those referred to in paragraph (4) of this Article.

(6) The accounts shall be organised and kept, i.e. the data media shall be kept in such a way that allows them to be examined by the customs authority. To that end, those obliged to keep accounts shall provide necessary assistance, including provision of the requisite insight into the design, organisation and operation of the accounting system.

Article 16

All information which is by nature confidential or which is provided on a confidential basis shall be kept by the customs authority as a professional secret. The confidential information shall not be disclosed by the customs authority without the express permission of the person or authority providing it. The communication of confidential data shall be permitted where the customs authority is obliged or authorised to do so pursuant to the provisions in force in respect of data protection, or in connection with actual legal proceedings.

Article 17

(1) The person involved in customs procedure shall keep the documents referred to in Article 14 of this Law for the purposes of control by the customs authority, for the period laid down in the provisions in force and for no less than five calendar years, irrespective of the data medium used.

That period shall run:

a) in the case of goods released for free circulation in circumstances other than those referred to in item b) of this paragraph or goods declared for export, from the last day of the calendar year in which the customs declarations for release for free circulation or export are accepted;

b) in the case of goods released for free circulation at a reduced or zero rate of import duty on account of their end-use, from the last day of the calendar year in which they cease to be subject to customs supervision;

c) in the case of goods placed under another customs procedure, from the last day of the calendar year in which the customs procedure concerned is completed and

d) in the case of goods placed in a free zone or free warehouse, from the end of the calendar year on which they leave the undertaking concerned.

(2) Without prejudice to the provisions of Article 246 of this Law, where a check carried out by the customs authority in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents shall be kept beyond the time limit provided for in paragraph (1) of this Article for a period sufficient to permit the correction to be made and checked.

Article

18

Where a period is determined for the purpose of applying customs rules, such period shall not be extended unless specific provision is made in the customs rules concerned.

TITLE 2 BASES FOR DETERMINATION OF THE IMPORT I.E. EXPORT DUTIES AND OF THE OTHER MEASURES PRESCRIBED IN RESPECT OF TRADE IN GOODS

CHAPTER 1 CUSTOMS TARIFF AND TARIFF CLASSIFICATION OF GOODS

Article 19

(1) Duties legally owed where a customs debt is incurred shall be determined on grounds of the Customs Tariff of the Republic of Macedonia.

(2) The other measures prescribed by provisions governing specific fields relating to trade in goods shall, where appropriate, be applied according to the tariff classification of those goods.

(3) The Customs Tariff of the Republic of Macedonia shall comprise:

a) nomenclature of goods based on the International Convention on the Harmonised Commodity Description and Coding System (Harmonised System) and the Combined nomenclature of the European Union;

b) any other nomenclature which is wholly or partly based on the nomenclature referred to in this paragraph under a) which adds any subdivisions to it, and which is established by provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

c) the customs rate and the amount of the duties applicable to goods covered by the nomenclature referred to in under item a) of this paragraph;

d) the preferential tariff measures contained in agreements which the Republic of Macedonia has concluded with certain countries, groups of countries and which provide for approval of preferential tariff treatment;

(e) preferential tariff measures adopted unilaterally by the Republic of Macedonia in respect of certain countries, group of countries or territories;

(f) autonomous measures providing for reduction or suspension of import duties chargeable on certain goods and

(g) other tariff measures provided for by other legislation.

(4) The measures referred to in paragraph (3) items d), e) and f) of this Article shall apply at the declarant's request instead of the customs rate and the amount of the duties provided for in paragraph (3) item c) of this Article where the goods concerned fulfil the conditions laid down.

(5) Where application of the measures referred to in paragraph (3) items d), e) and f) of this Article is restricted to a certain volume of imports, it shall cease: a) in the case of tariff quotas, as soon as the stipulated limit on the volume of imports is reached and b) in the case of tariff ceilings, in accordance with the rules in force.

(6) The tariff classification of goods shall be the determination, according to the rules in force, of tariff headings, tariff subheadings and tariff codes of the Customs Tariff of the Republic of Macedonia under which the aforesaid goods are to be classified.

(7) The Government of the Republic of Macedonia on proposal by the Minister of Economy, determined in agreement with the Minister of Finance and with prior consultation with the Minister of Agriculture, Forestry and Water Management or other Minister managing the state administration authority of the related field, having regard to the type of goods, shall prescribe autonomous measures providing for reduction or suspension of the import duties referred to in paragraph (3) item f) of this Article. The measures of this paragraph shall be provided for goods that are not produced in the Republic of Macedonia or are not produced in sufficient quantities or do not correspond to the special needs of the local industry. Autonomous measures for reduction or suspension of import duties may be determined for a defined or undefined period, as well as for a limited or unlimited quantity of goods.

(8) The Government of the Republic of Macedonia on proposal by the Minister of Economy, determined in agreement with the Minister of Finance and with prior consultation with the Minister of Agriculture, Forestry and Water Management or other Minister managing the state administration authority of the related field, having regard to the type of goods, prescribes in more

detail the conditions which must be complied with for goods to be subject to autonomous measures for reduction or suspension of import duties, the procedure for introduction of autonomous measures, as well as the manner of their distribution or use.

Article 20

(1) The favourable tariff treatment from which certain goods may benefit by reason of their nature or end-use shall be subject to the detailed conditions laid down in accordance with the regulation referred to in Article 257 of this Law. Where under this regulation the granting of an authorisation is required, Articles 99 and 100 of this Law shall apply.

(2) For the purposes of paragraph (1) of this Article, the expression 'favourable tariff treatment' means a reduction in or suspension of the import duties referred to in Article 4 item 9) of this Law, even within the framework of a tariff quota.

CHAPTER 2 ORIGIN OF GOODS

Section 1 Non-preferential origin of goods

Article 21

The provisions of Articles 22, 23, 24 and 25 of this Law define the non-preferential origin of goods for the purposes of:

- a) applying the Customs Tariff of the Republic of Macedonia with the exception of the measures referred to in Article 19 paragraph (3) items d) and e) of this Law;
- b) applying measures other than tariff measures established by provisions governing specific fields relating to trade in goods and c) the preparation and granting of certificates of origin.

Article 22

(1) Goods originating in a country shall be those wholly obtained or produced in that country.

(2) The expression 'goods wholly obtained in a country' means: a) mineral products extracted within that country; b) vegetable products harvested therein; c) live animals born and raised therein; d) products derived from live animals raised therein; e) products of hunting or fishing carried on therein; f) products of sea-fishing and other products taken from the sea outside a country's territorial sea by vessels registered or recorded in the country concerned and flying the flag of that country; g) goods obtained or produced on board factory ships from the products referred to in item f) of this paragraph originating in that country, provided that such factory ships are registered or recorded in that country and fly its flag; h) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that that country has exclusive rights to exploit that seabed or subsoil; i) waste and scrap products derived from manufacturing operations and used articles, if they were collected therein and are fit only for the recovery of raw materials and j) goods which are produced therein exclusively from goods referred to in items a) to i) of this paragraph or from their derivatives, at any stage of production.

(3) For the purposes of paragraph (2) the expression 'country' also covers that country's territorial sea.

Article 23

Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.

Article 24

Any processing or working in respect of which it is established, or in respect of which the facts as

ascertained, justify the presumption, that its sole object was to circumvent the provisions applicable in the Republic of Macedonia to goods from specific countries, shall under no circumstances be deemed to confer on the goods thus produced the origin of the country where it is carried out within the meaning of Article 23 of this Law.

Article 25

(1) Customs legislation or other legislation of the Republic of Macedonia governing specific fields may provide that a document must be produced as proof of the origin of goods.

(2) Notwithstanding the production of such document as referred to in paragraph (1) of this Article the customs authority may, in the event of reasonable doubts, require presentation of any additional proof to ensure that the indication of origin does indeed comply with customs rules.

Section 2

Preferential origin of goods

Article 26

(1) The rules on preferential origin shall lay down the conditions governing acquisition of origin which goods must fulfil in order to benefit from the measures referred to in Article 19 paragraph (3) item d) or e) of this Law.

(2) The rules of paragraph (1) of this Article shall: a) in the case of goods covered by the agreements referred to in Article 19 paragraph (3) item d) of this Law, be determined in those agreements and b) in the case of goods benefiting from the preferential tariff measures referred to in Article 19 paragraph (3) item e) of this Law, be determined in accordance with the regulation referred to in Article 257 of this Law.

CHAPTER 3

VALUE OF GOODS FOR CUSTOMS PURPOSES

Article 27

The provisions of this Chapter shall determine the customs value of goods for the purposes of applying the Customs Tariff and non-tariff measures laid down by special provisions governing specific fields relating to trade in goods.

Article 28

(1) The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs area of the Republic of Macedonia, adjusted, where necessary, in accordance with Articles 35 and 36 of this Law, provided:

a) that there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which:

are provided for under the regulations of the Republic of Macedonia,

limit the geographical area in which the goods may be resold or

do not substantially affect the value of the goods;

b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with Article 35 of this Law and

d) that the buyer and seller are not related, or, where the buyer and seller are related, that the transaction value is acceptable for customs purposes in accordance with paragraph (2) of this Article.

(2) a) In determining whether the transaction value is acceptable for the purposes of paragraph (1) of this Article, the fact that the buyer and the seller are related shall not in itself be sufficient

grounds for regarding the transaction value as unacceptable. In such case, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the customs authority has reasons for considering that the relationship influenced the price, it shall communicate its reasons to the declarant and he shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the reasons shall be in writing; b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph (1) of this Article wherever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time: 1) the transaction value in sales, between buyers and sellers who are not related in any particular case, of identical or similar goods for export to the Republic of Macedonia; 2) the customs value of identical or similar goods, as determined under Article 32 of this Law and 3) the customs value of identical or similar goods, as determined under Article 33 of this Law. In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 35 of this Law and costs incurred by the seller in sales in which he and the buyer are not related and where such costs are not shown in sales in which he and the buyer are related.

c) The criteria set forth in paragraph (2) item b) of this Article are to be used at the request of the declarant and only for comparison purposes and not for substitution of values.

(3) a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods and includes all payments made or to be made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instrument and may be made directly or indirectly and

b) Activities, including marketing activities, undertaken by the buyer on his own account, other than those for which an adjustment of the value is provided in accordance with Article 35 of this Law, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller or have been undertaken by agreement with the seller. Their cost shall not be added to the price actually paid or payable in determining the customs value of imported goods.

Article 29

(1) a) Where the customs value cannot be determined under Article 28 of this Law, the transaction value of identical goods sold for export to the Republic of Macedonia and exported at or about the same time as the goods being valued, shall be considered as customs value.

b) When this Article is applied, in the determining of the customs value, the transaction value of the identical goods sold at a same commercial level, and mainly in the same quantity as the goods being valued is used. When such sale is not found, the transaction value of identical goods sold at a different commercial level and/or in different quantities is used with the necessary adjustments in regard to the differences in the commercial level and/or the quantity, and under the condition that such adjustment may be made based on evidence making clear the justification and accuracy of the adjustment regardless of the fact whether the value is increased and/or decreased with the adjustment.

(2) When the costs and charges referred to in Article 35 paragraph (1) item d) of this Law are included in the transaction value, an adjustment is to be made in order to take into account the substantial differences of those costs and charges of the imported goods and the identical goods arising from the difference in distance and type of transport.

(3) If when this Article is applied, more than one transaction value of identical goods is established, the lowest such value is used to determine the customs value of the imported goods.

Article 30

(1) a) If the customs value of the imported goods cannot be determined in accordance with Articles 28 and 29 of this Law, the transaction value of similar goods shall be considered as customs value, sold for export to the Republic of Macedonia and exported at the same or about the same time as the goods being valued. b) When this Article is applied, in the determining of the customs value, the transaction value of similar goods sold at the same commercial level and mainly in the same quantity as the goods being valued is used. When such sale is not found, the transaction value of similar goods sold at a different commercial level and/or in different quantities shall be used with the necessary adjustments in regard to the differences in the commercial level and/or the quantity, and under the condition that such adjustment may be made based on evidence making clear the justification and accuracy of the adjustment regardless of the fact whether the value is increased and/or decreased with the adjustment.

(2) When the charges referred to in Article 35 paragraph (1) item e) of this Law are included in the transaction value, an adjustment is to be made in order to take into account the substantial differences of those costs and charges of the imported goods and the similar goods arising from the difference in distance and type of transport.

(3) If when this Article is applied more than one transaction value of similar goods is established, the lowest such value is used to determine the customs value of the imported goods.

Article 31

If the customs value of the imported goods cannot be determined in accordance with Articles 28, 29 and 30 of this Law, the customs value shall be determined in accordance with Article 32 of this Law. If the customs value cannot be determined in accordance with Article 32 of this Law, the customs value shall be determined in accordance with Article 33 of this Law, except in the case when the declarant requests the order of application of Article 32 and Article 33 of this Law to be changed.

Article 32

(1) a) If the imported goods or identical or similar imported goods are sold in the Republic of Macedonia in the same condition in which they were imported, the customs value of such imported goods, in accordance with the provisions of this Article, is to be established on the basis of the unit price to which the imported or identical or similar imported goods in such condition, in the greatest aggregate quantity, are sold to persons who are not related to the persons they purchase the goods from, at the same or about the same importation time as the valued goods, under the condition that the price is reduced of the amount of: 1) The usual commissions payable or agreed to be paid or the usual increases the purpose of which is a larger profit and general expenses (including direct and indirect expenses for marketing of the subject goods) related to the sale in the Republic of Macedonia of imported goods of the same class or type; 2) The usual transportation costs and insurance and other related costs incurred in the Republic of Macedonia; 3) The charges referred to in Article 35 paragraph (1) item e) of this Law, where applicable, and 4. The import duties and other charges payable in the Republic of Macedonia for the importation or sale of goods. b) If neither the imported goods nor the identical or similar imported goods are sold at the same or about the same time of the importation of the goods being valued, the customs value of the goods subject to the provisions of paragraph (1) item a) of this Article, shall be determined by the unit price at which the imported or identical or similar imported goods were sold in the Republic of Macedonia in the same condition they were imported in, at the earliest date following the importation of the goods being valued, but prior to the expiration of 90 days of such import.

(2) If in the Republic of Macedonia, the imported goods or identical or similar imported goods are not sold in the same condition as on importation, in that case, if the importer so requires, the customs value shall be determined based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Republic of

Macedonia who are not related to the persons they are buying the goods from, under the condition that in the valuating process, the value incurred with the processing and the reductions referred to in paragraph (1) item a) of this Article, are considered.

Article 33

(1) The customs value of the imported goods, in accordance with the provisions of this Article, is determined on the basis of the computed value. The computed value is a sum of: a) the value of the material and the costs of production or other processing employed in the producing of the imported goods; b) the amount of profit and general expenses equal to the amount usually reflected in the sale of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export in the Republic of Macedonia and c) the cost or value of the items referred to in Article 35 paragraph (1) under e) of this Law.

(2) Any person who is not a resident of the Republic of Macedonia may not be requested or forced to provide inspection or allow access to any receipt or other document for the purpose of determining the computed value. The customs authority may check the data provided on behalf of the manufacturer of the goods for the purpose of determining the customs value in accordance with this Article in another country, with the previous authorisation of the manufacturer and under the condition that the authorities of the respective country are timely notified and do not withstand the inspection.

Article 34

(1) If the customs value of imported goods cannot be established based on Articles 28, 29, 30, 31, 32, and 33 of this Law, it shall be established on the basis of data accessible in the Republic of Macedonia with the use of justifiable means which are in accordance with the principles and provisions contained in:

-the Agreement for application of Article 7 of the General Customs Duty and Trade Agreement of 1994, -Article 7 of the General Customs Duty and Trade Agreement and -Article 27, including Article 45 of this Law.

(2) In accordance with the provisions of this Article, the customs value cannot be determined on the basis of: a) the selling price in the Republic of Macedonia of goods produced in the Republic of Macedonia; b) a system which provides for customs purposes acceptance of the higher of the two alternative values; c) the price of goods on the local market of the exporting country; d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 33 of this Law; e) price of the goods for export to a country other than the Republic of Macedonia; f) minimum customs values or g) arbitrary or fictitious values. Upon request, the importer shall be notified in writing of the customs value determined in accordance with the provisions of this Article and of the methods applied in the determination of such value.

Article 35

(1) In determining the customs value under Article 28 of this Law, there shall be added to the price actually paid or payable for the imported goods: a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods: 1) commissions and brokerage, except buying commissions; 2) the cost of containers which are treated as being one, for customs purposes, with the goods in question, 3) the cost of packing, whether for labour or materials; b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable: 1) materials, components, parts and similar items incorporated in the imported goods; 2) tools, dies, moulds and similar items used

in the production of the imported goods; 3) materials consumed in the production of the imported goods and 4) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Republic of Macedonia and necessary for the production of the imported goods;

c) royalties (fees or revenue percentage paid to the holder of the intellectual property right) and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable; d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller and e) 1) the cost of transport and insurance of the imported goods to the point of entrance in the customs area of the Republic of Macedonia and 2) loading, unloading and handling charges associated with the transport of the imported goods to the place of introduction into the customs area of the Republic of Macedonia.

(2) Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

(3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

(4) In this Chapter, the term 'buying commissions' means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

(5) Notwithstanding paragraph (1) item c) of this Article:

a) charges for the right to reproduce the imported goods in the Republic of Macedonia shall not be added to the price actually paid or payable for the imported goods in determining the customs value and b) payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the Republic of Macedonia of the goods.

Article 36

Provided that they are shown separately from the price actually paid or payable, the following shall not be included in the customs value: a) charges for the transport of goods after their arrival at the place of introduction into the customs area of the Republic of Macedonia; b) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation of industrial plants, machinery or equipment; c) charges for interests under a financing arrangement entered into by the buyer and relating to the purchase of imported goods, irrespective of whether the finance is provided by the seller or another person, provided that the financing arrangement has been made in writing, and where required, the buyer can demonstrate that: such goods are actually sold at the price declared as the price actually paid or payable, and the claimed rate of interest does not exceed the level for such transactions prevailing in the country where, and at the time when, the finance was provided; d) charges for the right to reproduce imported goods in the Republic of Macedonia; e) buying commissions; f) import duties or other charges payable in the Republic of Macedonia by reason of the importation or sale of the goods.

Article 37

All price reductions are not included in the customs value, in accordance with Article 28 of this Law if agreed before the completed importation and within the agreed period.

Article 38

The customs value of goods imported without paying the counter-value shall be determined in compliance with the provisions stipulated in Articles 29 through 34 of this Law.

Article 39

(1) Notwithstanding the provisions of Articles 27 to 45 of this Law, in determining the customs value of imported carrier media for use in automated data processing equipment and bearing data or instructions, only the costs or the value of the data carriers is considered. The customs value of the imported data or instructions carriers shall not include the costs or the value of the data or instructions, provided that the costs or values are separated from the costs or value of the data carriers.

(2) For the purpose of this Article: a) the expression 'data carriers' does not apply to integrated circuits, semiconductors and similar devices or products in which such integrated circuits or devices are incorporated and b) the expression 'data or instructions' does not apply to audio, cinematographic or video records.

Article 40

(1) When importing goods for which the obligation pertaining to Article 35 paragraph (1) items b), c), d) of this Law is contracted, the importer shall state so in the customs declaration.

(2) The importer shall declare to the customs authority the resale, disposal, or use of the imported goods from which the obligation of payment of a certain amount to the seller in accordance with Article 35 paragraph (1) item d) of this Law arises, within 30 days at latest, following the date of payment.

Article 41

(1) Where a delivery consists of several kinds of goods that are subject to customs clearance by different customs rates, the costs pertaining to the purchase of the goods expressed in total amount for the whole delivery, as well as the costs for transportation, insurance and delivery are calculated proportionally to the value of each type of goods.

(2) As exception to paragraph (1) of this Article, the customs authority may, upon request by the declarant, add the costs from paragraph (1) of this Article related to the several types of goods in one delivery to the value of the goods for which the import duties are the highest.

Article 42

(1) The customs authority may in the customs procedure request that the declarant provides all documents and data needed for the determining of the customs value in accordance with Articles 28 to 36 of this Law.

(2) The provisions from Articles 27 to 45 of this Law shall not limit nor put in question the right of the customs authority to determine the authenticity and the accuracy of any statement, document or declaration presented for the purpose of determining the customs value.

(3) If an invoice is not presented for justifiable reasons, i.e. the customs authority has grounds for reasonable doubt that the value of the goods listed in the invoice does not comply with the provisions for transaction value of this Law, the customs value shall be determined on the basis of the provisions of Articles 29 to 34 of this Law.

(4) Upon written request, the importer has the right to receive by the customs authority clarification in writing of the manner of determining the customs value of the imported goods.

Article 43

If in the procedure of determining the customs value it is necessary to convert the foreign into local currency, the foreign currency shall be calculated in accordance with the average exchange rate determined by the National Bank of the Republic of Macedonia. The manner of application of the average exchange rate in the procedure of determining the customs value is prescribed by the Minister of Finance.

Article 44

If in the procedure of determining the customs value of the imported goods it is necessary to postpone the final determination of the customs value, the declarant may receive the goods, under the condition that a security for the payment of the customs debt is provided for in accordance with Article 204, 208, 210, 211, 213, 214 and 215 of this Law, in an amount covering the final payment of the customs debt that may be incurred.

Article 45

The provisions of this Chapter shall be without prejudice to the specific provisions of this Law or the regulation of Article 257 of this Law regarding the determination of the value, for customs purposes, of goods released for free circulation after being assigned a different customs-approved treatment or use of goods.

TITLE 3

PROVISIONS APPLICABLE TO GOODS BROUGHT INTO THE CUSTOMS AREA UNTIL THEY ARE ASSIGNED A CUSTOMS-APPROVED TREATMENT OR USE

CHAPTER 1 ENTRY OF GOODS INTO THE CUSTOMS AREA

Article 46

(1) Foreign goods may be entered into the customs area through customs border crossings at the time when they are open for circulation.

(2) The customs border crossings through which goods and passenger circulation is effected in accordance with customs or other rules and their categorization are determined by the Government of the Republic of Macedonia on proposal by the Minister of Finance. For the design, construction and reconstruction of premises at the customs border crossings, the consent of the Minister of Finance is required upon prior opinion given by the Director of the Customs Administration.

(3) Circulation of goods which are subject to phyto-sanitary, veterinary or other prescribed control is allowed only through border crossings which in accordance with appropriate rules are designated for entrance and exit of such goods.

(4) In case of exceptional circumstances, force majeure, greater disturbance of public order and the safety of the country, the Government of the Republic of Macedonia may prescribe that the entry and exit of goods or of certain goods is to be carried out only through certain border crossings.

Article 47

(1) Goods brought into the customs area shall, from the time of their entry, be subject to customs supervision. They may be subject to control by the customs authority in accordance with the provisions in force.

(2) They shall remain under customs supervision for as long as necessary to determine their customs status. In the case of foreign goods and without prejudice to Article 95, paragraph (1) of this Law, the goods remain under customs supervision until their customs status is changed, they enter a free zone or free warehouse, they are reexported or destroyed in accordance with Article 191 of this Law.

Article 48

(1) Goods brought into the customs area shall be conveyed by the person bringing them into the Republic of Macedonia without delay, by the route specified by the customs authority and in accordance with its instructions to:

a) the customs authority at the border crossing or to any other place designated or approved by the customs authority or b) a free zone, if the goods are to be brought into that free zone directly:
· by waterway or air or

· by land without passing through another part of the customs area where the free zone adjoins the land frontier between the Republic of Macedonia and a third country.

(2) The customs authority referred to in paragraph (1) item a) of this Article shall be the closest customs authority after the border line on the shortest regular route.

(3) Any person who assumes responsibility for the carriage of goods after they have been brought into the customs area, *inter alia* as a result of transshipment, shall become responsible for compliance with the obligation laid down in paragraph (1) of this Article.

(4) The provisions of paragraph (1) item a) of this Article do not preclude the application of any of the regulations in force concerning tourist, border, postal traffic or traffic of insignificant economic importance, provided that this does not jeopardize the possibility of carrying out customs supervision and customs control.

(5) Paragraph (1) shall not apply to goods on board aircraft crossing the airspace of the Republic of Macedonia without having as their destination an airport situated in the Republic of Macedonia.

Article 49

(1) Where, by reason of unforeseeable circumstances or force majeure, the obligations laid down in Article 48 paragraph (1) of this Law cannot be complied with, the person bound by that obligation or any other person taking actions in his place shall inform the competent customs authority of the situation without delay. Where the unforeseeable circumstances or force majeure do not result in total loss of the goods, the customs authority shall also be informed of the precise location of the goods.

(2) Where, by reason of unforeseeable circumstances or force majeure, an aircraft referred to in Article 48 paragraph (4) of this Law is forced to land temporarily in the customs area, and the obligation laid down in Article 48 paragraph (1) of this Law cannot be complied with, the person bringing the aircraft into the customs area or any other person taking actions in his place shall inform the customs authority of the situation without delay.

(3) The customs authority shall determine the measures to be taken in order to permit customs supervision of the goods referred to in paragraph (1) of this Article as well as of those on board the aircraft in accordance with paragraph (2) of this Article and, where appropriate, to ensure that they are subsequently conveyed to the customs authority or other place designated or approved by the customs authority.

CHAPTER 2 PRESENTATION OF GOODS TO THE CUSTOMS AUTHORITY

Article 50

(1) Goods which, pursuant Article 48 paragraph (1) item a) of this Law, arrive at the customs authority at the border crossing or other place designated or approved by the customs authority shall be presented to the customs authority by the person who brought the goods into the customs area or, if appropriate, by the person who assumes responsibility for carriage of the goods following such entry.

(2) The customs authority shall designate the places where the goods shall be presented and the prescribed formalities carried out.

Article 51

The provisions of Article 50 of this Law shall not preclude the application of the rules in force relating to goods:

- a) carried by travellers;
- b) placed under a customs procedure, but not presented to the customs authority.

Article 52

Once they have been presented, and in order that they may be assigned a customs-approved treatment or use, the goods may be examined or samples may be taken with the permission of the customs authority. Such permission shall be granted, upon request, to the person authorised to assign the goods such treatment or use.

CHAPTER 3 SUMMARY DECLARATION AND UNLOADING OF GOODS PRESENTED TO THE CUSTOMS AUTHORITY

Article 53

(1) Goods presented to the customs authority, with the exception of goods subject to Article 55 of this Law, shall be covered by a summary declaration.

(2) The summary declaration shall be lodged once the goods have been presented to the customs authority. The customs authority may, however, allow a period for lodging the declaration which shall not extend beyond the first working day following the day on which the goods are presented to the customs authority.

Article 54

(1) The summary declaration shall be made on the form provided for in the provision of Article 257 of this Law. The customs authority may also permit the use of any commercial or official document which contains the particulars necessary for identification of the goods as a summary declaration.

(2) The summary declaration shall be lodged by: a) the person who brings the goods into the customs area or by any person who assumes responsibility for carriage of the goods following such entry and b) the person in whose name the person referred to in item a) of this paragraph acts.

Article 55

Without prejudice to the provisions of the customs and other regulations governing goods imported by travellers and consignments by letter and parcel post, the customs authority may waive the lodging of a summary declaration under the condition that this does not jeopardize the customs supervision of the goods and where, prior to the expiry of the period referred to in Article 53 of this Law, the formalities necessary for the goods to be assigned a customs approved treatment or use are carried out.

Article 56

(1) Goods may be unloaded or transhipped from the means of transport carrying them solely with the permission of the customs authority in places designated or approved by that customs authority. Such permission shall not be required in the event of imminent danger necessitating the immediate unloading of all or part of the goods. In that case, the customs authority shall be informed accordingly forthwith.

(2) For the purpose of inspecting goods and the means of transport carrying them, the customs authority may at any time require goods to be unloaded and unpacked.

Article 57

Goods shall not be removed from their original position without the permission of the customs authority.

**CHAPTER 4 OBLIGATION TO ASSIGN GOODS PRESENTED TO THE CUSTOMS AUTHORITY A
CUSTOMS-APPROVED TREATMENT OR USE**

Article 58

Foreign goods presented to the customs authority shall be assigned a customs-approved treatment or use approved for such foreign goods.

Article 59

(1) Where goods are covered by a summary declaration, the formalities necessary for them to be assigned a customs-approved treatment or use must be carried out within 20 days from the date on which the summary declaration is lodged.

(2) By way of derogation from paragraph (1) of this Article, where circumstances so warrant, the customs authority may set a shorter period or authorise an extension of the period referred to in paragraph (1) of this Article. Such extension shall not, however, exceed the genuine requirements which are justified by the circumstances.

CHAPTER 5 TEMPORARY STORAGE OF GOODS

Article 60

Until such time as they are assigned a customs-approved treatment or use, goods presented to a customs authority shall, following such presentation, have the status of goods in temporary storage (hereinafter referred to as 'goods in temporary storage').

Article 61

(1) Goods in temporary storage shall be stored only in places approved by the customs authority in the manner determined by that authority.

(2) The customs authority may require the person holding the goods to provide a security with a view to ensuring payment of any customs debt which may arise under Articles 218 or 219 of this Law.

Article 62

Without prejudice to the provisions of Article 52 of this Law, goods in temporary storage shall be subject only to such forms of handling as are designed to ensure their preservation in an unaltered state without modifying their appearance or technical characteristics.

Article 63

(1) Where the formalities necessary for the assigning of a customs-approved treatment or use for the goods are not initiated within the period determined in accordance with Article 59 of this Law, the customs authority shall without delay take all measures necessary, including the sale of the goods, to regularize the occurred situation.

(2) The customs authority may, at the risk and expense of the person holding the goods, have them transferred to a special place, which is under customs supervision, until the situation is regularized.

CHAPTER 6 PROVISIONS APPLICABLE TO FOREIGN GOODS UNDER A TRANSIT PROCEDURE

Article 64

The provisions of Article 48 of this Law, with the exception of paragraph (1) item

a) thereof, and Articles 49 to 63 of this Law shall not apply when goods already placed under a transit procedure are brought into the customs area.

Article 65

Once foreign goods which have moved under a transit procedure reach their destination in the customs area and have been presented to the customs authority in accordance with the rules governing transit, the provisions of Articles 52 to 63 of this Law shall apply.

CHAPTER 7 OTHER PROVISIONS

Article 66

Where the circumstances so require, the customs authority may have goods presented to customs destroyed. The customs authority shall inform the holder of the goods accordingly. The costs of destroying the goods shall be borne by the holder of the goods.

Article 67

Where the customs authority finds that goods have been unlawfully brought into the customs area or have been withheld from customs supervision, it shall take any measures necessary, including sale of the goods, in order to regularize the occurred situation.

TITLE 4 CUSTOMS-APPROVED TREATMENT OR USE OF GOODS

CHAPTER 1 GENERAL PROVISIONS

Article 68

(1) Save as otherwise provided with the customs and other regulations, goods may at any time and under the conditions laid down, be assigned any customs-approved treatment or use irrespective of their nature or quantity, or their country of origin, consignment or final destination.

(2) Notwithstanding paragraph (1) of this Article, customs approved treatment or use of goods shall not be assigned if it precludes the imposition of prohibitions or restrictions prescribed as special measures for the purpose of security and public morality, the preservation of the health and life of humans, animals and plants, the protection of the living environment, the protection of natural rarities, protection of cultural heritage with artistic, historic, archaeological, ethnological value, or technical values, the protection of copyright and other related rights and industrial property rights, as well as other measures of commercial policy prescribed by law.

CHAPTER 2 CUSTOMS PROCEDURES

Section 1 Placing of goods under a customs procedure

Article 69

(1) All goods intended to be placed under a customs procedure shall be covered by a customs declaration for that customs procedure.

(2) Domestic goods declared for an export, outward-processing, transit or customs warehousing procedure shall be subject to customs supervision from the time of acceptance of the customs declaration until such time as they leave the customs area or are destroyed or the customs declaration is invalidated.

Article 70

(1) The Government of the Republic of Macedonia on proposal by the Minister of Finance may determine certain types of goods, due to their specific attributes to be suitable, in regard to customs actions, to be the subject of actions of only certain customs authorities.

(2) The Director of the Customs Administration shall determine the customs authorities for the release for free circulation of certain types of goods, account being taken of the nature of the goods.

Article 71

The customs declaration shall be made: a) in writing; b) using a data-processing technique in accordance with the rules and with the authorisation of the customs authority or c) orally or by means of any other act whereby the holder of the goods expresses his wish to place the goods under a customs procedure, where such a possibility is provided for under the regulation referred to in Article 257 of this Law.

A. Customs Declaration in Writing

1. Normal procedure

Article 72

(1) A customs declaration in writing shall be made on a form prescribed under the provision of Article 257 of this Law. The customs declaration in writing shall be signed and must contain all the particulars necessary for implementation of the customs rules governing the customs procedure for which the goods are declared.

(2) The customs declaration shall be accompanied by all the documents required for implementation of the provisions governing the customs procedure for which the goods are declared.

(3) The Minister of Finance shall determine the manner of completing the customs declaration and the code of codes that shall be used for the purpose of completion of the customs declaration.

Article 73

A customs declaration which complies with the conditions laid down in Article 72 of this Law shall be accepted by the customs authority without delay, provided that the goods to which the customs declaration refers are presented to the customs authority.

Article 74

(1) Subject to Article 5 of this Law, a customs declaration may be made by any person who is able to present the goods in question or to have them presented to the competent customs authority, together with all the documents required to be produced for the application of the rules governing the customs procedure in respect of which the goods were declared.

(2) Where acceptance of a customs declaration imposes particular obligations on a specific person, the customs declaration must be made exclusively by that person or on his behalf.

(3) The declarant must be established in the Republic of Macedonia. However, this condition shall not apply to persons who:

- a) make a declaration for transit or temporary importation and
- b) declare goods on an occasional basis, provided that the customs authority considers this to be justified.

Article 75

At the request by the declarant the customs authority may authorise amendment of one or more of the particulars of the customs declaration after it has been accepted. The amendment shall not have the effect of rendering the customs declaration applicable to goods other than those it originally covered. No amendment shall be permitted where authorisation is requested after the customs authority:

- a) has informed the declarant that it intends to examine the goods or
- b) has established that the particulars in question are incorrect or
- c) has released the goods.

Article 76

(1) The customs authority shall, at the request of the declarant, invalidate a customs declaration already accepted where the declarant furnishes proof that goods were declared in error for the customs procedure covered by that customs declaration or that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified. Where the customs authority has informed the declarant of its intention to examine the goods, a request for invalidation of the customs declaration shall not be accepted until after the examination has taken place.

(2) The customs declaration shall not be invalidated after the goods have been released, except in cases defined in accordance with the regulation referred to in Article 257 of this Law.

(3) Invalidation of the customs declaration shall be without prejudice to the application of the penal provisions of this Law.

Article 77

Save as otherwise provided for with this Law and the provisions brought based on this Law, the date used for the application of all rules governing the customs procedure for which the goods have been declared shall be the date of acceptance of the customs declaration by the customs authority.

Article 78

For the verification of a customs declaration which they have accepted, the customs authority may:

- a) examine the documents covering the declaration and the documents accompanying it. The customs authority may require the declarant to present other documents for the purpose of verifying the accuracy of the particulars contained in the customs declaration and
- b) examine the goods and take samples for analysis or for detailed examination.

Article 79

(1) Transport of the goods to the places where they are to be examined or samples are to be taken, and all the handling necessitated by such examination of the goods or taking of samples, shall be carried out by or under the responsibility of the declarant. The costs incurred shall be borne by the declarant.

(2) The declarant shall be entitled to be present when the goods are examined and when samples are taken. Where it deems appropriate, the customs authority shall require the declarant to be

present or represented when the goods are examined or samples are taken in order to provide it with the assistance necessary to facilitate such examination or taking of samples.

(3) Provided that samples are taken in accordance with the regulation prescribed with the provision of Article 257 of this Law, the customs authority shall not be liable for payment of any compensation in respect thereof.

Article 80

(1) Where only part of the goods covered by a customs declaration are examined, the results of the partial examination shall be taken to apply to all the goods covered by that customs declaration. The declarant may request further examination of the goods if he considers that the results of the partial examination are not valid as regards the remainder of the goods declared.

(2) For the purposes of paragraph (1) of this Article, where a customs declaration form covers two or more items, the particulars relating to each item shall be deemed to constitute a separate customs declaration.

Article 81

(1) The results of verifying the customs declaration shall be used for the purposes of applying the customs and other regulations governing the customs procedure under which the goods are placed.

(2) Where the customs declaration is not verified, the provisions referred to in paragraph (1) of this Article shall be applied on the basis of the particulars contained in the customs declaration.

Article 82

(1) The customs authority shall take the measures necessary to identify the goods where identification is required in order to ensure compliance with the conditions governing the customs procedure for which the said goods have been declared.

(2) Customs markings affixed to the goods or means of transport shall be removed or destroyed only by the customs authority or with its permission unless, as a result of unforeseeable circumstances or force majeure, their removal or destruction is essential to ensure the protection of the goods or means of transport.

Article 83

(1) Without prejudice to Article 84 of this Law, where the conditions for placing the goods under the procedure in question are fulfilled and provided the goods are not subject to any prohibitive or restrictive measures, the customs authority shall release the goods as soon as the particulars in the customs declaration have been verified or accepted without verification. The same shall apply where such verification cannot be completed within a reasonable period of time and the goods are no longer required to be present for verification purposes.

(2) All the goods covered by the same customs declaration shall be released at the same time. For the purposes of this paragraph, where a customs declaration form covers two or more items, the particulars relating to each item shall be deemed to constitute a separate customs declaration.

Article 84

(1) Where acceptance of a customs declaration gives rise to a customs debt, the goods covered by the customs declaration shall not be released unless the customs debt has been paid or secured.

(2) In the temporary import procedure with partial relief from import duties, the goods covered by the customs declaration shall not be released until a security in accordance with customs rules that govern this procedure is provided.

(3) Where, pursuant to the customs provisions governing the customs procedure for which the goods are declared, the customs authority requires the provision of a security, the said goods shall not be released for the customs procedure in question until such security is provided.

Article 85

Any necessary measures, including confiscation and sale, shall be taken by the customs authority to deal with goods which:

a) cannot be released because:

it has not been possible to undertake or continue examination of the goods within the period prescribed by the customs authority for reasons attributable to the declarant; or

the documents which must be produced before the goods can be placed under the customs procedure requested have not been produced or payment; or

a security which should have been made or provided in respect of import duties or export duties, as the case may be, have not been made or provided within the period prescribed; or

the goods are subject to bans or restrictions and b) are not removed within a twenty-day period after their release.

Article 86

(1) Where a state authority decides to, after the procedure is carried out, return the temporarily confiscated foreign goods, the return may be realised only if the customs authority has approved one of the customs approved treatments or uses of the goods and if the customs debt that may be incurred has been settled.

(2) The customs debt incurred in such an event, referred to in paragraph (1) of this Article, shall be settled by the customs debtor.

Article 87

(1) Goods confiscated or abandoned to the state in conformity with the provisions of this Law shall normally be sold. As an exception, the Government of the Republic of Macedonia, on proposal by the Minister of Finance may donate the confiscated goods to state authorities and humanitarian organisations, if such goods are necessary for their operation, i.e. activity, whereas goods of historical, archaeological, ethnographical, cultural, artistic or scientific value -to the competent authority for protection of cultural monuments.

Tobacco products and alcohol beverages which are confiscated or abandoned at the disposal of the state in accordance with the provisions of this Law shall be destroyed under customs supervision in accordance to the customs rules.

(2) Goods that cannot be sold i.e. used for health, veterinarian, phytosanitary, security or other reasons prescribed by law, shall be destroyed under customs supervision, in accordance with the customs rules.

(3) The cost of the destruction referred to in paragraph (2) of this Article shall be borne by the owner or declarant of the goods. Provided they are not known or unavailable, the cost of the destruction shall be borne by the customs authority.

(4) The manner of selling and treatment of the goods referred to in paragraph (1) of this Article, as well as the distribution of the assets obtained from the sale shall be prescribed by the Government of the Republic of Macedonia.

2. Simplified procedures

Article 88

(1) In order to simplify completion of formalities and procedures as far as possible while ensuring that operations are conducted in a proper manner, the customs authority shall, under conditions laid down in accordance with the regulation referred to in Article 257 of this Law, grant permission for:

a) the customs declaration referred to in Article 72 of this Law to omit certain of the particulars referred to in Article 72 paragraph (1) of this Law or for some of the documents referred to in paragraph (2) of that Article not to be attached thereto; b) a commercial or administrative document, accompanied by request for the goods to be placed under the customs procedure in question, to be lodged in place of the customs declaration referred to in Article 72 of this Law and c) the goods to be entered for the customs procedure in question by means of an entry in the records of the holder of the authorisation. In this case, the customs authority may waive the requirement that the declarant presents the goods.

The simplified customs declaration, commercial or administrative document or entry in the records must contain at least the particulars necessary for identification of the goods. Where the goods are entered in the records of the holder of the authorisation, the date of such entry must be included.

(2) Except in cases to be determined in accordance with the provision referred to in Article 257 of this Law, the declarant shall furnish a supplementary declaration which may be of a general, periodic or recapitulative nature.

(3) Supplementary declaration and simplified customs declarations referred to in paragraph (1), items a), b) and c) of this Article, shall be deemed to constitute a single, indivisible document taking effect on the date of acceptance of the simplified customs declarations. In the cases referred to in paragraph (1) item c) of this Article, entry in the records shall have the same legal force as acceptance of the customs declaration referred to in Article 72 of this Law.

(4) Special simplified procedures for the transit procedure shall also be laid down in accordance with the regulation referred to in Article 257 of this Law.

(5) A request for authorisation for a simplified procedure referred to in paragraph (1) item b) and c) of this Article shall be made at the customs authority that is locally competent by the registered office or the place where the detailed accounts of the person making the request are kept.

B. Other declarations

Article 89

(1) Where the customs declaration is made by means of a data-processing technique within the meaning of Article 71 item b) of this Law, or by an oral declaration or any other act within the meaning of Article 71 item c) of this Law, the provisions of Articles 72 to 88 of this Law shall apply accordingly.

(2) Where an oral customs declaration is made in passenger traffic, a special form for calculation of the import duties and other duties shall be used for the purpose of calculation of the duties. The design and the contents of such form shall be prescribed for under the regulation referred to in Article 257 of this Law.

C. Post-clearance examination of declarations

Article 90

(1) The customs authority may, acting *ex officio* or at the request of the declarant, amend the customs declaration after release of the goods within the periods referred to in Article 243 and 250 of this Law.

(2) The customs authority may, after releasing the goods and in order to satisfy itself as to the accuracy of the particulars contained in the customs declaration, inspect the accounting and commercial documents and data relating to the import or export operations in respect of the goods concerned or to subsequent commercial operations involving those goods. Such inspections may be carried out at the premises of the declarant, of any other person directly or indirectly involved in the said operations in a business capacity or at the premises of any other person in possession of the said document and data for business purposes. The customs authority may also examine the goods where it is still possible for them to be produced.

(3) Where the post-clearance examination of the customs declaration indicates that the provisions governing the customs procedure concerned have been applied on the basis of incorrect or incomplete information, the customs authority shall, in accordance with customs and other provisions laid down, take the measures necessary to regularize the occurred situation, taking account of the new information available.

Section 2

Release of goods for free circulation

Article 91

Release for free circulation shall confer on foreign goods the status of domestic goods. In order to release the goods for free circulation, commercial policy measures shall apply, the other formalities laid down in respect of the importation of goods shall be completed and any duties legally due under customs or other regulations shall be charged.

Article 92

(1) By way of derogation from Article 77 of this Law, provided that the import duty is reduced after the date of acceptance of the customs declaration, but before the goods are released for free circulation, the declarant may request application of the more favourable import duty.

(2) The provisions of paragraph (1) of this Article shall not apply where it has not been possible to release the goods for free circulation for reasons attributable to the declarant alone.

Article 93

Where a consignment is made up of goods falling within different tariff classifications, and dealing with each of those goods in accordance with its tariff classification for the purpose of drawing up the customs declaration would entail a burden of work and expense disproportionate to the import duties chargeable, the customs authority may, at the request of the declarant, agree that import duties be charged on the whole consignment on the basis of the tariff classification of the goods which are subject to the highest rate of import duty.

Article 94

(1) By way of derogation from Article 19 paragraph (1) of this Law for the below mentioned goods, the unified import duty is applied in the amount of 15 % of the customs value of the goods:

1) for goods delivered by mail by a natural person to another natural person or 2) for goods that the traveller carries with him/her or has given to be transported, only under the condition that such

goods are not of commercial nature and that the value of the single delivery or goods that the traveller carries with him does not exceed the value prescribed under the regulation referred to in Article 257 of this Law.

(2) The provisions of paragraph (1) of this Article shall not apply to goods for which a customs rate zero is prescribed in the Customs Tariff, and for goods that, in accordance with this Law, are relieved from customs duty payment.

(3) By way of derogation from paragraph (1) of this Article, the traveller or the recipient of the delivery may request that the goods are cleared of customs under the rate prescribed in the Customs Tariff.

(4) It is considered that the goods are not of commercial nature provided: 1) a delivery of goods from one to another natural person is concerned, and the delivery:

-is not intended for resale or any other profitable activity, -contains only goods exclusively for personal use by the recipient or members of his family living with the recipient in a common household, the nature and quantity of which is non-commercial and -is delivered free of charge and 2) goods carried by the traveller or given for transportation are concerned that: -are not intended for resale or other profitable activity and -are exclusively intended for personal use of the traveller and the members of his household living in a common household, or for presents, provided that their nature and quantity are not for commercial purposes.

(5) The types of goods to which the unified import duty may not apply shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 95

(1) Where goods are released for free circulation at a reduced or zero rate of import duties on account of their end-use, they shall remain under customs supervision. Customs supervision shall end when the conditions laid down for granting such a reduced or zero rate of import duties cease to apply, where the goods are exported or destroyed or where the use of the goods for purposes other than those laid down for the application of the reduced or zero rate of import duties is permitted subject to payment of the import duties incurred for the goods.

(2) The provisions of Articles 102 and 104 of this Law shall apply accordingly to goods referred to in paragraph (1) of this Article.

Article 96

Goods released for free circulation shall lose their status as domestic goods where: a) the customs declaration for release for free circulation is invalidated after release or (b) the imported duties payable on those goods are repaid or remitted:

- . under the inward-processing procedure in the form of the drawback system or
- . in respect of defective goods or goods which fail to comply with the terms of the contract, pursuant to the provisions of Article 252 of this Law or
- . in situations of the type referred to in Article 253 of this Law where repayment or remission is conditional upon the goods being exported or re-exported or being assigned an equivalent customs-approved treatment or use of goods.

Section 3 Suspensive arrangements and customs procedures with economic impact

A. Common provisions

Article 97

(1) In Articles 98 to 104 of this Law: a) where the term 'procedure' is used, it is understood as applying, in the case of foreign goods, to the following suspensive procedures:

transit,

customs warehousing,

inward-processing in the form of a system of suspension,

processing under customs control and

temporary importation and

b) where the term 'customs procedure with economic impact' is used, it is understood as applying to the following:

customs warehousing, —inward-processing,

processing under customs control,

temporary importation and — outward-processing.

(2) 'Import goods' means goods placed under a suspensive procedure and goods which, under the inward-processing procedure in the form of the drawback system, have undergone the formalities for release for free circulation and the formalities provided for in Article 139 of this Law.

(3) 'Goods in the unaltered state' means import goods which, under the inward-processing procedure or the procedures for processing under customs control, have undergone no form of processing.

Article 98

The use of any customs procedure with economic impact shall be conditional upon authorisation being issued by the customs authority.

Article 99

The authorisation referred to in Article 98 and that referred to in Article 112 paragraph (1) of this Law shall be granted only:

to persons who offer every security necessary for the proper conduct of the operations and

where the customs authority can supervise and monitor the procedure without having to introduce administrative arrangements disproportionate to the economic needs involved in the approved procedure.

Article 100

(1) The conditions under which the procedure in question is used shall be set out in the authorisation.

(2) The holder of the authorisation shall notify the customs authority of all factors arising after the authorisation was granted which may influence its continuation or content.

Article 101

In the cases referred to in the second sentence of the first indent of Article 4 item 6 of this Law, any products or goods obtained from goods placed under a suspensive arrangement shall be considered as being placed under the same arrangement.

Article 102

(1) The customs authority may make the placing of goods under a suspensive arrangement conditional upon the provision of a security in order to ensure that any customs debt which may be incurred in respect of those goods will be paid.

(2) Special provisions concerning the provision of a security in accordance with the regulation referred to in Article 257 of this Law may be laid down in the context of a specific suspensive arrangement.

Article 103

(1) A suspensive arrangement with economic impact shall be discharged when a new customs-approved treatment or use of goods is assigned by the customs authority:

-to the goods placed under a procedure with economic impact or -to compensating goods or - processed products obtained in one phase of the procedure with economic impact.

(2) The customs authority shall take all the measures necessary to regularise the position of goods in respect of which a procedure has not been discharged under the conditions prescribed.

Article 104

The rights and obligations of the holder of a customs procedure with economic impact may, on the conditions laid down by the customs authority, be transferred successively to other persons who fulfil any conditions laid down in order to benefit from the procedure in question.

B. Transit procedure

I. General provisions

Article 105

(1) With the transit procedure the customs authority shall allow the movement from one point to another within the customs area, of: a) foreign goods, without such goods being subject to payment of import duties and other charges or to commercial policy measures when placed under this procedure and b) domestic goods, for which an export procedure has been conducted in the cases and under the conditions determined with the regulation referred to in Article 257 of this Law.

(2) Movement as referred to in paragraph (1) of this Article shall take place: a) under the transit procedure laid down in this Law or b) under cover of a TIR carnet laid down in the TIR Convention provided that such movement:

1) began or is to end outside the customs area or 2) relates to consignments of goods which must be unloaded in the customs area and which are conveyed with goods to be unloaded in a third country or 3) is effected between two points in the customs area through the territory of a third country; c) under cover of an ATA carnet used as a transit document; or d) under cover of the form 302 provided for in the Convention between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951 or e) by post (including parcel post).

(3) The transit procedure shall apply without prejudice to the provisions of customs rules applicable to the movement of goods placed under a customs procedure with economic impact.

Article 106

(1) The transit procedure shall end and the obligations of the holder shall be met when the goods placed under the procedure and the required documents are produced at the customs authority of destination in accordance with the provisions of the procedure in question.

(2) The customs authority shall discharge the procedure when it is in a position to establish, on the basis of a comparison of the data available to the customs authority of departure and those available to the customs authority of destination, that the procedure has ended correctly.

2. Specific provisions relating to the transit procedure

Article 107

(1) The principal shall provide a security in order to ensure payment of any customs debt or other charges which may be incurred in respect of the goods.

(2) The security shall be either: a) an individual security covering a single transit operation or b) a comprehensive security covering a number of transit operations where the principal has been authorised to use such a security by the customs authority.

(3) The authorisation referred to in paragraph (2) under item b) of this Article shall be granted only to persons who: a) are established in the Republic of Macedonia; b) are regular users of transit procedures or who are known to the customs authority to have the capacity to fulfil their obligations in relation to these procedures and c) have not committed serious or repeated offences against customs or tax regulations.

(4) A person who satisfies the customs authority that it meets higher standards of reliability may be authorised to use comprehensive security for a reduced amount or to have a comprehensive security waiver. The additional criteria for this authorisation shall include:

a) the correct use of the transit procedures during a given period;

b) cooperation with the customs authority and

c) in respect of the comprehensive security waiver, a good financial standing which is sufficient to fulfil the commitments of the said person. The detailed conditions and the manner of issuing authorisations granted under this paragraph shall be determined in accordance with the regulation referred to in Article 257 of this Law.

(5) The comprehensive security waiver authorised in accordance with paragraph (4) of this Article shall not apply to transit operations involving goods which, as determined in accordance with the regulation referred to in Article 257 of this Law, are considered to involve increased risks.

Article 108

No security to ensure payment of any customs debt need to be furnished for:

a) journeys by air;

b) carriage by pipeline or power lines;

c) operations carried out by railway and

d) in other cases determined under the regulation referred to in Article 257 of this Law.

Article 109

(1) The principal shall be the holder of the transit procedure. He shall be responsible for: a) production of the goods intact at the customs authority of destination by the prescribed time limit and with due observance of the measures adopted by the customs authority to ensure identification and b) observance of the provisions relating to the transit procedure.

(2) Notwithstanding the principal's obligations under paragraph (1) of this Article, a carrier or recipient of goods who accepts goods knowing that they are moving under transit shall also be responsible for production of the goods intact at the customs authority of destination by the prescribed time limit and with due observance of the measures adopted by the customs authority to ensure identification.

C. Customs warehouses

Article 110

(1) With the customs warehousing procedure, the customs authority shall allow the storage in a customs warehouse of: a) foreign goods, without such goods being subject to payment of import duties or commercial policy measures when placed under this procedure; b) domestic goods, for

which it is prescribed by a separate provision that their placing in a customs warehouse entails application of measures that are ordinarily used to the export of such goods.

(2) Customs warehouse means any place approved by and under the supervision of a customs authority where goods may be stored under the conditions laid down in the customs rules and the authorisation.

(3) Cases in which the goods referred to in paragraph (1) of this Article may be placed under the customs warehousing procedure without being stored in a determined place of an approved customs warehouse shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 111

(1) A customs warehouse may be either a public warehouse or a private warehouse.

(2) 'Public warehouse' means a customs warehouse available for use by any person for the warehousing of goods.

(3) 'Private warehouse' means a customs warehouse reserved for the warehousing of goods by the warehousekeeper.

(4) The warehousekeeper is the person authorised to operate the customs warehouse.

(5) The depositor (warehouse user) shall be the person bound by the customs declaration to place the goods under the customs warehousing procedure or to whom the rights and obligations of such a person have been transferred.

Article 112

(1) Operation of a customs warehouse shall be subject to the issue of an authorisation by the customs authority, unless the said authority operates the customs warehouse itself.

(2) Any person wishing to operate a customs warehouse must lodge a request in writing containing the data required for granting the authorisation, in particular demonstrating that an economic need for warehousing exists. The authorisation shall lay down the conditions for operating the customs warehouse provided for under customs rules.

(3) The authorisation shall be granted only to legal persons established in the Republic of Macedonia.

Article 113

The warehousekeeper shall be responsible for: a) ensuring that while the goods are in the customs warehouse they are not removed from customs supervision; b) fulfilling the obligations that arise from the storage of goods covered by the customs warehousing procedure and c) complying with the particular conditions specified in the authorisation for operating a customs warehouse.

Article 114

(1) By way of derogation from Article 113 of this Law, where the authorisation concerns a public warehouse, it may provide that the responsibilities referred to in Article 113 a) and/or b) of this Law devolve exclusively upon the depositor.

(2) The depositor shall at all times be responsible for fulfilling the obligations arising from the placing of goods under the customs warehousing procedure.

Article 115

The rights and obligations of a warehousekeeper may, with the agreement of the customs authority, be transferred to another person.

Article 116

Without prejudice to Article 102 of this Law, the customs authority may demand that the warehousekeeper provides a security in connection with fulfilment of the responsibilities and obligations specified in Article 113 of this Law.

Article 117

The warehousekeeper shall keep stock records of all the goods placed under the customs warehousing procedure in a form approved by the customs authority, with the exception where a public warehouse is operated by the customs authority. In accordance with Article 99 of this Law, the customs authority may dispense with stock records where the responsibilities referred to in Article 113 item a) and/or (b) of this Law lie exclusively with the depositor and the goods are placed in the customs warehouse on the basis of a written declaration forming part of the normal procedure or an administrative document in accordance with Article 88 paragraph (1) item b) of this Law.

Article 118

(1) Where an economic need exists and customs supervision is not adversely affected thereby, the customs authority may allow: a) domestic goods other than those referred to in Article 110 paragraph (1) item b) of this Law to be stored on the premises of a customs warehouse; b) foreign goods to be processed on the premises of a customs warehouse under the inward-processing procedure, subject to the conditions provided for by that procedure. The formalities which may be dispensed with in a customs warehouse shall be determined in accordance with the regulation referred to in Article 257 of this Law and c) foreign goods to be processed on the premises of a customs warehouse under the procedure for processing under customs control, subject to the conditions provided for by that procedure. The formalities for processing under customs control which may be dispensed with in a customs warehouse shall be determined in accordance with the regulation referred to in Article 257 of this Law.

(2) In the cases referred to in paragraph (1) of this Article, the goods shall not be subject to the customs warehousing procedure. |

(3) The customs authority may require the goods referred to in paragraph (1) of this Article to be entered in the stock records provided for in Article 117 of this Law.

Article 119

Goods placed under the customs warehousing procedure shall be entered in the stock records provided for in Article 117 of this Law as soon as they are brought into the customs warehouse.

Article 120

(1) There shall be no limit to the length of time goods may remain under the customs warehousing procedure.

(2) In exceptional cases, depending on the kind of goods and storage conditions, the customs authority may set a time limit by which the depositor must assign the goods a new customs-approved treatment or use.

Article 121

(1) Import goods may undergo the usual forms of handling intended to preserve them, improve their appearance or marketable quality or prepare them for distribution or resale.

(2) The forms of handling provided for in paragraph (1) of this Article must be authorised in advance by the customs authority, which shall lay down the conditions under which they may take place.

(3) The lists of the forms of handling may be established in accordance with the regulation referred to in Article 257 of this Law.

Article 122

(1) Where circumstances so warrant, goods placed under the customs warehousing procedure may be temporarily removed from the customs warehouse. Such removal must be authorised in advance by the customs authority, who shall stipulate the manner in which it may take place.

(2) While they are outside the customs warehouse the goods may undergo the forms of handling referred to in Article 121 of this Law.

Article 123

The customs authority may allow goods placed under the customs warehousing procedure to be transferred from one customs warehouse to another.

Article 124

(1) Where a customs debt is incurred in respect of import goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing and of preserving goods while they remain in the warehouse, such costs need not be included in the customs value if they are shown separately from the price actually paid or payable for the goods.

(2) Where the import goods have undergone the usual forms of handling within the meaning of Article 121 of this Law, in determining the amount of import duties, at the request of the declarant, the nature of the goods, the customs value and the quantity to be taken into account shall, be those which would be taken into account for the goods, at the time referred to in Article 230 of this Law, if they had not undergone such handling.

(3) Where import goods are released for free circulation in accordance with Article 88 paragraph (1) item c) of this Law, the nature of the goods, the customs value and the quantity to be taken into account for the purposes of Article 230 of this Law shall be those applicable to the goods at the time when they were placed under the customs-warehousing procedure.

(4) The provisions of paragraph (3) shall apply provided that the taxation elements relating to those goods were ascertained or accepted at the time when the goods were placed under the customs-warehousing procedure, unless the declarant requests determination of those taxation elements at the time when the customs debt is incurred.

(5) The application of paragraph (3) of this Article shall apply without prejudice to a post-clearance examination within the meaning of Article 90 of this Law.

Article 125

Domestic goods referred to in Article 110 paragraph (1) item b) of this Law must be exported or be assigned another treatment or use.

Article 126

(1) Aircrafts that depart for an ultimate foreign destination may, under customs supervision, get supplies of the following goods exempted from payment of import duties: -food or other necessary products proportionate to the number of passengers, crew and duration of the flight and -products necessary for the functioning and maintenance of the aircraft in quantities appropriate to the functioning or maintenance of the aircraft during the flight.

(2) The goods from paragraph (1) indent 1 of this Article may be sold to the passengers on board the aircraft.

(3) Aircraft that enter the country may enter goods referred to in paragraph (1) of this Article duty free, provided that they remain on the ship or on the aircraft. If such goods are unloaded, they must be presented to the customs authority and be assigned a customs-approved treatment or use of goods.

(4) Goods referred to in this Article are supplied from a separate warehouse to which the provisions on customs warehouses apply.

Article 127

(1) Duty free shops are facilities located at international airports after the customs control points which sell duty free and tax free goods to passengers leaving the territory of the Republic of Macedonia.

(2) Supply of the duty free shops with goods is carried out from a separate warehouse where the provisions on customs warehouses apply.

(3) The authorisation for the establishing of duty free shops is granted only provided the following special conditions are met: -the future duty free shop is at an international airport at a location allowing appropriate customs supervision and preventing access of unauthorised persons in the duty free shop, -the duty free shop keeper submits all necessary guarantees for proper compliance with the requirements for operation of the duty free shop will be followed and -the duty free shop keeper keeps the prescribed stock-records of the goods he stores and sells in the duty free shop in a manner that allows the customs authority to carry out customs supervision and control.

(4) The customs authority has access to the duty free shops at any time in order to verify the goods and the documents.

(5) The duty free shop keeper shall pay the importation duties for the goods he sold contrary to paragraph (1) of this Article, or for the goods for which it cannot be established whether they were actually sold in accordance with the regulations pertaining to the sale of goods in duty free shops.

(6) Further provisions for application of this Article shall be adopted by the Government of the Republic of Macedonia.

D. Inward-processing

1. General provisions

(1) Without prejudice to Article 129 of this Law, the inward-processing procedure shall allow the following goods to be used in the customs area in one or more processing operations:

Article 128

a) foreign goods intended for re-export from the customs area in the form of compensating products, without such goods being subject to import duties or commercial policy measures and b) goods released for free circulation with repayment or remission of the import duties chargeable on such goods if they are exported from the customs area in the form of compensating products.

(2) The following expressions shall have the following meanings: a) 'suspension system' means the inward-processing relief arrangements as provided for in paragraph (1) item a) of this Article; b) 'drawback system' means the inward-processing relief arrangements as provided for in paragraph (1) item b) of this Article; c) 'processing operations' means:

the working of goods, including erecting or assembling them or fitting them to other goods,
the processing of goods,
completion of goods,

the repair of goods, including restoring them and putting them in order or

the use of certain goods defined in accordance with the provision referred to in Article 257 of this Law which are not to be found in the compensating products, but which allow or facilitate the production of those products, even if they are entirely or partially used up in the production process;

d) 'compensating products' means all products resulting from processing operations; e) 'equivalent goods' means domestic goods which are used instead of the import goods for the manufacture of compensating products and

f) 'rate of yield' means the quantity or percentage of compensating products obtained from the processing of a given quantity of import goods.

Article 129

(1) Where the conditions laid down in paragraph (2) of this Article are fulfilled, the customs authority shall allow: a) compensating products to be obtained from equivalent goods and b) compensating products obtained from equivalent goods to be exported from the Republic of Macedonia before importation of the import goods.

(2) Equivalent goods must be of the same quality and have the same characteristics as the import goods. In specific cases determined in accordance with the regulation referred to in Article 257 of this Law, equivalent goods may be allowed, by the customs authority, to be at a more advanced stage of manufacture than the import goods.

(3) Where paragraph (1) of this Article applies, the import goods shall for customs purposes be regarded as equivalent goods and the latter as import goods.

(4) Measures aimed at prohibiting, imposing certain conditions for or facilitating recourse to paragraph (1) of this Article may be adopted in accordance with the regulation referred to in Article 257 of this Law.

(5) Where paragraph (1) item b) of this Article is applied and the compensating products would be liable to export duties if they were not being exported or re-exported under an inward-processing operation, the holder of the authorisation shall provide a security to ensure payment of the export duties should the import goods not be imported within the period prescribed.

Article 131

The authorisation referred to in II. Grant of the authorisation *Article 130* The customs authority shall issue an authorisation at the request of the person who carries out processing operations or who arranges for them to be carried out. Article 130 of this Law shall be granted only:

a) to persons established in the Republic of Macedonia. The authorisation may be granted to persons established outside the Republic of Macedonia in respect of imports of a non-commercial nature; b) where, without prejudice to the use of the goods referred to in Article 128 paragraph (2) item c) indent 5 of this Law, the import goods can be identified in the compensating products or, in the case referred to in Article 129 of this Law, where compliance with the conditions laid down in respect of equivalent goods can be verified and (c) where the inward-processing procedure can help create the most favourable conditions for the export or re-export of compensating products, provided that the essential interests of local producers are not adversely affected (economic conditions). The cases in which the economic conditions are deemed to have been fulfilled shall be determined in accordance with the regulation referred to in Article 257 of this Law.

III. Operation of the procedure

Article 132

(1) The customs authority shall specify the period within which the compensating products must be exported or re-exported or assigned another customs-approved treatment or use of goods. That period shall take account of the time required to carry out the processing operations and dispose of the compensating products.

(2) The period referred to in paragraph (1) of this Article shall run from the date on which the foreign

goods are placed under the inward-processing procedure. The customs authority may grant an extension of the period upon submission of a duly substantiated and timely written request by the holder of the authorisation. For reasons of simplification, the customs authority may decide that a period which commences in the course of a calendar month or quarter shall end on the last day of a subsequent calendar month or quarter.

(3) Where Article 129 paragraph (1) item b) of this Law applies, the customs authority shall specify the period within which the foreign goods must be declared for the inward-processing procedure. That period shall run from the date of acceptance of the export customs declaration, relating to the compensating products obtained from the corresponding equivalent goods.

(4) Specific time limits may be laid down in accordance with the regulation referred to in Article 257 of this Law for certain processing operations or for certain import goods.

Article 133

The customs authority shall set either the rate of yield of the operation or, where appropriate, the method of determining such rate. The rate of yield shall be determined on the basis of the actual circumstances in which the processing operation is, or is to be, carried out.

Article 134

The cases in which and the conditions under which goods in the unaltered state or compensating products shall be considered to have been released for free circulation are determined in accordance with the regulation referred to in Article 257 of this Law.

Article 135

(1) Where a customs debt is incurred, the amount of such debt shall be determined on the basis of the taxation elements appropriate to the import goods at the time of acceptance of the customs declaration of placing of these goods under the inward-processing procedure.

(2) If at the time referred to in paragraph (1) of this Article the import goods fulfilled the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings, they shall be eligible for any preferential tariff treatment existing in respect of identical goods at the time of acceptance of the customs declaration of release for free circulation.

Article 136

By way of derogation from Article 135 of this Law, compensating products:

a) shall be subject to the import duties appropriate to them where they are released for free circulation and appear on the list adopted in accordance with the regulation referred to in Article 257 of this Law, to the extent that they are in proportion to the exported part of the compensating products not included in that list. The holder of the authorisation may ask for the import duties on those products to be assessed in the manner referred to in Article 135 of this Law;

(b) shall be subject to import duties calculated in accordance with the customs and other rules applicable to the customs procedure in question or to free zones or free warehouses where they have been placed under a suspensive arrangement or in a free zone or free warehouse.

However: -the party may request the duties for these goods to be assessed in accordance with Article 135 of this Law and -in cases where the compensating products have been assigned a customs-approved treatment or use of goods referred to above, other than processing under customs control, the amount of the import duties levied shall be at least equal to the amount calculated in accordance with Article 135 of this Law;

c) may be made subject to the rules governing assessment of import duties laid down under the procedure for processing under customs control where the import goods could have been placed

under that procedure; d) shall enjoy favourable tariff treatment owing to the special use for which they are intended, where provision is made for such treatment in the case of identical imported goods and e) shall be admitted free of import duties where such duty-free provision is made in the case of identical goods imported in accordance with Articles 195, 196 and 198 of this Law.

4. Processing operations outside the customs area

Article 137

(1) Some or all of the compensating products or goods in the unaltered state may be temporarily exported for the purpose of further processing outside the customs area if the customs authority so authorises, in accordance with the conditions laid down under customs rules governing outward-processing.

(2) Where a customs debt is incurred in respect of re-imported products, the following shall be charged: a) import duties on the compensating products or goods in the unaltered state referred to in paragraph (1) of this Article, that have not undergone further processing, calculated in accordance with Articles 135 and 136 of this Law and b) import duties on products re-imported after processing outside the customs area, the amount of which shall be calculated in accordance with the provisions relating to the outward-processing procedure, on the same conditions as would have applied had the products exported under the latter procedure been released for free circulation before such export took place.

5. Special provisions relating to the drawback system

Article 138

The drawback system may be used for all goods within the inward-processing procedure. It shall not be usable where, at the time the declaration of release for free circulation is accepted:

the import goods are subject to quantitative import restrictions and
a tariff measure within quotas is applied to the import goods.

Article 139

(1) The customs declaration of release for free circulation shall indicate that the drawback system is being used and shall provide particulars of the authorisation referred to in Article 130 of this Law.

(2) At the request of the customs authority, the authorisation referred to in paragraph (1) of this Article shall be attached to the customs declaration of release for free circulation.

Article 140

Under the drawback system, Article 129 paragraph (1) item b), paragraph (3) and paragraph (5), Article 132 paragraph (3), Articles 134 and 135 and Article 136 paragraph

(1) item c) of this Law shall not apply.

Article 141

Temporary exportation of compensating products carried out as provided for in Article 137 paragraph (1) of this Law shall not be considered to be exportation within the meaning of Article 142 of this Law except where such products are not re-imported into the Republic of Macedonia within the period prescribed.

Article 142

(1) The holder of the authorisation may ask for the import duties to be repaid or remitted where he can establish to the satisfaction of the customs authority that import goods released for free circulation under the drawback system in the form of compensating products or goods in the unaltered state have been either:

- exported or
- placed, with a view to being subsequently re-exported, under the transit procedure, the customs-warehousing procedure, the temporary importation procedure or the inward-processing procedure (suspension system), or in a free zone or free warehouse, provided that all conditions for use of the procedure have also been fulfilled.

(2) The goods referred to in paragraph (1) indent 2 of this Article shall be considered to be foreign goods.

(3) The period within which the application for repayment must be made shall be determined in accordance with the regulation referred to in Article 257 of this Law.

(4) Without prejudice to Article 136 item b) of this Law, where compensating products or goods in the unaltered state placed under a customs procedure or in a free zone or free warehouse in accordance with paragraph (1) of this Article are released for free circulation, the amount of import duties repaid or remitted shall be considered to constitute the amount of the customs debt.

(5) For the purpose of determining the amount of import duties to be repaid or remitted, Article 136 item a) of this Law shall apply accordingly.

E. Processing under customs control

Article 143

The procedure for processing under customs control shall allow foreign goods to be used in the customs area in operations which alter their nature or state, without their being subject to payment of import duties or to commercial policy measures, and shall allow the products resulting from such operations to be released for free circulation with the import duties appropriate to them. Such products shall be termed processed products.

Article 144

The cases in and specific conditions under which the procedure for processing under customs control may be used shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 145

Authorisation for processing under customs control shall be granted at the request of the person who carries out the processing or arranges for it to be carried out.

Article 146

Authorisation shall be granted only:

- a) to persons established in the Republic of Macedonia;
- b) where the import goods can be identified in the processed products;
- c) where the goods cannot be economically restored after processing to their description or state as it was when they were placed under the procedure; d) where use of the procedure cannot result in circumvention of the effect of the rules concerning origin and quantitative restrictions applicable to the imported goods and e) where the necessary conditions for the procedure to help create or maintain a processing activity in the Republic of Macedonia without adversely affecting the essential interests of local producers of similar goods (economic conditions) are fulfilled. The cases in which the economic conditions are deemed to have been fulfilled may be determined in accordance with

the regulation referred to in Article 257 of this Law.

Article 147

For the processing under customs control procedure, Article 132 paragraphs (1), (2) and (4) and Article 133 of this Law shall apply accordingly.

Article 148

Where a customs debt is incurred in respect of goods in the unaltered state or of products that are at an intermediate stage of processing as compared with that provided for in the authorisation, the amount of that debt shall be determined on the basis of the taxation elements appropriate to the import goods at the time of acceptance of the customs declaration relating to the placing of the goods under the procedure for processing under customs control.

Article 149

(1) Where the import goods qualified for preferential tariff treatment when they were placed under the procedure for processing under customs control, and such preferential tariff treatment is applicable to products identical to the processed products released for free circulation, the import duties to which the processed products are subject shall be calculated by applying the amount of import duties applicable under that treatment.

(2) If the preferential tariff treatment referred to in paragraph (1) of this Article in respect of the import goods is subject to tariff quotas or tariff ceilings, the application of the import duties referred to in paragraph (1) of this Article in respect of the processed products shall also be subject to the condition that the said preferential tariff treatment is applicable to the import goods at the time of acceptance of the customs declaration of release for free circulation. In this case, the quantity of import goods actually used in the manufacture of the processed products released for free circulation shall be written off from the tariff quotas or ceilings in force at the time of acceptance of the customs declaration of release for free circulation and the writing off of the quantities shall be done from the tariff quotas in respect of the import goods, not the processed products.

F. Temporary importation

Article 150

The temporary importation procedure shall allow the use in the customs area, with total or partial relief from import duties and without their being subject to commercial policy measures, of foreign goods intended for re-export without having undergone any change except normal depreciation due to the use made of them.

Article 151

Authorisation for temporary importation shall be granted at the request of the person using the goods or arranges for them to be used.

Article 152

The customs authority shall refuse to grant authorisation for use of the temporary importation procedure where it is impossible to ensure that the import goods can be identified. The customs authority may also grant authorisation for use of the temporary importation procedure without ensuring that the goods can be identified where, in view of the nature of the goods or of the operations to be carried out, the absence of identification measures is not liable to give rise to any abuse of the procedure.

Article 153

- (1) The customs authority shall determine the period within which import goods must be re-exported or assigned a new customs-approved treatment or use of goods. Such period must be long enough for the objective of temporary importation to be achieved.
- (2) Without prejudice to the special periods laid down in accordance with Article 154 of this Law, the maximum period during which goods may remain under the temporary importation procedure shall be 24 months. The customs authority may however, in accordance with the circumstances, determine a shorter period.
- (3) Where exceptional circumstances so warrant, the customs authority may, at a detailed and duly justified request of the party, extend the periods referred to in paragraphs (1) and (2) of this Article in order to permit the objective of temporary importation to be achieved.

Article 154

Total relief from import duties under the temporary importation procedure in accordance with the special conditions and periods determined in the regulation referred to in Article 257 of this Law may be granted for:

- 1) means of transportation;
- 2) personal effects and goods imported by travellers for sports purposes;
- 3) disaster relief material;
- 4) medical, surgical and laboratory equipment;
- 5) live animals;
- 6) goods for use in frontier zones;
- 7) media carrying sound, image or data;
- 8) advertising material;
- 9) professional equipment;
- 10) pedagogic aids and scientific equipment;
- 11) packing;
- 12) moulds, dies, blocks, drawings, sketches, measuring, checking and testing instruments and other similar articles;
- 13) tools and instruments for specific purposes;
- 14) goods used to carry out tests or goods subjected to tests;
- 15) samples of goods;
- 16) replacement means of production;
- 17) goods to be exhibited or used at exhibitions, fairs, meetings and similar events or for sale;
- 18) spare parts, kits and equipment and
- 19) other goods imported occasionally or imported in particular situations having no economic effect.

Article 155

- (1) Use of the temporary importation procedure with partial relief from payment of import duties shall be granted in respect of goods which are not covered by the provisions adopted in accordance with Article 154 of this Law or which are covered by such provisions but do not fulfil all the conditions laid down therein for the grant of temporary importation with total relief.
- (2) The list of goods in respect of which the temporary importation procedure with partial relief from import duties may not be used and the conditions subject to which the procedure may be used shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 156

- (1) The amount of import duties payable in respect of goods placed under the temporary importation procedure with partial relief from import duties shall be set at 3 %, for every month or

fraction of a month during which the goods have been placed under the temporary importation procedure with partial relief, of the amount of duties which would have been payable on the said goods had they been released for free circulation on the date on which they were placed under the temporary importation procedure.

(2) The amount of import duties to be charged shall not exceed that which would have been charged if the goods concerned had been released for free circulation on the date on which they were placed under the temporary importation procedure, leaving out of account any interest which may be applicable.

(3) Transfer of the rights and obligations deriving from the temporary importation procedure pursuant to Article 140 of this Law shall not mean that the same relief arrangements, total or partial, must be applied to each of the periods of use to be taken into consideration.

(4) Where the transfer referred to in paragraph (3) of this Article is made with partial relief for both persons authorised to use the procedure during the same month, the holder of the initial authorisation shall be liable to pay the amount of import duties due for the whole of that month.

Article 157

(1) Where a customs debt is incurred in respect of import goods, the amount of such debt shall be determined on the basis of the taxation elements appropriate to those goods at the time of acceptance of the customs declaration of their placing under the temporary importation procedure. Where the provisions of Article 154 of this Law so provide, the amount of the debt shall be determined on the basis of the taxation elements appropriate to the goods in question at the time referred to in Article 230 of this Law.

(2) Where, for a reason other than the placing of goods under the temporary importation procedure with partial relief from import duties, a customs debt is incurred in respect of goods placed under the said procedure, the amount of that debt shall be equal to the difference between the amount of duties calculated pursuant to paragraph (1) of this Article and that payable pursuant to Article 156 of this Law.

G. Outward-processing

I. General

Article 158

(1) With the outward-processing procedure, the customs authority shall authorise domestic goods to be exported temporarily from the customs area in order to undergo processing operations and the products resulting from those operations to be released for free circulation with total or partial relief from payment of import duties.

(2) Temporary exportation of domestic goods shall entail the application of export duties, commercial policy measures and other formalities for the export and exit of domestic goods from the customs area.

(3) The following definitions shall apply: a) 'temporary export goods' means goods placed under the outward-processing procedure; b) 'processing operations' means the operations referred to in Article 128 paragraph (2) item c), indents 1, 2, 3 and 4 of this Law; c) 'compensating products' means all products resulting from processing operations; d) 'rate of yield' means the quantity or percentage of compensating products obtained from the processing of a given quantity of temporary export goods.

Article 159

(1) The outward-processing procedure shall not be open to domestic goods:

- whose export gives rise to repayment or remission of import duties and
- which, prior to export, were released for free circulation with total relief from import duties by

virtue of end use, for as long as the conditions for granting such relief continue to apply.

(2) Derogations from the cases referred to in paragraph (1) indent 2 of this Article shall be determined in accordance with the regulation referred to in Article 257 of this Law.

2. Grant of the authorisation

Article 160

Authorisation to use the outward-processing procedure shall be issued at the request of the person who arranges for the processing operations to be carried out.

Article 161

The authorisation referred to in Article 160 of this Law shall be granted only:

- a) to persons established in the Republic of Macedonia;
- b) where it is considered that it will be possible to establish that the compensating products have resulted from processing of the temporary export goods. The cases in which and the conditions under which such derogations from the application of item b) shall apply shall be determined in accordance with the provision referred to in Article 257 of this Law and
- (c) where authorisation to use the outward-processing procedure is not liable to seriously harm the essential interests of producers of the Republic of Macedonia (economic conditions).

3. Operation of the procedure

Article 162

(1) The customs authority shall specify the period within which the compensating products must be re-imported into the customs area. It may extend that period on submission of a duly substantiated and timely request by the holder of the authorisation.

(2) The customs authority shall set either the rate of yield of the operation or, where necessary, the method of determining that rate.

Article 163

(1) The total or partial relief from import duties provided for in Article 164 paragraph (1) of this Law shall be granted only where the compensating products are declared for release for free circulation in the name of or on behalf of: a) the holder of the authorisation or b) any other person established in the Republic of Macedonia provided that that person has obtained the consent of the holder of the authorisation and the conditions of Article 164 paragraph (2) subparagraph 3 of this Law are fulfilled.

(2) The total or partial relief from import duties provided for in Article 164 of this Law shall not be granted where one of the conditions or obligations relating to the outward-processing procedure is not fulfilled, unless it is established that the failures have no significant effect on the correct operation of the said procedure.

Article 164

(1) The total or partial relief from import duties provided for in Article 158 of this Law shall be effected by deducting from the amount of the import duties applicable to the compensating products released for free circulation the amount of the import duties that would be applicable on the same date to the temporary export goods if they were imported into the customs area from the country in which they underwent the processing operation or last processing operation.

(2) The amount to be deducted pursuant to paragraph (1) of this Article shall be calculated on the basis of the quantity and nature of the goods in question on the date of acceptance of the customs declaration placing them under the outward-processing procedure and on the basis of the other taxation elements applicable to them on the date of acceptance of the customs declaration relating

to the release for free circulation of the compensating products. The value of the temporary export goods shall be the value that shall be taken into account for those goods in determining the customs value of the compensating products in accordance with Article 35 paragraph (1) item b) under 1 of this Law or, if the value cannot be determined in that way, the difference between the customs value of the compensating products and the processing costs determined by reasonable means. Certain charges determined in accordance with the regulation referred to in Article 257 of this Law shall not be taken into account in calculating the amount to be deducted; Where, prior to being placed under the outward-processing procedure, the temporary export goods were released for free circulation at reduced import duties by virtue of their end use, and for as long as the conditions for granting the reduced import duties continue to apply, the amount to be deducted shall be the amount of import duties actually levied when the goods were released for free circulation.

(3) Where temporary export goods could qualify on their release for free circulation for a reduced or zero import duties by virtue of their end use, those import duties rates shall be taken into account provided that the goods underwent operations consistent with such an end-use in the country where the processing operation or last such operation took place.

(4) Where compensating products qualify for a preferential tariff measure within the meaning of Article 19 paragraph (3) item d) or e) of this Law and the measure exists for goods falling within the same tariff classification as the temporary export goods, the import duties to be taken into account in establishing the amount to be deducted pursuant to paragraph (1) of this Article shall be those which would apply if the temporary export goods fulfilled the conditions under which that preferential measure may be applied.

Article 165

Where the purpose of the processing operation is the repair of the temporary export goods, they shall be released for free circulation with total relief from import duties where it is established to the satisfaction of the customs authority that the goods were repaired free of charge, either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect where account was taken of the defect at the time when the goods in question were first released for free circulation.

Article 166

(1) Where the purpose of the processing operation is the repair of temporary export goods and such repair is carried out in return for payment, the partial relief from import duties provided for in Article 158 of this Law shall be granted by establishing the amount of the duties applicable on the basis of the taxation elements pertaining to the compensating products on the date of acceptance of the customs declaration of release for free circulation of those products and taking into account as the customs value an amount equal to the repair costs, provided that those costs represent the only consideration provided by the holder of the authorisation and are not influenced by any links between that holder and the operator.

(2) By way of derogation from Article 164 of this Law, the regulation referred to in Article 257 of this Law may be used to determine the cases in and specific conditions under which goods may be released for free circulation following an outward processing operation, with the cost of the processing operation being taken as the basis for assessment for the purpose of applying the Customs Tariff.

4. Outward-processing with use of the standard exchange system

Article 167

(1) Under the conditions laid down in this Article and Article 168 to 172 of this Law which are applicable in addition to the provisions of Article 158 to 166, the standard exchange system shall

permit an imported product, (hereinafter referred to as a 'replacement product'), to replace a compensating product.

(2) The customs authority shall allow the standard exchange system to be used where the processing operation involves the repair of domestic goods.

(3) Without prejudice to Article 172 of this Law, the provisions applicable to compensating products shall also apply to replacement products.

(4) The customs authority may, in the manner it determines, permit replacement products to be imported before the temporary export goods are exported (prior importation). In the event of prior importation of a replacement product, a security shall be provided to cover the amount of the import duties.

Article 168

(1) Replacement products shall have the same tariff classification, be of the same commercial quality and possess the same technical characteristics as the temporary export goods had the latter undergone the repair in question.

(2) Where the temporary export goods have been used before export, the replacement products must also have been used and may not be new products. The customs authority may, however, grant derogations from this rule if the replacement products have been supplied free of charge either because of a contractual or statutory obligation arising from a guarantee or because of a manufacturing defect.

Article 169

Standard exchange system shall be authorised only where it is possible to verify that the conditions laid down in Article 168 of this Law are complied with.

Article 170

(1) In the case of prior importation, the export goods shall be temporarily exported within a period of two months from the date of acceptance by the customs authority of the customs declaration relating to the release of the replacement products for free circulation.

(2) Where exceptional circumstances so warrant, the customs authority may, at the request of the person concerned, extend within reasonable limits the period referred to in paragraph (1) of this Article.

Article 171

In the case of prior importation and where Article 164 of this Law is applied, the amount to be deducted shall be determined on the basis of the taxation elements applicable to the temporary export goods on the date of acceptance of the customs declaration placing them under the procedure.

Article 172

Article 161 item b) of this Law shall not apply in the context of standard exchange system.

5. Other provisions

Article 173

Non-tariff commercial policy measures shall also be applicable in the outward-processing procedures.

Section 4

Export

Article 174

(1) With the export procedure, the customs authority shall allow domestic goods to leave the customs area. Exportation shall entail the application of export formalities including commercial policy measures and, where appropriate, export duties payment.

(2) With the exception of goods placed under the outward-processing procedure, all domestic goods intended for export shall be placed under the export procedure.

(3) The case in which and the conditions under which goods leaving the customs area are not subject to an export customs declaration shall be determined in accordance with the regulation referred to in Article 257 of this Law.

(4) The export customs declaration must be lodged at the customs authority responsible for supervising the place where the exporter is established or where the goods are packed or loaded for export shipment. Derogations shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 175

Release for export of the goods shall be granted on condition that the goods in question leave the customs area in the same condition as when the export declaration was accepted.

CHAPTER 3

OTHER TYPES OF CUSTOMS-APPROVED TREATMENT OR USE OF GOODS

Section 1 Free zones and free warehouses

A. General

Article 176

Free zones and free warehouses shall be parts of the customs area or premises situated in that customs area and separated from the rest of it in which: a) foreign goods are considered, for the purpose of import duties and commercial policy import measures, as not being on the customs area, provided they are not released for free circulation or placed under another customs procedure or used or consumed in the free zone or the free warehouse under conditions other than those provided for in customs regulations and b) domestic goods for which such provision is made under specific provisions qualify, by virtue of being placed in a free zone or free warehouse, for measures normally attaching to the export of goods.

Article 177

(1) The Government of the Republic of Macedonia may in accordance with Law designate parts of the customs area as free zones or authorise the establishment of free warehouses.

(2) The Government of the Republic of Macedonia shall in accordance with law determine the area covered by each free zone and approve the premises which are to be designated as free warehouses.

(3) Free zones, with the exception of those designated in accordance with Article 179 of this Law, shall be enclosed. The customs authority shall define the entry and exit points of each free zone or free warehouse.

(4) The construction of any building in a free zone shall require the prior authorisation of the customs authority.

Article 178

(1) The perimeter and the entry and exit points of free zones, except the free zones designated in accordance with Article 179 of this Law, and of free warehouses shall be subject to supervision by the customs authority.

(2) Persons and means of transport entering or leaving a free zone or free warehouse may be subjected to a customs check.

(3) Access to a free zone or free warehouse may be denied to persons who do not provide every guarantee necessary for compliance with the rules provided for in this Law and other rules in force.

(4) The customs authority may check goods entering, leaving or remaining in a free zone or free warehouse. To enable such checks to be carried out, a copy of the transport document, which shall accompany goods entering or leaving, shall be handed to, or kept at the disposal of, the customs authority by any person designated for this purpose by such authority. Where such checks are required, the goods shall be made available to the customs authority.

Article 179

(1) The customs authority may designate free zones in which customs checks and formalities shall be carried out and the provisions concerning customs debt applied in accordance with the requirements of the customs warehousing procedure. Articles 181, 186 and 189 of this Law shall not apply to the free zones thus designated.

(2) References to free zones in Articles 47, 48 and 220 of this Law shall not apply to free zones referred to in paragraph (1) of this Article.

B. Placing of goods in free zones or free warehouses

Article 180

Both domestic and foreign goods may be placed in a free zone or free warehouse. The customs authority may require that goods which present a danger or are likely to spoil other goods or which, for other reasons, require special facilities be placed in premises specially equipped to receive them.

Article 181

(1) Without prejudice to Article 178 paragraph (4) of this Law, goods directly entering a free zone or free warehouse without entering the other customs area at all, need not be presented to the customs authority, nor need a customs declaration be lodged.

(2) Goods shall be presented to the customs authority and undergo the prescribed customs formalities only where: a) they have been placed under a customs procedure which is discharged when they enter a free zone or free warehouse. Where the customs procedure in question permits exemption from the obligation to present goods, such presentation shall not be required; b) they have been placed in a free zone or free warehouse on the authority of a decision to grant repayment or remission of import duties and c) they qualify for the measures referred to in Article 176 item b) of this Law.

(3) The customs authority may require to be notified of goods subject to export duties or to other export provisions.

(4) At the request of the party concerned, the customs authority shall certify the domestic or foreign status of goods placed in a free zone or free warehouse.

C. Operation of free zones and free warehouses

Article 182

(1) There shall be no limit to the length of time goods may remain in free zones or free warehouses.

(2) For certain goods referred to in Article 176 item b) of this Law, specific time limits may be imposed in accordance with the provision referred to in Article 257 of this Law.

Article 183

(1) Any commercial or service activity may, under the conditions laid down in this Law or any other

law, be carried out in a free zone and free warehouse. The carrying on of such activities shall be notified in advance to the customs authority.

(2) The customs authority may impose certain prohibitions or restrictions on the activities referred to in paragraph (1) of this Article, having regard to the nature of the goods concerned or the requirements of customs supervision.

(3) The customs authority may prohibit persons who do not provide the necessary guarantees of compliance with the provisions laid down in this Law from carrying on an activity referred to in paragraph (1) of this Article in a free zone or free warehouse.

Article 184

Foreign goods placed in a free zone or free warehouse may, while they remain in a free zone or free warehouse:

a) be released for free circulation under the conditions laid down by that procedure and by Article 188 of this Law; b) undergo the usual forms of handling referred to in Article 121 paragraph (1) of this Law without authorisation; c) be placed under the inward-processing procedure under the conditions laid down by that procedure; d) be placed under the procedure for processing under customs control under the conditions laid down by that procedure; e) be placed under the temporary importation procedure under the conditions laid down by that procedure; f) be abandoned to the state in accordance with Article 191 of this Law and g) be destroyed, provided that the party supplies the customs authority with all the information they judge necessary.

Article 185

(1) Foreign and domestic goods referred to in Article 176 item b) of this Law shall not be consumed or used in free zones or in free warehouses only when Article 184 of this Law is applied.

(2) Paragraph (1) of this Article shall not preclude the use or consumption of goods the release for free circulation or temporary importation of which would not entail application of import duties or measures under commercial policy. In that event, no customs declaration of release for free circulation or temporary importation shall be required. Such customs declaration shall, however, be required if such goods are to be charged against a quota or a ceiling.

Article 186

(1) All persons carrying on an activity involving the storage, working or processing, or sale or purchase, of goods in a free zone or free warehouse shall keep stock records in a form approved by the customs authority. Goods shall be entered in the stock records as soon as they are brought into the premises of such person. The stock records must enable the customs authority to identify the goods, and must record their movements.

(2) Where goods are transhipped within a free zone, the documents relating to the operation shall be kept at the disposal of the customs authority. The short-term storage of goods in connection with such transhipment shall be considered to be an integral part of the operation.

D. Removal of goods from free zones or free warehouses

Article 187

(1) Goods leaving a free zone or free warehouse may be:

exported or re-exported from the customs area or brought into another part of the customs area.

(2) The provisions of paragraph (1) of this Article are without prejudice to special provisions governing specific fields.

(3) The provisions of Title 3 of this Law, with the exception of Articles 58 to 63 of this Law where domestic goods are concerned, shall apply to goods brought into other parts of that area except in the case of goods which leave that zone by air without being placed under a transit or other customs procedure.

Article 188

(1) Where a customs debt is incurred in respect of foreign goods and the customs value of such goods is based on a price actually paid or payable which includes the cost of warehousing or of preserving goods while they remain in the free zone or free warehouse, such costs shall not be included in the customs value if they are shown separately from the price actually paid or payable for the goods.

(2) Where the said goods have undergone, in a free zone or free warehouse, one of the usual forms of handling within the meaning of Article 121 paragraph (1) of this Law, the nature of the goods, the customs value and the quantity to be taken into consideration in determining the amount of import duties shall, at the request of the declarant and provided that such handling was covered by an authorisation granted in accordance with Article 121 paragraph (3), be those which would be taken into account in respect of those goods, at the time referred to in Article 230 of this Law, had they not undergone such handling. Derogations from this provision may, however, be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 189

(1) Where goods are brought into or returned to the remaining part of the customs area or placed under a customs procedure while remaining in the free zone or free warehouse, the certificate referred to in Article 181 paragraph (4) of this Law may be used as proof of the domestic or foreign status of such goods.

(2) Where it is not proved by the certificate or other means that the goods have domestic or foreign status, the goods shall be considered to be:

- domestic goods, for the purposes of applying export duties or export licences or provided for export measures and
- foreign goods in all other cases.

Article 190

The customs authority shall satisfy itself that the rules governing exportation or re-exportation are respected where goods are exported or re-exported from a free zone or free warehouse.

Section 2 Re-exportation, destruction and abandonment

Article 191

(1) Foreign goods may be:

re-exported from the customs area,
destroyed and
abandoned to the state.

(2) Re-exportation shall, where appropriate, involve application of the formalities laid down for goods being exported or exited, including application of commercial policy measures. Cases in which no measures of commercial policy are applied on exportation of foreign goods placed in a suspensive arrangement may be determined in accordance with the regulation referred to in Article 257 of this Law.

(3) Save in cases determined in accordance with the regulation referred to in Article 257 of this Law, re-exportation or destruction of goods shall be the subject of prior notification of the customs authority. The customs authority shall prohibit reexportation should the formalities or measures

referred to in the first sentence of paragraph (2) of this Article so provide. Where goods, placed under a customs procedure with economic impact when on the customs area, are intended for re-exportation, a customs declaration within the meaning of Articles 69 to 90 of this Law shall be lodged. In such cases, Article 174 paragraphs (3) and (4) of this Law shall apply. Abandonment of goods shall be put into effect in accordance with the regulation referred to in Article 257 of this Law. (4) Destruction or abandonment of goods to the state shall not entail any expense for the state. (5) Any waste or scrap resulting from destruction shall be assigned a customs-approved treatment or use prescribed for foreign goods. The waste or scrap shall remain under customs supervision until the time laid down in Article 47 paragraph (2) of this Law.

TITLE 5 GOODS LEAVING THE CUSTOMS AREA

Article 192

Goods leaving the customs area shall be subject to customs supervision. They may be the subject of checks by the customs authority in accordance with the customs provisions in force. They shall leave the said area through the customs border crossings referred to in Article 46 of this Law using, where appropriate, the route and instructions determined by the customs authority.

TITLE 6 PRIVILEGED OPERATIONS

CHAPTER 1 RELIEFS FROM IMPORT DUTY PAYMENT

Article 193

(1) The following are granted relief from import duty payment: 1) heads of foreign states and chief representatives of heads of foreign states on special missions, as well as members of their company, on items intended for official or personal use; 2) international and interstate organisations with registered office in the Republic of Macedonia i.e. with representative offices in the Republic of Macedonia, for the period of their appointment in the Republic of Macedonia, on items for official use; 3) diplomatic and consular representative offices of foreign states in the Republic of Macedonia, on items for official use and 4) heads of foreign diplomatic representative offices in the Republic of Macedonia and members of their immediate families, on items intended for personal use. (2) Relief from payment of import duty in accordance with international agreements is granted to: 1) diplomatic staff of foreign diplomatic representative offices in the Republic of Macedonia and members of their immediate family, on items intended for their personal use; 2) consular staff of foreign consular representative offices in the Republic of Macedonia and members of their immediate family, on items intended for their personal use and 3) the staff of foreign diplomatic and consular representative offices in the Republic of Macedonia for household items imported within a period of 12 months from their arrival in the Republic of Macedonia. (3) The relief under paragraph (2) of this Article may not be enjoyed by citizens of the Republic of Macedonia, nor by foreign citizens with approved permanent stay in the Republic of Macedonia.

Article 194

The following are granted relief from import duty payment:

1) travellers from abroad, on items for personal use during their travel abroad (personal baggage) that are not subject to any limitations and restrictions in force, regardless of whether they carry them with them or have handed them over to a transporter; 2) travellers from the country, aside for items from the personal baggage, on other items of minor value of non-commercial nature. The relief from this item does not apply to travellers from the country, that enter the customs area more than once in the same day, i.e. in 24 hours. The staff and the persons operating the public means of transport shall not be considered as travellers from the country; 3) citizens of the Republic of Macedonia and foreign citizens, on items of non-commercial nature and of minor value received

from abroad on occasional basis; 4) citizens of the Republic of Macedonia and foreign citizens, on medication for personal use that they carry with them or receive as consignments from abroad; 5) disabled persons, on special equipment and technical aids that they use for living or work purposes, as well as on spare parts for the use of such equipment and aids, except for automobiles, provided they enter or receive them from abroad for personal use; 6) disabled persons with first and second level of disability who after undergoing professional rehabilitation are trained for a certain activity, on equipment which is not manufactured in the Republic of Macedonia necessary for the carrying out of that activity; 7) drivers of motor vehicles and motorbikes, on fuel and lubricants in the factory installed tanks in the motor vehicles and motorbikes; 8) citizens of the Republic of Macedonia and foreign citizens with approved permanent residence in the Republic of Macedonia, on personal items inherited abroad; 9) citizens of the Republic of Macedonia living in the border belt, on herbal and cattle products (items) produced on their properties in the border area of the neighbouring country, as well as on offspring and other products acquired from livestock that they keep on those properties for agricultural activities, grazing or wintering; 10) citizens of the Republic of Macedonia, students and pupils who receive education abroad, as well as foreign students and pupils who receive their education in the Republic of Macedonia, on educational aids brought from abroad intended for personal use; 11) citizens of the Republic of Macedonia and foreign citizens, on decorations, medals, sports and other trophies or symbolic objects that they receive abroad at competitions, exhibitions and events of international significance and 12) scholars, authors and artists for their own works entered from abroad.

Article 195

Import duty payment relief is granted to: 1) state administration authorities or registered humanitarian, or registered welfare organisations, on goods for free distribution to the victims of natural or other disasters or goods remaining the ownership of such organisations for the purpose of being at free disposal of the victims of such disasters; 2) registered humanitarian or welfare organisations, on goods imported from abroad for the purpose of carrying out their humanitarian activities; 3) firefighting organisations and other rescue services, on technical firefighting equipment and rescue equipment, firefighting vehicles and other rescue vehicles and spare parts specifically intended for firefighting and rescue activities; 4) public museums and public art galleries, on collections and art items; 5) public libraries, on library material; 6) public archives -on reproduced archive material; 7) disabled persons' organisations, on specific equipment, apparatus, instruments and technical aids, except road vehicles, as well as spare parts and consumables for such equipment, apparatus, instruments and technical aids.

Article 196

Import duty payment relief is granted for: 1) unused equipment and spare parts (except cars and office stationary) based on a deposit by a foreign person, for the purposes of the association's main activity. The deposit made by the foreign person shall be longer than three years and be 20% of the total deposited fixed capital provided that the obligor using the relief works at least three additional years after the expiry of the last year he used the relief from customs duty payment. The purchase of shares by foreign persons is also considered a deposit; 2) imported items of educational, scientific and cultural character, determined in accordance with the regulation referred to in Article 199 of this Law, as well as instruments and apparatus, as well as their spare parts that are imported for noncommercial purposes and are not manufactured in the Republic of Macedonia; 3) therapeutic substances of human origin and blood-grouping and tissue-typing reagents; 4) laboratory animals and biological or chemical substances intended for research; 5) samples of goods of minor value; 6) printed advertising material; 7) products for use at fairs, trade exhibitions or similar events; 8)

imported goods which are to undergo examination, research, analysis or tests; 9) trademarks, patterns or designs and their supporting documents, as well as applications for patents for invention or the like, to be submitted to the bodies competent to deal with the protection of copyrights or the protection of industrial property rights; 10) tourist promotional material; 11) pharmaceutical products for health or veterinarian use at international sport events organised in the Republic of Macedonia; 12) ancillary materials for the stowage and protection of goods during their transport; 13) litter, fodder and feedingstuffs for animals during their transport; 14) materials for the construction, upkeep or ornamentation of memorials to, or cemeteries for, war victims and 15) coffins with bodies, funerary urns with ashes and ornamental funerary articles.

Article 197

Import duty payment relief is granted for: 1) documents sent free of charge to the state administration authorities; 2) publications of foreign governments and publications of official international bodies intended for distribution free of charge; 3) items to be submitted as evidence or for like purposes to the courts or other state administration authorities; 4) specimen signatures and printed circulars concerning signatures sent as part of customary exchanges of information between public services or banking establishments; 5) official printed materials sent to the National Bank of the Republic of Macedonia; 6) reports, statements, notes, prospectuses, application forms and other documents drawn up by companies registered in a third country and sent to the bearers or subscribers of securities issued by such companies; 7) recorded media – data carriers (punched cards, sound recordings, microfilms, etc.) used for the transmission of information sent free of charge to the addressee, in so far as importation of those media – data carriers does not give rise to abuses or to major distortions of competition; 8) files, archives, printed forms and other documents to be used at international meetings, conferences or congresses, as well as reports on such gatherings; 9) plans, technical drawings, traced designs, descriptions and other similar documents imported with a view to obtaining or fulfilling orders in third countries or to participating in a competition held in the customs area; 10) documents to be used in examinations held in the customs area by institutions set up in third countries; 11) printed forms to be used as official documents in the international movement of vehicles or goods, within the framework of international conventions; 12) printed forms, labels, tickets and similar documents sent by transport undertakings or by undertakings of the hotel industry in a third country to travel agencies set up in the customs area; 13) printed forms and tickets, bills of lading, way-bills and other commercial or office documents which have been used; 14) official printed forms from third countries or international authorities, and printed materials conforming to international standards sent for distribution by third country associations to corresponding associations with registered offices in the customs area and 15) photographs, slides and stereotype mats for photographs, whether or not captioned, sent to press agencies or newspaper or magazine publishers.

Article 198

Import duty payment relief is granted for: 1) goods received as gift from international donors, as well as imported goods bought with the money assets received as gift by state authorities, municipalities and the city of Skopje and public legal entities and 2) goods necessary for the realisation of projects financed by foreign donors based on agreements made between the Government of the Republic of Macedonia and foreign donors which contain the clause that the donated finances may not be used for payment of import duties.

Article 199

The detailed criteria and manner of carrying out of the relief from import duty payment, as well as the value, quantity and nature or purpose of the goods that may be granted relief from import duty payment in accordance with Articles 193 to 198 of this Law shall be prescribed by the Government of the Republic of Macedonia on proposal by the Minister of Finance.

Article 200

(1) Goods which have been granted relief from import duty payment pursuant to Article 193 and Article 194, items 3, 5, 6, 8, 9 and 10, Article 195, 196 item 2 and Article 198 of this Law, in a three year period from the day of importation, shall not be transferred to a third person, given for use to a third person or used otherwise for purposes different from the ones it was relieved from import duty payment for, prior to the payment of such import duties. Such items shall not be pledged, lent or used as security for other obligations.

(2) The goods that were granted relief from payment of import duties pursuant to Article 196 item 1 of this Law, within a six year period starting with the day of importation, shall not be alienated, given at the disposal of a third person or used otherwise for other purposes other than those for which they were granted relief from payment of import duties, before payment of the import duties is settled. Such articles shall not be given as collateral, given under lease or as security for other obligations.

(3) Where the customs authority, upon the request by the holder of the right, before the expiration of the period referred to in paragraph (1) and paragraph (2) of this Article approves a different use, the amount of the customs debt is calculated on the basis of the taxation elements applicable at the moment of lodging of the request for payment of the customs debt.

(4) In case of incompliance with the provisions of paragraph (1) and paragraph (2) of this Article, the amount of the customs debt is calculated based on the taxation elements applicable at the moment of acceptance of the customs declaration, on the basis of which the goods were granted relief from payment of import duties.

CHAPTER 2 RETURN OF EXPORTED GOODS

Article 201

(1) Domestic goods which, having been exported from the customs area, are returned to that area and released for free circulation within a period of three years shall, at the request of the party, be granted relief from import duties. The three-year period may be exceeded in case of justified circumstances. Where, prior to their exportation from the customs area, the returned goods have been released for free circulation at reduced or zero import duty because of their use for a particular purpose, relief from payment of import duties shall be granted only if they are to be re-imported for the same purpose. Where the purpose for which the goods in question are to be imported is no longer the same, the amount of import duties chargeable upon them shall be reduced by any amount levied on the goods when they were first released for free circulation. Should the latter amount exceed that levied on the entry for free circulation of returned goods, no refund shall be granted.

(2) The relief from import duties provided for in paragraph (1) of this Article shall not be granted in the case of goods exported from the customs area under the outward-processing procedure unless those goods remain in the state in which they were exported;

Article 202

The relief from import duties provided for in Article 201 of this Law shall be granted only if goods are re-imported in the same state in which they were exported. The circumstances in which and the conditions under which this requirement may be waived shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 203

(1) The provisions of Articles 201 and 202 of this Law shall apply accordingly to compensating products originally exported or re-exported subsequent to an inward-processing procedure.

(2) The amount of import duties legally owed shall be determined on the basis

of the rules applicable under the inward-processing procedure, the date of re-export being regarded as the date of release of the goods for free circulation.

TITLE 7 CUSTOMS DEBT

CHAPTER 1 SECURITY TO COVER CUSTOMS DEBT

Article 204

(1) Where, in accordance with customs rules, the customs authority requires security to be provided in order to ensure payment of a customs debt, such security shall be provided by the person who is liable or who may become liable for that debt.

(2) The customs authority shall require only one security to be provided in respect of one customs debt.

(3) The customs authority may authorise the security to be provided by a person other than the person from whom it is required.

(4) Where the person who has incurred or who may incur a customs debt is a state authority, no security shall be required.

(5) The customs authority may waive the requirement for provision of security where the amount to be secured does not exceed 150 EUR in equivalent denar value.

Article 205

(1) Where customs legislation provides that the provision of security is optional, such security may be required at the discretion of the customs authority in so far as it considers that a customs debt which has been or may be incurred is not certain to be paid within the prescribed period.

(2) Where the security referred to in the preceding subparagraph is not required, the customs authority may nevertheless require from the person referred to in Article 204 paragraph (1) of this Law, an undertaking to comply with the obligations which that person is legally obliged to fulfil.

(3) The security referred to in paragraph (1) of this Article shall be required:
at the time of application of the rules requiring such security to be provided or
at any subsequent time when the customs authority finds that the customs debt which has been or may be incurred is not certain to be paid within the prescribed period.

Article 206

At the request of the person referred to in Article 204 paragraph (1) or (3) of this Law, the customs authority shall allow comprehensive security to be provided to cover two or more operations in respect of which a customs debt has been or may be incurred.

Article 207

(1) Where customs legislation makes it compulsory for security to be provided, and subject to the specific provisions laid down for transit in accordance with the regulation referred to in Article 257 of this Law, the customs authority shall fix the amount of such security at a level equal to:
the precise amount of the customs debt or debts in question where that amount can be established with certainty at the time when the security is required and

in other cases the maximum amount, as estimated by the customs authority, of the customs debt or debts which have been or may be incurred.

(2) Where comprehensive security is provided for a customs debt which varies in amount over time, the amount of such security shall be set at a level enabling the customs debt in question to be covered at all times.

(3) Where customs legislation provides that the provision of security is optional and the customs authority requires security to be provided, the amount of the security shall be fixed by that authority so as not to exceed the level provided for in paragraph (1) and (2) of this Article.

(4) The circumstances in which and the conditions under which a flat-rate security may be provided shall be determined in accordance with the regulation referred to in Article 257 of this Law.

Article 208

Security may be provided by either:

a cash deposit or
a bank guarantee.

Article 209

A cash deposit shall be made in accordance with customs rules and other regulations.

Article 210

(1) The guarantor bank shall issue the security in writing, undertaking to pay the customs debt, including the interest and caused expenses relating to the collection procedure of the unpaid customs debt. The guarantor bank shall, together with the customs debtor, jointly and severally be responsible for the amount which falls to be paid.

(2) The guarantor bank must be established in the Republic of Macedonia and approved by the customs authority.

(3) The customs authority may refuse to approve the guarantor bank or type of security proposed where they do not appear certain to ensure payment of the customs debt within the prescribed period.

Article 211

The person required to provide security shall be free to choose between the types of security laid down in Article 208 of this Law. The customs authority may refuse to accept the type of security proposed where it does not ensure the proper implementation of the customs procedure concerned. The customs authority may require that the type of security chosen be maintained for a specific period.

Article 212

Where the rules adopted in accordance with the regulation referred to in Article 257 of this Law so provide, the customs authority may accept types of security other than those referred to in Article 208 of this Law where they provide equivalent assurance that the customs debt will be paid. The customs authority shall refuse the security proposed by the debtor where it does not consider that such security is certain to ensure payment of the customs debt.

Article 213

Where the customs authority establishes that the security provided does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt within the prescribed period, it shall require the person referred to in Article 204 paragraph (1) of this Law, at his option, to provide additional security or to replace the original security with a new security.

Article 214

(1) The security shall not be released until such time as the customs debt in respect of which it was given is extinguished or can no longer arise. Once the customs debt is extinguished or can no longer arise, the security shall be released forthwith.

(2) Once the customs debt has been extinguished in part or may arise only in respect of part of the amount which has been secured, part of the security shall be released accordingly at the request of the party.

Article 215

Provisions derogating from those contained in this Chapter shall, where necessary, be adopted in accordance with the regulation referred to in Article 257 of this Law in order to fulfil certain obligations undertaken under international conventions.

CHAPTER 2 INCURRENCE OF A CUSTOMS DEBT

Article 216

(1) A customs debt on importation shall be incurred through: a) the release for free circulation of goods liable to import duties or

b) the placing of such goods under the temporary importation procedure with partial relief from import duties.

(2) A customs debt shall be incurred at the time of acceptance of the customs declaration in question.

(3) The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

(4) Where a customs declaration in respect of one of the procedures referred to in paragraph (1) of this Article is drawn up on the basis of incorrect data which leads to all or part of the import duties legally owed not being collected, the persons who provided the data required to draw up the customs declaration and who knew, or who ought reasonably to have known that such data was false, shall also be considered debtors.

Article 217

(1) A customs debt on importation shall be incurred through: a) the unlawful introduction into the customs area of goods liable to import duties or b) the unlawful introduction into another part of that area of such goods located in a free zone or free warehouse. For the purpose of this Article, unlawful introduction means any introduction in violation of the provisions of Articles 48 to 51 of this Law and Article 187 paragraph (1) indent 2 of this Law.

(2) The customs debt shall be incurred at the moment when the goods are unlawfully introduced.

(3) The debtors shall be:

- the person who introduced such goods unlawfully,
- any persons who participated in the unlawful introduction of the goods and who knew or should reasonably have known that such introduction was unlawful and

— any persons who acquired or held the goods in question and who knew or should reasonably have known at the time of acquiring or receiving the goods that they had been introduced unlawfully.

Article 218

(1) A customs debt on importation shall be incurred through the unlawful removal from customs supervision of goods liable to import duties.

(2) The customs debt shall be incurred at the moment when the goods are removed from customs supervision.

(3) The debtors shall be:

the person who removed the goods from customs supervision,

any persons who participated in such removal and who knew or should reasonably have known that the goods were being removed from customs supervision,

any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been removed from customs supervision and

where appropriate, the person required to fulfil the obligations arising from temporary storage of the goods or from the use of the customs procedure under which those goods are placed.

Article 219

(1) A customs debt on importation shall be incurred through: a) non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they are placed or b) non-compliance with a condition governing the placing of the goods under that procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods, in cases other than those referred to in Article 218 of this Law, unless it is established that those failures have no significant effect on the correct operation of the temporary storage or customs procedure in question.

(2) The customs debt shall be incurred either at the moment when the obligation whose non-fulfilment gives rise to the customs debt ceases to be met or at the moment when the goods are placed under the customs procedure concerned where it is established subsequently that a condition governing the placing of the goods under the said procedure or the granting of a reduced or zero rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

(3) The debtor shall be the person who is required, according to the circumstances, either to fulfil the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs procedure under which they have been placed, or to comply with the conditions governing the placing of the goods under that procedure.

Article 220

(1) A customs debt on importation shall be incurred through the consumption or use, in a free zone or a free warehouse, of goods liable to import duties, under conditions other than those laid down. Where goods disappear and where their disappearance cannot be explained to the satisfaction of the customs authority, that authority may regard the goods as having been consumed or used in the free zone or the free warehouse.

(2) The debt shall be incurred at the moment when the goods are consumed or are first used under conditions other than those laid down by customs rules and other regulations.

(3) The debtor shall be the person who consumed or used the goods and any persons who participated in such consumption or use and who knew or should reasonably have known that the goods were being consumed or used under conditions other than those laid down by customs rules and other regulations.

(4) Where the customs authority regards goods which have disappeared as having been consumed or used in the free zone or the free warehouse and it is not possible to apply paragraph (3) of this Article, the person liable for payment of the customs debt shall be the last person known to this authority to have been in possession of the goods.

Article 221

(1) By way of derogation from Articles 217 and 219 paragraph (1) item a) of this Law, no customs debt on importation shall be deemed to be incurred in respect of specific goods where the party proves that the non-fulfilment of the obligations which arise from: the provisions of Articles 48 to 51 and Article 187 paragraph (1) indent 2 of this Law or keeping the goods in question in temporary storage or the use of the customs procedure under which the goods have been placed, results from the total destruction or irretrievable loss of the said goods as a result of the actual nature of the goods or unforeseeable circumstances or *force majeure*, or as a consequence of authorisation granted by the customs authority. Goods shall be irretrievably lost when they are rendered unusable by any person.

(2) Nor shall a customs debt on importation be deemed to be incurred in respect of goods released for free circulation at a reduced or zero rate of import duty by virtue of their end-use, where such goods are exported or re-exported with the permission of the customs authority.

Article 222

Where, in accordance with Article 221 paragraph (1) of this Law, no customs debt is deemed to be incurred in respect of goods released for free circulation at a reduced or zero rate of import duties on account of their end-use, any scrap or waste resulting from such destruction shall be deemed to be foreign goods.

Article 223

Where in accordance with Article 218 or 219 of this Law a customs debt is incurred in respect of goods released for free circulation at a reduced rate of import duties on account of their end-use, the amount paid when the goods were released for free circulation shall be deducted from the amount of the customs debt. This provision shall apply accordingly where a customs debt is incurred in respect of scrap and waste resulting from the destruction of such goods.

Article 224

(1) A customs debt on exportation shall be incurred through the exportation from the customs area, under cover of a customs declaration, of goods liable to export duties.

(2) The customs debt shall be incurred at the time when such customs declaration is accepted.

(3) The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor.

Article 225

(1) A customs debt on exportation shall be incurred through the removal from the customs area of goods liable to export duties without a customs declaration.

(2) The customs debt shall be incurred at the time when the said goods actually leave the customs area.

(3) The debtor shall be:

the person who removed the goods and

any persons who participated in such removal and who were aware or should reasonably have been aware that a customs declaration had not been, but should have been lodged.

Article 226

(1) A customs debt on exportation shall be incurred through failure to comply with the conditions under which the goods were allowed to leave the customs area with total or partial relief from export duties.

(2) The debt shall be incurred at the time when the goods reach a destination other than that for which they were allowed to leave the customs area with total or partial relief from export duties or, should the customs authority be unable to determine that time, the expiry of the time limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.

(3) The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the declaration is made shall also be a debtor.

Article 227

The customs debt referred to in Articles 216 to 220 and 224 to 226 of this Law shall be incurred even if it relates to goods subject to measures of prohibition or restriction on importation or exportation of any kind whatsoever. However, no customs debt shall be incurred on the unlawful introduction into the customs area of counterfeit currency or of narcotic drugs and psychotropic substances which do not enter into the economic circuit strictly supervised by the competent authorities with a view to their use for medical and scientific purposes. For the purposes of criminal rules as applicable to violation of customs rules, the customs debt shall nevertheless be deemed to have been incurred where, under the criminal rules, customs duties provide the basis for determining penalties, or the existence of a customs debt is grounds for taking criminal proceedings.

Article 228

Where customs rules provide for autonomous measures for reduction or suspension of import duties or favourable tariff treatment of goods by reason of their nature or end-use or for relief or total or partial exemption from import or export duties pursuant to Articles 19, 20, 95, 158 or 193 to 203 of this Law, such autonomous measure, such favourable tariff treatment, exemption or partial or total relief from import or export customs duty payment shall also apply in cases where a customs debt is incurred pursuant to Articles 217 to 220, 225 or 226 of this Law, on condition that the behaviour of the party involves neither fraudulent dealing nor obvious negligence and he produces evidence that the other conditions for the application of autonomous measures for reduction or suspension of import duties, favourable tariff treatment, exemption or partial or total relief have been satisfied.

Article 229

Where several persons are liable for payment of one customs debt, they shall be jointly and severally liable for the payment of such debt.

Article 230

(1) Save as otherwise expressly provided for, the amount of the import duty or export duty applicable to goods shall be determined on the basis of the taxation elements appropriate to those goods at the time when the customs debt in respect of them is incurred. The provisions of this paragraph do not preclude the application of the provisions of paragraph (2) and paragraph (3) of this Article.

(2) Where it is not possible to determine precisely when the customs debt is incurred, the time to be taken into account in determining the taxation elements appropriate to the goods concerned shall be the time when the customs authority establishes that a customs debt is incurred for the goods.

(3) Where the information available to the customs authority enables it to establish that the customs debt was incurred prior to the time referred to in the paragraph (2) of this Article, the amount of the import duties and export duties payable on the goods in question shall be determined on the basis of the rules appropriate to the goods at the earliest time when existence of the customs debt may be established from the information available.

(4) Compensatory interest shall apply in the circumstances and under the conditions to be defined in the regulation referred to in Article 257 of this Law, in order to prevent the wrongful acquisition of a financial advantage through deferment of the date on which the customs debt was incurred or calculated.

Article 231

(1) A customs debt shall be incurred:

- at the place where the events from which it arises occur,
- if it is not possible to determine the place from indent 1 of this paragraph, at the place where the customs authority establishes that the goods are in a situation in which a customs debt is incurred and
- if the goods have been entered for a customs procedure which has not been discharged, and the place cannot be determined pursuant to the first or second indent of this paragraph within a period of time determined, at the place where the goods were either placed under the customs procedure concerned or were introduced into the customs area under that procedure.

(2) Where the data available to the customs authority enables them to establish that the customs debt was already incurred when the goods were in another place at an earlier date, the customs debt shall be deemed to have been incurred at the place which may be established as the location of the goods at the earliest time when existence of the customs debt may be established.

Article 232

(1) In so far as the Agreements concluded between the Republic of Macedonia and third countries provide for the granting on importation into those countries of preferential tariff treatment for goods originating in the Republic of Macedonia within the meaning of such agreements, and where the goods have been obtained under the inward-processing procedure, foreign goods incorporated in the said originating goods are subject to payment of the import duties payable thereon. The validation of the documents necessary to enable such preferential tariff treatment to be obtained in third countries shall cause a customs debt on importation to be incurred.

(2) The moment when such customs debt is incurred shall be deemed to be the moment when the customs authority accepts the export customs declaration relating to the goods in question.

(3) The debtor shall be the declarant. In the event of indirect representation, the person on whose behalf the declaration is made shall also be a debtor.

(4) The amount of the import duties corresponding to this customs debt shall be determined under the same taxation elements as in the case of a customs debt resulting from the acceptance, on the same date, of the declaration for release for free circulation of the foreign goods concerned for the purpose of terminating the inward-processing procedure.

CHAPTER 3 CALCULATION AND COLLECTION OF THE AMOUNT OF THE CUSTOMS DEBT

Article 233

(1) Each and every amount of import duty or export duty resulting from a customs debt (hereinafter referred to as 'amount of duty'), shall be calculated by the customs authority as soon as they have the necessary particulars, and entered by that authority in the accounting records.

(2) Where the amount of duty legally due does not exceed that determined in the regulation referred to in Article 257 of this Law, the customs authority shall not apply paragraph (1) of this Article.

(3) The customs authority shall determine practical procedures for the entry in the accounts of the amount of duties.

Article 234

(1) Where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure other than temporary importation with partial relief from import duties or any other act having the same legal effect as such acceptance, the amount corresponding to such customs debt shall be entered in the accounts as soon as it has been calculated.

(2) By way of derogation from paragraph (1) of this Article, when a customs debt resulted from the acceptance of a commercial or administrative document or entry in the accounts of the holder of the authorisation within the simplified procedures of Article 88, paragraph (1), item b) or c) of this Law, the total amount of duties relating to all the goods released to one and the same person during a period fixed by the customs authority, which may not exceed 31 days, may be covered by a single calculation.

Article 235

(1) As soon as the calculation is completed, the amount of duties shall be communicated to the debtor in an appropriate manner.

(2) When the amount of duties legally due is written on the customs declaration, the customs authority does not communicate the amount of duties to the debtor and the debt shall be deemed as to have been communicated to the debtor at the time of release of the goods by the customs authority.

Article 236

(1) If the person is not entitled to any of the payment facilities laid down in Articles 238 to 241 of this Law, amounts of duties communicated in accordance with Article 235 of this Law shall be paid by debtors within a period not longer than 10 days from communication of the amount of duties owed.

(2) In the cases of Article 234 paragraph (2) of this Law, the period referred to in paragraph (1) of this Article shall be so fixed as not to enable the debtor to obtain a longer period for payment than if he had been granted deferred payment.

Article 237

Payment shall be made in cash and in denars or in any other manner in accordance with the provisions governing manners of payment. Payment may also be made by balancing of the dues when the customs authority is to repay import duties while at the same time the customs debtor has an unsettled customs debt toward the customs authority.

Article 238

Provided the amount of duties payable by the party relates to goods declared for a customs procedure which entails the obligation to pay such duties, the customs authority may, at that party's request, grant deferment of payment of that amount under the conditions laid down in Articles 239 and 240 of this Law.

Article 239

- (1) The Customs authority, when deciding upon the request for deferment of payment of the amount of duties, shall check whether the debtor complies with the following conditions:
-is credible and financially stable, -is diligent in settling his obligations, -keeps all the prescribed accounts allowing undisturbed carrying out of control and -has not violated any customs or tax rules in the last three years.
- (2) The granting of deferment of payment shall be conditional on the provision of security by the applicant in accordance with Article 208 of this Law.

Article 240

The period for which payment is deferred shall be 30 days. It shall be calculated as follows:

- (a) where payment is deferred in accordance with Article 234 paragraph (1) of this Law, the period shall be calculated from the day following the date on which the amount of duty is calculated by the customs authority and
- (b) where payment is deferred in accordance with Article 234 paragraph (2) of this Law, the period shall be calculated by: -the twenty-third day, following the date on which the period for lodging of the supplementary declaration expires, provided the period for lodging of the supplementary declaration is a calendar week and -the sixteenth day of the month following the calendar month for which the simplified procedure was granted, provided the period for lodging of the supplementary declaration is a calendar month.

Article 241

Provided deferment of payment is granted to the debtor, the latter may in any case pay all or part of the amount of duty without awaiting expiry of the period he has been granted for payment.

Article 242

An amount of duties owed may be paid by a third person instead of the debtor in accordance with law.

Article 243

- (1) Where the customs authority determines that: -a customs debt is incurred in accordance with Article 217 to 220 of this Law or -the amount of duties of an incurred customs debt has not been calculated in accordance with Article 234 of this Law or has been entered in the accounts at a level lower than the amount legally owed, it shall calculate the amount of duties (subsequent calculation) and takes, acting ex officio or upon request by the debtor, a decision for payment of the incurred obligation.

(2) The decision in accordance with paragraph (1) of this Article is taken as soon as the necessary data for calculation of the debt is available to the customs authority, as well as the data that allow the determination of the customs debtor.

(3) Subsequent calculation of a customs debt in accordance with paragraph (1) of this Article shall be made in the period of five years following incurrence of the customs debt.

(4) Subsequent calculation shall not occur where the provisions of the regulation referred to in Article 257 of this Law exempt the customs authority from the subsequent calculation and collection of amounts of duty less than a certain figure.

Article 244

(1) Where the amount of duties due has not been paid within the prescribed period, the customs authority shall avail itself of all options open to it under the rules in force, including forced payment, to secure payment of that amount in accordance with the Law on Payment Operations.

(2) Executive title in the execution, i.e. forced collection shall be: a) an executive decision of the customs authority; b) a customs declaration and c) a calculation of import or other duties in the passenger traffic containing the clause of execution.

(3) The customs authority may waive forced collection where the amount does not exceed a level fixed in accordance with the regulation referred to in Article 257 of this Law.

Article 245

(1) Where the amount of duties due has not been paid within the prescribed period, interest shall be charged by the rate prescribed with the provisions of the Law on Value Added Tax for each day of delay.

(2) The customs authority may waive collection of interest:

(a) where the amount does not exceed a level fixed in accordance with the regulation referred to in Article 257 of this Law or (b) if the duties are paid within five days of the expiry of the period prescribed for payment.

Article 246

(1) The right to collect the amount of duties becomes time-barren five years following the day of incurrence of the customs debt.

(2) The time-barring ends with each action of the competent authority to collect the amount of duties.

(3) However, the right to collect becomes time-barren after the expiration of 10 years following the date of incurrence of the customs debt.

CHAPTER 4 EXTINCTION OF A CUSTOMS DEBT

Article 247

(1) A customs debt shall be extinguished: a) by payment of the amount of duty; b) by remission of the amount of duty; c) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties:

the customs declaration is invalidated and

the goods, before their release are: confiscated; destroyed on the instructions of the customs authority; destroyed or abandoned in accordance with Article 191 of this Law, or destroyed or irretrievably lost as a result of their actual nature and characteristics or of unforeseeable circumstances or force majeure and

(d) where goods in respect of which a customs debt is incurred in accordance with Article 217 of this Law are confiscated upon their unlawful introduction.

(2) In the event of confiscation of goods, the customs debt shall, nonetheless for the purposes of the criminal rules applicable to the violation of the customs rules, be deemed not to have been extinguished where, under criminal rules, customs duties provide the basis for determining penalties or the existence of a customs debt is grounds for taking criminal proceedings.

Article 248

A customs debt, as referred to in Article 232 of this Law, shall also be extinguished where the formalities carried out in order to enable the preferential tariff treatment referred to in Article 232 to be granted are cancelled.

CHAPTER 5 REPAYMENT AND REMISSION OF DUTIES

Article 249

The terms used in Chapters 4 and 5 of this Title shall have the following meaning:

(a) 'repayment' means the total or partial refund of import duties or export duties which have been paid and

(b) 'remission' means either a decision to waive all or part of the amount of a customs debt or a decision to render void calculation of all or part of an amount of import or export duty which has not been paid.

Article 250

(1) Import duties or export duties shall be repaid in so far as it is established that when they were paid the amount of such duties was not legally owed or that the amount has been calculated contrary to Article 243 of this Law.

(2) Import duties or export duties shall be remitted in so far as it is established that when they were calculated the amount of such duties was not legally owed or that the amount has been calculated contrary to Article 243 of this Law.

(3) No repayment or remission shall be granted when the facts which led to the payment or calculation of an amount which was not legally owed are the result of deliberate action by the party.

(4) Import duties or export duties shall be repaid or remitted upon submission of an application to the appropriate customs authority within a period of three years from the date on which the amount of those duties was communicated to the debtor.

(5) The period referred to in paragraph (4) of this Article shall be extended if the party provides evidence that it was prevented from submitting the application within the said period as a result of unforeseeable circumstances or force majeure.

(6) Where the customs authority itself discovers within this period that one or other of the situations described in paragraphs (1) and (2) of this Article exists, it shall repay or remit the duties, acting *ex officio*.

Article 251

Import duties or export duties shall be repaid where a customs declaration is invalidated and the duties have been paid. Repayment shall be granted upon submission of an application by the party within the periods laid down for submission of the application for invalidation of the customs declaration.

Article 252

(1) Import duties shall be repaid or remitted in so far as it is established that the amount of such duties calculated relates to goods placed under the customs procedure in question and rejected by the importer because at the point in time referred to in Article 77 of this Law they are defective or do not comply with the terms of the contract on the basis of which they were imported. Defective goods, within the meaning of the first subparagraph, shall be deemed to include goods damaged before their release.

(2) Repayment or remission of import duties shall be granted on condition that: a) the goods have not been used, except for such initial use as may have been necessary to establish that they were defective or did not comply with the terms of the contract and b) the goods are exported from the customs area.

(3) At the request of the party, the customs authority shall permit the goods to be destroyed or to be placed, with a view to re-export, under the external transit procedure or the customs warehousing procedure or in a free zone or free warehouse, instead of being exported. For the purposes of being assigned one of the customs-approved treatments or uses, the goods shall be deemed to be foreign goods.

(4) Import duties shall not be repaid or remitted in respect of goods which, before being declared in the customs declaration, were imported temporarily for testing, unless it is established that the fact that the goods were defective or did not comply with the terms of the contract could not normally have been detected in the course of such tests.

(5) Import duties shall be repaid or remitted for the reasons set out in paragraph (1) of this Article upon submission of an application to the appropriate customs authority within twelve months from the date on which the amount of those duties was communicated to the debtor.

Article 253

(1) Import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 250, 251 and 252 of this Law:

to be determined in accordance with the regulation referred to in Article 257 of this Law and resulting from circumstances in which no deception or obvious negligence may be attributed to the party. The situations in which this provision may be applied and the procedures to be followed to that end shall be defined in accordance with the regulation referred to in Article 257 of this Law. Further conditions on repayment or remission shall also be defined in accordance with this regulation.

2) Duties shall be repaid or remitted for the reasons set out in paragraph (1) of this Article upon submission of an application to the appropriate customs authority within 12 months from the date on which the amount of the duties was communicated to the debtor.

Article 254

Import or export duties shall be repaid or remitted under the conditions laid down in this Chapter only if the amount to be repaid or remitted exceeds an amount fixed in accordance with the regulation referred to in Article 257 of this Law.

Article 255

Repayment of amounts of import duties or export duties shall not give rise to the payment of interest by the customs authorities. Interest shall be paid where a decision to grant a request for repayment is not implemented within three months of the date of adoption of that decision. Such interest shall be calculated in accordance with the amount referred to in Article 230 paragraph (4) of

this Law.

Article 256

Where a customs debt has been remitted or the corresponding amount of duty repaid in error, the original debt shall again become payable. Any interest paid under Article 255 of this Law must be reimbursed to the customs authority.

TITLE 8 IMPLEMENTATION OF THE PROVISIONS OF THIS LAW

Article 257

The Government of the Republic of Macedonia shall adopt further implementing regulations for this Law.

TITLE 9 VIOLATION TO THE CUSTOMS RULES CHAPTER 1 General Provisions

Article 258

Failure to perform activities provided for under the provisions of customs rules or performance contrary to the provisions of customs rules is deemed to be a customs violation. Violations of customs rules may be criminal acts or customs offences.

Article 259

- (1) For a customs offence, the customs authority may initiate a mandatory procedure, a mediation procedure or an offence procedure before court all in accordance with law.
- (2) If the carried out mandatory procedure or mediation procedure fails, the customs authority shall initiate an offence procedure before court.

Article 260

- (1) The confession of the perpetrator of a perpetrated customs offence constitutes part of the evidence in a court proceeding.
- (2) Proving the contrary than the material evidence before the court and other state authorities and pursuant to official acts of the customs authority shall be borne by the perpetrator of the offence himself.

Article 261

- (1) During the court proceedings, the goods subject to a customs offence shall be under customs supervision.
- (2) Where the offence proceeding is stopped or terminated and the goods are not confiscated, such goods shall be returned through the customs authority for the purpose of carrying out of the appropriate customs procedure.
- (1) An offence proceeding on customs offences may not be initiated after three years from the date of perpetration of the offence.
- (2) Prescription shall terminate by any action of the competent authority undertaken for prosecution of the perpetrator of the offence. Following a suspension of the time limit, the prescription period continues to run, but an offence proceeding may not be initiated nor continued after expiration of a five-year period following the date of perpetration of the offence.

Article 262

CHAPTER 2 Punitive Provisions

Article 263

(1) A fine of 100.000 to 3.000.000 denars shall be levied against a legal person and 15.000 to 200.000 denars against a natural person, if such person: 1) enters or exits, or attempts to enter or exit goods in/from the customs area outside the customs border crossing points or at a time when the customs border crossing is not open for circulation (Article 46 and Article 192); 2) enters or exits, or attempts to enter or exit hidden goods through the customs border crossing point (Article 46 and Article 192); 3) removes or attempts to remove the goods from under customs supervision avoiding customs control (Article 47); 4) fails to without delay convey the goods by the route and instructions of the customs authority to the customs authority at the border crossing or to another place designated by such authority, or conveys the goods contrary to the designated route and instructions determined by the customs authority (Article 48); 5) fails to present the goods to the customs authority (Article 50); 6) fails to cover all goods to be placed under a customs procedure with a customs declaration (Article 69); 7) by avoiding customs control enters or exits, i.e. attempts to import in/from the customs area or places or attempts to place under a customs procedure a motor vehicle with chassis and/or engine markings different from the factory imprinted ones or a vehicle bearing falsified registration markings or registration markings that actually belong to another vehicle, or presents a falsified registration licence for the vehicle (Article 47, 69, 71 and 72); 8) acts as if the goods were released for free circulation before completion of the formalities for release of the goods for free circulation and for payment of all duties prescribed with this Law or other laws or the measures of commercial policy or other rules related to import of goods were not complied with (Article 91); 9) contrary to Article 187 paragraph (3) enters goods from the free zone or free warehouse into the remaining part of the customs area (Article 187); 10) contrary to the provisions, transfers the goods to a third person, gives the goods to be used by a third person, lends or otherwise uses the goods for other purposes than those for which such goods were granted relief from payment of import duties and other duties, i.e. pledges, lends or gives as security the goods which were granted relief from payment of duties before the import duties have been settled (Article 200) and 11) achieves or attempts to achieve, by false presentation of the facts or by misleading the customs authority in any other way, application of autonomous measures for reduction or suspension of import duties or preferential tariff treatment or exemption from payment of import duties or relief from payment of import and other charges or payment in a reduced amount or repayment or remission import duties or any other relief (Articles 14, 19, 20, 69, 72, 99, 100, 118, 136, 138, 154, 155, 163 to 166 and 185 to 203 and 250 to 254).

(2) A fine of 25.000 to 400.000 denars shall be levied against the responsible person in a legal person for the offence referred to in paragraph (1) of this Article.

Article 264

(1) A fine of 50.000 to 1.500.000 denars shall be levied against a legal person and 10.000 to 100.000 denars against a natural person, if such person:

1) fails to submit documents or fails to give information necessary to the customs authority, i.e. fails to give other necessary assistance for the carrying out of the customs procedure (Article 14, Article 72 paragraph (2), Article 78 and Article 186); 2) fails to keep the documents within the prescribed periods (Article 17); 3) prepares or induces the preparation of false evidence on the origin of goods (Article 21 and 26); 4) prepares or induces the preparation of a document containing incorrect data in order to unrightfully entail granting of preferential origin for the goods the document covers (Article 21 and 26); 5) fails to lodge a summary declaration in accordance with Article 53 of this Law or lodges a summary declaration after the prescribed period (Article 53); 6) for the purpose of examination of the goods and the means of transportation it is transported in, at the request of the customs authority fails to unload and unpack the goods (Article 56 paragraph (2)); 7) carries out

unloading or transshipment of presented goods without authorisation by the customs authority, or carries out the approved unloading or transshipment at places that are not designated or approved for that purpose, or fails to inform the customs authority without delay in the case of immediate danger imposing the necessity of immediate unloading or transshipment of the goods, or without authorisation by the customs authority, moves the goods from its original storage (Article 56 and Article 57); 8) fails to carry out the formalities for assignment of one of the customs approved treatments or uses for goods or fails to carry out such formalities within the prescribed time limit (Article 58 and Article 59); 9) keeps the goods in temporary storage in places and under conditions contrary to those approved by the customs authority, or carries out operations on the goods that alter their appearance or technical characteristics (Article 61 and Article 62); 10) fails to enter in the import customs declaration all particulars for the goods when such particulars are decisive for the correct tariff classification by nomenclature and this entails or may entail payment of import duties or other charges in a reduced amount (Article 72 paragraph (1)); 11) enters in the import customs declaration a tariff indicator contrary to the particulars on the nature of the goods in box 31 in the SAD which gives rise to the payment of import duties or other charges in a reduced amount (Article 72 paragraph (1)); 12) submits to the customs authority an import customs declaration in which incorrect particulars on the nature, quality, value or origin of the goods are entered and this entails or may entail the payment of import duties in a reduced amount (Article 72 paragraph (1)); 13) submits to the customs authority, in regard to the export procedure, an export customs declaration in which it enters a greater quantity or greater value or a different origin of the goods (Article 72 paragraph (1)); 14) submits to the customs authority, directly or indirectly, and in regard to the implementation of the import customs procedure, documents in which the entered particulars are incorrect and provided this entails or may entail nonpayment of the import duties or payment in a reduced amount or the granting of a customs privilege, benefit or right that it is rightfully not entitled (Article 72 paragraph (2)); 15) submits to the customs authority, directly or indirectly and in regard to the export customs procedure, documents containing incorrect particulars and this entails or may entail the granting of a customs benefit or right that it is rightfully not entitled (Article 72 paragraph (2)); 16) presents means of transportation to the customs authority for the purpose of application of a customs marking, although the said means of transportation is not properly equipped i.e. constructed (Article 82 paragraph (2)). 17) fails to properly protect the customs markings of the goods from destruction or damage or removes them from the means of transportation without the authorisation of the customs authority except if due to unforeseeable circumstances or force majeure the removal or destruction of such marking is necessary in order to ensure the protection of the goods or means of transportation (Article 82 paragraph (2)); 18) prior to the release of the goods for free circulation starts to use the goods (Article 83, paragraph (1) and Article 84); 19) acts contrary to Article 88 or fails to comply with the obligations imposed on him with the granted authorisation for simplified procedure (Article 88); 20) fails to submit a supplementary customs declaration or fails to submit it within the prescribed period (Article 88 paragraph (2)); 21) fails to comply with the obligations in accordance with the granted authorisation for customs procedure with economic impact (Article 100, paragraph (1), Article 129, paragraph (1) and Article 145); 22) fails to notify the customs authority of the activities which followed the granting of the authorisation for the customs procedure with economic impact and which are of significance for the contents or validity of the authorisation (Article 100 paragraph (2)); 23) fails to complete the transit procedure and to present the goods to the customs authority of destination in unaltered state or to present the goods within the prescribed period or fails to comply with the other measures undertaken by the customs authority in order to ensure the equivalency of the goods (Article 106 and Article 109); 24) fails to comply with the obligations and conditions imposed on it as a warehousekeeper (Article 113, Article 122 and Article 123); 25) fails to comply with the obligations and conditions imposed on it as a warehouse user (Article 114); 26) fails to keep stock-

records of the goods placed in a customs warehousing procedure in the manner prescribed by the customs authority or fails to keep them regularly (Article 117 and Article 119); 27) carries on in the customs warehouse activities referred to in Article 118 paragraph (1) and Article 121 of this Law contrary to the authorisation of the customs authority or without authorisation of the customs authority (Article 118 paragraph (1) and Article 121); 28) acts contrary to Article 127 of this Law (Article 127); 29) fails to export, i.e. re-export compensated goods within the determined period within the framework of the inward-processing procedure or fails to, within such period, request the assignment of a different customs-approved treatment or use of goods (Article 132 paragraph (1)); 30) fails to carry out the processing under customs control procedure in accordance with the authorisation of the customs authority (Article 147); 31) fails to export the temporary imported goods within the prescribed period or fails to within such period request authorisation for a different customs-approved treatment or use of goods to be assigned (Article 153); 32) uses goods in the outward processing procedure contrary to this Law (Article 158 paragraph (1)); 33) fails to in case of prior importation exit the goods within the determined period (Article 167); 34) fails to provide upon request by the customs authority a copy of the transportation document accompanying the goods or fails to present the goods (Article 178 paragraph (4)); 35) fails to present the goods referred to in Article 181 paragraph (2) of this Law on entry into a free zone or free warehouse (Article 181 paragraph (2)); 36) fails to beforehand inform the customs authority of the carrying out of an industrial, commercial or service activity in a free zone or free warehouse or carries on such activity regardless of the prohibition or limitation set by the customs authority (Article 183 paragraph (1)); 37) fails to keep stock-records of the goods in the carrying out warehousing, working, processing, sale or supply of goods in the free zone or free warehouse or fails to keep stock-records in the prescribed form (Article 186); 38) fails to beforehand notify the customs authority of re-exportation or destruction of the goods (Article 191 paragraph (3)) and 39) notifies the customs authority that certain goods are leaving the customs area, but does not hold the goods or such goods are not in the means of transportation (Article 192).

(2) A fine of 20.000 to 200.000 denars shall be levied against the responsible person in a legal person for the offence referred to in paragraph (1) of this Article.

Article 265

(1) A legal person that buys, sells, sells out, receives as gift, conceals, takes in for storage or transportation, keeps, uses or acquires on any basis goods for which it knows, or considering the circumstances, must have known, were used for perpetrating an offence under Articles 263 and 264 of this Law, if the perpetrator committed any of the actions under Articles 263 and 264 of this Law, shall be punished with the same penalty prescribed for the perpetrator of the offence.

(2) A fine ranging from 20.000 to 200.000 denars shall be levied for an offence referred to in paragraph (1) of this Article against a responsible person in a legal person.

(3) A fine ranging from 10.000 to 100.000 denars shall also be levied for an offence referred to in paragraph (1) of this Article against a natural person.

Article 266

(1) A fine in the amount of 15.000 denars shall be levied on the spot by the customs officer against a legal person – perpetrator of an offence referred to in Article 263 and Article 265 of this Law provided the value of the goods does not exceed the amount of 60.000 denars.

(2) A fine in the amount of 15.000,00 denars shall be levied on the spot by a customs officer against a legal person -perpetrator of an offence referred to in Article 264 of this Law.

(3) A fine in the amount of 5.000 denars shall be levied by the customs officer on the spot against a responsible person in a legal person referred to in paragraphs (1) and (2) of this Article.

(4) A fine in the amount of 3.000 denars shall be levied by the customs officer on the spot against a natural person – perpetrator of the offence referred to in Article 263 and Article 265 of this Law if the value of the goods does not exceed the amount of

30.000 denars and the goods are not intended for resale or the carrying out of some profitable business.

(5) A fine in the amount of 3.000 denars shall be levied by the customs officer on the spot against a natural person perpetrator of an offence referred to in Article 264 of this Law.

Article 267

(1) Goods subject of the offence referred to in Article 263 items 1 to 9 and Article 265 in regard to Article 263 items 1 to 9 of this Law shall be confiscated.

(2) Goods referred to in paragraph (1) of this Article shall also be confiscated where they are not ownership of the perpetrator of the offence, provided the owner of the goods was familiar or considering the consequences, should have reasonably been familiar, with the fact that the goods are subject to the offences from Article 263 or 265 of this Law.

(3) Goods referred to in paragraph (1) and paragraph (2) of this Article shall also be confiscated where after the offence is perpetrated such goods are processed, worked or completed and the incremental value does not exceed 30% of the customs value of the goods subject of the offence.

(4) If the goods, subject of the offence are not recovered, the perpetrator of the offence shall pay an amount proportionate to their value, which, according to the provisions of this Law, means the customs value and a procedure for collection of import duties and charges payable on import shall be initiated.

(5) It is deemed that the goods are not recovered if for any reason it is not possible for them to be confiscated from the owner. It is also deemed that the goods are not recovered if the goods subject of the offence are processed, or completed or worked after perpetration of the offence so that the incremental value exceeds 30 % of the customs value of the goods subject of the offence.

(6) Where there is more than one perpetrator, they shall all be jointly and severely liable for the value of the goods.

(7) The goods, subject to a customs offence for which a security measure – confiscation of the goods is prescribed, remain under customs supervision until conclusion of the offence proceedings.

Article 268

The goods or the means of transportation with which a perpetration has been committed shall be confiscated, i.e. their value shall be collected even when an offence proceeding cannot be initiated against the perpetrator due to the fact that he is either unknown or unavailable, or due to the existence of other legal obstacles, except in case of occurrence of absolute prescription.

Article 269

(1) The means of transportation used for transport i.e. carriage of the goods across the customs line i.e. into the customs area, of the goods subject of the offences referred to in Article 263 of this Law shall be confiscated provided the value of the said goods exceeds 20% of the value of the means of transportation and the owner of the means of transportation, knew or reasonably should have known that it was to be used for such transportation, i.e. carriage.

(2) Notwithstanding paragraph (1) of this Article, the means of transportation shall also be confiscated when it has been specially constructed, adapted, altered or adjusted in whatsoever way for the purpose of concealment of the goods.

(3) Paragraphs (1) and (2) of this Article do not affect the rights of the other persons to require compensation of the damage from the perpetrator of the offence.

TITLE 10 Transitory and Final Provisions

Article 270

The rights granted with the authorisations and other administrative acts in regard to the relief from payment of customs duty, in accordance with the Customs Law ("Official Journal of the Republic of Macedonia" no. 21/98, 26/98, 63/98, 86/99, 25/2000, 109/2001, 31/2001, 4/2002, 55/2002, 42/2003) that were not utilised until the date of application of this Law, may be used until the expiry of the time limits prescribed with those acts, but not later than 90 days following the date of application of this Law.

Article 271

Administrative procedures initiated before the date of application of this Law shall be completed in accordance with the provisions applicable up to the time of start of its application.

Article 272

Customs warehouses established before the date of application of this Law shall continue to operate as customs warehouses provided they make their operation compliant with the conditions laid down under this Law within a period of six months from the day of application of this Law.

Article 273

The free economic zones shall make their operation compliant with the conditions prescribed under this Law at latest by 31st May 2006.

Article 274

Persons performing representation activities in the customs declarations lodging procedure before the entering into force of this Law may continue performing such affairs of representation without having to comply with the conditions set out in Article 6 of this Law at latest by 30th April 2006.

Article 275

With the day of application of this Law, the Customs Law ('Official Journal of the Republic of Macedonia' no. 21/98, 26/98, 63/98, 86/99, 25/2000, 109/2001, 31/2001, 4/2002, 55/2002, 42/2003), as well as the provisions of the Law on Free Economic Zones ('Official Journal of the Republic of Macedonia' no. 56/99, 41/2000, 6/2002) regarding customs procedures for goods entering or exiting a free economic zone, shall cease to apply.

Article 276

This Law shall enter into force on the eighth day following its publishing in the "Official Journal of the Republic of Macedonia" and shall apply as from 01st January 2006.

48. Togo

Law No. 90-24 of November 23, 1990 on the Protection of National Cultural Heritage

This law ensures the protection of national cultural heritage. According to Article 2, national cultural heritage concerns: “religious, artistic, literary or touristic movable and immovable property whose conservation and protection is major importance for the national community”. Articles 5, 6 and 7 provide a list of protected movable and immovable property. When property is considered as part of the national cultural heritage, they fall into the public domain. Its exportation, exploitation and reproduction for commercial use are prohibited (Articles 4, 13 and 29).

French text only

49. Tunisia

Law No. 35 dated 24 February 1994 relating to the issuance of the Code Of the Protection Of Archaeological And Historical Heritage and Traditional arts 1994

Enforcement of IP and Related Laws, Traditional Cultural Expressions, Traditional Knowledge

Arabic and French text only

50. Turkey

Regulation on Exporting and Importing of Movable Cultural and Natural Property that Needs to be Protected 1984

Relates to traditional knowledge

Turkish text only

51. Uganda

Listed as relevant but minimal mention of traditional knowledge

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 2006

An Act to repeal and replace the Copyright Act, and to provide for the protection of literary, scientific and artistic intellectual works and their neighbouring rights; and to provide for other related matters.

DATE OF ASSENT: 31st May, 2006.

Date of Commencement: 4th August, 2006.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Short title

This Act may be cited as the Copyright and Neighbouring Rights Act, 2006.

2. Interpretation

In this Act, unless the context otherwise requires—

“audio visual fixation” means work consisting of a series of related images which impart the impression motion, with or without accompanying sounds, susceptible of being made visible and where accompanied by sound, susceptible of being audible such as cinema, television or video films; “author” means the physical person who created or creates work protected under section 5 and includes a person or authority commissioning work or employing a person making work in the course of employment;

“braille” means writing of the blind consisting of raised dots which are read by touching;

“broadcast” has the same meaning assigned to under the Uganda Communications Act;

“broadcasting company” means a company which—

(a) communicates or carries on transmission or broadcasts programmes of sound, video or data intended for simultaneous reception by the public; or

(b) provides or supplies audio-visual fixation rental communication or library services;

(c) provides services by wire or wireless means in such a way that members of the public access the fixation from a place and at a time individually chosen by them;

“choreography” means steps and movements of a dance and “choreographic work” includes any form of dance or body movement communication whether in a dramatic form or not;

“communication to the public” means the operation by which sounds or images or both sounds and images are transmitted to the public whether through broadcast, performance or other means and

“public” excludes a family setting or function;

“computer programme” means a set of instructions expressed in any language, code or notation, intended to cause the device having an information processing capacity to indicate, perform or achieve a particular function, task or result;

“copy” means a production of a work in a written, recorded or fixation form or in any other material form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or a model;

“currency point” has the value specified in the 1st Schedule;

“derivative work” means work resulting from adaptation, translation or other transformation of an original work but which constitutes an independent creation in itself;

“economic rights” means the rights specified under section 9;

“fixation” means the embodiment of images or sound or both images and sound in a material form sufficiently stable or permanent, to permit them to be perceived, reproduced or otherwise communicated through a device during a period of more than transitory duration;

“literary work” includes—

(a) novels, stories or poetic work;

(b) plays, stage directions, audio-visual scenarios or broadcasting scripts;

(c) textbooks, histories, biographies, essays or articles;

(d) encyclopaedias, dictionaries, directories or anthologies;

(e) letters, reports or memoranda;

(f) lectures, addresses or sermons; and

(g) any other work of literature;

“Minister” means the Minister responsible for justice;

“moral right” means the right to claim authorship or performance as is provided in sections 10 and 23;

“moral rights information” means information which identifies the author of the work or performer, the title of the work, the producer of the sound recording or audio-visual fixation, the owner of any right in the work or information about the terms and conditions of use of the work;

“neighbouring rights” include rights of performing artistes in their performances, rights of producers and music publishers and rights of broadcasting companies in their programmes and others as is provided under Part IV;

“performance” means the presentation of a work by actions such as dancing, acting, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators;

“performer” includes an actor or actress, singer, musician, dancer or other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

“producer” means a person who organises and finances the production of an audio visual fixation or sound recording;

“pseudonym” means the fictitious name adopted by an author;

“publication” means the lawful reproduction of a work or of an audio-visual or audio visual sound recording, fixation or of sound recording for availability to the public; and includes public performances and making available of a work on the internet;

“published” means a work or sound recording, tangible copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of work the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent in writing of the producer of the phonogram or his or her successor in title;

“public performance” means a performance of work which is presented to listeners or spectators not restricted to specific persons belonging to a private group and which exceeds the limits or normal domestic representations;

“programme-carrying signals” means electronically generated carriers transmitting live or recorded material consisting of images, sounds, or both images and sounds in their original, form or any form recognisably derived from the original and emitted to or passing through a satellite situated in extra-territorial space;

“public place” means any building, or conveyance to which for the time being the public are entitled or permitted to have access, with or without payment which may include cinema, concert, dance or video halls, bars, clubs, sports grounds, holiday resorts, circuses, restaurants, counter vehicles, banks or other commercial establishments;

“Registrar” means the Registrar of copyright appointed under section 41;

“reproduction” means the making of one or more copies of a work or sound recording in any manner or form including any permanent or temporary storage of the work or sound recording in electronic form.

“sound recording” means any exclusively aural fixation of sound in a material carrier such as a tape, disc or other similar material but does not include audio visual work including sound.

3. Application of the Act.

This Act applies to any work, including work, created or published before the commencement of this Act, which has not yet fallen into the public domain where the work is—

- (a) created by a citizen of Uganda or a person resident in Uganda;
- (b) first published in Uganda, irrespective of the nationality or residence of the author;
- (c) created by a person who is a national of or resident in a country referred to in section 81 or;
- (d) first published in a country referred to in section 81.

PART II—COPYRIGHT PROTECTION AND RIGHTS

4. Author entitled to copyright protection.

(1) The author of any work specified in section 5 shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created.

(2) The protection of the author’s work under subsection (1) shall not be subject to any formality.

(3) For the purpose of this section, a work is original if it is the product of the independent efforts of the author.

5. Work eligible for copyright.

- (1) The following literary, scientific and artistic works are eligible for copyright—
- (a) articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature;
 - (b) dramatic, dramatic-musical and musical works;
 - (c) audio-visual works and sound recording, including cinematographic works and other work of a similar nature;
 - (d) choreographic works and pantomimes;
 - (e) computer programmes and electronic data banks and other accompanying materials;
 - (f) works of drawing, painting, photography, typography, mosaic, architecture, sculpture, engraving, lithography and tapestry;
 - (g) works of applied art, whether handicraft or produced on industrial scale, and works of all types of designing;
 - (h) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science;
 - (i) derivative work which by selection and arrangement of its content, constitute original work;
 - (j) any other work in the field of literature, traditional folklore and knowledge, science and art in whatever manner delivered, known or to be known in the future.

(2) Derivative works such as—

- (a) translations, adaptations and other transformations of pre-existing works under subsection (1); and
 - b) collections of pre-existing works like encyclopaedia and anthologies;
- which by selection and arrangement of their contents constitute original works, shall be protected under this Act as original works.

(3) The protection of a derivative work under subsection (2) shall not affect the protection of the pre-existing work used by a person for derivation purposes.

6. Ideas not protected.

Ideas, concepts, procedures, methods or other things of a similar nature shall not be protected by copyright under this Act.

7. Public benefit works not protected.

- (1) The right to protection of copyrights under this Act shall not extend to the following works—
- (a) an enactment including an Act, Statute, Decree, statutory instruments or other law made by the Legislature or other authorised body;
 - (b) decree, order or other decision by a court of law for the administration of justice and any official translations from them;
 - (c) a report made by a committee or commission of inquiry appointed by Government or any agency of Government;
 - (d) news of the day namely reports of fresh events or current information by the media whether published in a written form, broadcast, internet or communicated to the public by any other means.
- (2) The Government shall be the trustee for the public benefit of the works specified in subsection (1).

8. Employed authors and works for Government or international bodies.

- (1) Where a person creates a work—
- (a) in the course of employment by another person;

b) on commission by another person or body;

then in the absence of a contract to the contrary, the copyright in respect of that work shall vest in the employer or the person or body that commissioned the work.

(2) Where a person creates work under the direction or control of the Government or a prescribed international body, unless agreed otherwise, the copyright in respect of that work shall vest in the Government or international body.

(3) Vesting of copyright referred to in (1) and (2) above shall apply only to work created within the stipulated schedule of work of an employee.

(4) The moral right in a work made under this section shall always remain with the actual author of the work.

9. Economic rights of author.

The owner of a protected work shall have, in relation to that work, the exclusive right to do or authorise other persons to do the following—

(a) to publish, produce or reproduce the work;

(b) to distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership;

(c) to perform the work in public;

(d) to broadcast the work;

(e) to communicate the work to the public by wire or wireless means or through any known means or means to be known in the future, including making the work available to the public through the internet or in such a way that members of the public may access the work from a place and at a time individually chosen by them;

(f) where the work is a pre-existing work, to make a derivative work;

(g) to commercially rent or sell the original or copies of the work;

(h) to do, in relation to that work any act known or to be known in the future;

(i) to reproduce transcription into braille which is accessible to blind persons.

10. Moral rights of author

(1) The author of any work protected by copyright shall have a moral right—

(a) to claim authorship of that work, except where the work is included incidentally or accidentally in reporting current events by means of media or other means;

(b) to have the author's name or pseudonym mentioned or acknowledged each time the work is used or whenever any of the acts under section 9 is done in relation to that work, except where it is not practicable to do so; and

(c) to object to, and seek relief in connection with any distortion, mutilation, alteration or modification of the work.

(2) The author of a work has a right to withdraw the work from circulation if it no longer reflects the author's convictions or intellectual concepts; and if the author does so, shall indemnify any authorised user of that work who might, in any material way, be affected by the withdrawal.

(3) The moral right under subsection (1) is not assignable to any person, except for purposes of its enforcement.

11. Co-author's right.

Where work is created by more than one person and no particular part of the work is identified to have been made by each person, such that the work is indistinguishable, all the authors shall be co-owners of the economic rights and the moral rights relating to that work and the co-owners shall have equal rights in that work.

12. Fine art works to have inalienable right in proceeds of sale.

(1) The author of an applied or fine art work shall have an inalienable right to share in the proceeds of each sale of that work by public auction, through a dealer or by whatever means.

(2) The right to share in the proceeds referred to in subsection (1) shall not include auction for fundraising purposes.

PART III—DURATION OF COPYRIGHT AND AUTHORIZED USES OF PROTECTED WORKS

13. Duration of copyright protection

(1) The economic rights of an author in relation to a work are protected during the life of the author and fifty years after the death of the author.

(2) The economic rights of the author where the work is of joint authorship, are protected during the life of the last surviving author and fifty years after the death of the last surviving author.

(3) Where the economic rights in a work are owned by a corporation or other body, the term of protection shall be fifty years from the date of the first publication of the work.

(4) Where the work is published anonymously or under a pseudonym, the economic rights of the author are protected for a term of fifty years from the date of its first publication; but where before the expiration of the fifty years the identity of the author is known or is no longer in doubt the economic right shall be protected during the life time of the author and fifty years after the death of that author.

(5) In the case of audio-visual work, sound recording or broadcast, the economic rights of the author are protected until the expiration of fifty years commencing from the date of making the work or from the date the work is made available to the public with the consent of the author.

(6) In the case of a computer program the economic right of the author are protected for fifty years from the date of making the program available to the public.

(7) In the case of photographic work, the economic rights of the author are protected for fifty years from the date of making the work.

(8) The moral rights of an author exist in perpetuity whether the economic rights are still protected or not and that moral right is enforceable by the author or after death his or her successors.

14. Assignment of licence or transfer of a copyright.

(1) The owner of a copyright may, as if it were movable property—
or her economic rights in a copyright to another person;

(a) assign his

(b) licence another person to use the economic rights in a copyright;

(c) transfer to another person or bequeath the economic rights in a copyright in whole or in parts;

(d) transfer to any braille production unit in Uganda the economic rights in the braille translation.

(2) The assignment, licence or transfer of the economic rights in whole or in part under subsection (1) shall not include or imply the assignment, licence or transfer of the moral right.

(3) An assignment or transfer of the economic right under subsection (1) shall be in writing and signed by the owner of the right or by the owner's agent and by the person to whom the rights are being assigned or transferred.

(4) A licence to do an act falling within a copyright may be oral, written or inferred from conduct or circumstances.

(5) An assignment or transfer of the economic right shall be limited to the use, period and country provided in the contract under subsection (3).

(6) Where the ownership of the only copy of one of several copies of a work is assigned, the economic rights relating to the work shall, unless the contrary is stated in writing, not be assigned.

(7) Where a person is entitled, under will, to any original literary, dramatic, musical or artistic work in a material form, but which work was not published before the death of the testator, the economic

rights in the work shall, on publication of the work, belong to the person to whom the work is bequeathed unless the contrary is indicated in the will.

15. Fair use of works protected by copyright

(1) The fair use of a protected work in its original language or in a translation shall not be an infringement of the right of the author and shall not require the consent of the owner of the copyright where—

(a) the production, translation, adaptation, arrangement or other transformation of the work is for private personal use only;

(b) a quotation from a published work is used in another work, including a quotation from a newspaper or periodical in the form of press summary, where—

(i) the quotation is compatible with fair practice; and

(ii) the extent of the quotation does not exceed what is justified for the purpose of the work in which the quotation is used, and

(iii) acknowledgement is given to the work from which the quotation is made;

(c) a published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording in so far as the use is compatible with fair practice and acknowledgement is given to the work and the author;

(d) the work is communicated to the public for teaching purposes for schools, colleges, universities or other educational institution or for professional training or public education in so far as the use is compatible with fair practice and acknowledgement is given to the work and the author;

(e) the work is reproduced, broadcast or communicated to the public with acknowledgement of the work, in any article printed in a news paper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public;

(f) any work that can be seen or heard is reproduced or communicated to the public by means of photograph, audio-visual work or broadcast to the extent justified for the purpose when reporting on current events;

(g) any work of art or architecture in a photograph or an audio-visual or television broadcast is reproduced and communicated to the public where the work is permanently located in a public place or is included by way of background or is otherwise incidental to the main object represented in the photograph or audio-visual work or television broadcast;

(h) for the purposes of current information, a reproduction in the press, broadcast or communication to the public is made to—

(i) a political speech or a speech delivered during any judicial proceeding; or

(ii) an address, lecture, sermon or other work of a similar nature delivered in public;

(i) for the purpose of a judicial proceeding, work is reproduced;

(j) subject to conditions prescribed by the Minister, a reproduction of a literary, artistic or scientific work by a public library, a non-commercial documentation centre, a scientific institution or an educational institute if the reproduction and the copies made—

(i) do not conflict with the normal exploitation of the work reproduced;

ii) do not unreasonably affect the right of the author in the work; and

(k) any work is transcribed into braille or sign language for educational purpose of persons with disabilities.

(2) In determining whether the use made of a work in any particular case is a fair use the following factors shall be considered—

(a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;

(b) the nature of the protected work;

- (c) the amount and substantiality of the portion used in relation to the protected work as a whole; and
- (d) the effect of the use upon the potential market for value of the protected work.
- (3) The fact that a piece of work is not published shall not of itself prejudice the requirement of fair use in accordance with subsection(2).

16. Ephemeral recording

- (1) A broadcasting company may, for the purpose of its own broadcast and by means of its own facilities, make an ephemeral recording of the broadcast, in one or several copies of any work which it is authorised to broadcast.
- (2) No copyright shall exist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast.
- (3) Subject to subsection (4) all copies of the ephemeral recording shall be destroyed within a period of six months or longer period as may be authorised by the copyright owner.
- (4) Where a recording under subsection (1) is of exceptional documentary character, a copy of the recording may be preserved for the National Archives.
- (5) The preservation of a copy under subsection (4) does not affect, in any way, the rights of the author in the work that was broadcast.
- (6) Whether the recording of a broadcast under subsection(1) is of an exceptional documentary character is a question of fact to be determined having regard to all the circumstances and in particular to the need for the enhancement of the historical or social aspect of life in Uganda.

17. Non-exclusive licence

- (1) A person who is a citizen of Uganda or who is ordinarily resident in Uganda may apply to the Minister for a non-exclusive licence—
 - (a) to make and publish or to cause to make and publish a translation of a work into the English, Swahili or any Ugandan language and to produce or cause to produce copies from them;
 - (b) to reproduce or cause to be reproduced a work which is published, and to publish or cause to be published in a material form the work reproduced.
- (2) An application for translation shall not be issued under paragraph (a) of subsection (1) until one year has expired from the date of the publication of the work in a material form.
- (3) Where the author of the work has withdrawn all copies of the work from circulation, no licence under paragraph (a) of subsection (1) shall be granted by the Minister in respect of that work.
- (4) The Minister shall not grant a licence under paragraph (b) of subsection (1)—
 - (a) until the following period commencing from the date of first publication of the work in a material form, has expired—
 - (i) three years in the case of work in a material form of technology or natural or physical science including mathematics;
 - (ii) five years in the case of music or any other related work;
 - (iii) seven years in the case of work of fiction, poetry, drama or for a book of art;
 - (iv) seven years in the case of an audio-visual fixation.
- (5) The licensee under this section shall provide just compensation consistent with standards of royalties normally payable in the case of a licence freely negotiated between any person and the owner of the right, which shall be paid to the owner or owner's agent and if the owner is not known or cannot be found shall be paid to the Registrar who shall avail it to the owner if found.
- (6) Where a licence is granted under this section the licensee shall ensure that the translation or reproduction of the work is correct and the published copies include—
 - a) the original title and the name of the author of the work;

- (b) a notice in the language of the translation or reproduction that the copies of the work are for distribution in Uganda and are not for export from Uganda; and
- (c) a reprint of the copyright notice, that is, the symbol © accompanied by the name of the owner of the copyright and the year of first publication, where the work from which the translation or reproduction is made is published with a copyright notice.

18. Scope and condition of non-exclusive licence

(1) A licence issued under section 17 shall—

- (a) be limited to a non-exclusive right to translate the work into the language in respect of which it is granted;
- (b) be limited to non-exclusive right to reproduce the work as provided in the licence;
- (c) be for the purpose of teaching; scholarship or research only;
- (d) not be transferable by the licensee;
- (e) not extend to the export of copies of the work translated under the licence.

(2) The Minister shall not issue a licence under section 17 unless—

- (a) the Minister is satisfied that no translation of that work into the language in question has ever been published in a material form by, or under the authority of the owner of the right of translation or that all previous editions in that language are out of print.
- (b) there has never been a sale or other distribution, authorised by the owner or the owner's agent of the reproduction right, of copies of the particular edition in Uganda to the public or in connection with systematic instructional activities, or that there has been no sale or other distribution during the immediately preceding six months;
- (c) the applicant has requested from the owner of the rights or the owner's agent for the authorisation to reproduce or translate and has been refused unreasonably or in spite of genuine efforts made by the applicant it has not been possible to locate the owner or the owner's agent;
- (d) the applicant has at the time of making the application, sent a notice of the application to the International Copyright Information Centre at the UNESCO, or a national or regional copyright information centre officially designated to that organisation by the government of the country where the author or publisher is believed to have his or her principal place of business;
- (e) where the applicant cannot locate the owner of the rights or the owner's agent the applicant has by registered mail sent copies of the application to the author or publisher whose name appears on the work and also to the national or regional copyright information centre or in the absence of such a centre, has sent a copy of the application to the International Copyright Information Centre of UNESCO.

(3) A licence issued under section 17 shall terminate—

- (a) where copies of an edition of the work translated or reproduced are distributed to the general public in Uganda; or
- (b) translation of the work in the same language and with substantially the same content as the edition for which the licence was granted is published in Uganda by or under the authority of the owner of the right of translation, at a reasonable price; and any copies produced before the termination of the licence may be distributed until the stock is exhausted.
- (c) where copies of the edition of the work are distributed in Uganda in connection with systematic instructional activities, by the owner of the right of production or the owner's agent at a reasonable price if that edition is in the same language and substantially the same in content as the edition published under the licence, and any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

19. Translation for broadcasting

(1) A broadcasting company may apply to the Minister for a non-exclusive licence to translate published work or text of an audio-visual fixation where—

(a) the translation is to be made from a copy lawfully acquired;

(b) the translation is for broadcast intended for teaching or for dissemination of the results of specialised technical or scientific research to experts in a particular profession by broadcast;

(c) the broadcast under paragraphs (a) or (b) is lawfully made and is intended for reception in Uganda only.

(2) A translation under this section may be exchanged only between the departments or divisions of that licensed company.

(3) A translation made under this section shall not be used for any commercial purpose.

20. Records of copyright centres

The Registrar shall keep up-to-date records of the copyright information centres for ease of reference or contact by the interested persons under sections 17, 18, 19 or other circumstance.

PART IV—NEIGHBOURING RIGHTS

21. Neighbouring rights and persons entitled

(1) Neighbouring rights are rights attached to the auxiliary role played by performers, producers of sound recording and audio-visual and broadcasting companies through—

(a) the fulfilment of literary or artistic works;

(b) the provision of destiny and permanence in works; and

(c) the diminishing of distance in the publication of works;

respectively, which auxiliary role is dependent on the work of the author and without which the role cannot begin.

(2) The neighbouring rights attached to the auxiliary role of a performer or a producer or broadcasting company does not in any way affect the copyright in a literary, scientific or artistic work from which it arose.

22. Rights of a performer

(1) A performer shall have the right to authorise—

(a) the fixation of his or her live performance not previously fixed on a physical medium;

(b) the broadcasting or communication to the public of his or her unfixed performance except where—

(i) it is made from a previously authorised fixation;

(ii) the transmission has been authorised by a broadcasting company that transmitted the first performer;

(c) the direct or indirect reproduction of a fixation of his or her performance in manner or form;

(d) the distribution or making available to the public of the original or copies of the fixation of his or her performance through sale or other transfer of ownership.

(2) A performer has the right to enter into contract on terms and conditions that the performer may wish for the use of the performance or fixation by another person.

(3) A performer shall have the right to authorise the commercial rental to the public of the original or copies of the fixation of his or her performance even after the distribution or making available to the public of the original or copies of the fixation by the performer.

(4) A performer shall have the right to authorise the making available to the public of the fixation of his or her performance by wire or wireless means or internet, in such a way that members of the public may access it from a place and at a time individually chosen by them.

23. Moral rights of a performer

(1) A performer has a right—

- (a) to be identified as the performer;
- (b) to have his or her name mentioned each time the performance or the broadcast or communication of the fixation, is used or whenever any of the acts referred to in section 24 is done in relation to a performance, except where it is not practicable to do so;
- (c) to object to and seek relief in connection with any distortion, mutilation, alteration or modification of his or her performance.

(2) The moral right under subsection (1) shall not be assignable to any person, except for the purpose of its enforcement.

24. Action not authorized without a specific provision in a contract

Unless it is specifically provided in a contract, the authorisation to broadcast or communicate a performance does not imply—

- a) a licence to other broadcasting or companies to transmit the performance;
- b) authorisation to make a fixation of the performance;
- (c) authorisation to reproduce the fixation where the authorisation granted is to broadcast and communicate a fixation of the performance;
- (d) authorisation to broadcast or communicate the performance from the fixation where the authorisation granted is to make a fixation.

25. Authorization in a co-performance

Where two or more persons take part in the same performance as a group, authorisation for the use, broadcast or communication of the performance shall be given by the leader of the group or the legal representative of the group if any.

26. Duration of protection of performer

The right of a performer under this Act shall be protected for fifty years from the date of the performance.

27. Rights of Director

director of a performance, sound recording or audio-visual fixation has a right—

- (a) to be identified as the director;
- (b) to have his or her name mentioned each time a performance, sound recording or audio-visual fixation is used or whenever any acts referred to in section 24 is done in relation to the work except where it is not practicable to do so;

28. Rights of producer

(1) A producer of a sound recording or audio-visual fixation shall have a right to authorise the reproduction of that sound recording or audio-visual fixation.

(2) A producer of sound recording or audio-visual fixation shall have the right to authorise the distribution or making available to the public of the original or copies of the fixation through sale or other transfer of ownership.

(3) A producer of sound recording or audio-visual fixation shall have the right to authorise the commercial rental to the public of the original or copies of the fixation even after the distribution or making available to the public of the original or copies of the fixation by the producer.

(4) A producer of sound recording or audio-visual fixation shall have the right to authorise making available to the public of the fixation, by wire or wireless means, in such a way that members of the public may access the fixation from a place and at a time individually chosen by them.

(5) No person shall reproduce, distribute or make available to the public a sound recording or audio-visual fixation without the authorisation of the producer under this section.

(6) For the purposes of this section, reproduction of a copy of a sound recording or an audio-visual fixation shall be unlawful if, with or without imitating the outward characteristics of the original work, it incorporates all or part of the sound or image with or without sound and without authorisation.

(7) Where a sound recording or audio-visual fixation for commercial advertisement or its reproduction is used for broadcasting or for any other form of communication to the public, the user shall not require the authorisation of the producer, but shall pay an equitable remuneration to the producer and the performer.

(8) The rights of the producer under this section shall be protected for fifty years from the date of the cutting of the matrix.

29. Duty to indicate moral right information

(1) The producer or publisher has a duty to indicate on the book, cable of the disc or tape or the container—

(a) the name of the author and those of the main performer or performers if any;

(b) the title of the work;

(c) the year of the cutting of the original matrix or of first publication of the book;

(d) the name (whether individual or body corporate) or distinguishing mark of the producer or publisher; and

(e) that the rights of the producer or publisher are reserved.

(2) For the purposes of paragraph (a) of sub-section (1) a choir, orchestra, theatre company or author shall be referred to by the proper name and by the name of the performer if any.

(3) The producer may indicate on the cable of the disc or tape or the container any information about the terms and conditions of use of fixation.

30. Notice of protection of producer's rights

(1) Where copies of a sound recording or audio-visual fixation are made for commercial purposes there shall be printed on the copies a notice consisting of—

(a) the symbol ©; and

(b) the year of first publication of the sound recording or audio-visual fixation placed in a manner that gives reasonable notice of claim of protection of the rights of the producer.

(2) Where the copies of sound recording, audio-visual fixation or their containers do not identify—

(a) the producer;

(b) the producer's licence in relation to that sound recording or fixation; or

(c) the description or trade mark of the producer;

the notice shall include the name of the person who owns the rights of the producer.

(3) Where the copies of a sound recording, audio-visual fixation or their containers do not identify the principal performers the notice shall include the name of the person who owns the rights of the performers.

(4) The coming into force of this Act shall not affect the right of any person to use, in accordance with the provisions of this Act, any fixation or reproduction made in good faith before the coming into force of this Act.

31. Remuneration for broadcasting

(1) If a sound recording or audio-visual fixation published for commercial advertisement purposes, or a reproduction of that sound advertisement recording or audio-visual fixation is used directly or

indirectly for broadcasting or other communication to the public, or is publicly performed, unless otherwise agreed, a single equitable remuneration for the performer or performers and the producer of the sound recording or audio-visual fixation shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid to the performer or performers.

(3) Sound recording or audio visual-fixation published for commercial advertisement and made available to the public by internet, wire or wireless means in such a way that members of the public may access it from a place and at a time individually chosen by them shall, for the purposes of this section, be subject to subsection (1).

32. Rights of a broadcasting company

(1) A broadcasting company shall have the right to authorise or prohibit—

(a) the broadcasting of its broadcast;

(b) the fixation of its broadcasts; or

(c) the reproduction of a fixation of its broadcasts except where—

(i) the fixation used to make the broadcast is made without authorisation; or

(ii) the broadcast is initially fixed in accordance with the provisions of this Act but the reproduction is made for purposes other than those specified.

(2) The rights of a broadcasting company under this section shall be protected for fifty years from the date the first broadcast takes place.

33. Producers of programme carrying signals

A producer of programme carrying signals transmitted through the point to point communication intellects shall have the right to authorise further transmission of the signal in Uganda or from its territory which right shall exist for fifty years from the date of publication of the programme.

34. Limitation on neighbouring rights

The provisions of sections 24, 27, 28, 29, 30, 33 shall not apply where the acts done are for—

(a) private use;

(b) the reporting of current event, except that no more than short excerpts of a performance, sound recording or audio-visual performance fixation or broadcast are used;

(c) teaching science, or

(d) quotations in the form of short excerpts of a performance, sound recording, audio-visual fixation or fixation or broadcast, which are compatible with fair use and are justified by the informative purpose of the quotations.

PART V—CONTRACTS RELATING TO THE EXPLOITATIONS OF RIGHTS.

35. Contracts to be in writing

Any contract relating to the exploitation of the author's rights or the performer's rights shall be in writing and signed or marked by the parties to the contract.

36. Publishing contracts

(1) Subject to section 40, the author, his or her successor in title or agent shall, in a publishing contract, transfer to the publisher against payment of a remuneration, the right to publish his or her work in a material form and distribute that work to the public.

(2) A publishing contract made under this section may specify—

(a) the period, the territory and the language for which the right is transferred;

(b) the exclusive or non-exclusive nature of the right transferred;

- (c) the period within which the work of the contract is to be published which period shall not exceed eighteen months from the date of the making of the contract;
- (d) the amount of the author's remuneration and mode of payment.

37. Public performance contracts

- (1) Subject to section 40, the author, performer, successor in title or agent shall, in a public performance contract, transfer to a person or body, the right to perform in public his or her literary, dramatic, dramatic-musical or musical work against payment of remuneration.
- (2) A performance contract made under this section may specify—
 - a) the exclusive or non-exclusive nature of the rights transferred;
 - (b) the period for which the right is transferred or the number of performances to be effected;
 - (c) the period within which the performance or performances are to be effected, which shall not exceed two years from the date of the making of the contract;
 - (d) the territory for which the right is transferred;
 - e) the type of performance; and
 - (f) the amount of the author's remuneration and mode of payment.

38. Broadcasting contracts

- (1) Subject to section 40, the author, performer, successor in title or agent shall, in a broadcasting contract, transfer to a company involved in radio or, television broadcasting or the supplier of audio-visual communication services or other form of broadcast, the right to broadcast his or her literary dramatic, dramatic-musical or musical work against payment of remuneration.
- (2) A broadcasting contract made under this section may specify—
 - a) the exclusive or non-exclusive nature of the right transferred;
 - (b) the period for which the right is transferred or the number of times the work shall be broadcast;
 - (c) the language in which the work is to be broadcast;
 - (d) the territory in which the work is to be broadcast; and
 - e) the amount of the author's remuneration and mode of payment.

39. Voidable contracts

Any contract made under this Part of this Act which does not include any item specified in respect of the respective contract or any contract which contravenes a relevant provision of this Part of this Act is voidable.

40. Remuneration payable to author

The remuneration to be paid to an author under this Part of the Act shall be that agreed upon by the parties in respect of—

- a) proceeds from the exploitation of the authors' work, where practicable; or
- (b) a reasonable lump sum to off set the expenses incurred by the creation of the work, plus a reasonable profit.

PART VI—GENERAL PROVISIONS RELATING TO ADMINISTRATION OF COPYRIGHT

41. Registrar of copyright and other officers

- (1) The Minister may, on the recommendation of the board of the Uganda Registration Services Bureau appoint a Registrar of Copyright.
- (2) The Board of Directors of the Uganda Registration services Bureau may appoint such number of assistant registrars, copyright inspectors and other officers as may be necessary for the efficient discharge of the duties and functions of the Registrar of copyrights under this Act.

(3) The assistant registrars, copyright inspectors and other officers shall report and be subject to the direction of the Registrar.

42. Functions of the registrar

The Registrar shall—

- (a) process applications for licences to be issued by the Minister under section 17;
 - b) register works and productions to be registered under this Act;
 - (c) register collecting societies;
 - (d) give guidance to and discipline collecting societies;
 - (e) register assignments, licences and transfers of copyrights;
 - f) register copyright contracts relating to exploitation of rights;
 - (g) provide copyright and neighbouring rights information service to the public and users of copyright works;
 - (h) in collaboration with the collecting societies, advise Government, on matters relating to copyright and neighbouring rights;
 - (i) perform any other duty or function relating to copyrights, neighbouring rights and collecting societies as may be necessary for the better functioning of this Act or as the Minister may by regulation prescribe.
- (2) The Registrar's office shall be the National Copyright Information Centre.

43. Registration of rights

- (1) The owner of a copyright or a neighbouring right may register the right with the Registrar for the purpose of—
- (a) keeping evidence of ownership of the right;
 - (b) identification of works and authors;
 - (c) maintenance of record of the rights;
- (2) Any holder of an assignment, licence or transfer of a copyright or neighbouring right may register the assignment, licence or transfer with the Registrar for the purpose of—
- (a) keeping evidence of the assignment, licence or transfer of the copyright;
 - (b) maintenance of record of the rights;
 - (c) publication of the assignment, licence or transfer.
- (3) Any person entering into a copyright or neighbouring right contract may register the rights in the contract.
- (4) A piece of work which is creating the right shall be reduced in a material form before the owner of the right can register the right.
- (5) A copy of the work or contract which is creating the right for registration shall be deposited with the Registrar for registration.
- (6) On registration, the Registrar shall issue a certificate as proof of registration and one certificate may include rights in more than one piece of work.
- (7) A certificate of registration of a piece of work may be received in evidence as proof of ownership of that piece of work.
- (8) The procedure for application and form of registration of a right in a piece of work shall be as prescribed by rules made by the Minister for the purpose.

44. Users of work to apply for licence

- (1) Any person who wishes to use or perform another person's work or who causes work to be performed in public for gain shall apply to the owner or the owner's agent for a licence to do so.
- (2) The owner or agent may grant a licence and shall in respect of any grant, charge such royalties as the owner or owner's agent may determine to be appropriate.

(3) A licence granted under this section shall be in force for one year but may be renewed each time it expires.

(4) Any person who, after the expiration of a licence continues to use, perform or cause to perform in public for gain any work, without renewing the licence commits an offence and is liable, in addition to any other punishment under this Act, to pay not less than fifty percent of the royalties charged in respect of that work in addition to the royalties due for that particular use.

(5) The form of application and licence under this section shall be as prescribed by the Minister.

(6) A licence by an agent shall not affect the rights of the owner of the work under section 9 but where a person is licensed by an agent the owner shall not impose extra conditions and similarly where the owner exercises his or her rights under section 9, the agent shall not impose conditions other than those agreed upon between the owner and the user of the work if the agreement is in conformity with this Act.

45. Civil remedies

(1) Any person whose rights under this Act are in imminent danger of being infringed or are being infringed may institute civil proceedings in the Commercial Court for an injunction to prevent the infringement or to prohibit the continuation of the infringement.

(2) Upon an ex-parte application by a right owner, the court may in chambers make an order for the inspection of or removal from the infringing person's premises, of the copyright infringing materials which constitute evidence of infringement by that person.

(3) The grant of an injunction under subsection (1) shall not affect the author's claim for damages in respect of loss sustained by him or her as a result of the infringement of the rights under this Act.

(4) A person who sustains any damage because of the infringement of his or her rights under this Act may claim damages against the person responsible for the infringement whether or not that person has been successfully prosecuted.

(5) Infringement is not actionable unless the infringement involves the whole piece of work or a substantial part of the work.

46. Infringements of copyright

(1) Infringement of copyright or neighbouring right occurs where, without a valid transfer, licence, assignment or other authorisation under this Act a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to—

(a) reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use;

b) distribute in Uganda by way of sale, hire, rental or like manner; or

(c) exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise.

(2) The use of a piece of work in a manner prejudicial to the honour or reputation of the author shall be deemed an infringement of the right of the owner of the right.

47. Offences and penalty

(1) A person who, without the authorisation of or licence from the rights owner or his or her agent—

a) publishes, distributes or reproduces the work;

b) performs the work in public;

c) broadcasts the work;

d) communicates the work to the public; or

(e) imports any work and uses it in a manner which, were it work made in Uganda, would constitute an infringement of copyright;

commits an offence and is liable on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

(2) A person who contravenes the rights of a producer of sound recording or audio-visual fixation, a broadcasting company or a producer of programme carrying signals commits an offence and is liable on conviction to a fine not exceeding twenty five currency points or imprisonment not exceeding one year or both.

(3) Where a work is communicated to the public on the premises of an occupier or by the operation of any apparatus which is provided by or with any consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public whether or not he or she operates the apparatus.

(4) A person who sells or buys in the course of trade or imports any apparatus, article, machine or thing, knowing that it is to be used for making infringing copies of work, commits an offence and is liable on conviction, to a fine not exceeding fifty currency points or imprisonment not exceeding one year or both.

(5) In addition to the punishment prescribed by subsection (4) the Court shall, where an offence is committed under that subsection, order the forfeiture of the apparatus, article or thing which is the subject matter of the offence or which is used in connection with the commission of the offence.

(6) Any person who does any act to make other people believe that he or she is the author or performer of a piece of work, whether that act is—

(a) by words or writing;

(b) through conduct or fraudulent tricks; or

(c) the use of electronic or other device;

commits an offence.

(7) A person commits an offence who, having reasonable grounds to know or suspect that the act will induce, enable, facilitate or conceal an infringement of a copyright or a neighbouring right, does the following—

(a) remove or alters any electronic moral rights information without lawful authority to do so;

(b) distributes, imports for distribution, broadcasts, communicates or makes available to the public any pirated work;

(c) without lawful authority, distributes, imports for distribution, broadcasts, communicates or makes available to the public, any performance, copy of a sound recording or audio-visual fixation knowing that the moral rights information has been unlawfully removed or altered.

(8) Where a work is communicated to the public on the premises of an occupier by live performance without the authority of the owner of the copyright or neighbouring right or agent, the occupier of the premises shall be deemed to have communicated the work to the public.

48. Infringement of neighbouring right

(1) A person who infringes a neighbouring right of another person under this Act commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

(2) The provisions of section 45 and subsections (2) to (6) of section 47 shall apply to the owner of a neighbouring right.

49. Offences by body of persons

(1) Where an offence is committed by a body of persons—

(a) in the case of a body corporate, every director and the secretary of the body shall be deemed to have committed the offence; and

(b) in the case of a partnership or other body not being a body corporate, every partner or member shall be deemed to have committed the offence.

(2) No person shall be taken to have committed an offence under subsection (1) if he or she proves to the satisfaction of the court that the offence for which he or she is charged was committed by some person other than himself or herself and was without his or her consent or connivance and that he or she exercised all diligence to prevent the commission of the offence as he or she ought to have exercised in the circumstances.

50. Penalties and compensation

(1) A person convicted of an offence under this Act, for which no other punishment is provided, is liable to a fine not exceeding fifty currency points or imprisonment not exceeding one year or both.

(2) In addition to any other punishment that may be imposed by the court under this Act, the court may order—

(a) that all sums of money arising out of the offence and received by the offender be accounted for by the offender and paid to the person entitled to the economic rights under this Act; and

(b) that all reproductions, duplication, translation, extracts, imitations and all other materials involved in the infringement be forfeited and disposed of as the court may direct.

51. Proof of facts

An affidavit, affirmation or other oath made before a magistrate, commissioner for oaths or other person authorised to administer an oath or affirmation under the law of the country where the oath was made, which—

(a) purports to have been made by or on behalf of the owner of the copyright or successor in title, and

(b) states all or any of the following—

(i) that at the time of the affidavit, oath or affirmation the rights of the owner of the copyright work subsisted;

(ii) the nationality of the work of the copyright;

(iii) the place where the work was first made;

(iv) the date and place for first publication of the work and the date of publication in Uganda, if such publication was not the first publication;

(v) that the person named in affidavit, oath or affirmation is the owner of the copyright or successor in title;

(vi) that a copy of the work exhibited to the affidavit oath or affirmation is a true copy of the work, shall be admissible in any proceedings under this Act.

52. Staff of collecting society etc to act as inspector

In addition to inspectors appointed under section 41 the Registrar may authorise any member from the Uganda Registration Service Bureau or any staff of a collecting society to perform the functions of an inspector under this Act.

53. Entry into premises

Subject to the provisions of this section, an inspector may, at any reasonable time and on production of the certificate of authority enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connection with those premises, ship, aircraft or vehicle any contravention of this Act.

54. Mode of inspection of premises

(1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

a) any substance or article appearing to be a work;

(b) any container or package appearing to be used or intended to be used to contain any work; or
(c) any place, plant or equipment appearing to be used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which he or she has reasonable cause to believe to be an infringing of a copyright in any work or in relation to which or by means of which there is reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he or she has reasonable cause to believe to be a document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work, the inspector shall notify in writing the person from whom it is seized the fact of that seizure and shall in that notification specify the item seized.

(4) Any person who—

(a) wilfully obstructs an inspector in the discharge of the inspector's duties; or

(b) wilfully fails to comply with any requirement properly made to that person by an inspector; or

(c) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require for the purpose of the performance of the inspector's duties under this Act; or

(d) makes any statement which that person knows to be false or which that person does not believe to be true,

commits an offence and is liable on conviction to a fine not exceeding one hundred currency points, or to imprisonment not exceeding two years or both.

55. Inspectors not personally liable

An inspector shall not be personally liable in respect of any act done in good faith in the execution of any duty under this Act.

56. Suspension of release by customs authorities

(1) A rights owner, who has reasonable grounds for suspecting that the importation of pirated goods may take place, may lodge an application in writing with the commercial court for the suspension of the release into free circulation of such goods.

(2) Any rights owner initiating the procedures under subsection (1) shall be required to provide adequate evidence to satisfy the court that, there is *prima facie* infringement of the copyright and to supply a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities.

PART VII—GENERAL PROVISIONS RELATING TO COLLECTING SOCIETIES.

57. Collecting Societies to be registered

(1) No collecting society shall operate in Uganda without a registration certificate issued by the Registrar of Companies.

(2) The Registrar of Companies shall not register another society in respect of the same bundle of rights and category of works if there exists another society that has already been licensed and functions to the satisfaction of its members.

(3) Any person operating as a collecting society or causing any society or body to operate as a collecting society without a registration certificate commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding two years or to both the fine and imprisonment.

58. Qualifications for registration

The Registrar may register as a collecting society any society or body which has for its main object the promotion of the economic and social interest of its members through defending their copyright

and neighbouring right interests and whose function or other objects include any of the following—

- (a) in cooperation with other relevant bodies and organisations, to promote and encourage creativity in the artistic, literary and scientific fields in Uganda;
- (b) to promote and carry out public awareness on copyright and neighbouring rights;
- (c) to pay the royalties to its members who are the appropriate beneficiaries;
- (d) to make reciprocal agreements with foreign societies or other bodies of authors or neighbouring rights owners for the issue of authorisations in respect of their members' works and for the collection and distribution of copyright fees deriving from those works;
- (e) to help in the preparation of its members standard forms of contract for the benefit and use of its authors and neighbouring rights owners, and to act as an intermediary for the conclusion of contracts between its members and the users of their works;
- (f) to foster harmony and understanding between its members with the users of their works as is necessary for the protection of their economic rights;
- (g) to provide its members or other persons in need of it, with information on all matters relating to copyright and neighbouring rights and to give advice and keep its members informed about their rights and interests;
- (h) to act as agent for its members in relation to their copyright and neighbouring rights interests;
- (i) to do any act necessary in relation to the copyright and neighbouring rights and interests of its members.

59. Conditions for registration

The Registrar shall not register a society unless—

- (a) the Registrar is satisfied that the society is capable of promoting its members' interests and of discharging its functions and objectives.
- (b) it consists of at least thirty persons all of whom are, according to its articles and rules qualified to be members.
- (c) the society is incorporated under the provisions of the Companies Act.

60. Application for registration

- (1) An application for registration of a collecting society shall be made to the Registrar in a prescribed form and shall be signed by at least thirty members of the society.
- (2) The application shall be accompanied by three copies of the proposed articles and rules of the Society, a copy of the certificate of registration as a non-governmental organisation and such other information as the Registrar may require.

61. Registration of a society on probation

- (1) If the Registrar is satisfied that a society has complied with all the requirements under this Act, and regulations made under this Act and that its proposed articles and rules are not contrary to the provisions of this Act, the Registrar shall register the society and its articles and rules on probation for a period not exceeding eighteen months.
- (2) If at the expiration of the probationary period the Registrar is not satisfied with the performance of the society, the Registrar may either cancel the registration or extend the probationary period by a period not exceeding six months; and if after the extension the Registrar is still not satisfied with the performance of the society, the registration shall be cancelled.
- (3) On registration of a society on probation, a trust under the names of the society shall be established and the executive body of the society shall be established as the board of trustees of the society for the period of the probation.

62. Indication of probationary registration

A society which is registered on probation shall state in legible letters in all its receipts and letter-heads, notices, advertisement or other official publications, that it is registered probationary and shall indicate the same on a signboard in a conspicuous position outside any premises or office in which it carries on its business.

63. Cancellation of registration

(1) At any time during the period of registration of a society on probation, the Registrar may, by notice in writing to the person responsible for running the society, cancel the probationary registration of the society stating reasons for the cancellation and the society shall, from the date of service of the notice, cease to be a registered society.

(2) The cancellation referred to in subsection (1) shall be published in the *Gazette* and in at least one of the prominent newspapers in Uganda.

64. Full registration of society

(1) Where at the end of the probation the registrar is satisfied with the functioning of the society the Registrar shall fully register the society as a collecting society.

(2) A society shall, on full registration, become a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its operations.

(3) If the Registrar is satisfied that a society's original certificate of registration has been lost or destroyed, the Registrar may issue a duplicate certificate.

(4) All assets, rights and liabilities vested in the board of trustees of the society during the period of the registration on probation shall vest in the society as a body corporate.

65. Qualification for membership of a society

(1) In order to be qualified for membership of a registered society, a person, other than a registered society or a company incorporated under the Companies Act or an un-incorporated body of persons permitted to become a member shall be resident in Uganda.

(2) No person of a registered society shall exercise any of the rights of a member unless that person has paid the required membership fee.

(3) Each member of a registered society shall have one vote only as a member in the affairs of the registered society.

66. Address of society

(1) Every registered society shall have a registered address to which notices and communications may be sent, and shall notify the Registrar on every change in its registered address within one month of the change.

(2) Every registered society shall display its name and address on a signboard in a conspicuous position outside its place of business.

67. Amendment of the articles and rules of a registered society

(1) Any registered society may amend its articles and rules including the name of the society.

(2) No amendment under subsection (1) shall be valid until it is registered with the Registrar.

(3) If the Registrar is satisfied that an amendment is not contrary to the provisions of this Act, the Registrar shall register the amendment.

(4) An amendment which changes the name of a registered society shall not affect any right or obligation of the society or any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) When an amendment of the articles or rules of a registered society is registered, the Registrar shall issue a certified copy of the amendment to the society which certified copy shall be conclusive evidence that the amendment has been duly registered.

(6) If it appears to the Registrar that an amendment of the articles or rules of a society is necessary or desirable in the interest of the society, the Registrar may call upon the society, to make the amendment within a specified period.

(7) If the society fails to make the amendment under subsection within the time specified, the Registrar may, after giving the society an opportunity of being heard, make and register the amendment, and issue to the society a certified copy of the amendment.

(8) With effect from the date of registration of an amendment under subsection (7) the articles or rules of a society shall be deemed to have been duly amended and the articles or rules as amended shall, be binding on the society and its members.

(9) Any society aggrieved by any amendment of its articles or rules made under sub-section (7) may appeal to the Minister against the amendment within two months of the date of the issue of the certified copy of the amendment.

(10) Any member of a registered society may appeal to the Minister, in writing against any refusal by the Registrar to register any amendment to the articles or rules of the society.

68. Act e.t.c to be kept and list of members open for inspection

Every registered society shall keep a copy of this Act and of the regulations made thereunder and of its articles or rules and shall have a list of its members open to inspection by any person, free of charge at all reasonable times during business hours at the office of the society.

Financial Provisions relating to Societies

69. Audit, annual returns and accounts

(1) The executive committee of a registered society shall cause the accounts of the society to be audited at least once in every year by an auditor appointed by the Annual General Meeting and approved by the Registrar.

(2) Where the registered society is unable to appoint an auditor, the Registrar may appoint the auditor for the society and the cost of the audit shall be borne by the society.

(3) Audits shall be conducted in accordance with generally accepted professional audit standards and in addition include audit of management efficiency.

(4) An auditor appointed under this section shall have access to all books, accounts, papers and securities of a registered society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the auditor may require.

(5) The auditor shall have power, where necessary—

(a) to summon, any officer, agent, servant or member of the society whom the auditor has reason to believe can give information in regard to the transactions of the society or the management of its affairs;

(b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to the society from the officer, agent, servant or member in possession of such book, documents, cash or securities.

(6) An auditor appointed under this section shall submit a detailed audit report of the accounts and balance sheet to the executive committee of the society and a true copy of accounts and balance sheet to the Registrar within three months after the end of the society's financial year, which report shall include the auditor's opinion on whether or not the administration of the society has been conducted—

(a) efficiently and in accordance with the standard accounting methods;

(b) in accordance with the society's objectives, articles and rules or any other decisions made by the Annual General Meeting.

(7) Where the executive committee fails to cause the auditing of accounts in accordance with this section, the executive committee of that society shall be deemed to have relinquished the office; and the Registrar shall convene a special general meeting to elect a new committee unless the Registrar is satisfied that the failure was due to circumstances beyond the committee's control.

70. Estimates and expenditure

(1) Every executive committee of a registered society shall cause estimates of the income and expenditure of the society to be repapered for the coming twelve months at least three months before the end of its financial year and a copy of the estimates shall be sent to the Registrar for an opinion before they are submitted to the general meeting.

(2) Supplementary estimates may be prepared by a society during the financial year and submitted to the registrar for an opinion before they are submitted to the annual General Meeting.

(3) If a society contravenes or fails to comply with any provision of this section, the society and any officer or person who purports to act on its behalf commits an offence and is liable to a fine not exceeding fifty currency points and in the case of a continuing offence to a further fine not exceeding two currency points for each day on which the offence is continued.

71. Voluntary amalgamation of societies

(1) Any two or more registered societies may, with the prior approval of the Registrar, amalgamate into a single society.

(2) An amalgamation referred to in subsection (1) shall not take place unless—

(a) a general meeting of each of the societies has been called;

(b) each member of the society has had a clear notice of fifteen days of the meeting; and

(c) a preliminary resolution has been passed by a two-thirds majority of the members present at the meeting for the amalgamation.

(3) An amalgamation of registered societies into one society under this section may be effected without dissolution of the societies concerned or a division of the assets and liabilities of the amalgamated societies and a resolution of the society passed for the amalgamation shall be sufficient for the transfer of the assets and liabilities of the amalgamated societies to the new society.

72. Investment of funds

A registered society may invest or deposit its funds—

(a) in any bank or financial commercial institution incorporated in Uganda;

(b) in such investments and securities as are by law allowed for the investment of trust funds;

(c) in such other way as is specified in its articles or rules and approved by the Registrar.

73. Provident and benevolent fund

(1) A registered society shall establish and administer a Provident and Benevolent Fund which shall be separate from the funds of the society for the benefit of the copyright and other rights owners.

(2) The society shall credit all moneys collected on behalf of the authors and other copyright and neighbouring rights owners to the Fund and shall pay all sums due to the rights owners from that Fund.

Supervision of societies

74. Inspection

Any employee, officer or member of a collecting society shall, when required to do so by the Registrar or an inspector, produce for inspection any books, records or document in his or her control relating to the operations of the society.

75. Ad hoc committee of inquiry

(1) The Registrar may hold an inquiry or direct an inspector or other person in writing to hold an inquiry into the constitution, working and financial conditions of a registered society.

(2) On receipt of a resolution demanding an inquiry passed by not less than two-thirds of the members present at a general meeting which has been duly advertised, the registrar shall cause an inquiry to be held.

(3) During the period of inquiry under this section, the executive Officer, other officers or employees may be suspended from duty by the Registrar to facilitate the smooth holding of the inquiry.

(4) Where the executive Officer has been suspended under subsection (3) a caretaker manager shall be appointed by the Registrar in consultation with the executive committee.

(5) The caretaker shall remain in office until either the former Executive Officer is reinstated or a new one is appointed such that the caretaker shall not stay in office for more than three months after the report of the inquiry has been submitted.

(6) Where after the report of the inquiry, it is necessary to elect a new executive committee, the Registrar shall convene a special general meeting within thirty days after the submission of the report to elect a new committee.

76. Cancellation of registration after inquiry or inspection

(1) If the Registrar, after an inquiry or after making an inspection or on receipt of an application made by two-thirds of the members of a registered society, is of the opinion that the society ought to be dissolved, the Registrar may make an order for the cancellation of registration of the society.

(2) Any member of a registered society may, within two months from the date of an order made under subsection (1), appeal from such order to the Minister.

(3) Where no appeal is presented within two months of an order made under subsection (1) the cancellation shall take effect and where an appeal is presented the order shall not take effect until the appeal is concluded.

(4) The Minister shall make a decision on an appeal under subsection (2) within two months of receiving the appeal.

77. Cancellation of registration of a collecting society

(1) The Registrar may, by order in writing, cancel the registration of any society, if satisfied that—

(a) the registration was obtained by fraud or mistake;

(b) the society has exhibited operations for an illegal purpose;

(c) the society is no longer operating in accordance with this Act;

(d) the number of members of the society has fallen below the minimum required by this Act; or

(e) the society has not commenced operations or has ceased to operate for two consecutive years.

(2) Where the registration of a society is cancelled, the society shall cease to exist as a body corporate as from the date the cancellation takes effect.

(3) On the making of an order to cancel the registration of a society, a copy of the order shall be placed on the file maintained by the registrar in respect of the society and gazetted and published in at least one of the leading newspapers in Uganda.

78. Appointment of liquidator

(1) Where the registration of a society is cancelled the Registrar may appoint one or more persons to be a liquidator or liquidators of the society and all the property of the society shall vest in such liquidator or liquidators with effect from the date of cancellation of the registration.

(2) A liquidator appointed under this section shall, subject to the guidance, control and any limitation imposed by the Registrar have the following powers—

(a) to appoint a day, before which the creditors whose claims are not already recorded in the books of the society shall state their claims for admission, or be excluded from any distribution made before they have proved them;

(b) to institute and defend suits and other legal proceedings by and on behalf of the society and appear in court as litigant in person on behalf of the society;

(c) to refer disputes to arbitration;

(d) to determine from time to time the contributions to be made by the members and past members, and by the estate of deceased members of the society, respectively, to the assets of the society;

(e) to investigate all claims against the society and, decide questions of priority arising between claimants;

(f) to call meetings of members as may be necessary for the proper conduct of the liquidation;

(g) to sell the assets of the society;

(h) to determine from time to time, by what persons and in what proportion the costs of the liquidation are to be borne;

(i) to take possession of the books, documents and assets of the society;

(j) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar;

(k) to give such directions in regard to the disposal of the books and documents of the society in accordance with affairs of the society;

(l) to compromise, with the approval of the Registrar, any claim by or against the society; and

(m) to apply to the Registrar for discharge from the duties of liquidator after completion of the liquidation proceedings.

(3) Upon the appointment of a liquidator for a registered society, the provisions of the Companies Act relating to winding up of a company shall apply subject to modifications that may be required in the circumstances.

PART VIII—GENERAL PROVISIONS

79. Settlement of disputes

(1) Any dispute regarding the operations of a registered society which arises—

a) among the members or past members;

(b) between a member, past member or other person not being a member, or deceased member, and the society, its committee or any officer or past officer of the society; or

(c) between the society or its committee and any officer or past officer of the society; or

d) between the society and any other registered society;

shall be referred to an arbitrator or arbitrators under the Arbitration and Conciliation Act.

80. Remuneration of officers

(1) No officer or member of a registered society shall receive any remuneration, salary, commission or other payment from the society for services rendered to the society unless the society has, after consultation with the Registrar, by resolution passed at a general meeting of the society approved the expenditure in the estimates of the society for the financial year.

(2) No officer or member of a registered society shall receive any remuneration, salary, commission or other payment from any person other than the society in respect of any business or transaction

entered into by the society, but in special circumstances the society may, after consultation with the Registrar, by a resolution passed at a general meeting of the society, consent to such remuneration, salary, commission or other payment being made.

(3) Any officer or member of a registered society who pays out or receives any remuneration, salary, commission or other payment in contravention of subsection (1) or (2), as the case may be, commits an offence and is liable on conviction to a fine not exceeding twenty currency points or to a period of imprisonment not exceeding two years or both.

81. Reciprocal protection

A copyright or neighbouring rights owner who is not a citizen or resident of Uganda shall be protected under this Act if the work was first published in a country which is—

- (a) a member of any of the organisations specified in Part I of the Second Schedule to this Act; or
- (b) a signatory to any of the international conventions specified in Part II of the Second Schedule to this Act.

82. Regulations

(1) The Minister may, on the recommendation of the Registrar, and after consultation with the collecting societies, make regulations generally for the better carrying into effect of the provisions of this Act and to prescribe or provide for anything required or authorised to be prescribed or provided under this Act.

(2) In particular and without prejudice to the generality of subsection (1) regulations may—

- (a) prescribe the forms to be used to apply for registration;
- (b) prescribe the procedure for a society to apply for registration;
- (c) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;
- (d) provide for audit of the accounts and books to be kept by a society and the charges if any to be made for such audit;
- (e) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating to them;
- (f) prescribe the procedure to be followed in appeals to the Ministers;
- (g) provide for the returns to be submitted to the Registrar by registered societies;
- (h) prescribe the fees to be paid on application for registration and for other services provided by the Registrar and;
- (i) prescribe anything that may be necessary for the better functioning of the societies.

(3) Regulations made under this section may prescribe as penalties for the contravention of the regulations any fine not exceeding twenty currency points or any term of imprisonment not exceeding six months or both.

83. Amendment of Schedules

(1) The Minister may, in consultation with the Minister responsible for finance, by statutory instrument amend the First Schedule to this Act.

(2) The Minister may, by statutory instrument, amend the Second Schedule to this Act as circumstances may require.

PART IX—TRANSITION PROVISIONS

84. Repeal and Saving

(1) The Copyright Act, is repealed.

(2) The repeal under subsection (1) shall not affect any copyright or other rights that existed immediately before the repeal of the Act and all such rights shall be enforceable under this Act, as if this Act was in force at the time of the creation of that work.

85. Existing societies

(1) A collecting society operating before the commencement of this Act shall—

(a) where it is operating as a fully registered non-governmental organisation, apply for full registration of the society within twelve months from the date of commencement;

(b) where it is operating as an unregistered society, apply for full registration within twelve months from the date of commencement if it fulfills the qualifications provided under section 58.

(2) The Registrar shall, after the period of twelve months referred to under subsection (1) publish, by legal notice in the *Gazette*, and in at least one leading newspaper, the registered collecting societies at the time.

FIRST SCHEDULE CURRENCY POINT

Section 2

One Currency point is equivalent to twenty thousand shillings

SECOND SCHEDULE Sections 3 and 81

PART I—ORGANISATIONS

1. World Intellectual Property Organisation (WIPO)

2. Africa Region Intellectual Property Organisation (ARIPO)

3. The United Nations Educational Scientific and Cultural Organisation (UNESCO)

4. The World Trade Organisation.

PART II—INTERNATIONAL CONVENTIONS

1. The Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement).

Cross references

Arbitration and Conciliation Act, Cap. 4

Uganda Communications Act, Cap. 106

Companies Act, Cap. 110

Copyright Act, Cap. 215

THE NATIONAL ENVIRONMENT ACT.

There are some provisions relating to genetic resources and access to them

Commencement: 19 May, 1995.

An Act to provide for sustainable management of the environment; to establish an authority as a coordinating, monitoring and supervisory body for that purpose; and for other matters incidental to or connected with the foregoing.

PART I—INTERPRETATION.

1. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “air quality” means the concentration prescribed under this Act of a pollutant in the atmosphere at the point of measurement;
- (b) “ambient air” means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;
- (c) “analysis” means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or subsonic vibrations to determine the level or other characteristics of the noise or subsonic vibration or its effect on any segments of the environment;
- (d) “analyst” means an analyst designated under section 83;
- (e) “authority” means the National Environment Management Authority established under section 4;
- (f) “beneficial use” means a use of the environment or any element or segment of the environment that is conducive to public health, welfare or safety and which requires protection from the effects of wastes, discharges, emissions and deposits;
- (g) “benefited environment” means that environment which has benefited through the imposition of one or more obligations on the burdened land;
- (h) “biological diversity” means the variability among living organisms from all sources, including, *inter alia*, terrestrial ecosystems and aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems;
- (i) “burdened land” means that land which is in the vicinity of a benefited environment;
- (j) “chemical” means a chemical substance in any form whether by itself or in a mixture or preparation whether manufactured or derived from nature and for the purposes of this Act includes industrial chemicals, pesticides, fertilisers and drugs;
- (k) “developer” means a person who is developing a project which is subject to an environmental impact assessment process;
- (l) “district environment action plan” means the district environment action plan established under section 18;
- (m) “effluent” means waste water or other fluid of domestic agricultural trade or industrial origin, treated or untreated and discharged directly or indirectly into the aquatic environment;
- (n) “element” in relation to the environment means any of the principal constituent parts of the environment, including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;
- (o) “environment” means the physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;
- (p) “environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving the environment and its resources;

- (q) “environmental education” includes the process of recognising values and clarifying concepts in order to develop skills and attitudes necessary to understand and appreciate the interrelatedness among a person, his or her culture and his or her biophysical surroundings;
- (r) “environmental impact assessment” means a systematic examination conducted to determine whether or not a project will have any adverse impact on the environment;
- (s) “environmental impact statement” means the statement described in section 20;
- (t) “environmental inspector” means any environmental inspector designated under section 79;
- (u) “environmental monitoring” means the continuous determination of actual and potential effects of any activity or phenomenon on the environment, whether short term or long term;
- (v) “environmental planning” means both short-term and long-term planning that takes into account environmental issues;
- (w) “environmental resources” means the resources of the air, land and water, including their aesthetical qualities;
- (x) “environmental restoration order” means an order provided for under section 67;
- (y) “*ex situ*” means conservation outside the natural habitat of the biological organism;
- (z) “executive director” means the executive director of the authority appointed under section 11;
- (aa) “fund” means the National Environment Fund established under section 88;
- (bb) “genetic resources” means genetic material of actual or potential value;**
- (cc) “good environmental practice” means practice that is in accordance with the provisions of this Act and any other law;
- (dd) “hazardous substance” means any chemical, waste, gas, medicine, drug, plant, animal or micro-organism which is injurious to human health or the environment;
- (ee) “hazardous waste” means any waste which has been determined by the authority to be a hazardous waste or to belong to any other category of waste provided for in section 53;
- (ff) “*in situ*” means conservation within the natural ecosystem and habitat of the biological organism;
- (gg) “lead agency” means any Ministry, department, parastatal agency, local government system or public officer in which or in whom any law vests functions of control or management of any segment of the environment;
- (hh) “local environmental committee” means a committee on the environment appointed under section 16 at the municipal, town, division, county and subcounty local government council level or such other lower level of local council as the local government system may determine;
- (ii) “Minister” means the Minister to whom the President has assigned responsibility for this Act;
- (jj) “mixture containing oil” means a mixture with such oil content as may be specified by the Minister or, if such oil content is not specified, a mixture with an oil content of one hundred parts or more in one million parts of the mixture;
- (kk) “national environment action plan” means the plan described in section 17;
- (ll) “noise” means any undesirable sound that is intrinsically objectionable or that can cause adverse effects on human health or the environment;
- (mm) “occupational air quality” means the concentration prescribed under or pursuant to this Act of a pollutant in the atmosphere within a structure or underground space in which human activities take place;
- (nn) “occupier” means a person in occupation or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;
- (oo) “oil” includes —
 - (i) crude oil, diesel oil, fuel oil and lubricating oil; and
 - (ii) any other description of oil which may be prescribed;
- (pp) “owner” in relation to any premises means—

- (i) the registered proprietor of the premises;
- (ii) the lessee, including a sublessee of the premises;
- (iii) the agent or trustee of any of the owners described in subparagraphs (i) and (ii) of this interpretation or where such owner as described in subparagraphs (i) and (ii) cannot be traced or has died, his or her legal personal representative;
- (iv) the person for the time being receiving the rent of the premises whether on his or her own account or as agent or trustee for any other person or as receiver of or who would receive the rent if such premises were let to a tenant, and in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship, except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship's operator, "owner" shall include such country;
- (qq) "ozone layer" means the layer of the atmospheric zone above the plenary boundary layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;
- (rr) "policy committee" means the policy committee on the environment established under section 7;
- (ss) "pollutant" includes any substance whether liquid, solid or gaseous which directly or indirectly—
 - (i) alters the quality of any segment or element of the receiving environment so as to affect any beneficial use adversely; or
 - (ii) is hazardous or potentially hazardous to health, and objectionable odours, radioactivity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;
- (tt) "pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging, emitting or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause a contravention of any condition, limitation or restriction which is subject to a licence under this Act;
- (uu) "pollution licence" means a pollution licence issued under section 58;
- (vv) "practicable" means reasonably practicable having regard, among other things, to local conditions and circumstances and to the current state of technical knowledge, and the term "practicable means" includes the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;
- (ww) "premises" includes messuages, buildings, lands, and hereditaments in every tenure and machinery, plants or vehicles used in connection with any trade carried on at any premise;
- (xx) "prescribed" means prescribed by or under this Act or continued in operation by this Act or under regulations, standards and guidelines made pursuant to this Act;
- (yy) "project" includes both project and policy that leads to projects with an impact on the environment;
- (zz) "project brief" means a summary statement of the likely environmental effects of a proposed development referred to in section 19;
- (aaa) "proprietary information" means information relating to any manufacturing process, trade secret, trademark, copyright, patent or formula protected by law or by international treaties to which Uganda is a party;
- (bbb) "radiation" includes ionising radiations and any other radiation likely to have adverse effects on human health and the environment;
- (ccc) "regulations" means regulations made under section 107;
- (ddd) "segment" in relation to the environment means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality or time or any combination thereof;
- (eee) "ship" includes every description of vessel or craft or floating structure;

(fff) “soil” includes earth, sand, rock, shales, minerals, vegetation, and the soil flora and fauna in the soil and derivatives thereof such as dust;

(ggg) “standard” means the limits of pollution established under Part VI of this Act or under regulations made under this Act or any other law;

(hhh) “sustainable development” means development that meets the needs of this generation without compromising the rights of future generations;

(iii) “sustainable use” means present use which does not compromise the right to use the same resource by future generations;

(jjj) “technical committee” means a technical committee appointed under section 10;

(kkk) “trade” means any trade, business or undertaking whether originally carried on at fixed premises or at varying places which results in the discharge of waste and includes any activity prescribed to be a trade, business or undertaking for the purposes of this Act;

(III) “Uganda Revenue Authority” means the Uganda Revenue Authority established under the Uganda Revenue Authority Act;

(mmm) “waste” includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, composition or manner as to cause an alteration of the environment;

(nnn) “water” includes drinking water, river, stream, watercourse, reservoir, well, dam, canal, channel, lake, swamp, open drain or underground water;

(ooo) “wetland” means areas permanently or seasonally flooded by water where plants and animals have become adopted.

PART II—GENERAL PRINCIPLES.

2. Principles of environment management.

- (1) The authority shall ensure that the principles of environment management set out in subsection (2) are observed.
- (2) The principles of environment management referred to in subsection (1) are—
 - (a) to assure all people living in the country the fundamental right to an environment adequate for their health and well-being;
 - (b) to encourage the maximum participation by the people of Uganda in the development of policies, plans and processes for the management of the environment;
 - (c) to use and conserve the environment and natural resources of Uganda equitably and for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of the available resources;
 - (d) to conserve the cultural heritage and use the environment and natural resources of Uganda for the benefit of both present and future generations;
 - (e) to maintain stable functioning relations between the living and nonliving parts of the environment through preserving biological diversity and respecting the principle of optimum sustainable yield in the use of natural resources;
 - (f) to reclaim lost ecosystems where possible and reverse the degradation of natural resources;
 - (g) to establish adequate environmental protection standards and to monitor changes in environmental quality;
 - (h) to publish relevant data on environmental quality and resource use;
 - (i) to require prior environmental assessments of proposed projects which may significantly affect the environment or use of natural resources;
 - (j) to ensure that environmental awareness is treated as an integral part of education at all levels;
 - (k) to ensure that the true and total costs of environmental pollution are borne by the polluter;
 - (l) to promote international cooperation between Uganda and other states in the field of the environment.

3. Right to a decent environment.

- (1) Every person has a right to a healthy environment.
- (2) Every person has a duty to maintain and enhance the environment, including the duty to inform the authority or the local environment committee of all activities and phenomena that may affect the environment significantly.
- (3) In furtherance of the right to a healthy environment and enforcement of the duty to maintain and enhance the environment, the authority or the local environment committee so informed under subsection (2) is entitled to bring an action against any other person whose activities or omissions have or are likely to have a significant impact on the environment to—
 - (a) prevent, stop or discontinue any act or omission deleterious to the environment;
 - (b) compel any public officer to take measures to prevent or to discontinue any act or omission deleterious to the environment;
 - (c) require that any ongoing activity be subjected to an environmental audit in accordance with section 22;
 - (d) require that any ongoing activity be subjected to environmental monitoring in accordance with section 23;
 - (e) request a court order for the taking of other measures that would ensure that the environment does not suffer any significant damage.
- (4) The authority or the local environment committee proceeding under subsection (3) is entitled to bring an action notwithstanding that the person cannot show that the defendant's act or omission has caused or is likely to cause any personal loss or injury.

PART III—INSTITUTIONAL ARRANGEMENTS.

The authority.

4. Establishment of the National Environment Management Authority.

- (1) There is established a body to be called the National Environment Management Authority.
- (2) The authority shall be a body corporate with perpetual succession and a common seal.
- (3) The authority shall, in its own name, be capable of suing and being sued and doing and suffering all acts and things as bodies corporate may lawfully do or suffer.
- (4) The authority shall be under the general supervision of the Minister.

5. Powers of the authority.

The authority shall be the principal agency in Uganda for the management of the environment and shall coordinate, monitor and supervise all activities in the field of the environment.

6. Functions of the authority, relationship with lead agencies and delegation.

- (1) The functions of the authority are—
 - (a) to coordinate the implementation of Government policy and the decisions of the policy committee;
 - (b) to ensure the integration of environmental concerns in overall national planning through coordination with the relevant Ministries, departments and agencies of the Government;
 - (c) to liaise with the private sector, intergovernmental organisations, nongovernmental agencies and governmental agencies of other States on issues relating to the environment;
 - (d) to propose environmental policies and strategies to the policy committee;
 - (e) to initiate legislative proposals, standards and guidelines on the environment in accordance with this Act;

- (f) to review and approve environmental impact assessments and environmental impact statements submitted in accordance with this Act or any other law;
 - (g) to promote public awareness through formal, nonformal and informal education about environmental issues;
 - (h) to undertake such studies and submit such reports and recommendations with respect to the environment as the Government or the policy committee may consider necessary;
 - (i) to ensure observance of proper safeguards in the planning and execution of all development projects, including those already in existence that have or are likely to have significant impact on the environment determined in accordance with Part V of this Act;
 - (j) to undertake research and disseminate information about the environment;
 - (k) to prepare and disseminate a state of the environment report once in every two years;
 - (l) to mobilise, expedite and monitor resources for environmental management;
 - (m) to perform such other functions as the Government may assign to the authority or as are incidental or conducive to the exercise by the authority of any or all of the functions provided for under this Act.
- (2) The authority may in the performance of its functions under subsection (1) delegate, by statutory instrument, any of those functions to a lead agency, a technical committee, the executive director or any other public officer.
- (3) In the exercise by the authority of its coordinating, monitoring and supervisory function in the field of the environment, a lead agency shall not be released from performing its duties as prescribed by law.
- (4) Each lead agency charged with the management of any segment of the environment under any law shall submit to the authority—
- (a) within two months after the expiry of every two years, a report on its operation during that period;
 - (b) such other reports as may be prescribed by the policy committee and at such times as may be so prescribed, on the state of that segment of the environment and the measures taken by the lead agency to maintain or improve the environment.

Policy committee on the environment.

7. Policy committee on the environment.

- (1) There shall be a policy committee on the environment consisting of the members set out in the First Schedule to this Act.
- (2) The functions of the policy committee on the environment shall be—
 - (a) to provide policy guidelines and to formulate and coordinate environmental policies for the authority;
 - (b) to liaise with the Cabinet on issues affecting the environment;
 - (c) to identify obstacles to the implementation of environmental policies and programmes and ensure implementation of those policies and programmes;
 - (d) to perform any other function that may be assigned to it by the Government.
- (3) The chairperson of the board and the executive director shall be ex officio members of the policy committee.
- (4) The First Schedule to this Act shall have effect so far as the meetings of the policy committee and other matters specified in that Schedule are concerned.
- (5) The Minister may, on the advice of the policy committee, by statutory instrument, amend the First Schedule.

The board.

8. Establishment and membership of the board.

- (1) There shall be a board of directors of the authority.
- (2) The board shall be appointed by the Minister with the approval of the policy committee.
- (3) The board shall consist of a chairperson, vice chairperson and seven other members drawn from the bodies specified in the Second Schedule to this Act.
- (4) The members of the board referred to in subsection (3) shall serve for three years and be eligible for reappointment for a further term.
- (5) The members appointed under subsection (2) shall be persons who qualify by virtue of their knowledge and experience in environmental management.
- (6) The executive director shall be an ex officio member of the board.

9. Functions and meetings of the board.

- (1) The functions of the board shall be—
 - (a) to oversee the implementation and successful operation of the policy and functions of the authority;
 - (b) to review the policy and strategic plan of the authority;
 - (c) to provide guidance to the executive director and staff;
 - (d) to approve the annual budget and plans of the authority;
 - (e) to monitor and evaluate the performance of the authority against budgets and plans;
 - (f) to establish and approve rules and procedures for the appointment, discipline, termination and terms and conditions of service of the staff, administrative matters and financial matters;
 - (g) any other duties assigned to it by this Act.
- (2) The policy committee may, from time to time, give directions to the board on matters of policy, and the board shall comply with those directions.
- (3) The Second Schedule to this Act shall have effect so far as meetings of the board and other matters specified in that Schedule are concerned.
- (4) The Minister may, on the advice of the board, by statutory instrument, amend the Second Schedule.

10. Technical committees.

- (1) The board shall, on the advice of the executive director, appoint as many technical committees as it considers necessary to give advice on such subjects relating to the environment.
- (2) Without prejudice to the general effect of subsection (1), the board shall appoint, under that subsection—
 - (a) a technical committee on soil conservation;
 - (b) a technical committee on the licensing of pollution;
 - (c) a technical committee on biodiversity conservation;
 - (d) a technical committee on environmental impact assessment.
- (3) The board shall specify in writing the terms of reference of each technical committee appointed by it under subsection (1).
- (4) A person appointed to serve on a technical committee shall serve in his or her personal capacity and shall have such qualifications and experience as may be prescribed.
- (5) The terms and conditions of service of the members of a technical committee shall be specified in the instruments of appointment.
- (6) Each technical committee shall adopt its own rules of procedure.

Staff of the authority.

11. Executive director and deputy executive director.

- (1) There shall be an executive director and a deputy executive director appointed by the Minister on the recommendation of the board with the approval of the policy committee.

- (2) The executive director and the deputy executive director shall each serve for a period of five years and shall be eligible for reappointment.
- (3) The executive director or the deputy executive director shall cease to hold office if—
- (a) he or she resigns; or
 - (b) is removed from office by the Minister on the advice of the board with the approval of the policy committee for—
 - (i) gross misconduct;
 - (ii) inability to discharge the functions of his or her office.

12. Functions of the executive director and the deputy executive director.

- (1) The executive director shall be the chief executive of the authority and shall be responsible for the day-to-day operations of the authority.
- (2) Subject to this Act and the general supervision and control of the board, the executive director shall be responsible for the management of the funds, property and business of the authority and for the administration, organisation and control of the staff of the authority.
- (3) The executive director shall, from time to time, keep the board and the policy committee informed of the progress and activities of the authority.
- (4) The deputy executive director shall assist the executive director in the performance of his or her functions.
- (5) The executive director and the deputy executive director shall be responsible to the board.

13. Other staff of the authority.

- (1) The board, on the advice of the executive director, may appoint other officers and employees of the authority.
- (2) The board, on the advice of the executive director, shall, from time to time, determine the terms and conditions of service of the officers and employees of the authority.

14. District environment committee.

- (1) The authority shall, in consultation with the district council, provide guidelines for the establishment of a committee on the environment for each district, in this Act referred to as a district environment committee.
- (2) When established, the functions of the district environment committee may include the following—
- (a) to coordinate the activities of the district council relating to the management of the environment and natural resources;
 - (b) to ensure that environmental concerns are integrated in all plans and projects approved by the district council;
 - (c) to assist in the development and formulation of byelaws relating to the management of the environment;
 - (d) to promote the dissemination of information about the environment through education and outreach programmes;
 - (e) to coordinate with the authority on all issues relating to environment management;
 - (f) to coordinate the activities of local environment committees in the management of the environment;
 - (g) to receive reports from the local environment committees and advise the local environment committees; and
 - (h) to prepare a district state of the environment report every year.
- (3) The district environment committee shall follow such procedure at its meetings as may be prescribed by the district council.

15. District environment officer.

- (1) The authority shall, on the advice of the district service committee, provide guidelines for the appointment of district environment officers for each district.
- (2) When appointed, the functions of a district environment officer may include the following—
 - (a) to advise the district environment committee on all matters relating to the environment;
 - (b) to liaise with the authority on all matters relating to the environment;
 - (c) to make such reports to the authority as may be prescribed;
 - (d) to promote environmental awareness through public educational campaigns;
 - (e) to assist local environment committees in the performance of their functions as provided for in this Act;
 - (f) to gather and manage information on the environment and the utilisation of natural resources in the district;
 - (g) to serve as the secretary to the district environment committee; and
 - (h) such other functions as may be prescribed by the district council in consultation with the authority.

16. Local environment committee.

- (1) A local government system shall, on the advice of the district environment committee, appoint local environment committees.
- (2) When appointed, the functions of the local environment committee shall include the following—
 - (a) to prepare a local environment work plan which shall be consistent with the national environment action plan and the district environment action plan;
 - (b) to carry out public environmental education campaigns;
 - (c) to mobilise the people within its local jurisdiction to conserve natural resources through self-help;
 - (d) to mobilise the people within its local jurisdiction to restore degraded environmental resources through self-help;
 - (e) to mobilise the people within its local jurisdiction to improve their natural environment through voluntary self-help;
 - (f) to monitor all activities within its local jurisdiction to ensure that such activities do not have any significant impact on the environment;
 - (g) to report any events or activities which have or are likely to have significant impacts on the environment to the district environment officer, or to the appropriate executive committee, local council or such other person as the district council may direct;
 - (h) to carry out such other duties as may be prescribed by the district council or urban council in consultation with the authority.

PART IV—ENVIRONMENTAL PLANNING.

17. Environmental planning at the national level.

- (1) The authority shall prepare a national environment action plan to be reviewed after every five years or such other lesser period as may be considered necessary by the authority.
- (2) The plan shall—
 - (a) cover all matters affecting the environment of Uganda and shall contain guidelines for the management and protection of the environment and natural resources as well as the strategies for preventing, controlling or mitigating any deleterious effects;
 - (b) take into account district plans as provided for under section 18;
 - (c) be binding upon all persons and all Government departments, agencies and organs;

- (d) without prejudice to subsection (1), be reviewed and modified from time to time to take into account emerging knowledge and realities;
- (e) be in such a form and contain such other matters as may be prescribed;
- (f) be subject to approval by the Cabinet and after approval be laid before Parliament;
- (g) be disseminated to the public.

18. Environmental planning at a district level.

- (1) Every district environment committee shall, in consultation with the authority, prepare a district environment action plan to be revised every three years or such other lesser period as may be considered necessary by the authority.
- (2) The district environment action plan shall—
 - (a) be in conformity with the national environment action plan;
 - (b) be binding on all the district agencies, local committees and persons within the district;
 - (c) be in such a form and contain such matters as may be prescribed;
 - (d) be subject to approval by the district council; and
 - (e) be disseminated to the public.

PART V—ENVIRONMENTAL REGULATION.

19. Project brief and environmental impact assessment.

- (1) A developer of a project described in the Third Schedule to this Act shall submit a project brief to the lead agency, in the prescribed form and giving the prescribed information.
- (2) The Minister may, on the advice of the board, by statutory instrument, amend the Third Schedule.
- (3) An environmental impact assessment shall be undertaken by the developer where the lead agency, in consultation with the executive director, is of the view that the project—
 - (a) may have an impact on the environment;
 - (b) is likely to have a significant impact on the environment; or
 - (c) will have a significant impact on the environment.
- (4) An environmental impact assessment shall be undertaken by experts whose names and qualifications are approved by the authority.
- (5) An environmental impact assessment required in subsection (3) shall be appropriate to the scale and possible effects of the project, and accordingly—
 - (a) where the project may have an impact on the environment, an environmental impact review shall be conducted;
 - (b) where the project is likely to have an impact on the environment, an environmental impact evaluation shall be conducted; or
 - (c) where the project will have a significant impact on the environment, an environmental impact study shall be conducted.
- (6) Where the lead agency, in consultation with the authority, is satisfied that an environmental impact review or an environmental impact evaluation conducted in accordance with subsection (5)(a) or (b) does not disclose possible significant impact on the environment, it may approve the environmental aspects of the project.
- (7) Where the lead agency, in consultation with the authority, is satisfied, after considering the environmental impact review or the environmental impact evaluation, that the project will lead to significant impact on the environment, it shall require that an environmental impact study be conducted.
- (8) The authority shall, in consultation with a lead agency, adopt guidelines with respect to environmental impact reviews, environmental impact evaluations and environmental impact studies on—

- (a) their format and contents;
 - (b) the procedure for conducting the assessments;
 - (c) the participation of the public, especially those most affected by the project in the assessment;
 - (d) any other matter the authority considers relevant.
- (9) The conduct of an environmental impact assessment under this section shall be published in such a manner as may be prescribed.

20. Environmental impact statement.

- (1) Where a project has been determined under section 19(7) as requiring an environmental impact study, the developer shall, after completing the study, make an environmental impact statement in the prescribed form and in the prescribed manner.
- (2) An environmental impact statement shall be made according to guidelines established by the authority.
- (3) The environmental impact statement shall be made to the authority, the lead agency or any other person requesting it.
- (4) In any case where the statement is not requested by a lead agency, a copy of the statement shall be forwarded to the relevant lead agency and the authority.
- (5) The environmental impact statement shall be a public document and may be inspected at any reasonable hour by any person.

21. Consideration of the statement by the lead agency; obligation of the developer.

- (1) The lead agency which receives an environmental impact statement under section 20 shall, in consultation with the authority, study it and if it considers it to be complete shall deal with it in the manner prescribed.
- (2) In executing the project, the developer shall take all practicable measures to ensure that the requirements of the environmental impact statement are complied with.

22. Environmental audit.

- (1) The authority shall, in consultation with the lead agency, be responsible for carrying out an environmental audit of all activities that are likely to have significant effect on the environment.
- (2) An environmental inspector appointed under section 79 may enter any land or premises for the purpose of determining how far the activities carried out on that land or premises conform with the statements made in the environmental impact statement.
- (3) The owner of the premises or the operator of a project for which an environmental impact statement has been made shall keep records and make annual reports to the authority describing how far the project conforms in operation with the statements made in the environmental impact statement.
- (4) The owner of premises or the operator of a project shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental impact statement and shall report on those measures to the authority annually or as the authority may, in writing, require.

23. Environmental monitoring.

- (1) The authority shall, in consultation with a lead agency, monitor—
- (a) all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts;
 - (b) the operation of any industry, project or activity with a view to determining its immediate and long-term effects on the environment.

(2) An environmental inspector appointed under section 79 may enter upon any land or premises for the purpose of monitoring the effects upon the environment of any activities carried out on that land or premises.

PART VI—ESTABLISHMENT OF ENVIRONMENTAL STANDARDS.

24. Air quality standards.

The authority shall, in consultation with the lead agency—

- (a) establish criteria and procedures for the measurement of air quality;
- (b) establish—
 - (i) ambient air quality standards;
 - (ii) occupational air quality standards;
 - (iii) emission standards for various sources;
 - (iv) criteria and guidelines for air pollution control for both mobile and stationary sources;
 - (v) any other air quality standard prescribed;
- (c) take measures to reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both to meet the requirements of standards established under this section;
- (d) make guidelines to minimise emissions of greenhouse gases and identify suitable technologies to minimise air pollution.

25. Water quality standards.

The authority shall, in consultation with the lead agency, establish—

- (a) criteria and procedures for the measurement of water quality;
- (b) minimum water quality standards for all the waters of Uganda;
- (c) minimum water quality standards for different uses, including—
 - (i) drinking water;
 - (ii) water for industry;
 - (iii) water for agricultural purposes;
 - (iv) water for recreational purposes;
 - (v) water for fisheries;
 - (vi) water for wildlife; and
 - (vii) any other water use prescribed.

26. Standards for the discharge of effluent into water.

The authority may, in consultation with the lead agency—

- (a) establish standards for the discharge of any effluent into the waters of Uganda;
- (b) prescribe measures for the treatment of any effluent before discharge into the sewage system;
- (c) require that the operator of a plant undertake such works as it considers necessary for the treatment of effluent before it is discharged into the water.

27. Standards for the control of noxious smells.

The authority shall, in consultation with the lead agency, establish—

- (a) procedures for the measurement and determination of noxious smells;
- (b) minimum standards for the control of pollution of the environment by smell;
- (c) guidelines for measures leading to the abatement of obnoxious smells, whether from human activities or from naturally occurring phenomena.

28. Standards for the control of noise and vibration pollution.

The authority shall, in consultation with the lead agency, establish—

- (a) criteria and procedures for the measurement of noise and vibration pollution;
- (b) minimum standards for the emission of noise and vibration pollution into the environment;
- (c) guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.

29. Standards for subsonic vibrations.

The authority shall, in consultation with the lead agency, establish—

- (a) criteria and procedures for the measurement of subsonic vibrations;
- (b) standards for the emission of subsonic vibrations which are likely to have a significant impact on the environment;
- (c) guidelines for the minimisation of the subsonic vibrations referred to in paragraph (b) from existing and future sources.

30. Soil quality standards.

(1) The authority shall, in consultation with the lead agency, establish—

- (a) criteria and procedures for the measurement and determination of soil quality;
 - (b) minimum standards for the management of the quality of the soil.
- (2) For the purposes of subsection (1), the authority shall issue guidelines for—
- (a) the disposal of any substance in the soil;
 - (b) the identification of the various soils;
 - (c) the optimum manner for the utilisation of any soil;
 - (d) the practices that will conserve the soil;
 - (e) the prohibition of practices that will degrade the soil.

31. Standards for minimisation of radiation.

(1) The authority may, in consultation with the lead agency, establish—

- (a) criteria and procedures for the measurement of ionising and other radiation;
 - (b) standards for the minimisation of ionising and other radiation in the environment.
- (2) For the purpose of subsection (1), the authority may, in consultation with the lead agency, issue guidelines for—
- (a) monitoring radiation;
 - (b) protective measures to be taken against radiation;
 - (c) inspection of premises, areas, vehicles, and vessels contaminated by radiation;
 - (d) the control of the effects of the radiation;
 - (e) safe practices to protect persons involved in activities prone to radiation exposure.
- (3) The authority shall, in consultation with the Uganda Revenue Authority, maintain a register of all radioactive substances imported into Uganda in such form and in such manner and containing such information as may be prescribed.

32. Other standards.

(1) The authority shall, in consultation with the lead agency, establish standards for—

- (a) buildings and other structures;
 - (b) industrial products;
 - (c) materials used in industry, agriculture and for domestic uses;
 - (d) solid waste disposal;
 - (e) such other matters and activities that may affect the environment.
- (2) The authority shall, in consultation with the lead agency, establish such criteria and procedures as they consider necessary for the determination of the standards referred to in subsection (1).

PART VII—MANAGEMENT OF THE ENVIRONMENT.

33. Scope of Part VII.

The measures for the management of the environment and natural resources provided for under this Part shall be exercised in conjunction with other measures, incentives, fees and disincentives that may be included in the annual budget proposals by the Minister responsible for finance under section 93.

34. Limits on the use of lakes and rivers.

(1) Subject to subsection (2), no person shall, in relation to a river or lake, carry out any of the following activities—

- (a) use, erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, on, under or over the bed;
- (b) excavate, drill, tunnel or disturb the bed otherwise;
- (c) introduce or plant any part of a plant whether alien or indigenous in a lake or river;
- (d) introduce any animal, or microorganism, whether alien or indigenous in any river or lake or on, in or under its bed;
- (e) deposit any substance in a lake or river or in, on or under its bed, if that substance would or is likely to have adverse effects on the environment;
- (f) divert or block any river from its normal course;
- (g) drain any lake or river.

(2) The authority may, in consultation with the lead agency, in writing, waive any of the requirements of subsection (1) in respect of any person subject to conditions prescribed by the authority.

(3) For the purposes of this section and section 35—

- (a) “lake” includes natural lakes, artificial lakes, dams, canals, gulfs, bays and inlets; and
- (b) “river” includes stream and canal.

(4) The authority shall, in consultation with the lead agency, issue guidelines for the management of the environment of lakes and rivers.

35. Management of river banks and lake shores.

(1) The authority shall, in consultation with the lead agency, take all measures it considers necessary in order to protect the banks of rivers and the shores of lakes in Uganda from human activities that will adversely affect the rivers and the lakes.

(2) Each district environment committee, with the assistance of local environment committees, shall identify the banks of rivers and the shores of lakes within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities and take necessary measures to minimise the risk or recommend to the authority the need for the protection of those areas.

(3) The Minister may, on the advice of the authority, by statutory instrument, declare protected zones along the banks of rivers and the shores of lakes within such limits as it considers necessary to protect those rivers and lakes from deleterious human activities.

(4) In declaring protected zones on the banks of a river and the shores of a lake under subsection (3), the authority shall take into account—

- (a) the size of the river or the lake in determining the area of the protected zone; and
- (b) the existing interests in the land covered by the protected zone.

(5) Notwithstanding this section, sustainable uses of the protected zone which do not adversely affect the river or the lake may be permitted by the authority, except that where there is doubt relating to sustainable use, an environmental impact assessment in accordance with section 19 shall be conducted.

36. Restrictions on the use of wetlands.

(1) No person shall—

- (a) reclaim or drain any wetland;
- (b) erect, construct, place, alter, extend, remove or demolish any structure that is fixed in, on, under or over any wetland;
- (c) disturb any wetland by drilling or tunnelling in a manner that has or is likely to have an adverse effect on the wetland;
- (d) deposit in, on or under any wetland any substance in a manner that has or is likely to have an adverse effect on the wetland;
- (e) destroy, damage or disturb any wetland in a manner that has or is likely to have an adverse effect on any plant or animal or its habitat;
- (f) introduce or plant any exotic or introduced plant or animal in a wetland, unless he or she has written approval from the authority given in consultation with the lead agency.

(2) The authority may, in consultation with the lead agency, and upon an application to carry on any activity referred to in subsection (1), make any investigation it considers necessary, including an environmental impact assessment referred to in section 19 to determine the effect of that activity on the wetland and the environment in general.

(3) The authority shall, in consultation with the lead agency, and by statutory order, specify the traditional uses of wetlands which shall be exempted from the application of subsection (1).

37. Management of wetlands.

(1) The authority shall, in consultation with the lead agency, establish guidelines for the identification and sustainable management of all wetlands in Uganda.

(2) The authority shall, with the assistance of the local environment committees, district environment committees and the lead agency, identify wetlands of local, national and international importance as ecosystems and habitats of species of fauna and flora and compile a national register of wetlands.

(3) The authority may, in consultation with the lead agency and the district environment committee, declare any wetland to be a protected wetland, thereby excluding or limiting human activities in that wetland.

38. Identification of hilly and mountainous areas.

(1) Each district environment committee shall, with the assistance of the local environment committee within the district, identify the hilly and mountainous areas in each district which are at risk from environmental degradation.

(2) A hilly or mountainous area is at risk from environmental degradation if—

- (a) it is prone to soil erosion;
- (b) landslides have occurred in such an area;
- (c) vegetation cover has been removed or is likely to be removed from the area at a rate faster than it is being replaced; or
- (d) any other land use activity in such an area is likely to lead to environmental degradation.

(3) Each district environment committee shall notify the authority of the hilly and mountainous areas it has identified as being at risk from environmental degradation.

(4) The authority shall maintain a register of hilly and mountainous areas at risk from environmental degradation.

39. Reforestation and afforestation of hilltops, hillsides and mountainous areas.

- (1) Each district environment committee shall, in its district environment action plan, under section 18, specify which of the areas identified in accordance with section 38 shall be targeted for afforestation or reforestation.
- (2) Each local environment committee shall take measures, through encouraging voluntary self-help in the community, to plant trees and other vegetation in any areas specified under subsection (1) which are within the limits of its jurisdiction and not subject to any personal interest in land.
- (3) Where the areas specified under subsection (1) are subject to leasehold or any other interest in land, including customary tenure, the holder of that interest shall be responsible for taking measures to plant trees and other vegetation in those areas.
- (4) Where a holder of an interest in land fails to comply with subsection (3), the local environment committee may mobilise the community to ensure compliance.

40. Other measures for the management of hillsides, hilltops and mountainous areas.

- (1) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the sustainable use of hillsides, hilltops and mountainous areas.
- (2) The guidelines issued and measures prescribed by the authority under subsection (1) shall include those relating to—
 - (a) appropriate farming methods;
 - (b) carrying capacity of the areas described in subsection (1) in relation to animal husbandry;
 - (c) measures to curb soil erosion;
 - (d) disaster preparedness in areas prone to landslides;
 - (e) the protection of areas referred to in subsection (1) from human settlements;
 - (f) the protection of water catchment areas; and
 - (g) any other measures the authority considers necessary.
- (3) The local environment committees shall be responsible for ensuring that the guidelines issued and measures prescribed under subsection (2) are implemented.
- (4) A person who contravenes any measure prescribed by the authority under this section or who fails to comply with a lawful direction issued by a local environmental committee under this section commits an offence.

41. Guidelines for conservation of biological diversity.

- (1) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the conservation of biological diversity.
- (2) The authority may, in issuing guidelines under subsection (1)—
 - (a) specify national strategies, plans and programmes for the conservation and the sustainable use of biological diversity;
 - (b) integrate the conservation and sustainable utilisation ethic in relation to biological diversity in existing government activities and activities of private persons;
 - (c) identify, prepare and maintain an inventory of biological diversity of Uganda;
 - (d) determine which components of biological diversity are threatened with extinction;
 - (e) identify potential threats to biological diversity and devise measures to remove or investigate their effects.

42. Conservation of biological resources *in situ*.

The authority shall, in consultation with the lead agency—

- (a) prescribe measures to ensure the conservation of biological resources *in situ*;
- (b) the authority shall, in consultation with the lead agency, issue guidelines for—
 - (i) land use methods that are compatible with the conservation of biological diversity;

- (ii) the selection and management of protected areas so as to promote the conservation of the various terrestrial and aquatic ecosystems of Uganda;
- (iii) the selection and management of buffer zones near protected areas;
- (iv) special measures for protection of species, ecosystems, and habitats faced with extinction;
- (v) prohibiting or controlling the introduction of alien species;
- (vi) integrating traditional knowledge for the conservation of biological diversity with mainstream scientific knowledge.

43. Conservation of biological resources *ex situ*.

The authority shall, in consultation with the lead agency—

- (a) prescribe measures for the conservation of biological diversity *ex situ*, especially for species threatened with extinction;
- (b) issue guidelines for the establishment and operation of—
 - (i) germ plasm banks;
 - (ii) botanical gardens;
 - (iii) zoos;
 - (iv) animal orphanages;
 - (v) any other facilities the authority considers necessary;
- (c) ensure that species threatened with extinction which are conserved *ex situ* are reintroduced into their native habitats and ecosystems where—
 - (i) the threat to the species has been terminated;
 - (ii) a viable population of the threatened species has been achieved.

44. Access to the genetic resources of Uganda.

- (1) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the sustainable management and utilisation of the genetic resources of Uganda for the benefit of the people of Uganda.
- (2) Without prejudice to the general effect of subsection (1), the guidelines and measures issued or prescribed under that subsection shall specify—
 - (a) appropriate arrangements for access to the genetic resources of Uganda by noncitizens of Uganda, including the fees to be paid for that access;
 - (b) measures for regulating the export of germ plasm;
 - (c) the sharing of benefits derived from genetic resources originating from Uganda;
 - (d) any other matter which the authority considers necessary for the better management of the genetic resources of Uganda.

45. Management of forests.

- (1) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the management of all forests in Uganda.
- (2) The guidelines and measures issued or prescribed under subsection (1) shall take into account—
 - (a) forests in protected areas, including forest reserves, national parks and game reserves;
 - (b) forests on lands subject to interests held by private persons.
- (3) All forests shall be managed in accordance with the principle of sustainable development.
- (4) The commercial exploitation of any forest shall be carried out in accordance with the principle of the optimum sustainable yield as prescribed by section 2(2)(e).
- (5) Traditional uses of forests which are indispensable to the local communities and are compatible with the principle of sustainable development shall be protected.

(6) Notwithstanding subsections (3), (4) and (5), the authority may, in consultation with the lead agency, expressly exclude human activities in any forest area by declaring a forest area a specially protected forest.

46. Conservation of energy and planting of trees or woodlots.

(1) The authority shall, in consultation with the lead agency, promote the use of renewable sources of energy by—

- (a) promoting research in appropriate renewable sources of energy;
- (b) creating incentives for the promotion of renewable sources of energy in accordance with subsection (2).

(2) The authority shall—

- (a) promote measures for the conservation of nonrenewable sources of energy;
- (b) take measures to encourage the planting of trees and woodlots by individual landusers, institutions and by community groups.

47. Management of rangelands.

(1) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the sustainable management and utilisation of rangelands.

(2) In issuing the guidelines and prescribing measures under subsection (1), the authority shall be guided by—

- (a) the carrying capacity of the land;
- (b) the conservation of the soil;
- (c) the risk to desertification faced by any rangelands;
- (d) any other factor which the authority considers appropriate.

48. Land use planning.

(1) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for land use planning at the local, district and national levels.

(2) The authority shall, in consultation with the lead agency, be responsible for the preparation of the national land use plan.

(3) The district land use plan, which shall be in conformity with the national land use plan, shall be prepared by the district development committee with the assistance of the authority and approved by the district resistance council.

(4) The local land use plan, which shall be in conformity with the district and national land use plans, shall be prepared by the local environment committee with the assistance of the district environment officer or such other public officer as may be prescribed.

(5) The authority, the district environment committee and the local environment committee shall be responsible for monitoring the implementation of any land use plans prepared in accordance with this section.

49. Protection of natural heritage sites.

(1) The authority shall, with the assistance of local environment committees, district environment committees and the lead agency, identify those elements, objects and sites in the natural environment which are of cultural importance to the various peoples of Uganda.

(2) The authority shall, in such manner as may be prescribed, maintain a register of all elements, objects and sites identified under subsection (1).

(3) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the management or protection of cultural elements, objects and sites registered under this subsection.

50. Protection of the ozone layer.

(1) The authority shall, in consultation with the lead agency, undertake national studies and give due recognition to developments in scientific knowledge relating to substances, activities and practices that deplete the stratospheric ozone layer and other components of the stratosphere to the detriment of human health.

(2) The authority shall, in consultation with the lead agency, make regulations, issue guidelines and institute programmes concerning—

- (a) the elimination of substances that deplete the ozone layer;
- (b) management practices and activities likely to lead to the degradation of the ozone layer and the stratosphere; and
- (c) the reduction and minimisation of risks to human health created by the degradation of the ozone layer and the stratosphere.

51. Management of dangerous materials and processes.

(1) The authority shall, in consultation with the lead agency, identify materials and processes that are dangerous to human health and the environment.

(2) The authority shall, in consultation with the lead agency, issue guidelines and prescribe measures for the management of the materials and processes identified under subsection (1).

52. Duty to manage and minimise waste.

(1) Every person has the duty to manage any waste generated by his or her activities or the activities of those persons working under his or her direction in such a manner that he or she does not cause ill health to the person or damage to the environment.

(2) No person shall dispose of any waste whether generated within or outside Uganda except in accordance with this Act and as may be prescribed.

(3) Every person whose activities generate waste shall employ measures for the minimisation of waste through treatment, reclamation and recycling.

(4) Any person who contravenes any provision of this section commits an offence.

53. Management of hazardous waste.

(1) The authority shall, in consultation with the lead agency, adopt standard criteria for the classification of hazardous wastes with regard to determining—

- (a) extremely hazardous waste;
- (b) corrosive waste;
- (c) carcinogenic waste;
- (d) flammable waste;
- (e) persistent waste;
- (f) toxic waste;
- (g) explosive waste;
- (h) radioactive waste;
- (i) wastes reactive otherwise than as described in paragraphs (a) to (h);
- (j) any other category of waste the authority may consider necessary.

(2) The authority shall, in consultation with the lead agency, make regulations and issue guidelines for the management of each category of hazardous waste determined under subsection (1).

(3) Any person who discharges any hazardous waste determined under subsection (1) without a licence issued by the authority or contrary to any regulations made under subsection (2) or to any conditions specified in the licence commits an offence.

54. Illegal traffic in waste.

- (1) No person shall import into Uganda any hazardous waste falling under any category determined under section 53.
- (2) No person shall import into Uganda any waste not determined under section 53, except under a licence issued by the authority.
- (3) Any person who contravenes this section commits an offence.
- (4) A person who imports any hazardous waste or any other waste into the territory of Uganda contrary to subsection (1) or (2) shall be responsible for removal of the waste from Uganda and for its disposal.
- (5) A person who withholds, falsifies or otherwise tampers with information relating to illegal traffic in hazardous or other waste commits an offence.

55. Guidelines for management of toxic and hazardous chemicals and materials.

- (1) The authority shall, in consultation with the lead agency, establish criteria for the classification of toxic and hazardous chemicals and materials in accordance with their toxicity and the hazards they present to human health and to the environment.
- (2) The authority shall, in consultation with the lead agency, on the basis of the criteria established under subsection (1), issue guidelines and prescribe measures for the management of toxic and hazardous chemicals and materials.
- (3) The guidelines issued and the measures prescribed by the authority under subsection (2) shall include guidelines and measures on—
 - (a) registration of chemicals and materials;
 - (b) labelling of chemicals and materials;
 - (c) packaging for chemicals and materials;
 - (d) advertising of chemicals and materials;
 - (e) control of imports and exports of toxic and hazardous chemicals and materials;
 - (f) distribution, storage, transportation and handling of chemicals and materials;
 - (g) monitoring of the effect of chemicals and their residue on human health and the environment;
 - (h) disposal of expired and surplus chemicals and materials;
 - (i) restricting and banning of extremely toxic and hazardous chemicals and materials.

56. Prohibition of discharge of hazardous substances, chemicals, oil, etc. into the environment and spiller's liability.

- (1) No person shall discharge any hazardous substance, chemical, oil or mixture containing oil in any waters or any other segment of the environment except in accordance with guidelines prescribed by the authority in consultation with the lead agency.
- (2) A person who discharges a hazardous substance, chemical, oil or a mixture containing oil into any waters or other segment of the environment contrary to subsection (1) commits an offence.
- (3) Upon conviction, the person discharging a hazardous substance, chemical, oil or a mixture containing oil into the environment may, in addition to any other sentence imposed by the court—
 - (a) pay the cost of the removal, including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge; and
 - (b) the costs of the third parties in the form of reparation, restoration, restitution or compensation as may, from time to time, be determined by the authority.
- (4) The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by—
 - (a) giving immediate notice of the discharge to the authority and other Government officers;
 - (b) immediately beginning cleanup operations using the best available cleanup methods;

- (c) complying with such directions as the authority may, from time to time, prescribe.
- (5) Until the owner or operator of a production or storage facility, motor vehicle or vessel has taken the mitigation measures prescribed in subsection (4), the authority may seize the production facility, motor vehicle or vessel.
- (6) Where the owner or operator fails to take the necessary measures under subsection (4) after the passage of a reasonable time in all the circumstances, the authority may, upon an order of court, dispose of the production or storage facility, motor vehicle or vessel to meet the costs of taking the necessary measures under subsection (4) and other remedial and restoration measures.
- (7) The court in convicting a person of an offence under this section shall take into account the measures taken by that person to comply with subsection (4).

PART VIII—CONTROL OF POLLUTION.

57. Prohibition of pollution contrary to established standards.

- (1) No person shall pollute or lead any other person to pollute the environment contrary to any of the standards or guidelines prescribed or issued under Parts VI and VII of this Act.
- (2) Notwithstanding subsection (1), a person may exceed the standards and guidelines referred to in subsection (1) if authorised by a pollution licence issued under section 60.

58. Pollution licences.

- (1) The technical committee on the licensing of pollution appointed under section 10 shall be composed of such persons as the authority may determine.
- (2) The executive director shall be the chairperson of the committee.
- (3) The functions of the committee are—
 - (a) to consider applications for pollution licences;
 - (b) to issue pollution licences;
 - (c) to perform any other functions assigned to it by the authority.
- (4) No person shall carry out any activity which is likely to pollute the air, the water or the land in excess of any standards or guidelines prescribed or issued under this Act except under and in accordance with a pollution licence.
- (5) For the avoidance of doubt, subsection (4) applies to any activity described in that subsection whether commenced before or after the coming into force of this Act.
- (6) The committee shall not issue a pollution licence unless it is satisfied that the licensee is capable of compensating the victims of the pollution and of cleaning the environment in accordance with the “polluter pays principle” as provided for under section 2(2)(k).

59. Application for a pollution licence.

- (1) An application for a pollution licence to carry on an activity which pollutes the land, the water or the air in excess of the standards or guidelines prescribed or issued under this Act shall be made to the committee in the prescribed form and in the prescribed manner.
- (2) Every application shall be accompanied by the prescribed fee.
- (3) Any proprietary information submitted to the committee shall be treated as confidential.

60. Consideration of the application by the committee.

- (1) Upon receiving the application, the committee shall—
 - (a) within sixty days, notify persons who may be affected by the proposed activity of the applicant and invite them to make representations;
 - (b) consider representations made by relevant Government departments;
 - (c) consider the application having regard to all the representations received by the committee;
 - (d) grant or reject the application.

- (2) The committee may, before granting or rejecting an application under subsection (1)—
- (a) require that an environmental impact study be conducted in accordance with Part V of this Act if, having regard to the nature of the activity requested and the pollution likely to result from that activity, it considers it necessary so to do;
 - (b) request the applicant to furnish further information relating to the plant location, materials or technology design.
- (3) Where the committee rejects an application for a pollution licence, it shall state in writing its reasons for doing so.

61. Conditions in a pollution licence.

- (1) A pollution licence issued under this Act shall be in the prescribed form and be subject to such conditions as may be prescribed or as may be specified in the licence.
- (2) A pollution licence issued under this Act shall remain valid for such period and may be renewed for such further periods as may be prescribed.

62. Fees for a licence.

- (1) For every issue or renewal of a pollution licence under section 60 or 61, the licensee shall pay to the authority the prescribed fee.
- (2) The fee to be charged under subsection (1) shall be determined in accordance with the “polluter pays principle” referred to in section 2(2)(k) and accordingly—
- (a) the person contributing the greater amount of pollution shall bear the largest burden in paying for cleaning the environment;
 - (b) the fee shall be used to promote behaviour that conserves the environment by charging smaller fees for activities that reduce pollution.

63. Renewal of a pollution licence.

- (1) A licensee may apply to the committee for the renewal of his or her pollution licence in the prescribed form and in the prescribed manner.
- (2) The committee shall consider each application for renewal of a licence within three months.
- (3) The committee may—
- (a) grant the pollution licence;
 - (b) reject the application;
 - (c) request further information.
- (4) In making a decision under subsection (3), the committee shall take into account the following—
- (a) whether the applicant has observed the conditions established in the previous licence;
 - (b) whether the applicant has taken measures to abate the pollution;
 - (c) the effect of the pollution in the area where it is discharged or emitted;
 - (d) any other matter that the committee considers to be reasonably relevant.

64. Cancellation of a pollution licence.

The committee may, in writing, cancel any pollution licence—

- (a) if the holder of the licence contravenes any provision of this Act or of any statutory instrument made under it;
- (b) if the holder fails to comply with any condition specified in the licence;
- (c) if the committee considers it in the interest of the environment or in the public interest so to do.

65. Register of a pollution licence.

- (1) The authority shall maintain a register of all pollution licences issued under this Act in accordance with guidelines issued by the committee.

(2) The register shall be a public document and may be inspected at any reasonable hour by any person on the payment of the prescribed fee.

66. Disaster preparedness.

(1) The authority shall prepare guidelines or plans for coordinating national responses to environmental disasters.

(2) In preparing guidelines under subsection (1), the authority shall consult the following—

- (a) the lead agencies;
- (b) the Uganda Peoples' Defence Forces;
- (c) the Uganda Police Force;
- (d) the Fire Brigade Service;
- (e) organisations providing health care, whether nongovernmental or governmental;
- (f) any other organisation the authority considers necessary.

(3) District environment committees and local environment committees shall prepare plans for responses to local environmental disasters with specific reference to known possible disasters within their area of jurisdiction.

(4) A specific disaster preparedness plan shall be prepared by—

- (a) each employer whose activities are likely to have a significant impact on the environment;
- (b) each educational institution;
- (c) each hotel or recreational facility; and
- (d) each hospital.

(5) A plan prepared under subsection (4) shall take into account the kind of risks faced by the employer or institution preparing it.

(6) Any person who negligently carries out any activity that leads to a disaster has a duty to compensate any person adversely affected by the disaster.

PART IX—ENVIRONMENTAL RESTORATION ORDERS AND ENVIRONMENTAL EASEMENTS.

67. Environmental restoration orders.

(1) Subject to the provisions of this Part, the authority may issue to any person in respect of any matter relating to the management of the environment and natural resources an order in this Part referred to as an environmental restoration order.

(2) An environmental restoration order may be issued under subsection (1) for any of the following purposes—

- (a) requiring the person to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order;
- (b) preventing the person from taking any action which would or is reasonably likely to do harm to the environment;
- (c) awarding compensation to be paid by that person to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;
- (d) levying a charge on that person which represents a reasonable estimate of the cost of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.

(3) An environmental restoration order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the authority, enable the order to achieve all or any of the purposes set out in subsection (1).

(4) Without prejudice to the general effect of the purposes set out in subsection (1) or the powers of the authority set out in subsection (2), an environmental restoration order may require a person on whom it is served to—

- (a) take such action as will prevent the commencement or continuation of or the cause of pollution;

- (b) restore land, including the replacement of soil, the replanting of trees and other flora and the restoration, as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land specified in the order;
 - (c) take such action as will prevent the commencement or continuation of or the cause of an environmental hazard;
 - (d) cease to take any action which is causing or may cause or may contribute to causing pollution or an environmental hazard;
 - (e) remove or alleviate any injury to land or the environment or to the amenities of the area;
 - (f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on, under or about the land specified in the order or land or the environment contiguous to land specified in the order;
 - (g) remove any waste or refuse deposited on land specified in the order;
 - (h) deposit waste in a place specified in the order;
 - (i) pay such compensation as is specified in the order.
- (5) In exercising its powers under this section, the authority shall—
- (a) have regard to the principles as set out in section 2;
 - (b) explain the rights of the person, against whom the order is issued, to appeal to the court against that decision.

68. Service of an environmental restoration order.

- (1) Where it appears to the authority that harm has been or is likely to be caused to the environment by an activity by any person, it may serve on that person an environmental restoration order requiring that person to take such action, in such time being not less than twenty-one days from the date of the service of the order, to remedy the harm to the environment as may be specified in the order.
- (2) An environmental restoration order shall specify clearly and in a manner which may be easily understood—
- (a) the activity to which it relates;
 - (b) the person or persons to whom it is addressed;
 - (c) the time at which it comes into effect;
 - (d) the action which must be taken to remedy the harm to the environment and the time, being not less than thirty days or such further period as may be prescribed in the order, within which the action must be taken;
 - (e) the powers of the executive director to enter land and undertake the action specified in paragraph (d);
 - (f) the penalties which may be imposed if the action specified in paragraph (d) is not undertaken;
 - (g) the right of the person served with an environmental restoration order to appeal to the court against that order.
- (3) The authority may inspect or cause to be inspected any activity to determine whether that activity is harmful to the environment and may take into account the evidence obtained from that inspection in any decision on whether or not to serve an environmental restoration order.
- (4) The authority may seek and take into account any technical, professional and scientific advice which it considers to be desirable for a satisfactory decision to be made on an environmental restoration order.
- (5) An environmental restoration order shall continue to apply to the activity in respect of which it was served notwithstanding that it has been complied with.
- (6) A person served with an environmental restoration order shall, subject to this Act, comply with all the terms and conditions of the order that has been served on him or her.

(7) It shall not be necessary for the authority in exercising its powers under subsection (3) to give any person conducting or involved in the activity the subject of the inspection or residing or working on or developing land on which the activity which the subject of the inspection is taking place, an opportunity of being heard by or making representations to the person conducting the inspection.

69. Reconsideration of an environmental restoration order.

(1) At any time within twenty-one days after the service of an environmental restoration order, a person upon whom the order has been served may, by giving reasons in writing, request the authority to reconsider that order.

(2) Where a written request has been made as provided for under subsection (1), the order shall continue in effect until varied, suspended or withdrawn under subsection (3) and, if varied, shall continue in effect in accordance with the variation.

(3) Where a request has been made under subsection (1), the authority shall, within thirty days after the receipt of the request, reconsider the environmental restoration order and notify in writing the person who made the request of his or her decision on the order.

(4) The authority may, after reconsidering the case, confirm, vary, suspend or withdraw the environmental restoration order.

(5) The authority shall give the person who has requested a reconsideration of an environmental restoration order the opportunity to be heard orally before a decision is made.

70. Action by the authority on environmental restoration orders.

(1) Where a person on whom an environmental restoration order has been served fails, neglects or refuses to take the action required by the order, the authority may, with all necessary workers and other officers, enter or authorise any other person to enter any land under the control of the person on whom that order has been served and take all necessary action in respect of the activity to which that order relates and otherwise to enforce that order as may seem fit.

(2) Where the authority exercised the power under subsection (1), it may recover as a civil debt, in any court of competent jurisdiction from the person referred to in subsection (1), the expenses necessarily incurred by it in the exercise of that power.

71. Issue of an environmental restoration order by a court.

(1) Without prejudice to the powers of the authority under sections 67, 68 and 69, the court may, in any proceedings brought by any person, issue an environmental restoration order against a person who has harmed, is harming or is reasonably likely to harm the environment.

(2) For the avoidance of doubt, it shall not be necessary for a plaintiff under this section to show that he or she has a right of, or interest in, the property, in the environment or land alleged to have been harmed or in the environment or land contiguous to such environment or land.

72. Environmental easements.

(1) The court may, on an application made under this Part, grant an environmental easement, subject to this Act.

(2) The object of an environmental easement is to further the principles of environment management set out in section 2 by facilitating the conservation and enhancement of the environment, in this Act referred to as the benefited environment, through the imposition of one or more obligations in respect of the use of land, in this Act referred to as the burdened land, being land in the vicinity of the benefited environment.

(3) An environmental easement may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest under customary law as the court may determine.

(4) Without prejudice to the general effect of subsection (1), an environmental easement may be imposed on burdened land so as to—

- (a) preserve flora and fauna;
- (b) preserve the quality and flow of water in a dam, lake, river or aquifer;
- (c) preserve any outstanding geological, physiographical, ecological, archeological or historical features of the burdened land;
- (d) preserve a view;
- (e) preserve open space;
- (f) permit persons to walk in a defined path across the burdened land;
- (g) preserve the natural contours and features of the burdened land;
- (h) prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of minerals or aggregates;
- (i) prevent or restrict the scope of any agricultural activity on the burdened land;
- (j) create and maintain works on burdened land so as to limit or prevent harm to the environment.

(5) Where an environmental easement is imposed on burdened land on which any person has at the time of the imposition of the easement any existing right or interest to use that land and that environmental easement will restrict that right or interest, there shall be paid to that person, by the applicant for the environmental easement, such compensation as may be determined in accordance with section 76.

(6) An environmental easement may exist in gross; that is to say, the validity and enforceability of the easement shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited, or of a person with an interest in that plot of land who can be benefited by the environmental easement.

73. Application for an environmental easement.

(1) A person or a group of persons may make an application to the court for the grant of an environmental easement.

(2) An application for the grant of an environmental easement shall be in the prescribed form and in the prescribed manner.

(3) The court may impose such conditions on the grant of an environmental easement as it considers to be best calculated to advance the object of an environmental easement.

74. Enforcement of an environmental easement.

(1) Proceedings to enforce an environmental easement may be commenced only by the person in whose name the environmental easement has been registered.

(2) Proceedings to enforce an environmental easement may request the court to—

- (a) grant an environmental restoration order;
- (b) grant any remedy available under the law relating to easements.

(3) The procedures to enforce an environmental easement shall be—

- (a) in the case of proceedings for the grant of an environmental restoration order, the procedures set out in sections 70 and 71;
- (b) in the case of proceedings for a remedy available under the law relating to easements, the procedures applicable to such proceedings.

(4) The court shall have a discretion to adapt and adjust, so far as seems necessary to it, the law and procedures relating to the enforcement of easements to the requirements of the enforcement of an environmental easement.

75. Registration of an environmental easement.

(1) Where an environmental easement is imposed on land, the title of which is registered under the Registration of Titles Act, the environmental easement shall be registered in accordance with the provisions of that Act applicable to the registration of easements.

(2) Where an environmental easement is imposed on any land other than land referred to in subsection (1), the district environment committee of the area in which that land is situated shall register the environmental easement in a local register established for the purpose.

(3) In addition to any matter which may be required by any law relating to the registration of easements to be included in the registration, the registration of an environmental easement shall include the name of the applicant for the environmental easement as the person in whose name the environmental easement is registered.

76. Compensation for environmental easements.

(1) Any person who has a legal interest in the land which is the subject of an environmental easement shall, in accordance with the provisions of this Act, be entitled to compensation commensurate with the lost value of the use of the land.

(2) A person described in subsection (1) may apply to the authority for compensation stating the nature of his or her legal interest in the burdened land and the compensation sought.

(3) The authority may require that the applicant for the environmental easement bear the cost of compensating the person described in subsection (1).

(4) The authority may, if satisfied that the easement sought is of national importance, recommend that the Government compensate the person described in subsection (1).

(5) The authority, in determining the compensation due under this section, shall take into account the provisions of the Constitution and any other laws relating to compulsory acquisition of land.

(6) Where a person described in subsection (1) is not satisfied with the determination by the authority of the compensation due under this section, he or she may appeal to the court.

PART X—RECORDS, INSPECTION AND ANALYSIS.

77. Recordkeeping.

(1) Any person who carries on any activity which has or is likely to have a significant impact on the environment and any person carrying out any other activity prescribed by the authority shall keep records relating to—

(a) the amount of waste and by-products generated by the activity;

(b) the extent of his or her activities, indicating the economic value of the activity on the area covered, expressed in the monetary value of the product per year;

(c) the observable effects of the activity on the environment;

(d) how far in the opinion of that person the provisions of this Act have been complied with.

(2) The records kept under subsection (1) shall be made available to an environmental inspector appointed under this Act, the district environment committee, the board or the policy committee upon request.

78. Transmission of records to the authority.

(1) The records kept under section 77 shall be transmitted to the authority or its designated representative annually to be received not later than one month after the end of each calendar year.

(2) The authority shall keep all the records transmitted under subsection (1).

(3) The records transmitted to the authority shall be used as a basis for the preparation of the state of the environment report required by section 86.

79. Designation of environmental inspectors.

The authority may, by notification in the Gazette, designate as many officers as it deems fit from duly qualified public officers, whether by name or by title of office, to be environmental inspectors within such local limits as may be specified in the notification.

80. Powers and duties of environmental inspectors.

(1) An environmental inspector may, in the performance of his or her duties under this Act or any regulations made thereunder, at all reasonable times and without warrant—

- (a) enter on any land, premises or vehicle to determine whether the provisions of this Act are being complied with;
- (b) require the production of, inspect, examine and copy licences, registers, records and other documents relating to this Act or any other Act relating to the environment and the management of natural resources;
- (c) make examinations and inquiries to discover whether this Act is complied with;
- (d) take samples of any article or substance to which this Act relates and, as may be prescribed, submit the samples for tests and analyses;
- (e) carry out periodic inspections of all establishments within the local limits of his or her jurisdiction which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have a significant impact on the environment, to ensure that the provisions of this Act are complied with;
- (f) carry out such other inspections as may be necessary to ensure that the provisions of this Act are complied with;
- (g) seize any plant, equipment, substance or any other thing which he or she believes has been used in the commission of an offence against this Act or the regulations made thereunder;
- (h) close any manufacturing plant or other activity which pollutes or is likely to pollute the environment contrary to this Act for a period of not more than three weeks;
- (i) issue an improvement notice requiring the operator of any manufacturing plant or other activity to cease any activities deleterious to the environment which are contrary to this Act;
- (j) cause a police officer to arrest any person whom he or she believes has committed an offence under this Act.

(2) An environmental inspector may, at any time, install any equipment on any land, premise or vehicle for the purpose of monitoring compliance with this Act.

(3) Where an environmental inspector exercises the power to close a manufacturing plant or to order the discontinuation of any activity under subsection (1)(h), he or she may issue an improvement notice under subsection (1)(i).

(4) In exercising his or her powers under this section, the environmental inspector shall suitably identify himself or herself.

81. Procedure for taking samples for analysis.

The authority shall, on the advice of the lead agency, prescribe the form and manner in which samples will be taken for analysis.

82. Designation of analytical laboratories and reference laboratories.

(1) The authority may, by notice in the Gazette, designate as many laboratories as it deems necessary and fit to be analytical laboratories and reference laboratories for the purposes of this Act.

(2) A notice under subsection (1) shall specify the specific functions of the laboratory and the local limits or subject matter which each laboratory shall serve.

83. Designation of analysts and reference analysts.

- (1) The authority may, by notice in the Gazette, designate as many persons as deemed necessary and fit to serve as analysts and reference analysts for the purposes of this Act.
- (2) A notice under subsection (1) shall specify the specific functions, the subject matter and the local limits within which each analyst or reference analyst shall serve.

84. Certificate of analysis and its effect.

- (1) A laboratory designated as an analytical or reference laboratory under section 82 shall issue a certificate of analysis of any substance submitted to it under this Act.
- (2) The certificate of analysis shall state the methods of analysis followed and shall be signed by the analyst or the reference analyst, as the case may be.
- (3) A certificate complying with subsections (1) and (2) shall be sufficient evidence of the facts stated in the certificate for all purposes.

PART XI—INFORMATION, EDUCATION AND PUBLIC AWARENESS.**85. Freedom of access to environmental information.**

- (1) Every person shall have freedom of access to any information relating to the implementation of this Act submitted to the authority or to a lead agency.
- (2) A person desiring the information shall apply to the authority or a lead agency and may be granted access on payment of a prescribed fee.
- (3) Freedom of access to environmental information does not extend to proprietary information which shall be treated as confidential by the authority and any lead agency.

86. Gathering, analysis and management of environmental information.

- (1) The authority shall—
- (a) gather information on the environment and natural resources on existing data;
 - (b) subject to any other law, have access to any data collection on the environment and natural resources;
 - (c) analyse information;
 - (d) disseminate information to public and private users;
 - (e) carry out public information and education campaigns in the field of environment;
 - (f) exchange information with other Ugandan, foreign, international and nongovernmental agencies;
 - (g) coordinate the management of environment information in the lead agencies;
 - (h) advise the Government on existing information gaps and needs;
 - (i) in consultation with the lead agencies, establish guidelines and principles for the gathering, processing and dissemination of environment information;
 - (j) liaise with the district environment committees and district environment officers regarding environmental information.
- (2) The authority shall publish a state of the environment report every two years.
- (3) The state of the environment report shall, in addition to other matters as may be prescribed, specify the main activities of the authority and the lead agencies regarding the protection of the environment.
- (4) The authority may publish such other publications as it considers necessary for public education on the environment and other environmental issues.

87. Integration of environmental education into the school curriculum.

The authority shall, in collaboration with the Minister responsible for education, take all measures necessary for the integration into the school curriculum of education on the environment.

PART XII—FINANCIAL PROVISIONS.

88. Fund of the authority.

- (1) There is established the National Environment Fund.
- (2) The sources of the fund shall consist of—
 - (a) disbursements from the Government;
 - (b) all fees charged under this Act;
 - (c) any fees prescribed for any service offered by the authority;
 - (d) any fines collected as a result of the breach of the provisions of this Act or any statutory instrument made under this Act;
 - (e) gifts, donations and other voluntary contributions to the fund made from any source.

89. Administration of the fund.

- (1) The board shall be responsible for the administration of the fund.
- (2) The board may, on the advice of the executive director, provide funding for any Government department involved in the field of environmental conservation and natural resources management.
- (3) Subject to any limitations that may be imposed by the policy committee, the fund may borrow money for the implementation of the objects of this Act.
- (4) The authority may maintain its own bank accounts in Ugandan currency or in any foreign currency.

90. Duty to operate on sound financial principles.

- (1) The board shall perform its functions in accordance with sound financial principles and shall ensure, as far as possible, that its revenue is sufficient to meet expenditure properly charged to revenue.
- (2) The board may invest money from the fund in conformity with good commercial practice.

91. Estimates.

- (1) The executive director shall, not later than three months before the end of each financial year, prepare and submit to the board for its approval, estimates of income and expenditure of the authority for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the board for approval, any estimates supplementary to the estimates of a current year.
- (2) No expenditure shall be made out of the funds of the authority unless that expenditure is part of the expenditure approved by the board under the estimates for the financial year in which the expenditure is to be made or in the estimates supplementary to it.

92. Accounts, audits and annual report.

- (1) The executive director shall keep proper accounts and records of all transactions and affairs of the fund and shall ensure that all monies received are properly brought to account, all payments out of its monies are correctly made and properly authorised and that adequate control is maintained over its assets and liabilities.
- (2) The annual accounts of the fund shall be audited by the Auditor General or an auditor appointed by him or her.
- (3) The executive director shall, within thirty days after the end of each financial year, submit—
 - (a) to the board an annual report in respect of that financial year containing—
 - (i) such financial statements as the board may require;
 - (ii) a report on the operations of the fund; and
 - (iii) such other information as the board may direct in writing;
 - (b) to the Auditor General—

- (i) the accounts of the fund for the financial year; and
- (ii) the annual report referred to in paragraph (a).

(4) The Auditor General shall audit the accounts of the authority and, within two months after the receipt by him or her of the accounts and annual report, submit his or her opinion on them to the board.

(5) The Minister shall cause copies of each annual report, together with a copy of the opinion of the Auditor General, to be laid before Parliament within thirty days after he or she has received them.

93. Minister's powers in relation to taxation.

Notwithstanding the Income Tax Act, the Minister responsible for finance may, on the advice of the board and the policy committee, include in the annual budget—

- (a) tax incentives to encourage good environmental behaviour, including the conservation of natural resources and the prevention or abatement of pollution;
- (b) user fees to ensure that those who use environmental resources pay the proper value for the utilisation of the resources; and
- (c) tax disincentives to deter bad environmental behaviour that leads to depletion of environmental resources or that causes pollution.

94. Refundable performance deposit bonds.

(1) The authority shall identify and create a register for those activities and industrial plants which have or are most likely to have significant adverse effects on the environment when operated in a manner that is not in conformity with good environmental practice.

(2) The Minister responsible for finance may, on the advice of the board and the policy committee, prescribe that activities and industrial plants identified under subsection (1) pay such deposit bonds as he or she may determine, to act as security for good environmental practice.

(3) The deposit bond determined in accordance with subsection (2) is refundable to the operator of the activity or industrial plant, after such duration as the Minister may determine where the operator has observed good environmental practice to the satisfaction of the authority.

(4) The authority may, after giving the operator an opportunity to be heard, confiscate the deposit bond if the authority is satisfied that the operator is responsible for environmental practice that is in breach of the provisions of this Act, and the authority may cancel a pollution licence issued under this Act if it is satisfied that the operator has become a habitual offender.

(5) Where the operator is not satisfied with the confiscation of the deposit bond or cancellation of a pollution licence under this section, he or she may appeal to the court.

(6) A refundable deposit bond levied under this section shall be paid into the fund and shall be treated as part of the fund until refunded to the depositor.

(7) Any interest accruing from monies deposited as part of the refundable deposit bond and invested in accordance with section 90(2) shall be for the benefit of the fund.

(8) In refunding the deposit under this section, the authority may take into account inflation and any other factors that may affect the value of the deposit to the benefit of the depositor.

PART XIII—OFFENCES AND PENALTIES.

95. Penalties relating to environmental inspectors.

Any person who—

- (a) hinders or obstructs an environmental inspector in the execution of his or her duties under this Act;
- (b) fails to comply with a lawful order or requirement made by an environmental inspector in accordance with this Act;

- (c) refuses an environmental inspector entry upon any land or into any premises which he or she is empowered to enter by this Act;
- (d) impersonates an environmental inspector;
- (e) refuses an environmental inspector access to records kept in accordance with this Act;
- (f) fails to state or wrongly states his or her name or address to an environmental inspector in the course of his or her duties under this Act;
- (g) misleads or gives wrongful information to an environmental inspector under this Act; or
- (h) fails to carry out an improvement order issued by an environmental inspector under this Act, commits an offence and is liable on conviction to imprisonment for a term of not less than twelve months or to a fine of not less than one hundred and twenty thousand shillings and not more than twelve million shillings or to both.

96. Offences relating to impact assessment.

Any person who—

- (a) fails to submit a project brief contrary to section 19;
- (b) fails to prepare an environmental impact assessment contrary to section 19; or
- (c) fraudulently makes a false statement in an environmental impact statement submitted under section 20, commits an offence and is liable on conviction, to imprisonment for a term not exceeding eighteen months or to a fine of not less than one hundred and eighty thousand shillings and not more than eighteen million shillings or to both.

97. Offences relating to records.

Any person who—

- (a) fails to keep records of the activities, products, by-products and wastes required to be kept by this Act; or
- (b) fraudulently alters any record required by this Act, commits an offence and is liable on conviction to imprisonment for a term of not less than twelve months or to a fine of not less than one hundred and twenty thousand shillings and not more than twelve million shillings or to both.

98. Offences relating to environmental standards and guidelines.

Any person who—

- (a) contravenes any environmental standard prescribed in Part VI of this Act;
- (b) contravenes a measure prescribed under this Act; or
- (c) uses natural resources in a wasteful manner contrary to measures prescribed under Part VII of this Act, commits an offence and is liable on conviction to imprisonment for a term not exceeding eighteen months or to a fine of not less than one hundred and eighty thousand shillings and not more than eighteen million shillings or to both.

99. Offences relating to hazardous waste, materials, chemicals and radioactive substances.

Any person who—

- (a) fails to manage any hazardous waste in accordance with sections 52 and 53;
- (b) imports any hazardous waste contrary to section 54(1);
- (c) imports waste which has not been determined as hazardous waste without a permit contrary to section 54(2);
- (d) fails to manage any chemical in accordance with section 55;
- (e) fails to manage any radioactive substance in accordance with section 31;
- (f) disposes of any chemical or hazardous waste contrary to this Act;
- (g) knowingly mislabels any waste, chemical or radioactive substance;
- (h) withholds information about the management of wastes, chemicals or radioactive substances; or

(i) aids or abets the illegal traffic in wastes, chemicals or radioactive substances, commits an offence and is liable on conviction to imprisonment for a term of not less than thirty-six months or to a fine of not less than three hundred and sixty thousand shillings and not more than thirty-six million shillings or to both.

100. Offences relating to pollution.

Any person who—

(a) pollutes the environment contrary to a condition contained in any pollution licence under section 61; or

(b) discharges any pollutant into the environment contrary to Part VIII of this Act, commits an offence and is liable on conviction to imprisonment for a term of not less than eighteen months or to a fine of not less than one hundred and eighty thousand shillings and not more than eighteen million shillings or to both.

101. Offences relating to restoration orders and easements.

Any person who—

(a) fails or refuses to comply with an environmental restoration order made under section 67; or

(b) fails to comply with an environmental easement issued under section 72, commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months or to a fine of not less than one hundred and twenty thousand shillings and not more than twelve million shillings or to both.

102. General penalty.

Any person who commits an offence against any provision of this Act or of a statutory instrument made thereunder for which no other penalty is specifically provided is liable on conviction to imprisonment for a term of not less than three months or to a fine of not less than thirty thousand shillings and not more than three million shillings or to both.

PART XIV—JUDICIAL PROCEEDINGS.

103. Immunity of officials.

No suit, prosecution or other legal proceeding may be brought against the policy committee, the executive director, the board, an inspector, an analyst or other official in their personal capacity for anything done in good faith under this Act or statutory instruments, guidelines and standards made thereunder.

104. Appeal from a decision of the authority.

Unless otherwise expressly provided in this Act—

(a) where this Act empowers the authority or any of its organs to make a decision, the decision may be subject to appeal within the structure of the authority in accordance with such administrative procedures as may be established for the purpose, and the decision shall not be called into question by any court;

(b) nothing provided for in this section impairs the High Court in the exercise of its supervisory jurisdiction.

105. Forfeiture, cancellation, community service and other orders.

(1) The court before which a person is prosecuted for an offence against this Act or any statutory instrument made thereunder may, in addition to any other order—

(a) upon the conviction of the accused; or

- (b) if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence, order that the substance, equipment and appliance used in the commission of the offence be forfeited to the State and be disposed of as the court directs.
- (2) In making an order under subsection (1), the court may also order that the cost of disposing of the substance, equipment and appliance referred to in that subsection be borne by the accused.
- (3) The court may further order that any licence, permit or other authorisation given under this Act and to which the offence relates be cancelled.
- (4) The court may, in addition to any fine it may impose upon an accused person, require him or her to do community work which promotes the protection or improvement of the environment.
- (5) The court may also issue an environmental restoration order against the accused in accordance with Part IX of this Act.

PART XV—INTERNATIONAL OBLIGATIONS.

106. Conventions and treaties on the environment.

- (1) Where Uganda is a party to any convention or treaty concerning the environment, after the convention or treaty has been ratified under article 123 of the Constitution where such ratification is required, the Minister may, by statutory order, with the approval of Parliament by resolution—
- (a) set out the provisions of the convention or treaty;
- (b) give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given the force of law in Uganda;
- (c) amend any enactment other than the Constitution for the purpose of giving effect to the convention or the treaty;
- (d) make such other provision as may be necessary for giving effect to the convention or treaty in Uganda or for enabling Uganda to perform its obligations or exercise its rights under the convention or treaty.
- (2) This section applies to any convention or treaty whether adopted before or after the coming into force of this Act and whether Uganda became a party to it before or after the coming into force of this Act.
- (3) Without prejudice to the general effect of subsections (1) and (2), a statutory order under this section may make provision for the imposition of penalties not exceeding such fine or imprisonment or both as may be prescribed by the Minister and may prescribe the payment of such fees or charges as the Minister thinks necessary in respect of any service or other thing to be done or given under the order.
- (4) The provisions of any convention or treaty set out in any order made under this section shall be evidence of the contents of the convention or treaty in any proceedings or matter in which the provisions of the convention or treaty came into question.

PART XVI—MISCELLANEOUS PROVISIONS.

107. Power to make regulations.

- (1) The Minister may, on the recommendation of any Minister, the policy committee or the board, make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving full effect to the provisions of this Act.
- (2) Regulations made under subsection (1) may adopt wholly or in part or with modifications any rules, standards, guidelines, regulations, byelaws, codes, instructions, specifications or administrative procedures prescribed by any lead agency either as in force at the time of prescription or publication or as amended, from time to time, thereafter.

108. Existing laws.

Any law existing immediately before the coming into force of this Act relating to the environment shall have effect subject to such modifications as may be necessary to give effect to this Act; and where any such law conflicts with this Act, the provisions of this Act shall prevail.

SCHEDULES

First Schedule.

s. 7.

Composition and proceedings of the policy committee.

1. Composition of the policy committee.

The policy committee shall consist of—

- (a) the Prime Minister, who shall be the chairperson;
- (b) the Minister responsible for natural resources;
- (c) the Minister responsible for agriculture, animal industry and fisheries;
- (d) the Minister responsible for finance and economic planning;
- (e) the Minister responsible for education and sports;
- (f) the Minister responsible for health;
- (g) the Minister responsible for land, housing and urban development;
- (h) the Minister responsible for local government;
- (i) the Minister responsible for gender and community development;
- (j) the Minister responsible for tourism, wildlife and antiquities;
- (k) the Minister responsible for trade and industry.

2. Meetings.

The Prime Minister shall preside at the meetings of the committee; in his or her absence, the Minister responsible for natural resources shall preside; in the absence of both the Prime Minister and the Minister responsible for natural resources, the other members of the committee shall elect one of the members to preside.

3. Procedure.

- (1) Five members of the policy committee shall form a quorum.
- (2) Questions proposed at a meeting of the policy committee shall be determined by a simple majority vote of members present and voting.
- (3) Where there is an equality of votes under subparagraph (2), the chairperson shall have a casting vote.
- (4) The policy committee may co-opt a person to attend its meeting, and a person so co-opted shall participate at the deliberations of the policy committee but shall have no right to vote.
- (5) The policy committee shall meet at least once every three months for the transaction of its business at such time and place as the chairperson may determine.
- (6) The executive director shall keep minutes of each meeting of the policy committee.
- (7) The minutes kept under subparagraph (6) shall be confirmed by the policy committee at the next meeting and signed by the chairperson of that meeting.

4. Decision by circulation of papers.

Notwithstanding paragraph 3, where the chairperson so directs, a decision may be made by the policy committee without a meeting by circulation of the relevant papers among all the members and the expression in writing of their views, but any member shall be entitled to require that any such decision be deferred until the subject matter is considered at a meeting of the policy committee.

5. Disclosure of interest.

(1) A member of the policy committee who has a direct or indirect personal interest in a matter being considered or about to be considered by the policy committee shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest to the policy committee.

(2) A disclosure of interest under subparagraph (1) shall be recorded in the minutes of the meeting of the policy committee, and the member making such disclosure shall not, unless the policy committee otherwise determines in respect of that matter—

- (a) be present during any deliberation on the matter by the policy committee;
- (b) take part in the decision of the policy committee.

(3) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberation on a matter in which he or she has disclosed a personal interest, the other members present may—

- (a) postpone the consideration of that matter until a quorum, without that member, is realised; or
- (b) proceed to consider and decide the matter as if there was a quorum.

Second Schedule.

ss. 8, 9.

Composition and proceedings of the board.

1. Membership of the board.

The board shall consist of—

- (a) a representative of the Ministry responsible for natural resources;
- (b) a representative of the Ministry responsible for agriculture, animal industry and fisheries;
- (c) a representative of the Ministry responsible for economic planning;
- (d) two representatives of academic and research institutions;
- (e) two representative of local nongovernmental organisations;
- (f) two representatives of the private sector; and
- (g) a representative of the Ministry responsible for tourism, wildlife and antiquities.

2. Meetings.

The chairperson shall preside at the meetings of the board; in his or her absence, the vice chairperson shall preside; in the absence of both the chairperson and the vice chairperson, the board shall elect one of the members to preside.

3. Procedure.

- (1) Five members of the board shall form a quorum.
- (2) Questions proposed at a meeting of the board shall be determined by a simple majority vote of members present and voting.
- (3) Where there is an equality of votes under subparagraph (2), the chairperson shall have a casting vote.
- (4) The board may co-opt a person to attend its meeting, and a person so co-opted shall participate at the deliberations of the board but shall have no right to vote.
- (5) The board shall meet at least once every three months for the transaction of its business at such time and place as the chairperson may determine.
- (6) The executive director shall keep minutes of each meeting of the board.
- (7) The minutes kept under subparagraph (6) shall be confirmed by the board at the next meeting and signed by the chairperson of that meeting.

4. Decision by circulation of papers.

Notwithstanding paragraph 3, where the chairperson so directs, a decision may be made by the board without a meeting by circulation of the relevant papers among all the members and the

expression in writing of their views, but any member shall be entitled to require that any such decision be deferred until the subject matter is considered at a meeting of the board.

5. Disclosure of interest.

(1) A member of the board who has a direct or indirect personal interest in a matter being considered or about to be considered by the board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest to the board.

(2) A disclosure of interest under subparagraph (1) shall be recorded in the minutes of the meeting of the board and the member making such disclosure shall not, unless the board otherwise determines in respect of that matter—

(a) be present during any deliberation on the matter by the board;

(b) take part in the decision of the board.

(3) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberation on a matter in which he or she has disclosed a personal interest, the other members present may—

(a) postpone the consideration of that matter until a quorum, without that member, is realised; or

(b) proceed to consider and decide the matter as if there was a quorum.

Third Schedule.

s. 19.

Projects to be considered for environmental impact assessment.

1. General—

(a) an activity out of character with its surroundings;

(b) any structure of a scale not in keeping with its surroundings;

(c) major changes in land use.

2. Urban development, including—

(a) designation of new townships;

(b) establishment of industrial estates;

(c) establishment or expansion of recreational areas;

(d) establishment or expansion of recreational townships in mountain areas, national parks and game reserves;

(e) shopping centres and complexes.

3. Transportation, including—

(a) all major roads;

(b) all roads in scenic, wooded or mountainous areas;

(c) railway lines;

(d) airports and airfields;

(e) pipelines;

(f) water transport.

4. Dams, rivers and water resources, including—

(a) storage dams, barrages and weirs;

(b) river diversions and water transfers between catchments;

(c) flood-control schemes;

(d) drilling for the purpose of utilising ground water resources, including geothermal energy.

5. Aerial spraying.

6. Mining, including quarrying and open-cast extraction of—

(a) precious metals;

(b) diamonds;

(c) metalliferous ores;

(d) coal;

- (e) phosphates;
- (f) limestone and dolomite;
- (g) stone and slate;
- (h) aggregates, sand and gravel;
- (i) clay;
- (j) exploration for the production of petroleum in any form.
- 7. Forestry-related activities, including—
 - (a) timber harvesting;
 - (b) clearance of forest areas;
 - (c) reforestation and afforestation.
- 8. Agriculture, including—
 - (a) large-scale agriculture;
 - (b) use of new pesticides;
 - (c) introduction of new crops and animals;
 - (d) use of fertilisers.
- 9. Processing and manufacturing industries, including—
 - (a) mineral processing, reduction of ores and minerals;
 - (b) smelting and refining of ores and minerals;
 - (c) foundaries;
 - (d) brick and earthenware manufacture;
 - (e) cement works and lime processing;
 - (f) glass works;
 - (g) fertiliser manufacturing or processing;
 - (h) explosives plants;
 - (i) oil refineries and petrochemical works;
 - (j) tanning and dressing of hides and skins;
 - (k) abattoirs and meat-processing plants;
 - (l) chemical works and process plants;
 - (m) brewing and malting;
 - (n) bulk grain processing plants;
 - (o) fish processing plants;
 - (p) pulp and paper mills;
 - (q) food processing plants;
 - (r) plants for the manufacture or assembly of motor vehicles;
 - (s) plants for the construction or repair of aircraft or railway equipment;
 - (t) plants for the manufacturing or processing of rubber;
 - (u) plants for the manufacturing of tanks, reservoirs and sheet-metal containers;
 - (v) plants for the manufacturing of coal briquettes.
- 10. Electrical infrastructure, including—
 - (a) electricity generation stations;
 - (b) electrical transmission lines;
 - (c) electrical substations;
 - (d) pumped-storage schemes.
- 11. Management of hydrocarbons, including the storage of natural gas and combustible or explosive fuels.
- 12. Waste disposal, including—
 - (a) sites for solid waste disposal;
 - (b) sites for hazardous waste disposal;
 - (c) sewage disposal works;

- (d) major atmospheric emissions;
- (e) offensive odours.
- 13. Natural conservation areas, including—
 - (a) creation of national parks, game reserves and buffer zones;
 - (b) establishment of wilderness areas;
 - (c) formulation or modification of forest management policies;
 - (d) formulation or modification of water catchment management policies;
 - (e) policies for management of ecosystems, especially by use of fire;
 - (f) commercial exploitation of natural fauna and flora;
 - (g) introduction of alien species of fauna and flora into ecosystems.

52. Ukraine

Law on Folk Artistic Craft 204

Relates to Copyright and Related Rights (Neighboring Rights), Traditional Cultural Expressions, Traditional knowledge

Ukrainian text only

53. United Arab Emirates

This is a copyright Act with some provisions dealing with folklore

UAE COPYRIGHT LAW

Federal Law No 40 for the year 1992 for the protection of Intellectual Works and Copyright

ARTICLE (1) Definitions

In the enforcement of the provisions of this law, the following words shall mean the definitions shown before each of them, unless the context means otherwise:

The Ministry The Ministry of Information and Culture.

The Minister The Minister of Information and Culture.

The Work Any innovative literary, scientific or artistic work.

The Author Any person who has publicized the work related to himself whether by showing his name on the work, or by any of the methods prescribed for relating the work's name on the work, or by any of the methods prescribed for relating the works to their authors, unless there is an evidence for the otherwise.

Publishing Copying the work itself, taking copies or photos thereof or from any part therefrom, which could be read, listened to, watched, or performed.

Reproduction The production of one or more copies of the literary, artistic or scientific works in any manner including audio or visual records.

Folklore State to express their cultural entity, and which passed from one generation to another and from one of the main elements of its heritage.

ARTICLE (2)

The authors of the innovative intellectual works in literature, art and science, whatever the value of such works, their type, the purpose of their composition or the method of expressing thereof, enjoy the protection prescribed in this law. Protection includes the following intellectual works: Books, booklets and other written matters.

Works given verbally as lectures, speeches and sermons.

Dramatic plays and musical plays.

Musical works whether accompanied by words or not.

The works of designing eurhythmics and pantomime.

Photography works.

Cinema, television and broadcasting work, and creative audio visual works, and computer programmes.

Works of applied arts whether handicraft or industrial.

Works of drawing and painting with lines or colours, architecture, sculpture, decorative arts, engraving, designs, geographical plans designs, and relief maps.

Encyclopedias, sundries and selections which form, in respect of selecting, arranging and editing their material, intellectual creative works.

3. Protection also includes the works for which the aspect of expressing in writing, sound, drawing, photography or motion.

ARTICLE (3)

The provisions of this law shall apply on the following:

Works of the citizens of the United Arab Emirates which are publicized inside or outside the State.

The works of those who are not the citizens of the United Arab Emirates which are published inside the United Arab Emirates for the first time.

The works of the citizens of any foreign country which treats the works of the citizens of the United Arab Emirates with reciprocity treatment.

ARTICLE (4)

The works shall be filed at the concerned authority in the Ministry according to the provisions of this law, the filing registers in the Ministry shall be considered as a reference of copyright data.

Non-filing shall not lead to the violation of the copyright prescribed by the law.

ARTICLE (5)

The person who, under a permission from the original author, has translated to another language, summarized, altered, amended or explained the work or made any act thereof which leads to make the work appears in a new form, shall enjoy the protection - this does not violate the protection prescribed for the authors of the original works.

The protection of the copyright of the author and the right of the person who translated his work into another foreign language and in translating that work into Arabic language ends if the author or the translator, by himself or through others, does not practise such right within three years from the date of the first publication of the original or translated work.

ARTICLE (6)

Protection prescribed in this law does not include the following items:

Laws and judicial judgements, decisions of the administrative authorities, international agreements, and other official documents and the official translations thereof. However, the above mentioned groups shall enjoy protection, if they are distinguished due to creation, arrangement or any other personal effort deserving protection. News published, broadcasted or publicly announced.

ARTICLE (7)

The author alone has the right to relate his work to himself, and to have his name written on all copies produced therefrom, whenever such work is circulated to the public, unless the mention of such work is casually made amidst a broadcast or television representation of the current events. This right is not liable to disposal or lapse with the passing of time. The author alone has the right to exploit his work, provided he has not assigned thereof to others. It is not permitted to exploit any intellectual work by circulation to the public in the United Arab Emirates without a written notarized permission from the author.

ARTICLE (8)

It is not permitted to publish, represent or circulate any work whatever its kind is, without fulfilling the following conditions:

To attach with the work a certificate of origin showing the name of the author or the person to whom the right of exploitation has been assigned. To attach with the work a permission from the supplier or the owner for presentation or circulation showing the geographical area and place, wherein the presentation and circulation has been permitted. To attach with the work a certificate from the supplier showing the payment for the copyright whether by public performance, making models of the work, or copying it for distribution.

ARTICLE (9)

The author alone shall be entitled to decide publishing his work or art, determining the method of publication, and exploiting his work in the way she determines for exploitation.

No-one else shall be entitled to exercise this right without a notarized written authorization from the author, whomever the author deputized to do so, or his successors after his death..

ARTICLE (10)

An author's rights to exploit his work shall include the following:

To convey the work to the public under any form especially publishing, public reading, musical arrangement, theatrical acting, or communicating with the public through broadcasting, sound, pictures or performance. To convey the work of art to the public directly especially through printing, painting, engraving, photography, moulding or any other artistic way whether schematic or three-dimensional arts or through photographic or cinematographic publication.

ARTICLE (11)

The author alone has the right to introduce to his work whatever amendment or change which he deems to be fit. He has the right of translating it into another language. Others are not permitted to do any of those actions, or to make any of the other acts mentioned in Article 5 without a written notarized permission from the author.

ARTICLE (12)

The heirs of the author have the right to practise translating the work.

ARTICLE (13)

The author has the right to refute any violation of his rights. He may prevent any deletion, addition or change to his work. However, if the deletion, addition or change took place in the translation of the work, the author has no right to prevent it, unless the translator denied the reference to the places of the deletion or change or the author's reputation and artistic stand have been defamed therefrom.

ARTICLE (14)

The following uses of the protected works shall be considered legal even if they are not accompanied by the author's consent:

Getting the assistance of the work for only the special personal use by copying, translation, adaptation, musical arrangement, acting, broadcast listening, television watching or photography with any other form. Getting the help of the work for explication in education by publications, broadcast or television programmes and records or cinema films for educational, instructive or religious aims or for vocational training, and in the limits of realizing such aim, provided the intention of use is not for making financial profit, in addition to mentioning the source and the author's name. Citing paragraphs of the work in another work with the aim of clarification, explanation or criticism, and in the limits of the known tradition and in the extent which is justified by such aim, provided the source shall mention the author's name. The same is applied on the paragraphs taken from press articles and periodicals which are declared in the form of press summaries.

ARTICLE (15)

It may be possible, without the author's permission, to copy the political, economic, social, cultural or religious news articles which tackle the topical subjects, or to be published by newspapers or periodical, and also the broadcasting works of similar nature provided that the source is mentioned. It shall be permitted to reproduce any work of art which can be watched or listened to during the presentation of current events or to publicize it by photographic or television filming or any means of the mass media, provided the same should be in the limit of the information objective aimed at, with reference to the name of the author.

ARTICLE (16)

Public libraries, non-commercial documentation centers, educational institutes, and scientific and cultural institutions may, without the author's permission, copy the protected works by photographing or by a similar method, provided that copying and the number of copies are limited to the needs of their activities and doing no harm to the financial exploitation of the works and also do not cause harm to the legal interests of the author. The broadcast organizations may prepare a temporary recording of any work for their programmes and by their own methods, having been permitted to broadcast thereof. All copies should be destroyed within a period not exceeding one calendar year with effect from the date of preparation. The author may extend this period. The records of documentary characteristic in the limit of one copy, are exceptions to this right.

ARTICLE (17)

The press and the other mass media means shall publish, without the permission of the author, the speeches, lectures, speeches for the defense delivered during judicial disputes, and such similar works openly communicated to the public provided that the author's name is clearly mentioned. The author alone shall have the right to publish these works in one volume or in any other way he deems fit.

ARTICLE (18)

The heirs of the author, after his death, shall have the right to exercise the financial exploitation rights of the work provided for in Article (7) of this Law.

ARTICLE (19)

If the author dies before he determined the publication of his work, his right shall be assigned to his successors who, alone, may practise the author's rights. However, if the author has recommended in

his will to prevent the publication or fixed a certain date for the publication, it is obligatory to execute his will in this respect.

ARTICLE (20)

The copyright shall be valid during the author's lifetime and for twenty five calendar years after his death. The validity period of the copyright shall be twenty five calendar years from publication date for the following works: Cinema films and the works of the applied arts. Works made by legal persons.

Works published under a pen name, or without mentioning the author's name to hide his personality till he reveals it.

Works published for the first time after the death of their author.

The validity period of the copyright for photographic works shall be ten calendar years from the date of publication. The validity period of the author's rights of the works of joint-authors shall be counted from the death date of the last surviving person of the authors. In case the work consists of parts which were published separately indifferent times, each part shall be considered an independent work in respect of the calculation of protection period.

ARTICLE (21)

The works published by the heirs for the first time after the decease of the author shall be subject to the protection and they shall have the right to exploit them financially.

ARTICLE (22)

If the author's heirs neglected publishing his work and the Minister deems that the public interest necessitates the publication of the work, he may ask the heirs in writing to publish it. If six months elapsed after the date of that request and the heirs have not published the work, the Minister may practise its printing and the right of publication thereof, and to compensate the heirs, in such case, with a fair compensation.

ARTICLE (23)

If some persons participated in preparing a work in a manner which makes it difficult to separate the share of each of them in the joint-work, all shall be equally considered owners unless they agreed contrary thereof. Any partner shall not practise the rights resulting from the copyright unless they all agreed thereof. Any dispute raised among them shall be determined by the legal authorities. Each of the joint-authors has the right to raise claims in case of any violation to the copyright. This right shall be transferred to the heirs of any of them.

ARTICLE (24)

The work prepared by a group of authors or by one author under the direction of a natural or legal person to publish it in his name and under his management, this natural or legal person who directed the creation of such work shall alone have the right of practising the author's financial rights, unless the contract between the two parties includes the contradiction thereof, or contains certain conditions. As for the literary right of the work affiliation, it shall remain for the author or the authors of such works.

ARTICLE (25)

In case of joint-participation in preparing musical song composition works, the author of the melody and music alone has the right of public performance permission of the total work, its execution, publication or copying without violating the right of the author of the literary part. This provision

shall apply on the works which are executed in works of motions accompanied by music, shows accompanied by music and in all other similar works.

The author of the literary part shall have the right to publish only his own part. However, he shall not have the right to dispose such part to bethe basis of another similar work unless there is a written agreement for the contrary thereof.

ARTICLE (26)

Each of the following persons shall be considered a partner in the preparation of the theatrical work, cinema work, or the work prepared for the broadcast or the television:

1. The author or the owner of the theme written for the broadcast, television, cinema or theatre programme.
2. The person who writes the dialouges.
3. The person who edits the existing literary work in a form to make it fit for the cinema art, television art or broadcast art.
4. The music composer if he composed it especially for the cinema work, broadcast work, television work or theatre work.
5. The director if he extended actual control and made a positive action from the intellectual aspect to realize the work in its previous forms.

If the work prepared for broadcast, television, cinema or theatre is adopted or extracted from another precedent work, the author of this precedent work will be considered participating in the new work, and his name shall be mentioned with reference to the adaptation or extraction explicitly.

ARTICLE (27)

If one of the participants in the creation of a cinema theatre work, or a work prepared for broadcast or television abstains from completing the works related to himself, this will not result in preventing the other participants from using the part he prepared without violating his rights resulting from his participating in the preparation in case the abstention is due to acceptable reasons which prevented him from completing the work. But if abstention is due to his individual will without having justifying reasons, he shall be deprived of any rights resulting from the part he completed.

ARTICLE (28)

If a literary author, scenarist, a dialogist, a director and a composer have collectively filed a cinematic, dramatic, radiophonic and television work of art each of them in his line of specialization, none of them shall have the right to prevent any reproduction or the showing of the work without prejudice to the composer's literary and financial rights. The scriptist and the composer may publish their works in any other way other than the cinema, theatre, radio and television unless otherwise agreed on.

ARTICLE (29)

The person who executes the tape takes the responsibility of such execution and gives the authors of the work the material and financial methods which warrant its production, is considered the producer of theatre, cinema, broadcast or television work.

The producer is always considered publisher of the work, and he shall have all the rights of the publisher for the tape and its copies. Throughout the exploitation period of the tape, the producer shall be considered as a representative of the authors of the theatre, cinema, broadcast or television work, their successors in agreement for its presentation and exploitation without violating the rights of the authors of literary or musical works, by publishing their works in other method, unless the contrary is agreed upon.

ARTICLE (30)

The Ministry has the right to broadcast the public works, such as public seminars, lectures, speeches, poetical evenings, cultural, literary and religious activities and the public art festivals which are presented or performed in theatres or any other public place. Officials for such place have to allow the Ministry's bodies, facilitate their function and surmount any difficulties before the broadcast or television, provided that the name of the author and the work's title shall be broadcasted.

ARTICLE (31)

The national folklore of the United Arab Emirates society shall be the public property of the State. The State, represented by the Ministry, will act to protect the national folklore by all legal means and methods and exercise the author's specialties as regards the folkloric works against distortion, modification and commercial exploitation.

ARTICLE (32)

The author may transfer any of his financial rights gained from his work according to the provisions of this Law to one or more persons. Such transfer should be completed in writing specifying explicitly each disposable right separately, showing the duration of such disposition or transfer, its method, its quantity, its purpose and its place. The author in using the disposed right shall not do any act which may hinder the person to whom the right has been transferred.

ARTICLE (33)

The Ministry shall set a special system for filing the works protected by this law and any dispositions that may arise thereof. It shall arrange the necessary forms and registers for filing.

ARTICLE (34)

Owners and authors of the intellectual works may apply to the Ministry for the registration of their works. The following particulars shall be attached with the registration application:

1. The name of the author, or authors in case of joint-works.
2. The subject of the work.
3. Ten copies of the work.
4. A detailed statement of the work's specifications.
5. A written undertaking from the author or authors showing that they own the work according to the provisions of this law.
6. An undertaking from the author or authors specifying the method they select for publishing the work.

ARTICLE (35)

The Ministry shall give the owner or the owners of the work a certificate containing the date of registration, its subject, kind and name/names of owner/owners.

ARTICLE (36)

The work submitted for filing should be passed from the Censorship Department of the Ministry, or be one of the works passed by the Press and Publications law.

ARTICLE (37)

The author alone, if essential reasons took place, may ask the concerned court to order the withdrawal of his work from circulation, or to enter essential amendments in the work, in spite of his disposition of the financial exploitation rights. In such cases, the author has to submit in advance a

fair compensation to be determined by the court to those whom financial exploitation rights have been devolved.

ARTICLE (38)

The person who published a work not owned by him without getting a written permission from the work's author or his heirs or his representative, will be punished with imprisonment and with a fine of not less than (50000) Fifty Thousand Dirhams, or with either both penalties. The person who claims, contrary to the truth, that he is the owner of a work, shall be punished with the same penalty.

ARTICLE (39)

The publisher who, on the execution of publishing a work, amended the reality, the nature, the subject and the title of the work, violating thereby the instructions and desire of the author, shall be punished with imprisonment and with a fine not less than (10000) Ten Thousand Dirhams or by either of these penalties.

ARTICLE (40)

The publisher is not allowed to republish the work unless he gets the consent of the author for the agreed quantity of the work. If the publisher violates this provision, he shall be punishable under with the penalty mentioned in Article 39 of this law.

ARTICLE (41)

The only licensed stores and persons in the State are allowed to publish, copy or print any work. Those who violate such provision shall be punished with imprisonment for a period not exceeding six months and with a fine not exceeding (10000) Ten Thousands Dirhams, or by either of these penalties.

ARTICLE (42)

Stores practising the distribution, sale, or copying the models of the works are not allowed to sell or copy without a written consent from the author who is the owner of the work or the person he so authorized. The store owner who violates this provision will be punished with imprisonment or with a fine not less than (50000) Fifty Thousand Dirhams, or with either of these penalties.

ARTICLE (43)

In all cases mentioned in this chapter, all copies of the work which is the subject of the crime shall be confiscated. The court may also order the store closure.

ARTICLE (44)

The provisions of penalties prescribed in this chapter shall be applied on the translated works if the licensed publisher or distributor republished or redistributed the translated work in violation of the agreement concluded between him and the author.

ARTICLE (45)

All stores licensed for copying, distribution or sale of works in the State shall keep the written documents authorizing them thereof from the owner of the work or other concerned authorities, whether the work is from within the State or from abroad. Regarding the works prepared outside the State, a statement should be tendered to show the origin of such works and the permission or agreement authorizing the copying, distribution or sale, provided that such works are previously censored by the Ministry.

ARTICLE (46)

The Minister of Justice in agreement with the Minister of Information and Culture, and after consultation with the responsible authority in the concerned Emirate, shall issue a decision to nominate the employees who will have the judicial power of arrest in the enforcement of the provisions of this law. Such employees shall have the right to enter stores which publish, distribute, copy and produce works in the state. They shall have the power to capture violators of the provisions of this law. To do so, they may confiscate materials, copies and means used to commit the offences mentioned in the law. They may have the help of the security whenever warranted.

ARTICLE (47)

The Minister shall issue the Executive By-Laws of this law.

ARTICLE (48)

All provisions which are contrary to the provisions of this law, shall be considered null and void.

ARTICLE (49)

This law shall be published in the Official Gazette and will be effective after six months from the date of its publication.

54. United Kingdom

This Act relates to regulation of traditional herbal medicines. As such it is not directly relevant.

STATUTORY INSTRUMENTS 2005 No. 2750

The Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to medicinal products, in exercise of the powers conferred by the said section 2(2), makes the following Regulations—

Citation, commencement and extent

1. These Regulations may be cited as the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005 and shall come into force—

(a) except for the purposes of paragraphs 4(2)(a) and 8(a)(i) of Schedule 7 on 30th October 2005; and

(b) for the purposes of paragraphs 4(2)(a) and 8(a)(i) of Schedule 7 on 20th November 2005.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Medicines Act 1968(c);

“appropriate committee”, for the purposes of any provision of these Regulations under which a function falls to be performed, means—

(a) in a case where—

(i) a committee has been established under section 4 of the Act for purposes which consist of or include any of those specified in subsection (3) of that section, and

(ii) the authority performing that function considers it to be the appropriate committee in the circumstances,

that committee; and

(b) in any other case, the Commission;

“the 2001 Directive” means Directive 2001/83/EC of the European Parliament and of the

Council on the Community code relating to medicinal products for human use(a) as amended by—
(c) Directive 2002/98/EC of the European Parliament and of the Council setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components(b),

(d) Commission Directive 2003/63/EC amending Directive 2001/83/EC on the Community code relating to medicinal products for human use(c),

(e) Directive 2004/24/EC of the European Parliament and of the Council amending, as regards traditional herbal medicinal products, Directive 2001/83/EC on the Community code relating to medicinal products for human use(d), and

(f) Directive 2004/27/EC of the European Parliament and of the Council amending Directive 2001/83/EC on the Community code relating to medicinal products for human use(e);

“EEA State” means a Member State, Norway, Iceland or Liechtenstein;

“EC traditional herbal registration” means a traditional herbal registration granted by a competent authority of an EEA State in accordance with the simplified registration procedure for traditional herbal medicinal products set out in Chapter 2a of the 2001 Directive;

“licensing authority” shall be construed in accordance with section 6 of the Act;

“parallel import licence” means a traditional herbal registration granted by the licensing authority under these Regulations in respect of a traditional herbal medicinal product which is imported into the United Kingdom from another EEA state in accordance with the rules of Community law relating to parallel imports;

“the relevant Community provisions” means the provisions of the 2001 Directive which apply to traditional herbal medicinal products and to traditional herbal registrations;

“traditional herbal registration” means a registration granted by the licensing authority under these Regulations and includes a parallel import licence.

(2) Expressions used in these Regulations which are also used in the 2001 Directive shall have the same meaning as they have there and related expressions shall be construed accordingly.

(3) Subject to paragraph (2), section 11 of the Interpretation Act 1978(f) shall apply for the interpretation of these Regulations as if they were made in the exercise of a power conferred by the Act.

(4) Any reference in these Regulations to an application that is signed includes a reference to an application that is signed with an electronic signature.

Responsibility for Member States’ functions in relation to traditional herbal medicinal products

3.—(1) In so far as they relate to traditional herbal medicinal products and fall to be performed by, or by any authority of, the United Kingdom, the functions of a Member State, or of the competent authority of a Member State, under any of the relevant Community provisions shall, subject to paragraph (2), be performed by the licensing authority.

(2) Paragraph (1) shall not apply in so far as any such functions fall to be performed by the exercise of any powers or duties which are conferred by any provision of these Regulations, or by any provision of the Act as applied by these Regulations, on a person or body other than the licensing authority.

Traditional herbal registrations for traditional herbal medicinal products

4.—(1) Except in accordance with any exception or exemption set out in the relevant Community provisions and subject to paragraphs 2, 4 and 5 of Schedule 1—

(a) no traditional herbal medicinal product shall be placed on the market; and

(b) no such product shall be distributed by way of wholesale dealing, unless a traditional herbal registration in respect of that product has been granted in accordance with the relevant Community

provisions by the licensing authority and is for the time being in force in accordance with those provisions.

(2) Schedule 1 shall have effect for the purpose of making certain exceptions or exemptions from paragraph (1), and for imposing certain obligations in connection with such exceptions and exemptions.

Applications for the grant or renewal of a traditional herbal registration

5.—(1) Every application for the grant or renewal of a traditional herbal registration shall be made in writing in accordance with the relevant Community provisions, subject to the rules of Community law relating to parallel imports, and the applicant shall comply with so much of the relevant Community provisions as contain requirements for applications as are applicable to the application or the consideration of it.

(2) Every application shall be made in writing, shall be signed by or on behalf of the applicant and shall, unless the licensing authority otherwise direct, be accompanied by any fee which may be payable in connection with that application.

(3) One copy of the application and of any accompanying material shall be supplied to the licensing authority in the English language and where the application or any accompanying material has been translated from another language, one copy of the application or the accompanying material, as the case may be, shall also be supplied in the original language.

(4) An application for the grant of a traditional herbal registration shall include a statement indicating—

(a) whether the herbal medicinal product is one that should be available—

(i) only from a pharmacy; or

(ii) on general sale; and

(b) what, if any, provisions of the traditional herbal registration are proposed concerning the method of sale or supply of the product (including, in particular, any proposed restrictions affecting the circumstances of the use or promotion of the product).

(5) The applicant for the grant or renewal of a traditional herbal registration must be established in the Community.

(6) An application for the renewal of a traditional herbal registration shall be made not later than 6 months before the date on which the existing traditional herbal registration expires.

Consideration, and grant or refusal, of an application for, or for renewal or variation of, a traditional herbal registration

6.—(1) The licensing authority shall—

(a) consider every application for the grant, renewal or variation by them of a traditional herbal registration in accordance with the relevant Community provisions, and (where applicable) the rules of Community law relating to parallel imports, and

(b) grant, renew or vary, or refuse to grant, renew or vary the registration in accordance with those provisions and (where applicable) the rules of Community law relating to parallel imports.

(2) Schedule 2 shall have effect to regulate the procedure for receiving advice and representations before granting, renewing or varying, or refusing to grant, renew, or vary a traditional herbal registration, or after notification of a decision relating to an application to vary such a registration.

(3) A parallel import licence shall, unless previously renewed or revoked, be valid for the period specified in it, but where an application to renew it is made in accordance with regulation 5(6) it shall remain in force pending the decision of the licensing authority on that application.

(4) Subject to paragraph (6), a traditional herbal registration other than a parallel import licence shall, unless previously revoked, be valid for an unlimited period unless—

- (a) it has not been renewed on the basis of a re-evaluation by the licensing authority of the risk-benefit balance in accordance with, and on the basis of the data set out in, Article 24(2) of the 2001 Directive; or
- (b) it has been so renewed, but the licensing authority considers on justified grounds relating to pharmacovigilance that it should be subject to one additional renewal five years after the date of the first renewal, and it has not yet been subject to that additional renewal.
- (5) Subject to paragraph (6), where, by reason of paragraph (4), a traditional herbal registration is not valid for an unlimited period, it shall, unless previously revoked, be valid for a period of five years beginning with the date on which it is granted or was renewed, whichever is the later, but where an application for its renewal is made in accordance with Article 24 of the 2001 Directive the traditional herbal registration shall remain in force pending the decision of the licensing authority on that application.
- (6) A traditional herbal registration (other than a parallel import licence) shall cease to be valid if at any time after it is granted the medicinal product to which it relates is not placed on the market in the United Kingdom for a period of three consecutive years, unless an exemption is granted in accordance with Article 24(6) of the 2001 Directive.
- (7) Each traditional herbal registration granted by the licensing authority shall be granted subject to a condition that the traditional herbal medicinal product to which the registration relates is to be available—
 - (a) only from a pharmacy; or
 - (b) on general sale.

Revocation, suspension or variation of a traditional herbal registration or the suspension of the use or marketing of traditional herbal medicinal products

- 7.—**(1) The licensing authority may and, where appropriate shall, subject to and in accordance with the relevant Community provisions, revoke, suspend or vary a traditional herbal registration for a traditional herbal medicinal product.
- (2) The licensing authority may and, where appropriate, shall, subject to paragraph (3) and subject to and in accordance with the relevant Community provisions, by notice in writing to the holder of a traditional herbal registration for a traditional herbal medicinal product, forthwith or from a date specified in the notice, suspend the use, supply or marketing within the United Kingdom of the product to which the registration relates for a period specified in the notice.
- (3) In any case where the relevant Community provisions permit or require the suspension of the use, supply or marketing of a product until some decision or similar action is taken by the Community, the licensing authority may, instead of specifying a period in the notice, provide that the suspension is to apply until further notice.
- (4) Where the licensing authority, in accordance with paragraph (3), include a provision that the suspension is to apply until further notice, they shall, where the effect of the Community decision or action is that the product may continue to be used or, as the case may be, marketed, in the United Kingdom, promptly give the holder of the registration written notice revoking the suspension forthwith or from such date specified in the notice as to comply with that decision or action.
- (5) Where, under the preceding provisions of this regulation the licensing authority revoke or suspend a traditional herbal registration, or where the licensing authority suspend the use, supply or marketing of a product, or where the relevant Community provisions so permit or require, the licensing authority may and, where appropriate, shall give written notice to the person who is or, immediately before its revocation or suspension, was the holder of the registration, requiring him to take all reasonably practicable steps to—
 - (a) inform wholesalers, retailers, medical practitioners, patients and others who may be in possession of relevant products of the revocation or suspension, the reasons for it, and the

action (if any) to be taken to restrict or prevent further use, supply or marketing;

(b) withdraw from the market in the United Kingdom and recover possession of such products within the time and for the period specified in the notice.

(6) The licensing authority may require the holder of the traditional herbal registration to withdraw from the market in the United Kingdom specified batches only of a product to which a notice under paragraph (5) applies.

(7) Schedule 2 shall have effect to regulate the procedure for receiving advice and representations before revocation, variation or suspension of a traditional herbal registration, and for notifying the holder of that registration in accordance with the preceding provisions of this regulation.

Urgent safety restrictions

8.—(1) The licensing authority may, subject to and in accordance with the relevant Community provisions, impose an urgent safety restriction on the holder of a traditional herbal registration.

(2) Where the licensing authority imposes an urgent safety restriction in accordance with paragraph (1), the holder of the traditional herbal registration shall—

(a) implement the restriction within a period specified by the licensing authority; and

(b) apply to vary the registration so as to take account of that safety restriction immediately and in any event not later than 15 days after the restriction was imposed.

Obligations of holders of traditional herbal registrations, and offences by holders of traditional herbal registrations and other persons

9.—(1) Every holder of a traditional herbal registration for a traditional herbal medicinal product shall comply with all obligations which relate to him by virtue of the relevant Community provisions including, in particular, obligations relating to providing or updating information, to making changes, to applying to vary the traditional herbal registration, to pharmacovigilance, and to labels and package leaflets.

(2) The holder of a traditional herbal registration shall maintain a record of reports of which he is aware of suspected adverse reactions in accordance with the relevant Community provisions which shall be open to inspection by a person authorised by the licensing authority, who may take copies of the record and, if the licensing authority so directs, the registration holder shall furnish the licensing authority with a copy of any such reports of which he has a record or of which he is or subsequently becomes aware.

(3) The holder of a traditional herbal registration shall keep such documents as will facilitate the withdrawal or recall from sale or supply of any traditional herbal medicinal product to which the registration relates.

(4) The holder of a traditional herbal registration shall notify the licensing authority if the medicinal product to which the registration relates has not been placed on the market in the United Kingdom for a period of three consecutive years.

(5) The holder of a traditional herbal registration shall, on request from the licensing authority, provide the licensing authority with data on the volume of sales of the medicinal product to which the registration relates.

(6) Schedule 3 shall have effect to create certain criminal offences in connection with the obligations of applicants for, and holders of, traditional herbal registrations and other persons arising under the relevant Community provisions.

(7) Where, by or under any provision of the relevant Community provisions or of these Regulations, a person is required to provide any information or furnish any document to the

licensing authority and no time is specified in that provision within which that obligation is to be performed, it shall be performed within such time as may be specified in a written notice served on that person by the licensing authority.

Consequential and other amendments of the Act and other enactments

10.—(1) Section 7 of the Act (general provisions as to dealing with medicinal products) shall not apply in relation to traditional herbal medicinal products.

(2) Section 23 of the Act (special provisions as to effect of manufacturer's licence) shall have effect as if any reference in subsection (1) to a product licence included a reference to a traditional herbal registration.

(3) Section 56 of the Act (exemptions in respect of herbal remedies) shall not apply in relation to traditional herbal medicinal products.

(4) Section 61 of the Act (special restrictions on persons to be supplied with medicinal products) shall have effect as if the reference to a product licence included a reference to a traditional herbal registration.

(5) The provisions of the Trade Descriptions Act 1968(a) shall apply to the application of a trade description to goods subject to a traditional herbal registration in the same way as, by virtue of section 2(5)(b) of that Act, they apply to the application of a trade description to goods subject to any provision made under Part V of the Act.

(6) Section 1(1) of the Medicines Act 1971(b) (fees payable for purposes of Part II of the Act) shall have effect as if the reference to any application in pursuance of the Act for a licence under Part II of the Act or for the variation or renewal of such a licence included a reference to any application under these Regulations for a traditional herbal registration or for the variation or renewal of such a registration.

(7) Section 19 of the Consumer Protection Act 1987(c) (interpretation of Part II) shall have effect as if in subsection (1) in the definition of "licensed medicinal product", the reference to any medicinal product within the meaning of the Medicines Act 1968 in respect of which a product licence within the meaning of that Act is for the time being in force, included a reference to a traditional herbal medicinal product in respect of which a traditional herbal registration under these Regulations is for the time being in force.

Application of enforcement provisions of the Act

11.—(1) Subject to paragraph (2) below, the following provisions of Part VIII of the Act (which provide for enforcement of the Act), namely, sections 107 to 109, section 110 except subsection (4), sections 111 to 116, section 118, section 119, sections 121 to 127 and Schedule 3, shall apply for the purposes of these Regulations as they apply for the purposes of the Act.

(2) Those provisions as so applied shall have effect—

(a) with the modifications specified in Schedule 4 to these Regulations; and

(b) as if all traditional herbal medicinal products were medicinal products for the purposes of the Act (whether or not they would otherwise be so).

Other Schedules to have effect

12. The following Schedules shall have effect, namely Schedule 5 (labels), Schedule 6 (transitional provision) and Schedule 7 (consequential amendments to orders and regulations).

Signed by authority of the Secretary of State for Health

Warner

Minister of State,

6th October 2005 Department of Health

SCHEDULE 1 Regulation 4(2)

EXEMPTIONS AND EXCEPTIONS FROM THE PROVISIONS OF REGULATION 4

Interpretation

1. In this Schedule—

“first level nurse” means a person registered in Sub-Part 1 of the Nurses’ Part of the professional register;

“professional register” means the register maintained by the Nursing and Midwifery Council under article 5 of the Nursing and Midwifery Order 2001(a);

“registered midwife” means a person registered in the Midwives’ Part of the professional register;

“relevant register” means—

(a) in relation to a first level nurse or registered midwife, the professional register,

(b) in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954 or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976, and

(c) in relation to a person whose name is registered in the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001(b) relating to—

(i) chiropodists and podiatrists;

(ii) physiotherapists;

(iii) radiographers: diagnostic or therapeutic, that register;

“supplementary prescriber” means—

(a) a first level nurse,

(b) a pharmacist,

(c) a registered midwife, or

(d) a person whose name is registered in the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001 relating to—

(i) chiropodists and podiatrists;

(ii) physiotherapists;

(iii) radiographers: diagnostic or therapeutic,

against whose name is recorded in the relevant register, an annotation or entry signifying that he is qualified to order drugs, medicines and appliances as a supplementary prescriber.

2. Regulation 4(1) shall not apply to a traditional herbal medicinal product supplied in response to a bona fide unsolicited order, formulated in accordance with the specification of a doctor, dentist or supplementary prescriber and for use by his individual patients on his direct personal responsibility, in order to fulfil the special needs of those patients, but such supply shall be subject to the conditions specified in paragraph 3.

3. The conditions mentioned in paragraph 2 are that—

(a) the traditional herbal medicinal product is supplied to a doctor, dentist or supplementary prescriber or for use in a registered pharmacy, a hospital or a health centre under the supervision of a pharmacist, in accordance with paragraph 2;

(b) no advertisement or representation relating to the traditional herbal medicinal product is issued with a view to it being seen generally by the public in the United Kingdom and that no advertisement relating to that product, by means of any catalogue, price list or circular letter is issued by, at the request or with the consent of, the person selling that product by retail or by way of wholesale dealing or supplying it in circumstances corresponding to retail sale, or the person who manufactures it, and that the supply is in

response to a bona fide unsolicited order;

(c) the manufacture or assembly of the traditional herbal medicinal product is carried out under the supervision of such staff and such precautions are taken as are adequate to ensure that the product is of the character required by and meets the specifications of the doctor, dentist or supplementary prescriber who requires it;

(d) written records as to the manufacture or assembly in accordance with sub-paragraph (c) are made and maintained and are available to the licensing authority or the enforcement authority on request by them or either of them;

(e) if the traditional herbal medicinal product is manufactured or assembled in the United Kingdom, or imported into the United Kingdom from a third country, the product—

(i) is manufactured, assembled or imported by the holder of a manufacturer's licence which relates specifically to the manufacture, assembly or import of traditional herbal medicinal products to which paragraph 2 applies; or

(ii) has been manufactured, assembled or imported as an investigational medicinal product by the holder of a manufacturing authorization granted by the licensing authority for the purposes of regulation 36 of the Medicines for Human Use (Clinical Trials) Regulations 2004(a); and

(f) the traditional herbal medicinal product is distributed by way of wholesale dealing by the holder of a wholesale dealer's licence.

4.—(1) Subject to the following sub-paragraphs, regulation 4(l) shall not apply to anything done—

(a) in relation to England and Wales, by a doctor or dentist which relates to a traditional herbal medicinal product specially prepared by him, or to his order, for administration—

(i) to one or more patients of his, or

(ii) where that doctor or dentist is a member of a group of doctors or dentists working together to provide primary medical or general services to one or more patients of any other doctor or dentist of that group, and consists of procuring the manufacture or assembly of a stock of the product with a view to administering the product to such patients;

(b) in relation to Scotland and Northern Ireland, by a doctor or dentist which relates to a traditional herbal medicinal product specially prepared by him, or to his order, for administration—

(i) to one or more patients of his, or

(ii) where that doctor or dentist is a member of a group of doctors or dentists working together to provide general medical or dental services to one or more patients of any other doctor or dentist of that group, and consists of procuring the manufacture or assembly of a stock of the product with a view to administering the product to such patients; or

(c) in a registered pharmacy, a hospital or health centre and is done there by or under the supervision of a pharmacist, and consists of procuring the manufacture or assembly of a stock of traditional herbal medicinal products with a view to dispensing them in accordance with paragraph 2.

(2) The exemption conferred by sub-paragraph (1) shall not apply to procuring the manufacture of traditional herbal medicinal products unless those products are to be manufactured by the holder of a manufacturer's licence which relates specifically to the manufacture or assembly of traditional herbal medicinal products to which paragraph 2 applies.

(3) The exemption conferred by sub-paragraph (1) shall not apply to anything done by a doctor or dentist in relation to a stock held by him of such traditional herbal medicinal products in excess of a total of 5 litres of fluid and 2.5 kilograms of solids of all traditional herbal medicinal products to which that sub-paragraph relates.

5.—(1) Regulation 4(1) shall not apply to the placing on the market by way of supplying of any traditional herbal medicinal product to which this paragraph relates if the conditions of subparagraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are—

- (a) that the traditional herbal medicinal product is sold or supplied to a person exclusively for use by him in the course of a business carried on by him for the purposes of administering it or causing it to be administered to one or more human beings otherwise than by selling it;
- (b) that, if sold or supplied through the holder of a wholesale dealer's licence, the traditional herbal medicinal product is sold or supplied to such a person, and for such use by him, as is described in head (a) above;
- (c) that, where the manufacture or assembly of the traditional herbal medicinal product is procured, it is procured by such a person, and for such use by him, as is described in head (a) above;
- (d) that no advertisement or representation relating to the traditional herbal medicinal product is issued with a view to it being seen generally by the public in the United Kingdom and that no advertisement relating to that product, by means of any catalogue, price list or circular letter, is issued by, at the request or with the consent of, the person selling that product by retail or by way of wholesale dealing or supplying it in circumstances corresponding to retail sale, or the person who manufactures it, and that the supply is in response to a bona fide unsolicited order;
- (e) that the traditional herbal medicinal product is prepared by or under the supervision of a pharmacist; and
- (f) that the traditional herbal medicinal product is manufactured by the holder of a manufacturer's licence which relates specifically to the manufacture of traditional herbal medicinal products to which paragraph 2 applies.

6. Any person who sells or supplies a traditional herbal medicinal product in accordance with any of paragraphs 2 to 5 shall maintain, and keep for a period of at least 5 years, a record showing—

- (a) the source from which that person obtained that product;
- (b) the person to whom and the date on which the sale or supply was made;
- (c) the quantity of each sale or supply;
- (d) the batch number of the batch of that product from which the sale or supply was made; and
- (e) details of any suspected adverse reaction to the product so sold or supplied of which he is aware.

7. A person required to maintain the records mentioned in paragraph 6 shall—

- (a) notify the licensing authority of any suspected adverse reaction such as is mentioned in head (e) of that paragraph which is a serious adverse reaction; and
- (b) make available for inspection at all reasonable times by the licensing authority the records mentioned in that paragraph.

SCHEDULE 2 Regulations 6(2), 7(7)

PROCEDURAL PROVISIONS RELATING TO THE GRANT, RENEWAL, VARIATION, REVOCATION AND SUSPENSION OF TRADITIONAL HERBAL REGISTRATIONS

PART 1

INTERPRETATION AND APPLICATION

Interpretation

1. In this Schedule—

“active ingredient from a new source” means an active ingredient in respect of which the application names as manufacturer a manufacturer not previously named as the manufacturer of that active ingredient included in a medicinal product in respect of which a marketing authorization (other than a product licence of right) or a traditional herbal registration has previously been granted;

“complex variation application” means an application by a traditional herbal registration holder to vary a traditional herbal registration which relates to a change in the formulation of a medicinal product comprising one or more of the following changes—

(a) a change in that product’s active ingredients which involves the addition of one or more active ingredients which are active ingredients from a new source;

(b) a change in that product’s excipients which involves the addition of one or more TSE risk excipients from a new source; or

(c) a change which involves the addition of one or more vitamins or minerals which are vitamins or minerals from a new source where no European Pharmacopoeia certificate of suitability covering those vitamins or minerals has been submitted with the application;

“new excipient” means any ingredient of a medicinal product, other than an active ingredient, that has not previously been included in a medicinal product which is intended to be administered by the same route of administration as the product in question and in respect of which a marketing authorization (other than a product licence of right) or a traditional herbal registration has previously been granted, except that—

(a) in the case of a medicinal product intended to be administered orally, the expression does not include any ingredient specified in any enactment (including an enactment comprised in subordinate legislation or in any Directive, Regulation or Decision of the European Community) as an approved ingredient or additive in food or in a food product; and

(b) in the case of a medicinal product intended for external use only, the expression does not include any ingredient specified in any enactment (including an enactment comprised in subordinate legislation or in any Directive, Regulation or Decision of the European Community) as an approved ingredient or additive in a cosmetic product;

“new excipient variation application” means an application, other than a complex variation application, by a traditional herbal registration holder to vary a traditional herbal registration which relates to a change in the formulation of the medicinal product to add a new excipient;

“the time allowed” means the period of twenty-eight days beginning with the date of the relevant notification, or such longer period as the licensing authority may allow in any particular case;

“TSE risk excipient from a new source” means an excipient which has been manufactured from raw materials of ruminant origin or which has had raw materials of ruminant origin used in its manufacture and in respect of which—

(a) the application names as manufacturer a manufacturer not previously named as the manufacturer of that excipient included in a medicinal product in respect of which a marketing authorization (other than a product licence of right) or a traditional herbal registration has previously been granted; and

(b) no European Pharmacopoeia certificate of suitability covering the excipient has been submitted with the application;

“vitamin or mineral from a new source” means a vitamin or mineral in respect of which the application names as manufacturer a manufacturer not previously named as the manufacturer of that vitamin or mineral included in a medicinal product in respect of which a marketing authorization (other than a product licence of right) or a traditional herbal registration has previously been granted.

Scope and application of this Schedule

2. Subject to paragraphs 6 and 7, Part 2 applies to—

(a) any application for the grant of a traditional herbal registration for a traditional herbal medicinal product except one made pursuant to the procedure in Article 28 of the 2001 Directive;

(b) any application to renew a traditional herbal registration for a traditional herbal medicinal

product; and

(c) any proposal to revoke, vary or suspend a traditional herbal registration for a traditional herbal medicinal product, other than a variation on the application of the holder of that traditional herbal registration.

3. Subject to paragraphs 6 and 7, Part 3 applies to any application to vary a traditional herbal registration for a traditional herbal medicinal product which is a complex or a new excipient variation application.

4. Subject to paragraphs 6 and 7, Part 4 applies where the licensing authority propose to refer an application for the grant of a traditional herbal registration for a traditional herbal medicinal product to the Committee for Herbal Medicinal Products in accordance with Article 16c(4) of the 2001 Directive.

5. Subject to paragraphs 6 and 7, Part 5 applies where—

(a) an applicant for a traditional herbal registration for a traditional herbal medicinal product, or for the variation or renewal of such a traditional herbal registration; or

(b) the holder of a traditional herbal registration for a traditional herbal medicinal product, gives notice under paragraphs 12, 17 or 20 of his wish to appear before or be heard by a person appointed by the licensing authority.

6. This Schedule shall cease to apply if at any time the relevant matter is, by virtue of any relevant Community provision, referred to the Committee for Herbal Medicinal Products for the application of the procedure laid down in Articles 32 to 34 of the 2001 Directive.

7. This Schedule does not apply—

(a) if an application relates to a traditional herbal medicinal product in respect of which either of the conditions set out in Article 16d(1) are fulfilled and—

(i) the licensing authority declines to assess the application because an application for an EC traditional herbal registration in another EEA State is being examined in that State and the application to the licensing authority has not been submitted in accordance with Article 28(1) and (3) of the 2001 Directive; or

(ii) the licensing authority rejects the application where the traditional herbal medicinal product in question has an EC traditional herbal registration in another EEA State and the application has not been submitted in accordance with Article 28(1) and (2) of the 2001 Directive;

(b) if the application or proposal relates to the renewal, revocation, suspension or variation of a traditional herbal registration which has been granted—

(i) in accordance with the provisions of Title III, Chapter 4 of the Directive; or

(ii) which has not been so granted, but which has been subject to the procedure laid down in Articles 32 to 34 of the Directive following a referral under Article 30 or 31 of that Directive, unless the procedure was limited to certain specific parts of the traditional herbal registration; or

(c) if the licensing authority refuse to grant the traditional herbal registration applied for following a referral to the Committee for Herbal Medicinal Products in accordance with Article 16c(4) where the Committee for Herbal Medicinal Products has not supported the grant of the application.

PART 2

PROCEDURES RELATING TO GRANT, RENEWAL, COMPULSORY VARIATION, REVOCATION OR SUSPENSION OF TRADITIONAL HERBAL REGISTRATIONS

Requirement to consult the appropriate committee

8. The licensing authority shall not, at any time while this Schedule applies—

(a) refuse to grant or renew the traditional herbal registration applied for; or

(b) revoke, vary or (subject to paragraph 13 of this Schedule) suspend a traditional herbal registration, on grounds relating to safety, quality or efficacy, except after consultation with the appropriate committee.

Provisional opinion against traditional herbal registration

- 9.—(1) Where the appropriate committee are consulted under the preceding paragraph and are of the provisional opinion that, on grounds relating to safety, quality or efficacy, they—
- (a) may be unable to advise the licensing authority to grant or renew the traditional herbal registration; or
 - (b) may be unable to advise the licensing authority to grant it unless it contains provisions otherwise than in accordance with the application; or
 - (c) may have to advise the licensing authority that the traditional herbal registration ought to be revoked, varied or suspended, the appropriate committee shall notify the applicant or holder accordingly.
- (2) A person who has been so notified may, within the time allowed, give notice of his wish to make written or oral representations to the appropriate committee.
- (3) The appropriate committee shall give the applicant or holder an opportunity to make such representations in accordance with sub-paragraphs (4) to (7).
- (4) Subject to sub-paragraph (5), the applicant or holder shall provide the appropriate committee with—
- (a) his written representations or a written summary of the oral representations he intends to make; and
 - (b) any documents on which he wishes to rely in support of those representations, before the end of the period of six months beginning with the date of the notice referred to in subparagraph (2), or within such shorter period as the appropriate committee may specify in the notification under sub-paragraph (1).
- (5) If the applicant or holder so requests, the appropriate committee may extend the time limit referred to in sub-paragraph (4), up to a maximum period of twelve months beginning with the date of the notice referred to in sub-paragraph (2).
- (6) The applicant or holder may not submit any additional written representations or documents once the time limit referred to in sub-paragraphs (4) and (5) has expired, except with the permission of the appropriate committee.
- (7) If the applicant or holder gave notice of his wish to make oral representations, the appropriate committee shall, after receiving a written summary and any other documents in accordance with sub-paragraph (4), arrange for the applicant or holder to make such representations at a hearing before the committee.
- (8) The appropriate committee shall—
- (a) take into account such representations as are made in accordance with this paragraph; and
 - (b) report their findings and advice to the licensing authority, together with the reasons for their advice.

Licensing authority's decision after appropriate committee report

- 10.—(1) After receiving the report of the appropriate committee pursuant to paragraph 9(8) the licensing authority shall—
- (a) decide whether to refuse to grant or renew the traditional herbal registration, or to grant or renew it otherwise than in accordance with the application, or to proceed further with their proposal to revoke, vary or suspend the traditional herbal registration; and
 - (b) take the report into account when making their decision.
- (2) The licensing authority shall then notify the applicant or holder of—
- (a) the decision made pursuant to sub-paragraph (1); and
 - (b) the advice given to them by the appropriate committee and the reasons for that advice.

Licensing authority proposals in other cases

- 11.—(1) If—
- (a) the appropriate committee was consulted pursuant to paragraph 8;

- (b) the committee did not give a provisional opinion under paragraph 9(1); and
- (c) the licensing authority propose—
 - (i) to determine the application in a way which differs from the advice of the committee,
 - (ii) to revoke, vary or suspend a traditional herbal registration against such advice, or
 - (iii) on grounds not relating to safety, quality or efficacy—
 - (aa) not to grant or renew a traditional herbal registration,
 - (bb) to grant or renew a traditional herbal registration otherwise than in accordance with an application, or
 - (cc) to revoke, vary or suspend a traditional herbal registration, the licensing authority shall notify the applicant or holder accordingly.
- (2) If—
 - (a) the appropriate committee has not been consulted pursuant to paragraph 8; and
 - (b) the licensing authority propose, on grounds not relating to safety, quality or efficacy—
 - (i) not to grant or renew a traditional herbal registration,
 - (ii) to grant or renew a traditional herbal registration otherwise than in accordance with an application, or
 - (iii) to revoke, vary or suspend a traditional herbal registration, the licensing authority shall notify the applicant or holder accordingly.
- (3) A notification given under sub-paragraph (1) or (2) shall state—
 - (a) the advice of the appropriate committee, if any, and the reasons stated by the committee for any such advice; and
 - (b) the proposals of the licensing authority and the reasons for them.

Right to be heard by a person appointed or to make further representations

- 12.—**(1) Subject to sub-paragraph (4), a person to whom a notification has been given under paragraph 10(2) may, within the time allowed, notify the licensing authority that he wishes to appear before and be heard by a person appointed by the licensing authority with respect to the decision.
- (2) A person to whom a notification has been given under paragraph 11(1) or (2) may, within the time allowed—
- (a) notify the licensing authority that he wishes to appear before and be heard by a person appointed for the purpose by the licensing authority, or
 - (b) make representations in writing to the licensing authority with respect to the proposal referred to in the notification.
- (3) If the applicant makes written representations in accordance with sub-paragraph (2)(b) of this paragraph, the licensing authority shall take those representations into account before determining the matter.
- (4) Sub-paragraph (1) shall not apply where—
- (a) the person has not made any representations in accordance with paragraph 9(4) to (7); and
 - (b) the decision of the licensing authority was in accordance with the advice of the appropriate committee.

Cases where suspension is to have immediate effect

- 13.—**(1) Paragraph 8 shall not apply to the suspension of a traditional herbal registration (whether or not it applies to any existing proposal to suspend or revoke the traditional herbal registration) where it appears to the licensing authority that, in the interests of safety, it is necessary to suspend the traditional herbal registration with immediate effect for a period not exceeding three months.
- (2) Where the licensing authority so suspend a traditional herbal registration they shall report the suspension forthwith to the appropriate committee.
- 14.** If, after suspending a traditional herbal registration with immediate effect by virtue of

paragraph 13—

(a) it appears to the licensing authority; or

(b) the appropriate committee advise, that the traditional herbal registration ought to be further suspended, or ought to be varied or revoked, the licensing authority shall proceed in accordance with the applicable provisions of this Schedule (including paragraph 13).

PART 3

VARIATION OF TRADITIONAL HERBAL REGISTRATION ON APPLICATION OF HOLDER

Hearing before appropriate committee

15.—(1) If the licensing authority decide, on grounds relating to safety, quality or efficacy—

(a) to refuse to grant a complex variation application or a new excipient variation application; or

(b) to grant it otherwise than in accordance with the application, they shall notify the applicant accordingly.

(2) A person who has been notified in accordance with sub-paragraph (1) may, within the time allowed, give notice to the licensing authority of his wish to make written or oral representations to the appropriate committee.

(3) On receipt of a notice under sub-paragraph (2), the licensing authority shall inform the appropriate committee and the committee shall give the applicant an opportunity to make such representations in accordance with sub-paragraphs (4) to (7).

(4) Subject to sub-paragraph (5), the applicant shall provide the appropriate committee with—

(a) his written representations or a written summary of the oral representations he intends to make; and

(b) any documents on which he wishes to rely in support of those representations, before the end of the period of six months beginning with the date of the notice referred to in sub-paragraph (1), or within such shorter period as the licensing authority may specify in the notification referred to in sub-paragraph (1).

(5) If the applicant so requests, the appropriate committee may extend the time limit referred to in sub-paragraph (4), up to a maximum period of twelve months beginning with the date of the notice referred to in sub-paragraph (2).

(6) The applicant may not submit any additional written representations or documents once the time limit referred to in sub-paragraphs (4) and (5) has expired, except with the permission of the appropriate committee.

(7) If the applicant gave notice of his wish to make oral representations, the appropriate committee shall, after receiving a written summary and any other documents in accordance with sub-paragraph (4), arrange for the applicant to make such representations at a hearing before the committee.

(8) The appropriate committee shall—

(a) take into account such representations as are made in accordance with this section; and

(b) report their findings and advice to the licensing authority, together with the reasons for their advice.

Licensing authority decision

16.—(1) After receiving the report of the appropriate committee, the licensing authority shall—

(a) confirm or alter their decision; and

(b) take the report into account before doing so.

(2) The licensing authority shall notify the applicant of—

(a) the decision made pursuant to sub-paragraph (1); and

(b) the advice given to them by the appropriate committee and the reasons for that advice.

Right to be heard by a person appointed

17.—(1) Subject to sub-paragraph (2), if the licensing authority notify the applicant of the authority's decision—

- (a) to refuse the application; or
 - (b) to grant it otherwise than in accordance with the application, the applicant may, within the time allowed, notify the licensing authority that he wishes to appear before and be heard by a person appointed by the licensing authority with respect to the decision.
- (2) Sub-paragraph (1) shall not apply where—
- (a) the person had not made any representations in accordance with paragraph 15(4) to (7); and
 - (b) the decision of the licensing authority was in accordance with the advice of the appropriate committee.

PART 4

REFERRAL TO THE COMMITTEE FOR HERBAL MEDICINAL PRODUCTS IN ACCORDANCE WITH ARTICLE 16C(4) OF THE 2001 DIRECTIVE

Hearing before appropriate committee

- 18.—**(1) If the licensing authority propose to refer an application for a traditional herbal registration to the Committee for Herbal Medicinal Products in accordance with Article 16c(4) of the 2001 Directive they shall notify the applicant accordingly.
- (2) A person who has been notified in accordance with sub-paragraph (1) may, within the time allowed, give notice to the licensing authority of his wish to make written or oral representations to the appropriate committee.
- (3) On receipt of a notice under sub-paragraph (2), the licensing authority shall inform the appropriate committee and the committee shall give the applicant an opportunity to make such representations in accordance with sub-paragraphs (4) to (7).
- (4) Subject to sub-paragraph (5), the applicant shall provide the appropriate committee with—
- (a) his written representations or a written summary of the oral representations he intends to make; and
 - (b) any documents on which he wishes to rely in support of those representations, before the end of the period of six months beginning with the date of the notice referred to in sub-paragraph (1), or within such shorter period as the licensing authority may specify in the notification referred to in sub-paragraph (1).
- (5) If the applicant so requests, the appropriate committee may extend the time limit referred to in sub-paragraph (4), up to a maximum period of twelve months beginning with the date of the notice referred to in sub-paragraph (2).
- (6) The applicant may not submit any additional written representations or documents once the time limit referred to in sub-paragraphs (4) and (5) has expired, except with the permission of the appropriate committee.
- (7) If the applicant gave notice of his wish to make oral representations, the appropriate committee shall, after receiving a written summary and any other documents in accordance with sub-paragraph (4), arrange for the applicant to make such representations at a hearing before the committee.
- (8) The appropriate committee shall—
- (a) take into account such representations as are made in accordance with this section; and
 - (b) report their findings and advice to the licensing authority, together with the reasons for their advice.

Licensing authority decision

- 19.—**(1) After receiving the report of the appropriate committee, the licensing authority shall—
- (a) decide whether to proceed with their proposal; and
 - (b) take the report into account before doing so.
- (2) The licensing authority shall notify the applicant of—
- (a) the decision made pursuant to sub-paragraph (1); and

(b) the advice given to them by the appropriate committee and the reasons for that advice.

Right to be heard by a person appointed

20.—(1) Subject to sub-paragraph (2), if the licensing authority notify the applicant of the authority's decision to refer the application to the Committee for Herbal Medicinal Products as proposed, the applicant may, within the time allowed, notify the licensing authority that he wishes to appear before and be heard by a person appointed by the licensing authority with respect to the decision.

(2) Sub-paragraph (1) shall not apply where—

- (a) the person had not made any representations in accordance with paragraph 18(4) to (7); and
- (b) the decision of the licensing authority was in accordance with the advice of the appropriate committee.

PART 5 HEARING BEFORE PERSON APPOINTED

Hearing before person appointed

21.—(1) If an applicant or holder of a traditional herbal registration gives notice under paragraphs 12, 17 or 20 of his wish to appear before or be heard by a person appointed by the licensing authority, the authority shall—

- (a) make that appointment; and
- (b) arrange for the applicant or holder to have an opportunity of appearing before that person.

(2) The person appointed—

- (a) shall not be, or at any time have been, a member of—

- (i) the Commission on Human Medicines or any of its Expert Advisory Groups,

- (ii) the Medicines Commission formerly established under section 2 of the Act or any of its committees, or

- (iii) a committee established under section 4 of the Act, or any sub-committee of such a committee; and

- (b) shall not be an officer or servant of a Minister of the Crown.

(3) Subject to sub-paragraph (4), the applicant or holder shall provide the person appointed with—

- (a) a written summary of the oral representations he intends to make; and

- (b) any documents on which he wishes to rely in support of those representations, before the end of the period of three months beginning with the date of the notice referred to in sub-paragraph (1).

(4) If the applicant or holder so requests, the person appointed may, after consulting the licensing authority, extend the time limit referred to in sub-paragraph (3), up to a maximum period of six months beginning with the date of the notice referred to in sub-paragraph (1).

(5) If the applicant or holder fails to comply with the time limit in sub-paragraph (3) or, where he has been granted an extended time limit under sub-paragraph (4), that time limit—

- (a) he may not appear before or be heard by the person appointed; and

- (b) the licensing authority shall decide whether—

- (i) to confirm or alter their decision,

- (ii) to refer the application to the Committee for Herbal Medicinal Products,

- (iii) to grant or renew the traditional herbal registration,

- (iv) to grant or renew the traditional herbal registration otherwise than in accordance with the application, or

- (v) to revoke, vary or suspend the traditional herbal registration, as the case may be.

(6) The applicant or holder may not submit any additional written representations or documents once the time limit has expired, except with the permission of the person appointed.

(7) At the hearing before the person appointed, both the applicant or holder and the licensing authority may make representations.

(8) If the applicant or holder so requests the hearing shall be in public.

(9) After the hearing—

- (a) the person appointed shall provide a report to the licensing authority; and

- (b) the licensing authority shall take this report into account and decide whether—
 - (i) to confirm or alter their decision,
 - (ii) to refer the application to the Committee for Herbal Medicinal Products,
 - (iii) to grant or renew the traditional herbal registration,
 - (iv) to grant or renew the traditional herbal registration otherwise than in accordance with the application, or
 - (v) to revoke, vary or suspend the traditional herbal registration, as the case may be.
- (10) The licensing authority shall then—
 - (a) notify the applicant or holder of their decision;
 - (b) if the applicant or holder so requests, provide the applicant or holder with a copy of the report of the person appointed.

SCHEDULE 3 Regulation 9(6) OFFENCES, PENALTIES ETC

Offences

1. Any person who, in breach of these Regulations, places a traditional herbal medicinal product on the market without holding a traditional herbal registration in respect of that product, or otherwise than in accordance with the terms of such a registration, shall be guilty of an offence.
2. Any person who, in the course of a business carried on by him, sells, supplies, manufactures or assembles, or procures the sale, supply, manufacture or assembly of, a traditional herbal medicinal product, or who has in his possession a traditional herbal medicinal product, knowing or having reasonable cause to believe that the product was or is intended to be placed on the market contrary to paragraph 1 shall be guilty of an offence.
3. Without prejudice to any other sanction which may be available for the enforcement of conditions attaching to traditional herbal registrations, any holder of a traditional herbal registration for a traditional herbal medicinal product who contravenes any condition of the registration shall be guilty of an offence.
4. Any person who is the holder of a traditional herbal registration who fails to implement an urgent safety restriction imposed on him by the licensing authority under regulation 8 shall be guilty of an offence.
5. Where the use, supply or marketing of a traditional herbal medicinal product is suspended in accordance with regulation 7, any person who sells, supplies or markets, or procures the sale, supply or marketing of, that product knowing, or having reasonable cause to believe, that such use, supply or marketing is suspended, shall be guilty of an offence.
6. Any person who is or, immediately before its revocation or suspension, was the holder of a traditional herbal registration who fails to comply with a notice given to him under regulation 7(5) (notice to take all reasonably practicable steps to publish information concerning revocation or suspension or to recover possession of products affected) shall be guilty of an offence.
7. Any holder of a traditional herbal registration who fails promptly to—
 - (a) take any steps reasonably necessary to take account of technical and scientific progress for the purposes of making any changes or amendments as required by Article 23 of the 2001 Directive; or
 - (b) introduce any changes or make any amendments that may be required in accordance with that Article or paragraphs 3.2(9) and 3.2.2.4(c) of Part I of Annex I to the 2001 Directive; or
 - (c) provide information to the licensing authority as required by the third or fourth paragraphs of Article 23 of the 2001 Directive; or
 - (d) submit any application to the licensing authority to make any changes or variation as required by that Article; or
 - (e) notify the licensing authority if the traditional herbal medicinal product to which the registration relates has not been placed on the market in the United Kingdom for a period

of three consecutive years pursuant to regulation 9(4);
shall be guilty of an offence.

8. Any holder of a traditional herbal registration who fails to forward to the licensing authority any data requested by the authority pursuant to the final paragraph of Article 23 of the Directive—

(a) where the licensing authority have served a written notice on the holder under regulation 9(7) in relation to the request, within the time specified in that notice;

(b) where there is no such notice, promptly, shall be guilty of an offence.

9. Any holder of a traditional herbal registration who fails to forward to the licensing authority any data requested by the authority pursuant to regulation 9(5)—

(a) where the licensing authority have served a written notice on the holder under regulation 9(7) in relation to the request, within the time specified in that notice;

(b) where there is no such notice, promptly, shall be guilty of an offence.

10. Any person who is the holder of a traditional herbal registration who fails to ensure appropriate and continued supplies pursuant to the second paragraph of Article 81 of the 2001 Directive shall be guilty of an offence.

11. Any holder of a traditional herbal registration who communicates to the general public information relating to pharmacovigilance concerns about the product to which the registration relates without having previously communicated, or without simultaneously communicating, such information to the licensing authority shall be guilty of an offence.

12. Any holder of a traditional herbal registration who fails to ensure that information relating to pharmacovigilance concerns about the product to which the registration relates which he communicates to the general public or the licensing authority is presented objectively and is not misleading shall be guilty of an offence.

13. Any person responsible for placing on the market a traditional herbal medicinal product authorised by the licensing authority who, at any time, does not have at his disposal an appropriately qualified person responsible for pharmacovigilance as required by Title IX of the 2001 Directive shall be guilty of an offence.

14. Any person responsible for placing a traditional herbal medicinal product on the market who fails to report to the licensing authority any suspected adverse reaction, or to submit to the licensing authority any records of suspected adverse reactions as required by Title IX of the 2001 Directive, shall be guilty of an offence.

15. Any person responsible for placing a traditional herbal medicinal product on the market who fails to make or maintain a detailed record of any suspected adverse reaction as required by Title IX of the 2001 Directive shall be guilty of an offence.

16. Any person who, while employed or engaged as an appropriately qualified person responsible for pharmacovigilance for the purposes of Title IX of the 2001 Directive fails to—

(a) establish or maintain a system for collecting and collating information about suspected adverse reactions;

(b) prepare for the licensing authority a report on any such reactions; or

(c) ensure that a request from the licensing authority for the provision of additional information necessary for the evaluation of the benefits and risks afforded by a traditional herbal medicinal product is answered fully and promptly; or

(d) provide to the licensing authority any other information relevant to the evaluation of the benefits and risks afforded by a medicinal product, including appropriate information on post authorization safety studies, as required by any provision of that Title, shall be guilty of an offence.

17.—(1) Any person who in the course of an application for the grant, renewal or variation of a traditional herbal registration for a traditional herbal medicinal product—

(a) fails to provide to the licensing authority any information which is relevant to an

evaluation of the safety, quality or efficacy of the traditional herbal medicinal product as required by point (7) or (11) of the introduction to Annex I to the 2001 Directive; or
(b) provides to the licensing authority any information which is relevant to an evaluation of the safety, quality or efficacy of the traditional herbal medicinal product but which is false or misleading in a material particular, shall be guilty of an offence.

(2) Any person who—

(a) is responsible for placing a traditional herbal medicinal product on the market;
(b) is the traditional herbal registration holder for a traditional herbal medicinal product; or
(c) while employed or engaged as an appropriately qualified person responsible for pharmacovigilance for the purposes of Title IX of the 2001 Directive is required to provide information to the licensing authority about a traditional herbal medicinal product, who provides to the licensing authority any information which is relevant to an evaluation of the safety, quality or efficacy of the traditional herbal medicinal product but which is false or misleading in a material particular shall be guilty of an offence.

18. Any holder of a traditional herbal registration who sells or supplies or procures the sale or supply of a traditional herbal medicinal product to which the traditional herbal registration relates—

(a) the labelling of which, or any package leaflet accompanying which, does not comply with; or
(b) without a package leaflet required to be provided by virtue of, the applicable requirements of Title V of the 2001 Directive or of Schedule 5 to these Regulations, shall be guilty of an offence.

19. Where, in relation to a traditional herbal medicinal product —

(a) the labelling of the product, or any package leaflet accompanying the product, does not comply with; or
(b) the product is not accompanied by a package leaflet required to be provided by virtue of, the applicable requirements of Title V of the 2001 Directive or Schedule 5, any person, other than the holder of the traditional herbal registration for that product, who in the course of a business carried on by him, sells or supplies or procures the sale or supply of that product knowing, or having reasonable cause to believe, that the labelling does not so comply or, as the case may be, that the product is not so accompanied, shall be guilty of an offence.

20. Any person who fails to keep any record required under paragraph 6 of Schedule 1, or to give notice or make it available for inspection as and when required under paragraph 7 of that Schedule, shall be guilty of an offence.

21. Any person who—

(a) sells or supplies a traditional herbal medicinal product in accordance with any of paragraphs 2 to 5 of Schedule 1; or
(b) provides a specification for such a product for the purposes of paragraph 2 of that Schedule, who provides to the licensing authority any information which is relevant to an evaluation of the safety, quality or efficacy of the traditional herbal medicinal product but which is false or misleading in a material particular shall be guilty of an offence.

Penalties

22. Any person guilty of an offence under any of the preceding paragraphs shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;
(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Miscellaneous

23.—(1) Where an offence is committed under any of paragraphs 14, 15, 16 or 17 by a person

mentioned in those paragraphs who is acting as the employee or agent of another person, the employer or principal of that person shall be guilty of the same offence.

(2) Where a Scottish partnership is guilty of an offence under these Regulations in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner in the partnership, he, as well as the partnership, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

24. Where the holder of a traditional herbal registration is charged with an offence under these Regulations in respect of anything which has been manufactured or assembled to his order by another person and had been so manufactured or assembled as not to comply with the provisions of that registration, it shall be a defence for him to prove—

(a) that he had communicated the provisions relating to the registration to that other person; and

(b) that he did not know, and could not by the exercise of reasonable care have known, that those provisions had not been complied with.

25.—(1) A person does not commit an offence under paragraphs 10, 17 or 21 if he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence.

(2) Where evidence is adduced which is sufficient to raise an issue with respect to that defence, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

SCHEDULE 4 Regulation 11(2)(a)

MODIFICATIONS OF ENFORCEMENT PROVISIONS OF THE ACT

1. In section 107 (validity of decisions and proceedings relating thereto)—

(a) in subsection (1), for “Part II of this Act or of a Minister under section 75 of this Act, and the validity of any licence or certificate” substitute “the Herbal Regulations, and the validity of any registration”;

(b) in subsections (2)(a) and (3)(b), for “this Act” substitute “the Herbal Regulations”;

(c) in subsection (2)(b), for “this Act or of any regulations made under this Act” substitute “the Herbal Regulations”; and

(d) in subsection (4), for “licence or certificate”, in each place those words appear, substitute “registration”.

2. In section 108 (enforcement in England and Wales)—

(a) for subsection (1) substitute—

“(1) It shall be the duty of the Secretary of State to enforce in England, or to secure the enforcement in England of, the provisions of the Herbal Regulations.

(1A) It shall be the duty of the National Assembly of Wales to enforce in Wales, or to secure the enforcement in Wales of, the provisions of the Herbal Regulations.”; and

(b) in subsection (2)(c) after “this Act”, in the second place those words appear, insert “or the Herbal Regulations”.

3. In section 109 (enforcement in Scotland), for subsections (1) to (3), substitute—

“(1) It shall be the duty of the Scottish Ministers to enforce in Scotland, or to secure the enforcement in Scotland of, the provisions of the Herbal Regulations.”.

4. For section 110 (enforcement in Northern Ireland) substitute—

“It shall be the duty of the Department for Health, Social Services and Public Safety to enforce in Northern Ireland, or to secure the enforcement in Northern Ireland of, the provisions of the Herbal Regulations.”.

5. In section 111 (rights of entry)—

(a) in subsection (1)(a), for the words after “contravention” substitute “of any provisions of the Herbal Regulations, or”;

(b) in subsection (1)(b), for “this Act or under any such regulations or order” substitute

“those Regulations or any of the provisions of this Act applied by regulation 11 of those Regulations”;

(c) in subsection (2)(a), for the words from “this Act or of any regulations” onwards substitute “the Herbal Regulations”; and

(d) in subsection (3)—

(i) for “licence or certificate under Part II of this Act” substitute “registration under the Herbal Regulations”, and

(ii) for “licence or certificate”, in the second place those words appear, substitute “registration”.

6. In section 112 (power to inspect, take samples and seize goods and documents)—

(a) in subsection (1), for the words before paragraph (a) substitute—

“For the purpose of ascertaining whether there is or has been a contravention of the Herbal Regulations, any person duly authorised in writing by an enforcement authority shall have a right to inspect—”;

(b) in subsection (4)—

(i) for “offence under this Act is” substitute—

“offence—

(a) under the Herbal Regulations, or

(b) under section 114, 118 or 123 of this Act, is”, and

(ii) for “under this Act”, in the second place those words appear, substitute “under those Regulations or under any of the provisions of this Act applied by regulation 11 of those Regulations”;

(c) in subsection (5), for “this Act and any regulations or order made thereunder” substitute “the Herbal Regulations”;

(d) in subsection (7)—

(i) for “a licence or certificate under Part II of this Act” substitute “a registration under the Herbal Regulations”, and

(ii) for “licence or certificate”, in the second place those words appear, substitute “registration”; and

(e) in subsection (9), for “this Act”, in the second place those words appear, substitute “the Herbal Regulations”.

7. In section 115 (analysis of samples in other cases)—

(a) in subsection (7), for “form prescribed by the Ministers” substitute “prescribed form”; and

(b) omit subsection (9).

8. In section 116 (liability to forfeiture under Customs and Excise Management Act 1979)—

(a) for “this Act”, in both places those words appear, substitute “the Herbal Regulations”; and

(b) after subsection (3) insert—

“(4) In this section “the Ministers” means the Secretary of State and the Department for Health, Social Services and Public Safety, acting jointly.”.

9. In section 118 (restrictions on disclosure of information), in subsection (1)(b), for “this Act” substitute “the Herbal Regulations or any provision of this Act applied by regulation 11 of those Regulations”.

10. In section 119 (protection for officers of enforcement authorities)—

(a) in subsection (1)—

(i) for “this Act”, in the first place those words appear, substitute “relevant legislation”, and

(ii) for “this Act”, in the second place those words appear, substitute “that legislation”;

(b) in subsection (2)—

(i) for “this Act”, in the first place those words appear, substitute “relevant legislation”, and

(ii) for “this Act”, in the second place those words appear, substitute “that legislation”;

(c) in subsection (3), for “this Act” substitute “relevant legislation”; and

(d) after subsection (3) insert—

“(4) In this section “relevant legislation” means—

(a) the Herbal Regulations, or

(b) any provision of this Act applied by regulation 11 of those Regulations.”.

11. In section 121 (contravention due to default of other person)—

(a) in subsection (1), for “to which this section applies constitutes an offence under this Act” substitute “of the Herbal Regulations constitutes an offence under those Regulations”;

(b) in subsection (2), for “this Act in respect of a contravention of a provision to which this section applies” substitute “the Herbal Regulations in respect of a contravention of a provision of those Regulations”; and

(c) Omit subsection (4).

12. In section 122 (warranty as defence)—

(a) in subsection (1), for “this Act in respect of a contravention of a provision to which this section applies” substitute “the Herbal Regulations”; and

(b) Omit subsection (2).

13. In section 124 (offences by bodies corporate)—

(a) in subsection (1), for “this Act” substitute “the Herbal Regulations, or under section 114, 118 or 123 of this Act,”; and

(b) after subsection (2) insert the following subsection—

“(2A) In subsections (1) and (2) of this section “body corporate” includes a Scottish partnership and “director”, in relation to such a partnership, includes any of its partners”.

14. In section 125 (prosecutions)—

(a) in subsections (1) and (2), for “under this Act” substitute “under the Herbal Regulations, or for an offence under section 114, 118 or 123 of this Act,”;

(b) omit subsection (3);

(c) in subsection (4) after “this Act”, in the second place those words appear, insert “or under the Herbal Regulations”; and

(d) omit subsections (6) and (7).

15. In section 127 (service of documents)—

(a) for “any provision of this Act” substitute “relevant legislation”; and

(b) at the end add—

“In this section “relevant legislation” means any provision of the Herbal Regulations or any provision of this Act applied by regulation 11 of those Regulations”.

16. In Schedule 3 (sampling)—

(a) in paragraph 1(1)(a), for the words from “this Act or of any Regulations” onwards substitute “the Herbal Regulations, or”;

(b) in paragraph 1(1)(b), for the words from “of their functions” onwards substitute “(in this Schedule referred to as “the relevant enforcement authority”) of their functions under those Regulations or under any provision of this Act applied by regulation 11 of those Regulations,”;

(c) in paragraph 19(3), for “form prescribed by the Ministers” substitute “prescribed form”;

(d) omit paragraph 20(2); and

(e) in each of paragraphs 21 and 22, for “under this Act” substitute “under the Herbal Regulations, or under section 114, 118 or 123 of this Act,”.

(f) in paragraph 24(1), for “under this Act,” substitute “under the Herbal Regulations, or under section 114, 118 or 123 of this Act,”.

SCHEDULE 5 Regulation 12 LABELS

Interpretation

1. In this Schedule—

“dispensed traditional herbal medicinal product” means a traditional herbal medicinal product prepared or dispensed in accordance with a prescription given by a practitioner; and

“requirements” includes restrictions.

Introductory

2. The requirements of this Schedule supplement those of Title V of the 2001 Directive relating to—

(a) special warnings necessary for particular medicinal products;

(b) the legal status for supply to the patient, in accordance with Title VI of the 2001 Directive;

(c) identification and authenticity.

Dispensed traditional herbal medicinal products

3.—(1) Subject to the following provisions of this Schedule, where a traditional herbal medicinal product is a dispensed traditional herbal medicinal product the container of that product shall be labelled to show the following particulars—

(a) where the traditional herbal medicinal product is for use by being administered to a particular human being, the name of the person to whom the traditional herbal medicinal product is to be administered;

(b) the name and address of the person who sells or supplies the traditional herbal medicinal product;

(c) the date on which the traditional herbal medicinal product is dispensed; and

(d) where the traditional herbal medicinal product has been prescribed by a practitioner, such of the following particulars as he may request—

(i) the name of the traditional herbal medicinal product or its common name,

(ii) directions for use of the traditional herbal medicinal product, and

(iii) precautions relating to the use of the traditional herbal medicinal product,

or where a pharmacist, in the exercise of his professional skill and judgement, is of the opinion that any of such particulars are inappropriate and has taken such steps as in all the circumstances are reasonably practicable to consult with the practitioner but has been unable to do so, particulars of the same kind as those requested by the practitioner as appear to the pharmacist to be appropriate.

(2) Where the container of a dispensed traditional herbal medicinal product is enclosed in a package immediately enclosing that container the particulars set out in sub-paragraph (1) may be omitted from the container if that package is labelled to show such particulars.

(3) Where a number of containers or packages, or of containers and packages, of dispensed traditional herbal medicinal products all of the same description are enclosed in a package, subparagraph (1)(d) shall be deemed to have been complied with if such of the particulars referred to in that sub-paragraph as would, apart from this sub-paragraph, be required to be shown on each container or package, or on each container and package so enclosed, are shown on either one or more such containers or packages or such containers and packages as the case may be.

Traditional herbal medicinal products not on a general sale list

4. Subject to the following provisions of this Schedule, where a traditional herbal medicinal product to which any of the restrictions imposed by section 52 of the Act (sale or supply of medicinal products not on general sale list) apply is sold by retail, or supplied in circumstances corresponding to retail sale or is offered or exposed for sale by retail, every container and every package immediately enclosing a container of such a product shall unless the product is a dispensed traditional herbal medicinal product, be labelled to show the capital letter “P” within a rectangle within which there shall be no other matter of any kind.

Exemptions

5.—(1) Nothing in this Schedule shall require the labelling of—

- (a) any package in the form of a transparent wrapping or cover to a container and package of a traditional herbal medicinal product or any package the whole or part of which is transparent or open if the particulars shown on the labelled container enclosed in that package are clearly visible;
 - (b) any package in the form of a wrapping paper, paper bag or similar covering in which the container and package of a traditional herbal medicinal product labelled in accordance with the provisions of this Schedule is placed when such traditional herbal medicinal product is sold by retail or supplied in circumstances corresponding to retail sale;
 - (c) any container or package immediately enclosing the container of a traditional herbal medicinal product which is for export; or
 - (d) any container which is—
 - (i) an ampoule or other container of not more than 10 millilitres nominal capacity which is immediately enclosed in a package which is labelled in accordance with paragraph 4, or
 - (ii) in the form of a wrapper consisting of paper, film, plastic material, metal foil or other sheet or strip material or in the form of a bubble, blister or other sealed unit consisting of such sheet or strip material, enclosing one or more dosage units of a traditional herbal medicinal product and such container is immediately enclosed in a package which is labelled in accordance with paragraph 4.
- (2) Where any package immediately enclosing a container as is described in paragraph (1)(d)(ii) is—
- (a) itself in the form of a bubble, blister or other sealed unit as is mentioned in that paragraph;
 - (b) part of a continuous series comprising a sheet or strip of like packages; and
 - (c) required to be labelled to show the letter referred to in paragraph 4, the requirement shall be deemed to have been complied with if the said letter is displayed at frequent intervals on the said sheet or strip of such packages.

SCHEDULE 6 Regulation 12 TRANSITIONAL PROVISION

1. The provisions of these Regulations shall not apply until 30th April 2011 to herbal medicinal products which were on the market in the United Kingdom on 30th April 2004 without a marketing authorization by virtue of section 12(2) of the Act.

SCHEDULE 7 Regulation 12 CONSEQUENTIAL AMENDMENTS TO ORDERS AND REGULATIONS

1. In the Medicines (Retail Sale or Supply of Herbal Remedies) Order 1977(a), after article 1 insert the following article—

“Application

1A. Nothing in this Order applies to a medicinal product for human use to which the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005 apply.”.

2. In the Medicines (Sale or Supply) (Miscellaneous Provisions) Regulations 1980(b), in regulation 5 (restrictions on persons to be supplied with certain medicinal products), in paragraph (1)(a), after “Marketing Authorizations Etc.) Regulations 1994” insert “or the holder of a traditional herbal registration within the meaning of the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005”.

3.—(1) The Medicines (Pharmacy and General Sale-Exemption) Order 1980(c) is amended as follows.

(2) In article 1 (citation, commencement and interpretation), in paragraph (2), after the definition of “supply” insert the following definition—

““traditional herbal registration” means a registration granted by the licensing authority under The Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005;”.

(3) In article 4A (exemption for the supply of medicinal products by national health service bodies)(a), in paragraph (2)(e), after “marketing authorization” insert “, a traditional herbal registration”.

(4) In article 4B (exemption for health professionals who supply medicinal products under a

Patient Group Direction in order to assist doctors or dentists in providing national health services)(b), in paragraph (2)(f), after “marketing authorization” insert “, a traditional herbal registration”.

(5) In article 4C (exemption for the supply of medicinal products by independent hospitals, clinics and agencies)(c), in paragraph (2)(e), after “marketing authorization” insert “, a traditional herbal registration”.

(6) In article 4D (exemption for health professionals who supply medicinal products under a Patient Group Direction in order to assist the provision of health care by or on behalf of the police, the prison services or the armed forces)(d), in paragraph (2)(f), after “marketing authorization” insert “, a traditional herbal registration”.

4.—(1) The Medicines (Products Other Than Veterinary Drugs) (General Sale List) Order 1984(e) is amended as follows.

(2) In article 1 (citation, commencement and interpretation), in paragraph (2)(a)—

(a) in the definition of “marketing authorization”(f), after “Evaluation of Medicinal Products” insert “or by the European Medicines Agency under Regulation (EC) No. 726/2004 of the European Parliament and of the Council laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency(g)”; and

(b) after the definition of “product licence of right” insert the following definition—
““traditional herbal registration” means a registration granted by the licensing authority under the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005; and”.

(3) In article 2 (general sale list)—

(a) after paragraph (a) insert the following paragraph—

“(aa) medicinal products in respect of which a traditional herbal registration has been granted, which in the traditional herbal registration are classified as being general sale list medicines;”;

(b) in paragraph (b) after “marketing authorization” insert “or traditional herbal registration”.

5. In the Dangerous Substances and Preparations (Safety) (Consolidation) Regulations 1994(h), in regulation 1 (citation, commencement and interpretation), in paragraph (2), in the definition of “medicinal product”, in paragraph (a), after sub-paragraph (i) insert the following sub-paragraph—
“(ia) in respect of which there is for the time being a traditional herbal registration granted under regulation 6 of the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005, or”.

6. In the Medicines (Aristolochia and Mu Tong etc.) (Prohibition) Order 2001(a), in article 4 (Exceptions to the prohibitions imposed by articles 2 and 3), in paragraph (4), after “(Marketing Authorisations Etc.) Regulations 1994” insert “, a traditional herbal registration within the meaning of regulation 2(1) of the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005”.

7. In the Medicines for Human Use (Kava-Kava) (Prohibition) Order 2002(b), in article 3 (Exceptions to the prohibition imposed by article 2), in paragraph (d)—

(a) at the end of sub-paragraph (iii) insert “, or”; and

(b) after sub-paragraph (iii) insert the following sub-paragraph—

“(iv) a traditional herbal registration within the meaning given in regulation 2(1) of the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005.”.

8. In the Unlicensed Medicinal Products for Human Use (Transmissible Spongiform Encephalopathies) (Safety) Regulations 2003(c), in regulation 1 (citation, commencement and interpretation), in paragraph (2)—

(a) in the definition of “unlicensed product”—

(i) in sub-paragraph (a)(ii) after “Medicinal Products” insert “or under Regulation (EC)

No. 726/2004 of the European Parliament and of the Council laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency”,

(ii) at the end of sub-paragraph (b) insert “or”, and

(iii) after sub-paragraph (b) insert the following sub-paragraph—

“(c) no traditional herbal registration has been granted by the licensing authority under the Medicines (Traditional Herbal Medicinal Products for Human Use) Regulations 2005;”;

(b) in the definition of “the TSE Guideline” after “for human use” insert “as substituted by Commission Directive 2003/63/EC amending Directive 2001/83/EC on the Community code relating to medicinal products for human use”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2004/24/EC of the European Parliament and of the Council amending, as regards traditional herbal medicinal products, Directive 2001/83/EC(d) on the Community code relating to medicinal products for human use(e) (the “2001 Directive”).

Directive 2004/24/EC amended the 2001 Directive to introduce a simplified registration procedure for the marketing of traditional herbal medicinal products for human use. These Regulations introduce a scheme of traditional herbal registrations (defined in Regulation 2). Regulation 3 provides that the licensing authority established under section 6 of the Medicines Act 1968 (consisting of the Secretary of State for Health, the Secretary of State for Environment and Rural Affairs, and the Northern Ireland Department for Health, Social Services and Public Safety and the Northern Ireland Department for Agriculture and Rural Development) will perform the functions of the competent authority in relation to the provisions of the 2001 Directive which apply to traditional herbal medicinal products.

Regulation 4(1) requires all traditional herbal medicinal products placed on the market or distributed by wholesale dealing to be registered in accordance with these Regulations.

Regulation 4(2) and Schedule 1 set out exemptions under which traditional herbal medicinal products may be supplied or administered without a traditional herbal registration provided the conditions set out in Schedule 1 are complied with. In particular, doctors, dentists and supplementary prescribers may prepare, or order to be prepared, traditional herbal medicinal products to be used by their individual patients.

Regulations 5 to 7 and Schedule 2 make provision for applications for the grant, renewal and variation of traditional herbal registrations, and for the licensing authority to revoke, vary or suspend traditional herbal registrations. In particular, Schedule 2 makes provision for reference to the appropriate committee of decisions to refuse traditional herbal registrations, proposals to refer applications in certain circumstances to the Committee for Herbal Medicinal Products, and to revoke, vary or suspend a registration.

Regulation 8 makes provision for the licensing authority to impose an urgent safety restriction on the holder of a traditional herbal registration.

Regulation 9 imposes obligations on the holders of traditional herbal registrations.

Regulations 9(6) and 11 and Schedules 3 and 4, make provision for enforcement and related matters, including powers of inspection, offences and penalties for breaches of the Regulations.

Regulation 12 and Schedule 5 impose labelling requirements for traditional herbal medicinal products which are prepared or dispensed in accordance with a prescription, or available only from a pharmacy.

Regulations 10 and 12 and Schedules 6 and 7, contain miscellaneous provisions for the consequential amendment of legislation and for transitional arrangements.

A Regulatory Impact Assessment in relation to these Regulations, and a Transposition Note in

relation to the implementation of Directive 2004/24/EC, have been placed in the libraries of both Houses of Parliament and copies may be obtained from the Medicines and Healthcare products Regulatory Agency, Market Towers, 1 Nine Elms Lane, London SW8 5NQ.

55. United Republic of Tanzania

This Act relates to regulation of traditional herbal medicines. As such it is not directly relevant.

THE TRADITIONAL AND ALTERNATIVE MEDICINES ACT, 2002

An Act to make provisions for promotion, control and regulation of traditional and alternative medicines practice, to establish the Traditional and Alternative Health Practice Council and to provide for related matters.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I PRELIMINARY PROVISIONS

1. This Act may be cited as the Traditional and Alternative Medicines Act, 2002 and shall come into operation on a date on which the and Minister may, by notice published in the *Gazette*, appoint.

2.--(1) This Act shall apply to traditional and alternative health practitioners and aides.

(2) In case of proceedings before the Council, the Act shall apply to all traditional and alternative health practitioners and aides irrespective of whether or not any such traditional or alternative health practitioner is registered or enrolled.

3. In this Act, unless the context otherwise requires:

"aide" means a person enrolled under section 15(3) of this Act;

"alternative health practitioner" means a person formally trained and has acquired knowledge, skills and competence in alternative medicine practices and disciplines as recognised internationally;

"alternative medicine" means the total sum of knowledge and practice used in diagnostic, prevention and elimination of physical, mental and social imbalance relying exclusively on various established alternative medicine system of respective disciplines;

"alternative medicine remedy" means and includes methods or processes used for curing or any preparations derived from plants, animals or mineral products that may or may not contain chemical characteristics of such substances from which it is derived but has the therapeutic effect in the intended individual and preparations of such a remedy follows the systems of alternative medicine and discipline employed;

"Committee" means a Committee of the Council established under section 8(1);

"Council" means the Traditional and Alternative Health Practice Council established under section 4 of this Act;

"discipline" means knowledge and practices established and accepted internationally such as homoeopathy, chiropractic, massage, aromatherapy, acupuncture ayurvedic medicine and others recognized by the Council;

"herbal medicines" means plant derived material or preparations with the therapeutic or other human benefits, which contain either raw or processed ingredients from one or more plants; in some traditions material of inorganic or animal origin may also be present;

"hospital" means an establishment providing out patient and inpatient general services;

"Minister" means the Minister responsible for matters related to health;

"register" means the Register of registered traditional and alternative health practitioners;

"Registrar" means the Registrar of the Council appointed under section 9 ,

"registration" means inclusion into the Register of traditional and alternative health practitioner;

"rolls" means rolls kept by the Registrar in which the names and particulars of persons enrolled are entered;

"professional misconduct" means a conduct connected with the traditional or alternative health practice in which the practitioner has fallen short by act or omission, of the standards of conduct expected among the members of the profession and such falling short is serious in the estimation of the members of the traditional and alternative health profession;

"traditional health practitioner" means a person who is recognized by the community in which he lives as competent to provide health care by using plants, animal, mineral substances and other methods based on social, cultural and religious background as well as on the knowledge, attitudes and beliefs that are prevalent in the community regarding physical, mental and social well being and the cause of disease and disability;

"traditional medicine" means a total combination of knowledge and practice, whether applicable or not, used in diagnosing, preventing or eliminating a physical, mental or social disease and which may rely exclusively on past experience and observation handed down from one generation to another orally or in writing;

"traditional medicine remedy" means and includes any methods, processes, practices or any medicine consisting of a substance or a mixture of substances produced by drying, extracting, crushing or comminuting, compressing natural substance of a plant, animal or mineral origin or any part of such substances;

"witchcraft" has the meaning assigned to it under the Witchcraft Cap 18 Ordinance.

PARTII ESTABLISHMENT OF THE COUNCIL

4.-(1) There is established a Council to be known as the Traditional and Alternative Health Practice Council;

(2) The Council shall:

- (a) be a body corporate with perpetual succession and a common seal;
- (b) in its corporate name be capable of suing and being sued; and
- (c) for and in connection with the purpose of this Act be capable of holding, purchasing and otherwise acquiring and disposing of movable and immovable property;

5.-(1) The Council shall be composed of:

- (a) a Chairman who shall be a person conversant with traditional or alternative medicine;
- (b) a legally qualified person from the Attorney General's Chambers;
- (c) four registered traditional health practitioners of whom one shall be a traditional birth attendant; and
- (d) two registered alternative health practitioners.

(2) The Chairnan of the Council shall be appointed by the President.

(3) The Minister shall appoint other members of the Council.

(4) The Vice Chairnan shall be elected from amongst the members of the Council.

(5) Every member of the Council shall hold office for three years but shall be eligible for reappointment of another term.

(6) Procedures of the meetings of the Council shall be as provided for in the First Schedule to this Act.

(7) The Council shall regulate tradional medicine remedies, herbal medicine, alternative medicines remedies in a manner provided for in the Third Schedule to this Act.

6.-(1) The functions of the Council shall generally be to monitor, regulate, promote, support the development oftraditional medicine and to implement the provisions of the Act and in particular:

- (a) to supervise and control the practice of traditional and alternative health practitioners;
- (b) to publish newly registered practitioners and other necessary issues;
- (c) to promote the practice oftraditional and alternative health practitioners;
- (d) to hold inquiries for the purpose of this Act;
- (e) to coordinate the efforts undertaken in different areas as to develop traditional and alternative health science;
- (f) to register and enrol persons who fulfil the requirements;
- (g) to register and regulate the traditional and alternative health delivery facilities;

- (h) to appoint ad-hoc Committees in order to conduct inquiries against certain aides and practitioners;
 - (i) to receive, scrutinize and dispose of reports from the ad-hoc Committee;
 - (j) to promote the maintenance and enforcement of traditional and alternative health care;
 - (k) to protect the society from abuse of traditional and alternative health practitioner and research on human beings;
 - (1) to control the dissemination of information and all advertisement pertaining traditional and alternative medicines; and
 - (m) to regulate and set standards, where possible, for traditional and alternative health material remedies and practices.
 - (n) to provide for the protection of Tanzanian medicinal plants, and other natural resources of medicinal value, such as animals, minerals, aquatic and marine products including their parts thereof.
 - (2) In the performance of its functions, the Council shall as far as is practicable, maintain a system of consultation and co-operation with other institutions or bodies and the Authority responsible for food, drugs, cosmetics and medical devices on matters relating to herbal drug and herbal medicine.
 - (3) Notwithstanding the provisions of subsection (2), where the consultation and co-operation with other bodies or institutions established by or under any other written law requires a memorandum of understanding, the bodies or institutions concerned may enter into an agreement for the purpose of implementing functions or objectives, and that the signed memorandum shall have the force of law.
 - (4) The Council, when performing its duties under this Act, particularly when issuing instructions or directions in connections to the matters pertaining to the quality, efficacy and safety in herbal medicine and herbal drug, shall consult first with other institutions or bodies and whose functions are related or similar to those specified under this Act.
7. In the performance of its functions, the Council shall have powers to:
- (a) caution, censure, suspend from practice or remove from the roll an aide or de-register a traditional health practitioner or alternative health practitioner who has:
 - (i) been found to be guilty of a profession misconduct;
 - (ii) been convicted of a criminal offence or has done anything that has lowered the estimation of the traditional or alternative medicine integrity;
 - (b) inspect and scrutinize practising premises of practitioners;
 - (c) grant or refuse to grant recognition of practitioners;
 - (d) remove any member of the Committee and Secretariat;
 - (e) hire and fire;
 - (f) terminate or suspend operation, permit or professional certificate to practice as aide or traditional or alternative health practitioner;
 - (g) revoke permits to premises performing illegal practices; and
 - (h) delegate its powers to the ad-hoc Committee for the purposes of enrollment of aides when the need arise.
- 8.-(1) There shall be established three standing committees of the Council to be known as:
- (a) Academic Committee;
 - (b) Professional Conduct Committee; and
 - (c) Research and Development Committee.
- (2) The composition and proceedings of the meetings shall be as provided for in the Second Schedule to this Act.

PART III THE REGISTRAR

9.-{ 1) There shall be a Registrar of the Council who shall be a public officer appointed by the Minister after consultation with the Council.

(2) The Registrar shall be the Secretary to the Council and to its Committees.

(3) The office of the Registrar shall be vacant if:

- (a) he resigns;
- (b) he is removed from office; and
- (c) he dies.

10.-(1) The functions of the Registrar shall include the following:

- (a) to keep and maintain, on behalf of the Council, the Register and rolls of traditional and alternative health practitioners;
- (b) to make such necessary alterations and corrections in the Register and rolls in relation to any entry as may be directed by the Council;
- (c) to remove from the Register or rolls the name of any person ordered to be removed, name of a deceased traditional and alternative health practitioner, or any entry which incorrectly or fraudulently entered;
- (d) to enter into any traditional and alternative health facility for the purpose of inspection as may be directed by the Council;
- (e) to record all minutes of the Council and the Committees;
- (f) to keep the seal of the Council;
- (g) he shall be, subject to the general control of the Council, be responsible for the funds, properties of the Council and for the day to day administration of affairs of the Council, the Secretariat and for the control of the staff of the Council;
- (h) to implement decisions of the Council;
- (i) to recommend proposal for the formulation of policies and to implement such policies as adopted by the Council;
- (j) to establish and maintain relationship with organizations, agencies and institutions as may be appropriate for implementation of policies and carrying out of the functions of the Council; and
- (k) to carry out any other function which may be assigned to him by the Council.

(2) The Chairman may, in writing, require the Registrar to submit a report on any matter affecting the affairs of the Council.

(3) The Registrar shall, within three months after the end of each financial year, submit to the Council a general report on affairs and activities of the Council.

11.-(1) There shall be a Deputy Registrar appointed by the Council who shall be a legally qualified person employed in the Service and whose terms and conditions of appointment shall be as prescribed in a letter of appointment.

(2) The Deputy Registrar shall perform such duties and assignment as may be directed to him by the Registrar.

Secretariat 12.-(1) There shall be established a Secretariat to the Council to assist it in the carrying out of its functions.

(2) The functions of the Secretariat shall be:

- (a) to implement the decisions of the Council;
- (b) to recommend proposals for the formulation of policies of the Council and to implement the policies adopted by the Council,
- (c) to establish and maintain relationship with organizations, institutions and agencies as may be appropriate for facilitating the implementation of the policies and the carrying out of the functions of the Council; and
- (d) to carry out other functions as the Council may be direct.

Other staff 13.-{ 1) Public officers may be employed or co-opted to the service

(2) Every public officer employed or co-opted as per sub-section (1) shall, without further assurance, be deemed to be part of the Secretariat of the Council.

PART IV REGISTRATION

14.-(1) Any person who apply to be registered as a traditional health practitioner shall be required to present to the Registrar any relevant identification documents and a written statement from the local government authority within which he is practising

(2) An aide to the traditional health practitioner shall be enrolled by a mere fact that he is a Tanzanian citizen and attached to a traditional health practitioner.

15.-(1) Any person who apply to be registered as the alternative health practitioner shall be required to produce

(a) any degrees or certificates from a recognized institute; and

(b) any other relevant documents in support thereof.

(2) Any other additional qualification recognized may be considered for approval.

(3) An aide to the alternative health practitioner shall be enrolled by a mere fact that he is a Tanzanian citizen and attached to an alternative health practitioner.

16. Registration requirements provided for in sections 14 and 15 of this Act, shall include:

(a) filling of application form for respective category of the practising;

(b) submission of four photographs;

(c) presentation of testimonials; and

(d) payment of registration fees.

17. A practitioner shall be registered provisionally for a period of three years and he shall be issued with a certificate.

18. A person shall be issued with a certificate of full registration according to his category, after:

(a) fulfilling the requirements provided for under sections 14,15 and 16, as the case may be ; and

(b) fulfilling the requirements under the provisions of section 17.

19. A person who is not a citizen of Tanzania and wish to practice Temporary as a traditional or alternative health practitioner may apply and be issued with a temporary registration certificate if:

(a) he has fulfilled all requirements for full registration; and

(b) he has affiliated himself with a local institution.

20. A holder of temporary registration certificate shall be required to Conditions renew his certificate after every two years and shall not be allowed to for temporary change his physical address without prior permission from the Council.

21. Where the Council is satisfied in relation to any person who is a Tanzanian that such person:

(a) is registered as traditional or alternative practitioner under this Act; and

(b) wishes to move from one region to another or outside the country for the purpose of rendering services as such, it may grant a letter authorizing that person to render such services as the Council may specify.

22. Notwithstanding any provision relating to any applications which may be made under this Act, it shall be necessary for the Registrar to determine any application submitted to him within sixty days and in the event that any application is not determined as such, it shall be the duty of the Registrar to give reasons for failure to determine the application.

23. Where any traditional or alternative health practitioner who is registered provisionally, fully or temporarily under this Act is convicted of an offence or after due inquiry by the Council it is found that he is guilty of a professional misconduct, the Council may caution, censure such a practitioner or may order his suspension from practice for a period as it deems fit or may direct the Registrar to de-register such practitioner from the Register.

24.-(1) Where the Council is of the opinion that, a person enrolled under this Act has conducted himself in a manner inconsistent with his position as traditional or alternative health practitioner's aide, it may caution, censure or suspend that person or may de-register his name from the rolls.

(2) No enrolled person shall be cautioned or censured or suspended or his name removed from the rolls unless he had first been afforded an opportunity to be heard before an *ad-hoc* Committee.

25.-(1) The Council may on its own motion or on the application of a practitioner or aide, whose name has been de-registered from the Register or rolls, reinstate the name of that person.

(2) Where the name of a person is reinstated in accordance with the provision of subsection (1), the Council may restore the registration or enrolment of such a person and may impose a period of supervision or any other conditions as may be necessary.

26.-(1) Any decision of the Council in respect of de-registration, removal from the Register or rolls, caution, censure or suspension shall be stated and the reasons given to such an extent which may be necessary to enable a person, in respect of whom a decision has been made, to understand the nature of the decision.

(2) A decision of the Council shall be notified or communicated to a person concerned by a registered post.

27. A traditional or alternative health practitioner who is aggrieved Appeal to by a decision of the Council refusing registration may appeal to the Minister against such refusal within thirty days from the date of such notification.

28.-(1) Any person who is aggrieved by a decision of the Minister may, within thirty days from the notification to him of the decision, or within a further period as the High Court may allow, appeal to the High Court.

(2) Every appeal referred to under subsection (1) shall be by way of a petition and a copy served on the Registrar and shall state facts and grounds in respect of which an appeal is preferred and be accompanied by a copy of a decision appealed against.

29. Any person registered or enrolled under this Act shall be in breach of professional conduct and personal behaviour if:

(a) he neglects or disregards professional responsibilities to patients in respect of their care and treatment;

(b) he abuses professional privileges and skills;

(c) his personal behaviours and conducts are derogatory to the reputation of the traditional and alternative health medicine;

(d) he disparages his professional colleagues;

(e) he associates in his work with unqualified persons; and

(f) his conduct would amount to an offence against the law relating to the control of dangerous drugs.

30. Nothing in this Act shall be construed as authorizing any person to practice:

(a) witchcraft; or

(b) traditional or alternative health medicine, if that practice is or likely to be dangerous to health or life of another person.

PART V

RIGHTS AND DUTIES OF TRADITIONAL AND ALTERNATIVE HEALTH PRACTITIONERS

31. A person registered under this Act as traditional or alternative health practitioner shall be entitled to engage in traditional and alternative health practice.

32. Every person registered under this Act as traditional or alternative health practitioner shall be entitled to demand, sue for and recover in any court reasonable charges for professional aid, advice or visits and the value of any medicine rendered or supplied by him.

33. Any person enrolled under this Act as a traditional or alternative health practitioner's aide shall be entitled to engage in traditional or alternative health practice only under the supervision of a registered traditional or alternative health practitioner.

34.-(1) Where circumstances demand, a traditional or alternative health practitioner shall make transfers to hospitals which are below the district level.

(2) Notwithstanding the provisions of subsection (1), the Minister shall in the regulations prescribe the mechanisms for transfer of patients from one traditional medicine facility by a traditional or alternative health practitioner to another facility.

35.-(1) It shall be the duty of every traditional or alternative health practitioner registered under this Act to attend and treat their patients with clear knowledge, skills and light attitude.

(2) Every registered traditional or alternative health practitioner shall ensure that:

(a) he is compatible with the traditional and alternative health profession;

(b) his conduct does not amount to professional misconduct;

(c) his conduct is commensurate to traditional and alternative health ethics and professional etiquettes;

(d) he adheres to the secrecy and confidentiality aspects of his patients;

(e) he transfers difficult cases to hospitals or other practitioners;

(f) he has a good system of keeping records to all cases attended by him;

(g) he observes cleanness of himself, appliances used and premises under which the service is rendered.

36.-(1) No person registered under this Act as a traditional or alternative health practitioner shall allow, associate or otherwise cause a person who is not registered as such to practice as traditional or alternative health practitioner.

(2) Subsection (1) shall not apply to an aide.

PART VI

REGULATION OF TRADITIONAL AND ALTERNATIVE MEDICINE PRACTICE

37.-(1) The Registrar shall, on behalf of the Council, receive complaints against any traditional or alternative health practitioner or aide and present such complaints to the Council.

(2) Every complaint shall be accompanied by a statutory declaration made by a patient, a relative of a patient or any person acting on behalf of a complainant or by a person interested in the act or omission giving rise to a complaint.

(3) Notwithstanding the provisions of subsection (2), the Council may on its own motion initiate any preliminary inquiry on a traditional or alternative health practitioner or aide if it is satisfied that information received by the Council warrants the holding of preliminary inquiry.

(4) Except for complaints made under subsection (3), no inquiry shall proceed until a statutory declaration has been obtained.

38.-(1) Where the Registrar has received a complaint he shall supply to a traditional or alternative health practitioner or aide against whom a complaint is made with copies of the complaint and all particulars.

(2) The Registrar shall require a traditional or alternative health practitioner against whom a complaint has been made to reply to the complaint.

39.-(1) Where the Registrar is satisfied that a traditional or alternative health practitioner or an aide against whom a complaint has been filed has not offered sufficient explanation or the reply is such that would require the holding of an inquiry, he shall conduct a preliminary inquiry.

(2) The Registrar shall during the preliminary inquiry, be accompanied by at least two traditional or alternative health practitioners not being members of the Council to assist him to gather evidence.

(3) When the Registrar has completed preliminary inquiry he shall report to the Council, and the Council shall determine whether or not to hold the inquiry.

40.-(1) Where the Council is of the opinion that, no *prima facie* case has been made out against the traditional or alternative health practitioner or aide as the case may be, it shall direct the Registrar to inform both parties of the Council's intention not to hold an inquiry.

(2) Notwithstanding the provision of subsection(1), the Council may re-conduct preliminary inquiry where fresh evidence has been availed before it.

Procedure 41.-(1) Where the Council is of the opinion that, a *prima facie* case for Inquiry has been made out it shall direct that an inquiry be held in which case, a formal charge shall be drawn by the Registrar or his Deputy.

(2) During the inquiry the person against whom the inquiry is being conducted, shall be entitled to appear in person or by an advocate.

(3) For the purpose of proceedings during the inquiry:

(a) the Chairman shall administer oaths; and

(b) the teaa! advisor shall-

(i) issue summon. directing the parties to attend and give evidence;

(ii) present the case against the traditional or alternative health practitioner or aids;

(iii) advise the Council on matters.

(4) The Council shall have power to make any such order as to payment by any party of any costs or witness expenses as it may think fit and the order so made shall be enforceable to the same extent and in the same manner as an order for costs made by the High Court.

(5) Subject to the rules of practice, Council shall regulate its procedure for the conduct of an inquiry.

42. As soon as practicable, after the conclusion of an inquiry, the Registrar shall serve notice of the determination of the Council on the traditional or alternative health practitioner or aide in respect of whom an inquiry was held.

43. Any person who is aggrieved by the decision of the Council in relation to an inquiry conducted pursuant to the provisions of this Act, may appeal to the High Court within thirty days from the date of the decision against which an appeal is preferred and the provisions of the Criminal Procedure Act, 1985 shall apply in respect thereof.

(2) Subject to provisions of the Criminal Procedure Act, 1985, a person aggrieved by the decision of the Minister may appeal to the High Court.

44. A conviction by a court of law against an aide or a traditional or alternative health practitioner in respect of an offence which relates to traditional or alternate health practice shall constitute a *prima facie* evidence that such an aide or a practitioner's conduct is derogatory to the reputation of the traditional and alternative health profession.

PART VII OFFENCES AND PENALTIES

45.-(1) Any person who practices as traditional health practitioner or aide without being registered or enrolled as the case may be under this Act, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both, such fine and imprisonment.

(2) Any person who practice as alternative health practitioner or aide without being registered or enrolled as the case may be under this Act, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both, such fine and imprisonment.

(3) In addition to the penalty imposed in pursuance of subsection (1), and (2), the trial court may order that any traditional medicine remedies or diagnostic instruments or appliances used by or

belonging to or found in possession of a person convicted, be forfeited, destroyed or otherwise disposed of.

46. Any person who:

(a) procures or attempts to procure registration or enrolment by;

(i) making or causing it to be made;

(ii) producing any false or fraudulent statement or document;

(b) deliberately makes or causes to be made any falsification in any matter relating to the Register or rolls.

(c) assists or aids any person to commit any of the acts prescribed under this section, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of two years or to both such fine and imprisonment.

47.-(1) Any person who contravenes the provisions of section 19 or 20, commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term of two years or to both, such fine and imprisonment.

(2) In addition to the penalty imposed under subsection (1), the trial court may order that any traditional or alternative medicine remedies or diagnostic instruments or appliances used by or belonging to or found in possession of a person convicted, be forfeited, destroyed or otherwise disposed of.

48. Any person who:

(a) will fully and falsely uses any name or title implying a qualification to practice as a traditional or alternative health practitioner; or

(b) having been summoned by the Council fails:

(i) to attend without reasonable cause;

(ii) without reasonable cause to produce any book or document which he is required to produce; or

(c) refuses, without lawful excuse, to answer any question put to him in the cause of the proceedings of the Council;

(d) contravenes any other provisions of this Act, commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of one year or to both such imprisonment and fine.

PART VIII FINANCIAL PROVISIONS

49.-(1) The funds and resources of the Council shall consist of:

(a) the sums of money as may be appropriated by the Parliament;

(b) all fees payable under this Act;

(c) such donations, grants, bequeaths or loans as the Council may receive from any person or organization;

(d) any other moneys legally acquired;

(2) The funds and resources of the Council shall be applied for the purposes for which the Council is established and in accordance with the directions of the Council.

(3) The Registrar shall keep proper audited accounts and other records relating to or in respect of the funds and resources of the Council.

50.-(1) The Registrar shall, within a period of three months before the end of each financial year, prepare and submit to the Council for approval, estimates of income and expenditure of the Council for the next ensuing financial year.

(2) Upon approval of estimates by the council, the Registrar shall

forward the estimates to the Minister for approval with or without variation.

(3) No expenditure shall be made out of funds of the Council unless any such expenditure has been approved by the Council.

51. Management of Council's funds shall be in accordance with the Financial Management Manual approved by the Council.

52.-(1) Members of the Council and the Secretariat shall be paid from the funds of the Council such allowances as the Council may determine.

(2) In determining the allowances, the Council shall make provisions for reimbursement of any expenses incurred in connection with the business of the Council.

PART IX

GENERAL PROVISIONS

53. No act done or omitted to be done by the Council, Standing Committees or *ad-hoc* Committee, the Registrar or any other person empowered to perform any function under this Act shall, if done or omitted to be done in good faith during or in the exercise or purported performance of any function provided under this Act, render a member of the Council, Standing Committees or *ad-hoc* Committee, the Registrar or such any other person personally liable for the matter or thing concerned.

54.-(1) The Council shall have a seal to be kept under the custody of the Registrar.

(2) The affixing of the Seal of the Council on any document shall be authenticated by the signature of the Chairman and the Registrar.

(3) A document purporting to be an instrument issued by the Council and authenticated in the manner provided for under sub section (2), shall be deemed to be a valid instrument and admissible in evidence.

55.-(1) The Minister may make regulations generally for the better carrying out of the provisions of this Act.

(2) Notwithstanding the provisions of subsection (1), the Minister may:

- (a) regulate the practice of traditional and alternative health;
- (b) prescribe ethics and standards of conduct for the traditional and alternative health practitioners or aides;
- (c) amend or vary any Schedule to this Act;
- (d) regulate the sale and storage of traditional and alternative medicine remedies.
- (e) prohibit or restrict the use or sale of any traditional or alternative medicine remedy;
- (f) establish or strengthen the national medicinal plants databank or compendiums;
- (g) prepare the national approved list of medicinal plants;
- (h) regulate the manufacture, importation, exportation distribution and labeling of traditional medicines remedy and other related products.
- (i) provide regulations for registration of traditional and alternative remedies, methods and equipment;
- (j) provide regulations and prescribe guidelines on matters related to formal training of traditional medical knowledge;
- (k) provide for use of titles , descriptions, abbreviations and dosages;
- (l) subject to the provisions of the Patents Act, 1987, provide for matters related to patenting of traditional medicine inventions.
- (m) prescribing qualifications, which shall be recognized as entitling the holder to registration or enrolment under this Act;
- (n) prescribing the conduct of ad-hoc Committees; and
- (o) prescribing anything which, in the opinion of the Minister, is incidental or conducive to the exercise of the functions and powers of the Council, the Committee or Minister as provided for under this Act.

FIRST SCHEDULE

Made under section 5(6)

PROCEDURES OF THE MEETINGS

- 1.-(1) The Council shall ordinarily meet at such times and places as it deems necessary for transaction of its business, but shall meet at least once every three months.
- (2) The Chairman or in his absence, the Vice-Chairman, may at any time call an extra ordinary meeting of the Council, upon a written request by a majority of the members in office;
- (3) The Chairman, or in his absence the Vice-Chairman, shall preside at every meeting of the Council and in the absence of both the members present shall appoint a member from amongst themselves to preside over the meeting.
- 2_ If a member of the Council who is a member by virtual of his office is unable for any reason to attend any meeting of the Council he may nominate another person from his organization to represent him in the meeting.
3. The quorum at any meeting of the Council shall be half the members in office.
- 4.-(1) Subject to sub-section (2), matters proposed at a meeting of the Council shall be decided by a majority of the votes of the members present and voting, in the event of an equality of votes, the Chairman or person presiding over the meeting shall have a casting vote in addition to his deliberative vote.
- (2) A decision may be made by the Council without a meeting by circulation of the relevant papers among the members and the expression of the views of the members in writing, but any member may require that the decision be deferred and the matter be considered at a meeting of the Council.
- 5.-(1) The Registrar shall record and keep minutes of all business conducted or transacted at the meeting and the minutes of each meeting of the Council shall be read and confirmed or amended and confirmed at the next meeting of the Council and signed by the Chairman or person presiding over the meeting and the Secretary.
6. The validity of any act or proceedings of the Council shall not be affected by any vacancy among its members or by any defect in the appointment of anyone of them.
7. Subject to the provisions of this Schedule, the Council may regulate its own proceedings.
8. Any document purporting to be under the hand of the Registrar as to any resolution of the Council or as having been issued on behalf of the Council, shall be receivable in all courts or tribunals or other bodies authorized to receive evidence and shall unless the contrary is shown, be deemed, without further proof, to be sufficient evidence of what is contained therein.

SECOND SCHEDULE

Made under Section 8 (2)

COMPOSITION AND PROCEEDINGS OF THE STANDING COMMITTEES

I. The Academic Committee shall be consisted of the following members:

- (a) the Chairman;
- (b) a member from the Ministry of Science, Technology and Higher Education;
- (c) a member from the Institute of Traditional Medicine;
- (d) a member qualified in alternative medicine;
- (e) two members qualified as traditional health practitioners;
- (f) a member from the Traditional Medicine Unit;
- (g) a member from the Ministry of Education and Culture; and
- (h) a member from the Ministry's Training Department.

2.-(1) The Professional Conduct Committee shall be consisted of the following members:

- (a) the Chairman;
- (b) three members qualified as traditional health practitioners;
- (c) two members qualified as alternative health practitioners;
- (d) a legally qualified person from the Attorney General's Chambers;
- (e) a traditional birth attendant; and

- (f) a member from the Traditional Medicine Unit.
- (2) The Committee may co-opt any person to attend its meetings but such a person shall not take part in any decision reached by the Committee.
3. The Research and Development Committee shall be consisted of the following members:
- (a) the Chairman;
 - (b) a member qualified as a traditional health practitioner;
 - (c) a member qualified as an alternative health practitioner;
 - (d) a member qualified as a traditional birth attendant;
 - (e) a member from the Botany Department of the University of Oar es Salaam;
 - (f) three members from the Traditional Medicine Institute;
 - (g) a member from the National Institute for Medical Research;
 - (h) a member from the Commission for Science and Technology.
 - (i) a member from the Traditional Medicine Unit;
 - (j) a member from the Authority responsible for food, drugs, cosmetics and medical devices.
 - (k) a member from a pharmaceutical industry.
- 4.-(1) The functions of the Academic Committee shall be:
- (a) to determine the category of formal training in traditional and alternative medicines;
 - (b) to identify and approve training institutions for traditional and alternative medicines;
 - (c) to acknowledge the training curricula for traditional and alternative medicines;
 - (d) to scrutinize, regulate, approve, monitor and evaluate the implementation of CUTricula of traditional and alternative medicines; and
 - (e) to make report to the Council.
- (2) The functions of the Professional Conduct Committee shall be:
- (a) to promote the maintenance and enforcement of professional traditional and alternative medicine ethics;
 - (b) to discuss issues related to misconduct, limitations, offences and recommend to the Council for appropriate action; and
 - (c) to report to the Council.
- (3) The functions of the Research and Development Committee shall be:-
- (a) to promote science and technology of material aspects of traditional and alternative medicines;
 - (b) to coordinate research, utilization and information on medicinal plants and other materia medica;
 - (c) to develop guidelines and standards, for traditional and alternative medicines research;
 - (d) to recommend the production and utilization of useful medicinal plants and other materia medica;
 - (e) to set standards for remedies, alternative medicines equipment, instruments and machineries;
 - (f) to establish data bank on researched and community based medicinal plants and other materia medica;
 - (g) to liaise with local and international researchers on efficacy, safety and quality of medicinal plants and other materia medica;
 - (h) to liaise with local and external industries on issues relating to the production of herbal medicines and other material medica; and
 - (i) to report to the Council.
- 5.-(1) The Council shall appoint all members of the Standing Committees.
- (2) Every member shall, unless his appointment is sooner terminated by the Council or he ceases in any other way to be a member, hold office for a period of three years but shall be eligible for reappointment.

- (3) Any member appointed by virtue of his office shall cease to be a member upon ceasing to hold such office.
- (4) The Committee may co-opt any person to attend its meetings but such a person shall not take part in any decision reached by the Committee.
- 6.-(1) The Chairmen for the Committees shall be selected by the Council from amongst its members.
- (2) The Vice-Chairmen shall be selected by the respective Committees from amongst its members;
- 7.-(1) Every Committee shall ordinarily meet at such times and places as it deems necessary for transaction of its business, once after every three months.
- (2) The Chairman or in his absence, the Vice-Chairman may at any time call an extra ordinary meeting upon a written request by a majority of the members in office.
- (3) The Chairman or in his absence, the Vice-Chairman, shall preside at every meeting of the Committee and in their absence, the members present, shall appoint a member from amongst themselves to preside over the meeting.
8. The quorum at any meetings of the Committees shall be half of the members in office.
9. All matters proposed at any meeting of the Committees shall be decided by a majority of votes of members present and voting and in the event an equality of votes, the Chairman or a person presiding over the meeting shall have a casting vote in addition to his deliberative vote.
- 10(1) The Registrar shall record and keep minutes of all business conducted or transacted at Minutes of the meetings and the minutes of each meeting shall be read and confirmed or amended and confirmed at the next meeting and be signed by the Chairman or person presided over the meeting and the Secretary.
- (2) Any minutes purporting to be signed by the Chairman or person presiding over the meeting and the Secretary shall in the absence of proof of error be deemed to be a correct record of the meeting whose minutes they purport to be.
11. Subject to the provisions of this Schedule, the Committees may regulate their own proceedings.

THIRD SCHEDULE

Made under section 5(7)

REGULATION OF TRADITIONAL MEDICINE REMEDIES, HERBAL MEDICINE AND ALTERNATIVE MEDICINE REMEDIES.

- I. The Council shall, for the purpose of better carrying out of the provisions of this Act:
- (a) regulate alternative medicine remedies, methods and appliances;
 - (b) regulate traditional medicine remedies in order:
 - (i) to regulate local marketing of traditional remedies;
 - (ii) to guarantee safe use by the population;
 - (Hi) to ensure that the sale of remedies is not done outside a region under which he practices without approval of the Council;
 - (c) regulate herbal medicine and other traditional medicine practices;
 - (d) to enforce registration of traditional and alternative medicine facilities; and
 - (e) regulate importation and exportation of traditional medicine remedies, herbal medicine and alternative medicine remedies.
 - (f) to protect medicinal plants grown within the country.;
 - (g) to manaae traditional medicine remedies at the practioner's level; and
 - (h) to provide for sustainable management, utilization and development of material medical used in traditional medicine, mostly plants.
- 2.-(1) The Council may regulate any other activities related to the regulation of traditional medicines.
- (2) The Minister may set fees and charges as he deems fit, for various services rendered under this Act.

56. Vanuatu

This Act has limited dealing with TK and TCE

Copyright and Related Rights Act 2000

Commencement: 8th February 2011

An Act to provide for copyright and related rights. Be it enacted by the President and the Parliament as follows-

PART 1 PRELIMINARY MATTERS

INTERPRETATION 1. (1) In this Act, unless the contrary intention appears:

'artistic work' means:

- (a) a painting, sculpture, drawing, engraving, lithography, tapestry, photograph and other works of fine art whether of artistic quality or not; or
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) an illustration, map, plan, sketch and a three-dimensional work relating to geography, topography, architecture or science; or
- (d) a work of applied art;

'audiovisual work' means a work that consists of a series of related visual images which impart the impression of motion, with or without accompanying sounds, susceptible to being made visible, and includes the aggregate of the sounds embodied in a sound-track associated with such visual images;

'author' of a work is the individual who has created the work;

'broadcast' means a sound or visual broadcast by wireless transmission, including by satellite, to the public;

'collective work' is a work created by 2 or more individuals at the initiative and under the direction of another person on the understanding that:

- (a) the work will be disclosed by that other person under that person's own name; and
- (b) the identity of the contributing individuals will not be indicated;

'computer' is an electronic device having digital information-processing capabilities;

'computer program' means a set of statements or instructions to be used directly or indirectly by a computer in order to bring about a certain result;

'copyright' in a work comprises the economic rights set out in section 8 and the moral rights set out in section 9 in relation to the work;

'dramatic work' includes:

- (a) a dramatic work, dramatic-musical work, pantomime, choreographic work and other works created for stage productions; and
- (b) a scenario or script for an audiovisual work;

'economic right' means a right mentioned in section 8, 23, 27 or 30;

'expression of indigenous culture' means any way in which indigenous knowledge may appear or be manifested, and includes:

- (a) all material objects; and
- (b) names, stories, histories and songs in oral narratives; and
- (c) dances, ceremonies and ritual performances or practices; and
- (d) the delineated forms, parts and details of designs and visual compositions; and
- (e) specialised and technical knowledge and the skills required to implement that knowledge, including knowledge and skills about biological resources, biological resource use and systems of classification;

'fixation' means the embodiment of:

(a) sounds or visual images; or

(b) the representations of sounds or visual images;

in such a manner that they can at a later time be perceived, reproduced or communicated with or without the aid of a device (for example, a recording of a live musical performance);

'indigenous knowledge' means any knowledge:

(a) that is created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and

(b) whose nature or use of which has been transmitted from generation to generation; and

(c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu;

'infringement' is any act that infringes copyright or any other right protected under this Act, and includes any act done in relation to an expression of indigenous culture that is taken to be an infringement under section 42;

'infringing copy' means:

(a) in relation to a work or sound recording - a reproduction of the work or sound recording; and

(b) in relation to a broadcast or performance- a reproduction of a fixation of the broadcast or performance;

being a thing the making or importing of which is an infringement of a right protected under this Act;

'literary work' includes:

(a) a book, pamphlet, article, computer program and other writings; and

(b) a speech, lecture, address, sermon and other oral works;

'moral right' means a right mentioned in section 9 or 24;

'musical works' include musical works with or without accompanying words;

'National Cultural Council' means the Vanuatu National Cultural Council established by the Vanuatu National Cultural Council Act [CAP 186];

'owner' of a right protected under this Act has the meaning given by subsections (3) to (5);

'performers' mean singers, musicians, and other persons who sing, deliver, play in or otherwise perform:

(a) dramatic works (including an improvisation) or part of such a work; or

(b) musical works or part of such a work; or

(c) literary works or part of such a work; or

(d) expressions of indigenous culture;

'person' means an individual, a statutory body, a company or any other body corporate or unincorporate;

'photograph' means a product of photography or of a process similar to photography, but does not include a still picture extracted from an audiovisual work;

'producer' of an audiovisual work or a sound recording is the person that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

'public lending' means the lending by a public institution, such as a public library or archive, of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes;

'published' means making available to the public in a reasonable quantity for sale, rental or public lending;

'reproduction' is the making of one or more copies of a work or sound recording in any manner or form, including any permanent or temporary storage of the work or sound recording in electronic form;

'rights management information' has the meaning given by section 2;

'right protected under this Act' means:

(a) the copyright in a work; or

(b) any other right protected under section 23, 24, 27 or 30;

'sound recording' is any exclusively aural fixation of sounds or representation of sounds regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied, but does not include a fixation of sounds and images, such as the sound track of an audiovisual work;

'work' has the meaning given by sections 5 and 6;

'work of applied art' means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

'work of joint authorship' is a work created by 2 or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of the other authors, but does not include a collective work.

(2) A reference in this Act:

(a) to the doing of an act in relation to a work or other subject matter is to be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject matter; and

(b) to a reproduction, adaptation or copy of a work is to be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, as the case may be.

(3) The owner of the copyright in a work is the author of the work or any other person who is the original owner of the economic rights in the work in accordance with section 20 (eg an employer is usually the owner of the copyright in the work of an employee). (4) However, if the economic rights in a work are owned by another person (eg the author or other original owner has assigned the economic rights to another person), that other person is the owner of the copyright in the work. (5) The owner of any other right protected under this Act is the person specified in the relevant section as the owner of that right (eg the performer is the owner of the rights protected under section 23).

RIGHTS MANAGEMENT INFORMATION

2. Information is rights management information if it is:

(a) information that identifies any of the following:

(i) the author of a work;

(ii) a work;

(iii) a performer;

(iv) the performance of a performer;

(v) the producer of a sound recording;

(vi) a sound recording;

(vii) a broadcaster;

(viii) a broadcast;

(ix) the owner of any right protected under this Act; or

(b) information about the terms and conditions of use of a work, a performance, a sound recording or a broadcast and any numbers or codes that represent such information;

and is information that:

(c) is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast; or

(d) appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast.

APPLICATION 3. This Act applies to works, performances, sound recordings, broadcasts and expressions of indigenous culture that:

(a) are created on or after the commencement of this Act; or

(b) were in existence before that commencement.

CONTRACTUAL RIGHTS NOT AFFECTED

4. This Act does not affect contracts or agreements made before the commencement of this Act relating to works, performances, sound recordings, broadcasts or expressions of indigenous culture.

WORKS PROTECTED

5. (1) work is an original intellectual creation. (2) Without limiting subsection (1), each of the following is a work:

- (a) an artistic work;
- (b) a literary work;
- (c) a dramatic work;
- (d) a musical work;
- (e) an audiovisual work;
- (f) a collective work.

(3) Works are protected by the sole fact of their creation and irrespective of their mode or form of expression, content, quality or purpose.

DERIVATIVE WORKS 6. The following are also to be protected as works:

- (a) translations, adaptations, arrangements and other transformations or modifications of works;
- (b) collections of works, collections of data sets (whether in machine readable or other form), and collections of expressions of indigenous culture if the collections are original by reason of the selection or arrangement of their contents.

CERTAIN SUBJECT MATTER NOT PROTECTED

7. Despite sections 5 and 6, any idea, procedure, system, method of operation, concept, principle, discovery or mere data, (even if expressed, described, explained, illustrated or embodied in a work) is not a work and is not protected under this Act.

PART 2 COPYRIGHT

ECONOMIC RIGHTS 8. (1) The owner of the copyright in a work has the exclusive right to carry out or to authorize the following acts in relation to the work:

- (a) to reproduce the work in any manner or form;
- (b) to publish the work;
- (c) to perform or display the work in public;
- (d) to broadcast the work;
- (e) to make an adaptation, arrangement or other transformation of the work;
- (f) to translate the work;
- (g) to cause the work to be transmitted to subscribers to a communications service;
- (h) to distribute the work to the public by sale, rental, public lending or otherwise;
- (i) to enter into a commercial rental arrangement in respect of an audiovisual work, a work reproduced in a sound recording or a musical work in the form of a notation;
- (j) in the case of a computer program - to enter into a commercial rental arrangement in respect of the program;
- (k) in the case of an artistic work - to include the work in a television broadcast;
- (l) to communicate the work in any other way to the public;
- (m) to import copies of the work.

(2) The rental rights under paragraph (1)(j) do not apply unless the computer program is the essential object of the rental or lending.

MORAL RIGHTS 9. (1) The author of a work has the moral rights set out in subsection (2) in relation to the work independently of his or her economic rights in the work, (including when the author is no longer the owner of the economic rights in the work). (2) The moral rights are:

- (a) to have the author's name indicated prominently on copies of the work and in connection with any public use of the work, as far as practicable; and
- (b) to not have the author's name indicated on copies of the work and in connection with any public use of the work; and
- (c) to use a pseudonym; and
- (d) to object to:
 - (i) any distortion, mutilation or other modification of the work; or
 - (ii) any other action in relation to the work;if it would be prejudicial to the author's honour or reputation. (3) Moral rights are not transmissible during the life of the author. However, after an author dies the right to exercise moral rights is transmissible by testamentary disposition or by operation of law. (4) An author may waive all or any of his or her moral rights. (5) A waiver must:
 - (a) be in writing; and
 - (b) specify the right or rights waived; and
 - (c) specify the circumstances in which the waiver applies, including the nature and extent of the modification or other action in respect of which the right is waived.(6) Following the death of the author, the person upon whom the author's moral rights have devolved has the right to waive those rights.

PART 3 ACTS NOT CONSTITUTING INFRINGEMENT OF COPYRIGHT IN WORKS

PRIVATE REPRODUCTION FOR PERSONAL PURPOSES

10. (1) Subject to subsection (2), an individual may reproduce a published work in a single copy exclusively for his or her own personal purposes and the reproduction is not an infringement of the copyright in the work. (2) An individual must not reproduce the following:

- (a) a work of architecture in the form of a building or other construction;
- (b) the whole or a substantial part of a book or musical work in the form of notation;
- (c) the whole or a substantial part of a database in digital form;
- (d) a computer program, except as provided for in section 16;
- (e) any work if the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of the copyright.

TEMPORARY REPRODUCTION

11. A temporary reproduction of a work is not an infringement of the copyright in the work if:

- (a) the reproduction is made in the process of a digital transmission of the work or is an act of making a digitally stored work perceptible; and
- (b) the person is lawfully entitled to make the transmission or the making perceptible of the work.

QUOTATION

12. (1) The reproduction of a short part of a published work in the form of a quotation is not an infringement of the copyright in the work if the reproduction:

- (a) is compatible with fair practice; and
- (b) does not exceed the extent justified by the purpose.

(2) The quotation must be accompanied by:

- (a) an indication of its source; and
- (b) the name of the author if his or her name appears in the work from which the quotation is taken.

REPRODUCTION FOR EDUCATIONAL OR LEGAL PURPOSES

13. (1) The reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, is not an infringement of the copyright in the work if:

- (a) the reproduction is compatible with fair practice; and
- (b) the reproduction does not exceed the extent justified by the purpose; and
- (c) a collective licence to reproduce the work is not available to the educational institution concerned.

(2) The source of the work reproduced and the name of the author must be indicated as far as practicable on all copies made under subsection (1). (3) A fair dealing with a work for the purpose of research or study does not constitute an infringement of the copyright in the work. (4) The copyright in a work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding. (5) A fair dealing with a work does not constitute an infringement of the copyright in the work if it is for the purpose of the giving of professional advice by a legal practitioner or patent attorney.

REPRODUCTION BY LIBRARIES AND ARCHIVES

14. (1) This section applies to a library or archive that does not operate for commercial gain. (2) The reproduction of a work in a single copy by the library or archive is not an infringement of the copyright in the work if:

- (a) the work reproduced is a published article or a short extract of a work; and
- (b) the purpose of the reproduction is to satisfy the request of an individual; and
- (c) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research; and
- (d) a collective licence to reproduce the work is not available to the library or archive.

(3) The reproduction of a work in a single copy by a library or archive is not an infringement of the copyright in the work if:

- (a) the copy is made in order:
 - (i) to preserve a copy of the work; or
 - (ii) to replace a copy of the work which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive; and
- (b) it is impossible to obtain such a copy under reasonable conditions.

REPRODUCTION, BROADCASTING AND OTHER COMMUNICATION TO THE PUBLIC FOR INFORMATION PURPOSES

15. (1) If:

- (a) a person:
 - (i) reproduces a work or broadcast referred to in subsection (3), (4) or (5) in a newspaper or periodical publication; or
 - (ii) broadcasts or communicates in any other way to the public such a work or broadcast; and
- (b) the person indicates the source of the subject matter and the name of the author as far as practicable;

the reproduction, broadcast or other communication of the work or broadcast is not an infringement of copyright. (2) Subsection (1) does not apply if the right to authorise the

reproduction, broadcasting or other communication to the public of the work is expressly reserved by the owner of the copyright in the work:

- (a) on the copies of the work; or
- (b) in connection with broadcasting or other communication to the public of the work.

(3) A person may reproduce:

- (a) an article published in a newspaper or periodical publication on a topic of current interest; or
- (b) a broadcast on a topic of current interest.

(4) A person may reproduce:

- (a) a political speech, a lecture, address, sermon or a work of a similar nature delivered in public; or
- (b) a speech delivered during legal proceedings;
- (c) to the extent justified by the purpose of providing current information.

(5) A person may reproduce for the purpose of reporting current events short excerpts of a work seen or heard in the course of such events to the extent justified by the purpose. (6) A fair dealing with a work does not constitute an infringement of the copyright in the work if:

- (a) it is for the purpose of criticism or review, whether of that work or of another work; and
- (b) an acknowledgment of the work and the author as far as practicable is made.

REPRODUCTION AND ADAPTATION OF COMPUTER PROGRAMS

16. (1) The lawful owner of a copy of a computer program may reproduce a single copy of the computer program, or make an adaptation of the computer program, if the copy or adaptation is necessary for:

- (a) the use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
- (b) archival purposes; or
- (c) replacement of the lawfully owned copy of the computer program if that copy is lost, destroyed or rendered unusable.

(2) The reproduction or adaptation of a computer program in accordance with subsection (1) is not an infringement of the copyright in the computer program. (3) A copy or adaptation of a computer program must not be used for any purpose other than a purpose mentioned in subsection (1). (4) A copy or adaptation of a computer program must be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

IMPORTATION FOR PERSONAL PURPOSES

17. An individual may import a copy of a work for his or her own personal purposes and the importation is not an infringement of the copyright in the work.

DISPLAY OF WORKS

18. (1) A person may display in public the original or copies of a work if:

- (a) the display is made other than by means of an audiovisual work, slide, television image or otherwise on screen; and
- (b) either:
 - (i) the work has been published; or
 - (ii) the original or the copy of the work displayed has been sold, given away or otherwise transferred to another person by the author or his or her successor in title.

(2) The display of the work in accordance with subsection (1) is not an infringement of the copyright in the work. (3) The display in public of the original or copies of a work by means of an audiovisual work, slide, television image or otherwise on screen is not an infringement of copyright in the work if its inclusion in such is only incidental to the principal matters being represented.

PART 4 DURATION, NATURE AND ASSIGNMENT OF COPYRIGHT IN WORKS DURATION OF COPYRIGHT PROTECTION

19. (1) The copyright in a work is protected for the period set out in the Table.

COPYRIGHT PROTECTION PERIOD TABLE		
Item	Kind of work	Period of protection of economic and moral rights
1.	Work of joint authorship	During the life of the last surviving author and for 50 years after his or her death
2.	Collective work (other than an work of applied art) and an audiovisual work	For 50 years on and after the date on which the work: was made; or first made available to the public; first published; whichever date is the latest
3.	Work published anonymously or under a pseudonym	For 50 years on and after the date on which the work: (a) was made; or (b) first made available to the public; (c) first published; whichever date is the latest See also subsection (2)
4.	Work of applied art	25 years on and after the making of the work
5.	Any other work	During the lifetime of the author and for 50 years after his or her death.

57. Venezuela

Decree-Law No. 41 Approving Convention No. 169 on Indigenous People and Tribes (2000)

Deals with Traditional Cultural Expressions, Traditional Knowledge (TK). No English version available

58. Vietnam

Although listed in WIPOLEX as addressing traditional knowledge and genetic resources there are no express provisions in this law dealing with those issues YK mentioned in copyright law

LAW ON INTELLECTUAL PROPERTY

(No. 50/2005/QH11)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

This Law provides for intellectual property.

Part One GENERAL PROVISIONS

Article 1.-Governing scope This Law provides for copyright, copyright-related rights, industrial property rights, rights to plant varieties and the protection of these rights.

Article 2.-Subjects of application This Law applies to Vietnamese organizations and individuals; foreign organizations and individuals that satisfy the conditions specified in this Law and treaties to which the Socialist Republic of Vietnam is a contracting party.

Article 3.-Subject matters of intellectual property rights

1. Subject matters of copyright include literary, artistic and scientific works; subject matters of copyright-related rights include performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.
2. Subject matters of industrial property rights include inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications.
3. Subject matters of rights to plant varieties include plant varieties and reproductive materials.

Article 4.-Interpretation of terms In this Law, the following terms shall be construed as follows:

Intellectual property rights mean rights of organizations and individuals to intellectual assets, including copyright and copyright-related rights, industrial property rights and rights to plant varieties.

Copyright means rights of organizations and individuals to works they have created or own.

Copyright-related rights (hereinafter referred to as related rights) mean rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-

carrying satellite signals.

Industrial property rights mean rights of organizations and individuals to inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications they have created or own, and right to repression of unfair competition.

Rights to plant varieties mean rights of organizations and individuals to new plant varieties they have selected, created or discovered and developed, or own.

An intellectual property right holder means an owner of intellectual property rights or an organization or individual that is assigned intellectual property rights by the owner.

A work means a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression.

A derivative work means a work which is translated from one language into another, adapted, modified, transformed, compiled, annotated or selected.

A published work, phonogram or video recording means a work, phonogram or video recording which has been made available to the public with the permission of the copyright holder or related right holder in a reasonable amount of copies.

Reproduction means the making of one or many copies of a work or a phonogram or video recording by whatever mode or in whatever form, including permanent or provisional backup of the work in electronic form.

Broadcasting means the transmission of sound or image or both sound and image of a work, a performance, a phonogram, a video recording or a broadcast to the public by wire or wireless means, including satellite transmission, in such a way that members of the public may access that work from a place and at a time they themselves select.

An invention means a technical solution in form of a product or a process which is intended to solve a problem by application of laws of nature.

An industrial design means a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements.

A semiconductor integrated circuit means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. Integrated circuit is synonymous to IC, chip and microelectronic circuit.

A layout-design of semiconductor integrated circuit (hereinafter referred to as layout-design) means a three-dimensional disposition of circuit elements and their interconnections in a semiconductor integrated circuit.

A mark means any sign used to distinguish goods and/or services of different organizations or individuals.

A collective mark means a mark used to distinguish goods and/or services of members from those of non-members of an organization which is the owner of such mark.

A certification mark means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods and/or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods and/or services bearing the mark.

An integrated mark means identical or similar marks registered by the same entity and intended for use on products or services which are of the same type or similar types or interrelated.

A well-known mark means a mark widely known by consumers throughout the Vietnamese territory.

A trade name means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and

area. A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.

A geographical indication means a sign which identifies a product as originating from a specific region, locality, territory or country.

A trade secret means information obtained from activities of financial and/or intellectual investment, which has not yet been disclosed and can be used in business.

A plant variety means a plant grouping within a single botanical taxon of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant grouping by the expression of at least one inheritable phenotype.

A protection title means a document granted by the competent state agency to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout-design, trademark or geographical indication; or rights to a plant variety.

Article 5.-Application of law

1. Where there exist intellectual property-related civil matters which are not provided for in this Law, the provisions of the Civil Code shall apply.
2. Where there exist differences between this Law's provisions on intellectual property and those of other laws, the provisions of this Law shall apply.
3. Where a treaty to which the Socialist Republic of Vietnam is a contracting party contains provisions different from those of this Law, the provisions of such treaty shall apply.

Article 6.- Bases for the emergence and establishment of intellectual property rights

1. Copyright shall arise at the moment when a work is created and fixed in a certain material form, irrespective of its content, quality, presentation, means of fixation, language and whether or not it has been published or registered.
2. Related rights shall arise at the moment when a performance, phonogram, video recording, broadcast or encrypted program-carrying satellite signal is fixed or displayed without any prejudice to copyright.
3. Industrial property rights are established as follows:

a/ Industrial property rights to an invention, industrial design, layout-design, mark or geographical indication shall be established on the basis of a decision of the competent state agency on the grant of a protection title according to the registration procedures stipulated in this Law or the recognition of international registration under treaties to which the Socialist Republic of Vietnam is a contracting party; for a well-known mark, industrial property rights shall be established on the basis of use process, not subject to any registration procedures.

b/ Industrial property rights to a trade name shall be established on the basis of lawful use thereof;

c/ Industrial property rights to a trade secret shall be established on the basis of lawful acquirement and confidentiality thereof;

d/ Rights to repression of unfair competition shall be established on the basis of competition in business.

4. Rights to a plant variety shall be established on the basis of a decision of the competent state agency on the grant of plant variety protection title according to the registration procedures specified in this Law.

Article 7.- Limitations on intellectual property rights

1. Intellectual property right holders shall only exercise their rights within the scope and term of protection provided for in this Law.
2. The exercise of intellectual property rights must neither be prejudicial to the State's interests, public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law.
3. In the circumstances where the achievement of defense, security, people's life-related objectives and other interests of the State and society specified in this Law should be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals with appropriate terms.

Article 8.- The State's intellectual property policies

1. To recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; not to protect intellectual property objects which are contrary to the social ethics and public order and prejudicial to defense and security.
2. To encourage and promote activities of creation and utilization of intellectual assets in order to contribute to the socio-economic development and the improvement of the people's material and spiritual life.
3. To provide financial supports for the receipt and exploitation of assigned intellectual property rights for public interests; to encourage organizations and individuals at home or abroad to provide financial aids for creative activities and the protection of intellectual property rights.
4. To prioritize investment in training and fostering the contingent of cadres, public servants and other relevant subjects engaged in the protection of intellectual property rights and the research into and application of sciences and techniques to the protection of intellectual property rights.

Article 9.- Right and responsibility of organizations and individuals for the protection of intellectual property rights

Organizations and individuals have the right to apply measures allowed by law to protect their intellectual property rights and have the responsibility to respect intellectual property rights of other organizations and individuals in accordance with the provisions of this Law and other relevant provisions of law.

Article 10.-Contents of state management of intellectual property

1. Formulating and directing the materialization of strategies and policies on protection of intellectual property rights.
2. Promulgating and organizing the implementation of legal documents on intellectual property.
3. Organizing the apparatus for management of intellectual property; training and fostering intellectual property personnel.
4. Granting and carrying out other procedures related to registered copyright certificates, registered related rights certificates, protection titles for industrial property objects and plant variety protection titles.
5. Inspecting and examining the observance of intellectual property law; settling complaints and denunciations, and handling violations of intellectual property law.
6. Organizing intellectual property information and statistical activities.
7. Organizing and managing intellectual property assessment activities.
8. Educating, communicating and disseminating intellectual property knowledge and law
9. Entering into international cooperation on intellectual property.

Article 11.- Responsibilities for state management of intellectual property

1. The Government shall exercise unified state management of intellectual property.
2. The Science and Technology Ministry shall be answerable to the Government for assuming the prime responsibility for, and coordinating with the Culture and Information Ministry and the Agriculture and Rural Development Ministry in, performing the state management of intellectual property and the state management of industrial property rights.

The Culture and Information Ministry shall, within the ambit of its tasks and powers, perform the state management of copyright and related rights.

The Agriculture and Rural Development Ministry shall, within the ambit of its tasks and powers, perform the state management of rights to plant varieties.

1. Ministries, ministerial-level agencies and Government-attached agencies shall, within the ambit of their tasks and powers, have to coordinate with the Science and Technology Ministry, the Culture and Information Ministry, the Agriculture and Rural Development Ministry and provincial/municipal People's Committees in performing the state management of intellectual property.
2. People's Committees at all levels shall perform the state management over intellectual property in their localities.
3. The Government shall specify the powers and responsibilities for state management of intellectual property of the Science and Technology Ministry, the Culture and Information Ministry, the Agriculture and Rural Development Ministry and People's Committees at all levels.

Article 12.- Intellectual property fees and charges

Organizations and individuals shall have to pay fees and/or charges when carrying out the procedures related to intellectual property rights according to the provisions of this Law and other

relevant provisions of law.

Part Two

COPYRIGHT AND RELATED RIGHTS Chapter I CONDITIONS FOR PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Section 1. CONDITIONS FOR PROTECTION OF COPYRIGHT

Article 13.-Authors and copyright holders that have works covered by copyright

1. Organizations and individuals that have works covered by copyright include persons who personally create such works and copyright holders defined in Articles 37 thru 42 of this Law.
2. Authors and copyright holders defined in Clause 1 of this Article include Vietnamese organizations and individuals; foreign organizations and individuals that have works first published in Vietnam and not yet published in any other country, or simultaneously published in Vietnam within thirty days after its first publication in another country; foreign organizations and individuals that have works protected in Vietnam under international conventions on copyright to which the Socialist Republic of Vietnam is a contracting party.

Article 14.- Types of works covered by copyright

1. Literary, artistic and scientific works covered by copyright include:

a/ Literary and scientific works, textbooks, teaching courses and other works expressed in written languages or other characters; b/ Lectures, addresses and other sermons; c/ Press works; d/ Musical works; e/ Dramatic works; f/ Cinematographic works and works created by a process analogous to cinematography (hereinafter referred to collectively as cinematographic works); g/ Plastic-art works and works of applied art; h/ Photographic works; i/ Architectural works; j/ Sketches, plans, maps and drawings related to topography or scientific works; k/ Folklore and folk art works of folk culture; l/ Computer programs and compilations of data.

Derivative works shall be protected according to the provisions of Clause 1 of this Article only if it is not prejudicial to the copyright to works used to create such derivative works. Protected works defined in Clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others' works.

1. The Government shall guide in detail the types of works specified in Clause 1 of this Article.

Article 15.-Subject matters not covered by copyright protection

1. News of the day as mere items of press information.
2. Legal documents, administrative documents and other documents in the judicial domain and official translations of these documents.
3. Processes, systems, operation methods, concepts, principles and data.

Section 2. CONDITIONS FOR PROTECTION OF RELATED RIGHTS

Article 16.-Organizations and individuals eligible for protection of related rights

1. Actors/actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter referred to collectively as performers).
2. Organizations and individuals that own performances defined in Clause 1, Article 44 of this Law.
3. Organizations and individuals that first fix sounds and images of performances or other sounds and images (hereinafter referred to collectively as producers of phonograms and video recordings).
4. Organizations which initiate and carry out the broadcasting (hereinafter referred to as broadcasting organizations).

Article 17.-Subject matters of related rights eligible for protection

1. Performances shall be protected if they fall into one of the following cases: a/ They are made by Vietnamese citizens in Vietnam or abroad; b/ They are made by foreigners in Vietnam; c/ They are fixed on phonograms or video recordings, and protected under the provisions of Article 30 of this Law; d/ They have not yet been fixed on phonograms or video recordings but already been broadcast, and are protected under the provisions of Article 31 of this Law; e/ They are protected under treaties to which the Socialist Republic of Vietnam is a contracting party.
2. Phonograms and video recordings shall be protected if they fall into one of the following cases: a/ They belong to phonogram and video recording producers bearing the Vietnamese nationality; b/ They belong to phonogram and video recording producers protected under treaties to which the Socialist Republic of Vietnam is a contracting party.
3. Broadcasts and encrypted program-carrying satellite signals shall be protected if they fall into one of the following cases:
 - a/ They belong to broadcasting organizations bearing the Vietnamese nationality;
 - b/ They belong to broadcasting organizations protected under treaties to which the Socialist Republic of Vietnam is a contracting party.
4. Performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals shall only be protected under the provisions of Clauses 1, 2 and 3 of this Article provided that they are not prejudicial to copyright.

Chapter II CONTENTS OF, LIMITATIONS ON AND TERM OF PROTECTION OF COPYRIGHT AND RELATED RIGHTS

Section 1. CONTENTS OF, LIMITATIONS ON AND TERM OF PROTECTION OF COPYRIGHT **Article 18.-**

Copyright Copyright to works provided for in this Law consists of moral rights and economic rights.

Article 19.-Moral rights Moral rights of authors include the following rights:

1. To title their works;
2. To attach their real names or pseudonyms to their works; to have their real names or pseudonyms acknowledged when their works are published or used;
3. To publish their works or authorize other persons to publish their works;
4. To protect the integrity of their works, and to prevent other persons from modifying, mutilating or distorting their works in whatever form prejudicial to their honor and reputation.

Article 20.- Economic rights

1. Economic rights of authors include the following rights: a/ To make derivative works; b/ To display their works to the public; c/ To reproduce their works; d/ To distribute or import original works or

copies thereof; e/ To communicate their works to the public by wire or wireless means, electronic information networks or any other technical means; f/ To lease original cinematographic works and computer programs or copies thereof.

2. The rights specified in Clause 1 of this Article shall be exclusively exercised by authors or copyright holders, or granted by authors or copyright holders to other persons for exercise under the provisions of this Law.

3. Organizations and individuals, when exercising one, several or all of the rights specified in Clause 1, this Article and Clause 3, Article 19 of this Law, shall have to ask for permission of and pay royalties, remunerations and other material benefits to copyright holders.

Article 21.- Copyright to cinematographic works and dramatic works

1. Persons who act as directors; screenwriters; cameramen; montage-makers; music composers; art designers; studio sound, lighting and art designers; studio instrument and technical-effect designers, and persons engaged in other creative jobs in the making of cinematographic works, shall enjoy the rights specified in Clauses 1, 2 and 4, Article 19 of this Law and other agreeable rights. Persons who act as directors, playwrights, choreographers, music composers, art designers, stage sound, lighting and art designers, stage instrument and technical-effect designers, and persons engaged in other creative jobs in the making of dramatic works, shall enjoy the rights specified in Clauses 1, 2 and 4, Article 19 of this Law and other agreeable rights.

2. Organizations and individuals that invest their finance and material-technical facilities in the production of cinematographic works and dramatic works shall be holders of the rights specified in Clause 3, Article 19 and Article 20 of this Law.

3. Organizations and individuals defined in Clause 2 of this Article are obliged to pay royalties, remunerations and other material benefits as agreed upon with the persons defined in Clause 1 of this Article.

Article 22.- Copyright to computer programs and compilations of data

1. A computer program means a set of instructions which is expressed in form of commands, codes, diagrams or any other form and, when incorporated in a device readable to computers, capable of enabling such computers to perform a job or achieve a designated result. Computer programs shall be protected like literary works, irrespective of whether they are expressed in form of source codes or machine codes.

2. A compilation of data means a set of data selected or arranged in a creative manner and expressed in electronic form or other forms. The protection of copyright to compilations of data does not cover, and is not prejudicial to copyright to those very data.

Article 23.-Copyright to folklore or folk art works of folklore

1. Folklore or folk art works mean collective creations based on traditions of a community or individuals reflecting such community's earnest expectations, of which the expression is appropriate to its cultural and social characteristics, and its standards and values, which have been handed down by imitation or other modes. Folklore and folk art works include:

a/ Folk tales, lyrics and riddles;

b/ Folk songs and melodies;

c/ Folk dances, plays, rites and games;

d/ Folk art products, including graphics, paintings, sculptures, musical instruments, architectural models, and products of other folk arts expressed in whatever material form.

2. Organizations and individuals using folklore and folk art works of folklore must refer to their sources and preserve their true values.

Article 24.- Copyright to literary, artistic and scientific works

The protection of copyright to literary, artistic and scientific works provided for in Clause 1, Article 14 of this Law shall be specified by the Government.

Article 25.- Cases of use of published works where permission and payment of royalties and/or remunerations are not required

1. Cases of use of published works where permission or payment of royalties and/or remunerations is not required include:

a/ Duplication of works by authors for scientific research or teaching purpose; b/ Reasonable recitation of works without misrepresenting the authors' views for commentary or illustrative purpose; c/ Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries; d/ Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose; e/ Reprographic reproduction of works by libraries for archival and research purpose; f/ Performance of dramatic works or other performing-art works in mass cultural, communication or mobilization activities without collecting any charges in any form; g/ Audiovisual recording of performances for purpose of reporting current events or for teaching purpose; h/ Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for purpose of presenting images of such works; i/ Transcription of works into Braille or characters of other languages for the blind; j/ Importation of copies of others' works for personal use.

1. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause prejudice to rights of the authors and/or copyright holders; and must indicate the authors' names, and sources and origins of the works.
2. The use of works in the cases specified in Clause 1 of this Article shall not apply to architectural works, plastic works and computer programs.

Article 26.- Cases of use of published works where permission is not required or but the payment of royalties and/or remunerations is required

Broadcasting organizations which use published works in making their broadcasts, which are sponsored, advertised or charged in whatever form, shall not have to obtain permission but have to pay royalties or remunerations to copyright holders according to the Government's regulations.

1. Organizations and individuals that use works defined in Clause 1 of this Article must neither affect the normal utilization of such works nor cause any prejudice to the rights of the authors and/or copyright holders; and must indicate the authors' names, and sources and origins of the works.

2.The use of works in the cases specified in Clause 1 of this Article shall not apply to cinematographic works.

Article 27.- Term of copyright protection

1. The moral rights provided for in Clauses 1, 2 and 4, Article 19 of this Law shall be protected for an indefinite term.
2. The moral rights provided for in Clause 3, Article 19 and the economic rights provided for in Article 20 of this Law shall enjoy the following terms of protection:
 - a/ Cinematographic works, photographic works, dramatic works, works of applied art and anonymous works shall have the term of protection of fifty years as from the date of first publication. Within fifty years after the fixation of a cinematographic work or dramatic work, if such work has not been published, the term of protection shall be calculated from the date of its fixation. For anonymous works, when information on their authors appear, the term of protection shall be calculated under the provisions of Point b of this Clause.
 - b/ A work not specified at Point a of this Clause shall be protected for the whole life of the author and for fifty years after his/her death. For a work under joint authorship, the term of protection shall expire in the fiftieth year after the death of the last surviving co-author;
 - c/ The term of protection specified at Points a and b of this Clause shall expire at 24:00 hrs of December 31 of the year of expiration of copyright protection term.

Article 28.-Acts of infringing upon copyright

1. Appropriating copyright to literary, artistic or scientific works.
2. Impersonating authors.
3. Publishing or distributing works without permission of authors.
4. Publishing or distributing works under joint-authorship without permission of co-authors.
- 5, Modifying, mutilating or distorting works in such a way as prejudicial to the honor and reputation of authors.
6. Reproducing works without permission of authors or copyright holders, except for the cases specified at Points a and e, Clause 1, Article 25 of this Law.
- 7.Making derivative works without permission of authors or holders of copyright to works used for the making of derivative works, except for the cases specified at Point i, Clause 1, Article 25 of this Law;
8. Using works without permission of copyright holders, without paying royalties, remunerations or other material benefits according to the provisions of law, except for the cases specified in Clause 1, Article 25 of this Law.

9. Leasing works without paying royalties, remunerations or other material benefits to authors or copyright holders.

10. Duplicating, reproducing, distributing, displaying or communicating works to the public via communication networks and by digital means without permission of copyright holders.

11. Publishing works without permission of copyright holders.

12. Willingly canceling or deactivating technical solutions applied by copyright holders to protect copyright to their works.

13. Willingly deleting or modifying right management information in electronic form in works.

14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment may deactivate technical solutions applied by copyright holders to protect copyright to their works.

15. Making and selling works with forged signatures of authors of original works.

16. Exporting, importing or distributing copies of works without permission of copyright holders.

Section 2. CONTENTS OF, LIMITATIONS ON, AND TERM OF PROTECTION OF RELATED RIGHTS **Article**

29.- Rights of performers

1. Performers-cum-investors shall have the moral rights and economic rights to their performances. Where performers are not also investors, performers shall have the moral rights whereas investors shall have the economic rights to performances.
2. Moral rights include the following rights:
 - a/ To be acknowledged when performing or distributing phonograms, video recordings, or broadcasting performances;
 - b/ To protect the integrity of performed figures, prevent others from modifying, mutilating or distorting works in whatever form prejudicial to the honor and reputation of performers.
3. Economic rights include exclusive rights to exercise or authorize others to exercise the following rights:
 - a/ To fix their live performances on phonograms or video recordings;
 - b/ To directly or indirectly reproduce their performances which have been fixed on phonograms or video recordings;
 - c/ To broadcast or otherwise communicate to the public their unfixed performances in a way accessible by the public, except where such performances are intended for broadcasting;
 - d/ To distribute to the public their original performances and copies thereof by mode of sale, rental or distribution by whatever technical means accessible by the public.

4. Organizations and individuals that exploit and use the rights provided for in Clause 3 of this Article shall have to pay remunerations to performers according to the provisions of law or under agreements in the absence of relevant provisions of law.

Article 30.- Rights of producers of phonograms and video recordings

1. Producers of phonograms and video recordings shall have the exclusive right to exercise or authorize others to exercise the following rights:

a/ To directly or indirectly reproduce their phonograms and video recordings;

b/ To distribute to the public their original phonograms and video recordings and copies thereof by mode of sale, rent or distribution by whatever technical means accessible by the public. 13

2. Producers of phonograms and video recordings shall enjoy material benefits when their phonograms and video recordings are distributed to the public.

Article 31.- Rights of broadcasting organizations

1. Broadcasting organizations shall have the exclusive right to exercise or authorize others to exercise the following rights: a/ To broadcast or rebroadcast their broadcasts; b/ To distribute to the public their broadcasts; c/ To fix their broadcasts; d/ To reproduce their fixed broadcasts.

2. Broadcasting organizations shall enjoy material benefits when their broadcasts are recorded and distributed to the public.

Article 32.- Cases of use of related rights where permission and payment of royalties and/or remunerations are not required

1. Cases of use of related rights where permission and payment of royalties and/or remunerations are not required include:

a/ Duplication of works by authors for scientific research purpose; b/ Duplication of works by authors for teaching purpose, except for performances, phonograms, video recordings or broadcasts which have been published for teaching purpose;

c/ Reasonable recitation for informative purpose; d/ Making of provisional copies of works by broadcasting organizations themselves for broadcasting purpose when they enjoy the broadcasting right.

2. Organizations and individuals that use the rights specified in Clause 1 of this Article must neither affect the normal utilization of performances, phonograms, video recordings or broadcasts, nor cause any prejudice to the rights of performers, producers of phonograms and video recordings, and broadcasting organizations.

Article 33.- Cases of use of related rights where permission is not required but payment of royalties and/or remunerations is required

1. Organizations and individuals that use related rights in the following cases shall not have to ask for permission but must pay agreed royalties and/or remunerations to performers, producers of phonograms and/or video recordings, or broadcasting organizations:

a/ They directly or indirectly use phonograms or video recordings already published for commercial purposes in making their broadcasts, which are sponsored, advertised or charged in whatever form;

b/ They use phonograms or video recordings already published in business or commercial activities.

2. Organizations and individuals that use the rights specified in Clause 1 of this Article must neither affect the normal utilization of performances, phonograms, video recordings or broadcasts, nor cause any prejudice to the rights of performers, producers of phonograms and video recordings, and broadcasting organizations.

Article 34.- Term of related right protection

The rights of performers shall be protected for fifty years counting from the year following the year of fixation of their performances.

The rights of producers of phonograms or video recordings shall be protected for fifty years counting from year following the year of publication, or fifty years counting from the year following the year of fixation of unpublished phonograms or video recordings.

The rights of broadcasting organizations shall be protected for fifty years counting from the year following the year of the making of their broadcasts.

1. The term of protection specified in Clauses 1, 2 and 3 of this Article shall expire at 24:00 hrs of December 31 of the year of expiration of related right protection term.

Article 35.-Acts of infringing upon related rights

Appropriating the rights of performers, producers of phonograms and/or video recordings and broadcasting organizations.

Impersonating performers, producers of phonograms and video recordings and broadcasting organizations.

Publishing, producing and distributing fixed performances, phonograms, video recordings and broadcasts without permission of performers, producers of phonograms and video recordings and broadcasting organizations.

Modifying, mutilating or distorting performances in whatever form prejudicial to the honor and reputation of performers.

Copying or reciting fixed performances, phonograms, video recordings and broadcasts without permission of performers, producers of phonograms and video recordings and broadcasting organizations.

Disengaging or modifying right management information in electronic form without permission of related right holders.

Willingly canceling or deactivating technical solutions applied by related right holders to protect their related rights

Publishing, distributing or importing for public distribution performances, copies of fixed performances or phonograms or video recordings when knowing or having grounds to know that right management information in electronic form has been disengaged or modified without permission of related right holders.

Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing or having grounds to know that such equipment help illegally decode an encrypted program-carrying satellite signal.

Willingly receiving or relaying an encrypted program-carrying satellite signal when such signal has been encoded without permission of the legal distributor.

Chapter III COPYRIGHT HOLDERS, RELATED RIGHT HOLDERS

Article 36.- Copyright holders Copyright holders mean organizations and individuals that hold one, several or all the economic rights specified in Article 20 of this Law.

Article 37.- Copyright holders being authors Authors who use their own time, finance and material-technical foundations to create works shall have the moral rights specified in Article 19 and the economic rights specified in Article 20 of this Law.

Article 38.- Copyright holders being co-authors

1. Co-authors who use their time, finance and material-technical foundations to jointly create works shall share the rights specified in Articles 19 and 20 of this Law to such works.
2. A co-author defined in Clause 1 of this Article who has jointly created a work, a separate part of which can be detached for independent use without any prejudice to parts of other co-authors, shall have the rights specified in Articles 19 and 20 of this Law to such separate part.

Article 39.- Copyright holders being organizations and individuals that have assigned tasks to authors or entered into contracts with authors

1. Organizations which have assigned tasks of creating works to authors who belong to them shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law, unless otherwise agreed.
2. Organizations and individuals that have entered into contracts with authors for creation of works shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law, unless otherwise agreed.

Article 40.- Copyright holders being heirs

Organizations and individuals that inherit the copyright according to the provisions of law on inheritance shall be holders of the rights specified in Article 20 and Clause 3, Article 19 of this Law.

Article 41.- Copyright holders being right assignees Organizations and individuals that are assigned one, several or all of the rights specified in Article 20 and Clause 3, Article 19 of this Law under contracts shall be copyright holders.

Article 42.- Copyright holders being the State

1. The State shall be the holder of copyright to the following works: a/ Anonymous works; b/ Works, of which terms of protection have not expired but their copyright holders die in default of heirs, heirs renounce succession or are deprived of the right to succession. c/ Works, over which the ownership right has been assigned by their copyright holders to the State.
2. The Government shall specify the use of works under the State ownership.

Article 43.- Works belonging to the public

1. Works, of which terms of protection have expired according to the provisions of Article 27 of this Law shall belong to the public.
2. All organizations and individuals shall be entitled to use works defined in Clause 1 of this Article but must respect the moral rights of the authors specified in Article 19 of this Law.
3. The Government shall specify the use of works belonging to the public. **Article 44.-Related right holders**
 1. Organizations and individuals that use their time and invest their finance and material-technical foundations in making performances shall be owners of such performances, unless otherwise agreed with the concerned parties.
 2. Organizations and individuals that use their time and invest their finance and material-technical foundations in producing phonograms and/or video recordings shall be owners of such phonograms and/or video recordings, unless otherwise agreed with the concerned parties.
 3. Broadcasting organizations shall be owners of their broadcasts, unless otherwise agreed with concerned parties.

Section 1. ASSIGNMENT OF COPYRIGHT AND RELATED RIGHTS **Article 45.-**

General provisions on assignment of copyright and related rights

1. The assignment of copyright and related rights means the transfer by copyright holders or related right holders of the ownership of the rights specified in Clause 3, Article 19; Article 20; Clause 3, Article 29; Articles 30 and 31 of this Law to other organizations and individuals under contracts or according to the relevant provisions of law.
2. Authors must not assign the moral rights specified in Article 19, except the right of publication; performers must not assign the moral rights specified in Clause 2, Article 29 of this Law.
3. Where a work, performance, phonogram, video recording or broadcast is under joint ownership, the assignment thereof must be agreed upon by all co-owners. In case of joint ownership but a work, performance, phonogram, video recording or broadcast is composed of separate parts which can be detached for independent use, copyright holders or related right holders may assign their copyright or related rights to their separate parts to other organizations or individuals.

Article 46.- Copyright or related right assignment contracts

1. A copyright or related right assignment contract must be established in writing and include the following principal contents: a/ Names and addresses of the assignor and the assignee; b/ Assignment bases; c/ Payment price and mode; d/ Rights and obligations of the involved parties; e/ liability for contract breaches.

2. The performance, amendment, termination or cancellation of copyright or related right assignment contracts shall comply with the provisions of the Civil Code.

Section 2. LICENSING OF COPYRIGHT AND RELATED RIGHTS **Article 47.-**

General provisions on licensing of copyright and related rights

1. Licensing of copyright and related rights means the permission by copyright holders or related right holders for other organizations and individuals to use for a definite term one, several or all the rights specified in Clause 3, Article 19; Article 20; Clause 3, Article 29; Articles 30 and 31 of this Law.
2. Authors must not license the moral rights specified in Article 19, except the right of publication; performers must not license the moral rights specified in Clause 2, Article 19 of this Law.
3. Where a work, performance, phonogram, video recording or broadcast is under joint ownership, the licensing of copyright or related rights must be agreed upon by all co-owners. In case of joint ownership but a work, performance, phonogram, video recording or broadcast is composed of separate parts which can be detached for independent use, copyright holders or related right holders may license their copyright or related rights to their separate parts to other organizations or individuals.
4. Organizations and individuals that are licensed copyright or related rights may license other organizations and individuals when obtaining the permission of copyright holders or related right holders.

Article 48.- Copyright or related right license contracts

1. A copyright or related right license contract must be established in writing and include the following principal contents: a/ Full names and addresses of the licensor and the licensee; b/ Licensing bases; c/ Licensing scope; d/ Payment price and mode; e/ Rights and obligations of the involved parties; f/ Liability for contract breaches.
2. The performance, amendment, termination or cancellation of copyright or related right license contracts shall comply with the provisions of the Civil Code.

Chapter V CERTIFICATES OF REGISTERED COPYRIGHT OR RELATED RIGHTS

Article 49.- Registration of copyright or related rights

The registration of copyright and related rights means the filing of applications and enclosed dossiers (hereinafter referred to collectively as applications) by authors, copyright holders or related right holders with the competent state agencies for recording of information on authors, works, copyright holders and related right holders.

2. The filing of applications for grant of certificates of registered copyright or certificates of registered related rights is not a compulsory formality for enjoyment of copyright or related rights according to the provisions of this Law.
3. Organizations and individuals that are granted certificates of registered copyright or certificates of registered related rights shall not have to bear the burden of proof of such copyright and related rights upon disputes, unless rebutting proofs are adduced.

Article 50.- Applications for registration of copyright or related rights

1. Authors, copyright holders or related right holders may directly file or authorize other organizations or individuals to file applications for registration of copyright or related rights.
2. An application for registration of copyright or related rights comprises:

a/ A written declaration for registration of copyright or related rights.

A written declaration must be made in Vietnamese and signed by the author, copyright holder, related rights holder or person authorized to file the application, fully stating the information on the applicant, author, copyright holder or related rights holder; summarized content of the work, performance, phonogram, video recording or broadcast; the name of the author, the title of the work used to make derivative work in cases where the to be-registered work is a derivative work; the date, place and form of publication; the guaranteed responsibility for information stated in the application.

The Culture and Information Ministry shall set the form of written declarations for copyright or related right registration;

b/ Two copies of the work subject to application for copyright registration, or two copies of the fixed object subject to the related right registration;

c/ A letter of authorization where the applicant is the authorized person;

d/ Documents proving the right to file application where the applicant acquires such right due to inheritance, succession from or assignment by another person;

e/ Written consent of co-authors, for works under joint authorship;

f/ Written consent of co-owners if the copyright or related rights are under joint-ownership.

3. The documents specified at Point c, d, e and f, Clause 2 of this Article must be made in Vietnamese. Documents in foreign languages must be translated into Vietnamese.

Article 51.- Competence to grant registered copyright certificates, registered related rights certificates

The state management agency in charge of copyright and related rights is competent to grant registered copyright certificates and registered related rights certificates.

The state agency competent to grant registered copyright certificates and registered related rights certificates can re-grant, renew or revoke such certificates.

The Government specifies the conditions, order and procedures for re-grant, renewal and revocation of registered copyright certificates and registered related rights certificates.

The Culture and Information Ministry sets the forms of registered copyright certificates and registered related rights certificates.

Article 52.-Time limit for granting registered copyright certificates or registered related rights certificates

Within fifteen working days after the receipt of a valid dossier, the state management agency in charge of copyright and related rights shall have to grant a registered copyright certificate or registered related rights certificate to the applicant. In case of refusal to grant registered copyright certificates or registered related rights certificates, the state management agency in charge of copyright and related rights must notify such in writing to the applicants.

Article 53.- Validity of registered copyright certificates and registered related rights certificates

1. Registered copyright certificates and registered related rights certificates shall be valid throughout the Vietnamese territory.
2. Registered copyright certificates and registered related rights certificates, which have been granted by the state management agency in charge of copyright and related rights before the effective date of this Law shall continue to be valid.

Article 54.-Recording and publication of registered copyright or registered related rights

1. Registered copyright certificates and registered related rights certificates shall be recorded in the national register of copyright and related rights.
2. Decisions on grant, re-grant, renewal or revocation of registered copyright certificates and registered related rights certificates shall be published in the Official Gazette on copyright and related rights.

Article 55.-Re-grant, renewal and revocation of registered copyright certificates and registered related rights certificates

1. Where a registered copyright certificate or registered related rights certificate is lost or damaged, or where the copyright holder or related rights holder is changed, the competent agency defined in Clause 2, Article 51 of this Law shall re-grant or renew such registered copyright certificate or registered related rights certificate.
2. Where a registered copyright certificate or registered related rights certificate grantee is not the author, copyright holder or related right holder, or where the registered work, phonogram, video recording or broadcast is ineligible for protection, the competent state agency defined in Clause 2, Article 51 of this Law shall revoke such registered copyright certificate or registered related rights certificate.

3. Organizations and individuals that detect that the grant of registered copyright certificates and/or registered related rights certificates is contrary to the provisions of this Law are entitled to request the state management agency in charge of copyright and related rights to revoke such registered copyright certificates and registered related rights certificates.

Chapter VI

COPYRIGHT AND RELATED RIGHTS REPRESENTATION, CONSULTANCY AND SERVICE ORGANIZATIONS

Article 56.-Organizations acting as collective representatives of copyright and related rights

1. Organizations acting as collective representatives of copyright and/or related rights are not-forprofit organizations established under agreements among authors, copyright holders and/or related right holders and operating according to the provisions of law for protection of copyright and related rights.
2. Organizations acting as collective representatives of copyright and/or related rights shall conduct the following activities under authorization by authors, copyright holders and/or related right holders:

a/ Performing the management of copyright and/or related rights; conducting negotiations for licensing, collection and division of royalties, remunerations and other material benefits from the exercise of authorized rights;

b/ Protecting legitimate rights and interests of their members; organizing conciliations upon occurrence of disputes.

3. Organizations acting as collective representatives of copyright and/or related rights shall have the following rights and duties:

a/ To conduct creation-promoting activities and other social activities; b/ To cooperate with their counterparts in international and national organizations on the protection of copyright and related rights; c/ To make regular and irregular reports on collective representation activities to competent state agencies; d/ Other rights and duties according to the provisions of law.

Article 57.-Copyright and related right consultancy and service organizations

1. Copyright and related right consultancy and service organizations are established and operate according to the provisions of law.
2. Copyright and related right consultancy and service organizations shall conduct the following activities at the request of authors, copyright holders, related right holders:

a/ Providing consultancy on issues related to the provisions of law on copyright and/or related rights;

b/ Carrying out, on the behalf of copyright holders or related right holders, the procedures for filing applications for registration of copyright or related rights under authorization;

c/ Joining other legal relations on copyright, related rights, protection of legitimate rights and interests of authors, copyright holders and related right holders under authorization.

Part Three INDUSTRIAL PROPERTY RIGHTS Chapter VII CONDITIONS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

Section 1. PROTECTION CONDITIONS FOR INVENTIONS **Article 58.-**

General conditions for inventions eligible for protection

1. An invention shall be protected by mode of grant of invention patent when it satisfies the following conditions: a/ Being novel; b/ Involving an inventive step; c/ Being susceptible of industrial application.
2. Unless it is a common knowledge, an invention shall be protected by mode of grant of utility solution patent when it satisfies the following conditions: a/ Being novel; b/ Being susceptible of industrial application.

Article 59.-Subject matters not protected as inventions The following subject matters shall not be protected as inventions:

1. Scientific discoveries or theories, mathematical methods;
2. Schemes, plans, rules and methods for performing mental acts, training domestic animals, playing games, doing business; computer programs;
3. Presentations of information;
4. Solutions of aesthetical characteristics only;
5. Plant varieties, animal breeds;
6. Processes of plant or animal production which are principally of biological nature other than microbiological ones;
7. Human and animal disease prevention, diagnostic and treatment methods.

Article 60.-Novelty of inventions

An invention shall be considered novel if it has not yet been publicly disclosed through use or by means of a written description or any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the invention registration application. An invention shall be considered having not yet been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.

An invention shall not be considered having lost its novelty if it is published in the following cases, provided that the invention registration application is filed within 6 months from the date of publication:

a/ It is published by another person without permission of the person having the right to register it defined in Article 86 of this Law;

b/ It is published in the form of a scientific presentation by the person having the right to register it defined in Article 86 of this Law;

c/ It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it defined in Article 86 of this Law.

Article 61.-Inventive step of inventions

An invention shall be considered involving an inventive step if, based on technical solutions already publicly disclosed through use or by means of a written description or any other form, inside or outside the country, prior to the filing date or the priority date, as applicable, of the invention registration application, it constitutes an inventive progress and cannot be easily created by a person with average knowledge in the art.

Article 62.-Susceptibility of industrial application of inventions

An invention shall be considered susceptible of industrial application if it is possible to realize mass manufacture or production of products or repeated application of the process that is the subject matter of the invention, and to achieve stable results.

Section 2. PROTECTION CONDITIONS FOR INDUSTRIAL DESIGNS

Article 63.-General conditions for industrial designs eligible for protection

An industrial design shall be protected when it satisfies the following conditions:

1. Being new;
2. Being creative;
3. Being susceptible of industrial application.

Article 64.-Subject matters not protected as industrial designs The following subject matters shall not be protected as industrial designs:

Appearance of a product, which is dictated by the technical features of the product;

Appearance of a civil or an industrial construction work;

Shape of a product, which is invisible during the use of the product. **Article 65.-Novelty of industrial designs**

An industrial design shall be considered new if it significantly differs from other industrial designs that are already publicly disclosed through use or by means of written descriptions or in any other form, inside or outside the country, prior to the filing date or the priority date, as applicable, of the industrial design registration application.

1. Two industrial designs shall not be considered significantly different from each other if they are only different in appearance features which are not easily noticeable and memorable and which cannot be used to distinguish these industrial designs as whole.
2. An industrial design shall be considered having not yet been publicly disclosed if it is known to only a limited number of persons who are obliged to keep it secret.
3. An industrial design shall not be considered having lost its novelty if it is published in the following cases, provided that the industrial design registration application is filed within 6 months from the date of publication:

a/ It is published by another person without permission of the person having the right to register it defined in Article 86 of this Law;

b/ It is published in the form of a scientific presentation by the person having the right to register it defined in Article 86 of this Law;

c/ It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it defined in Article 86 of this Law.

Article 66.-Creativity of industrial designs

An industrial design shall be considered creative if, based on industrial designs already publicly disclosed through use or by means of written descriptions or in any other form, inside or outside the country, before the filing date or the priority date, as applicable, of the industrial design registration application, it cannot be easily created by a person with average knowledge in the art.

Article 67.-Susceptibility of industrial application of industrial designs

An industrial design shall be considered susceptible of industrial application if it can be used as a model for mass manufacture of products with appearance embodying such industrial design by industrial or handicraft methods.

Section 3. PROTECTION CONDITIONS FOR LAYOUT-DESIGNS

Article 68.-General conditions for layout-designs eligible for protection

A layout-design shall be protected when it satisfies the following conditions:
Being original; Being commercially novel.

Article 69.-Subject matters not protected as layout-designs The following subject matters shall not be protected as layout-designs: Principles, processes, systems or methods operated by semiconductor integrated circuits; Information or software contained in semiconductor integrated circuits.

Article 70.-Originality of layout-designs

A layout-design shall be considered original if it satisfies the following conditions: a/ Being result of its author's creative labor; b/ Having not been widely known among creators of layout-designs or manufacturers of semiconductor integrated circuits at the time of its creation.

2. A layout-design that is a combination of elements and common interconnections shall be considered to be original only if such combination, taken as a whole, is original according to the provisions of Clause 1 of this Article.

Article 71.-Commercial novelty of layout-designs

1. A layout-design shall be considered commercially novel if it has not yet been commercially exploited anywhere in the world prior to the filing date of the registration application.
2. A layout-design shall not be considered having lost its commercial novelty if the layout-design registration application is filed within 2 years from the date it was commercially exploited for the first time anywhere in the world by the person who has the right to register it defined in Article 86 of this Law or his/her licensee.
3. Commercial exploitation of a layout-design mentioned in Clause 2 of this Article means any act of public distribution for commercial purposes of a semiconductor integrated circuit produced by

incorporation of such layout-design, or a commodity containing such semiconductor integrated circuit.

Section 4. PROTECTION CONDITIONS FOR MARKS

Article 72.-General conditions for marks eligible for protection

A mark shall be protected when it satisfies the following conditions:

1. Being a visible sign in the form of letters, words, drawings or images, including holograms, or a combination thereof, represented in one or more colors;
2. Being capable of distinguishing goods or services of the mark owner from those of other subjects.

Article 73.-Signs not protected as marks

The following signs shall not be protected as marks:

Signs identical with or confusingly similar to national flags or national emblems;

Signs identical with or confusingly similar to emblems, flags, armorial bearings, abbreviated names or full names of Vietnamese state agencies, political organizations, socio-political organizations, socio-political-professional organizations, social organizations or socio-professional organizations or international organizations, unless permitted by such agencies or organizations;

Signs identical with or confusingly similar to real names, alias, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries;

Signs identical with or confusingly similar to certification seals, check seals or warranty seals of international organizations which require that their signs must not be used, unless such seals are registered as certification marks by those organizations;

Signs which cause misleading or confusion or deceive consumers as to the origin, properties, intended utilities, quality, value or other characteristics of goods or services.

Article 74.-Distinctiveness of marks

1. A mark shall be considered distinctive if it consists of one or several easily noticeable and memorable elements, or of many elements forming an easily noticeable and memorable combination, and does not fall into the cases specified in Clause 2 of this Article.
2. A mark shall be considered as indistinctive if it is a sign or signs falling into one of the following cases:

a/ Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such signs have been widely used and recognized as a mark;

b/ Conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and known to many people;

c/ Signs indicating time, place and method of production, category, quantity, quality, properties, ingredients, intended utility, value or other characteristics, which is descriptive of goods or services, except where such signs have acquired distinctiveness through use before the filing of mark registration applications;

d/ Signs describing the legal status and business field of business entities;

e/ Signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as collective marks or certification marks as provided for in this Law;

f/ Signs other than integrated marks which are identical with or confusingly similar to registered marks of identical or similar goods or services on the basis of registration applications with earlier filing dates or priority dates, as applicable, including mark registration applications filed under treaties to which the Socialist Republic of Vietnam is a contracting party;

g/ Signs identical with or confusingly similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the filing date or the priority date, as applicable;

h/ Signs identical with or confusingly similar to another person's mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than 5 years, except where the ground for such invalidation is non-use of the mark according to Point d, Clause 1, Article 95 of this Law;

i/ Signs identical with or confusingly similar to another person's mark recognized as a well-known mark which has been registered for goods or services which are identical with or similar to those bearing such well-known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well-known mark or the mark registration is aimed at taking advantage of the reputation of the well-known mark;

j/ Signs identical with or similar to another person's trade name currently in use if the use of such signs may cause confusion to consumers as to the origin of goods or services;

k/ Signs identical with or similar to a geographical indication being protected if the use of such signs may mislead consumers as to the geographical origin of goods;

l/ Signs identical with, containing or being translated or transcribed from geographical indications being protected for wines or spirits if such signs have been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;

m/ Signs identical with or insignificantly different from another person's industrial design which has been protected on the basis of an industrial design registration application with the filing date or priority date earlier than that of the mark registration application.

Article 75.-Criteria for evaluation of well-known marks

The following criteria shall be taken into account when a mark is considered well-known:

1. The number of involved consumers who have been aware of the mark through purchase or use of goods or services bearing the mark or through advertising;
 2. Territorial area in which goods or services bearing the mark are circulated;
 3. Turnover of the sale of goods or provision of services bearing the mark or the quantity of goods sold or services provided;
 4. Duration of continuous use of the mark;
 5. Wide reputation of goods or services bearing the mark;
 6. Number of countries protecting the mark;
 7. Number of countries recognizing the mark as a well-known mark;
- Assignment price, licensing price, or investment capital contribution value of the mark.

Section 5. PROTECTION CONDITIONS FOR TRADE NAMES

Article 76.-General conditions for trade names eligible for protection A trade name shall be protected when it is capable of distinguishing the business entity bearing it from other business entities operating in the same business field and locality.

Article 77.-Subject matters not protected as trade names Names of state agencies, political organizations, socio-political organizations, socio-political professional organizations, social organizations, socio-professional organizations or other entities that are not involved in business activities shall not be protected as trade names. **Article 78.**-Distinctiveness of trade names A trade name shall be considered distinctive when it satisfies the following conditions:

1. Consisting of a proper name, except where it has been widely known through use;
2. Being not identical with or confusingly similar to a trade name having been used earlier by another person in the same business field and locality;
3. Being not identical with or confusingly similar to another person's mark or a geographical indication having been protected before the date it is used.

Section 6. PROTECTION CONDITIONS FOR GEOGRAPHICAL INDICATIONS

Article 79.-General conditions for geographical indications eligible for protection A geographical indication shall be protected when it satisfies the following conditions:

1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication;
2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication.

Article 80.-Subject matters not protected as geographical indications

The following subject matters shall not be protected as geographical indications:

1. Names or indications which have become generic names of goods in Vietnam;

2. Geographical indications of foreign countries where they are not or no longer protected or no longer used;
3. Geographical indications identical with or similar to a protected mark, where the use of such geographical indications is likely to cause a confusion as to the origin of products;
4. Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications.

Article 81.-Reputation, quality and characteristics of products bearing geographical indications

1. Reputation of products bearing a geographical indication shall be determined on the basis of consumers' trust in such products through the extent of their being widely known to and selected by consumers.
2. Quality and characteristics of products bearing a geographical indication shall be defined by one or several qualitative, quantitative or physically, chemically, microbiologically perceptible criteria which can be tested by technical means or experts with appropriate testing methods.

Article 82.-Geographical conditions relevant to geographical indications

1. Geographical conditions relevant to a geographical indication mean natural and human factors decisive to reputation, quality and characteristics of products bearing such geographical indication.
2. Natural factors include climatic, hydrological, geological, topographical and ecological factors and other natural conditions.
3. Human factors include skills and expertise of producers, and traditional production processes of localities.

Article 83.-Geographical areas bearing geographical indications

Geographical areas bearing geographical indications shall have their boundaries accurately determined in words and maps.

Section 7. PROTECTION CONDITIONS FOR BUSINESS SECRETS

Article 84.-General conditions for business secrets eligible for protection

A business secret shall be protected when it satisfies the following conditions:

1. Being neither common knowledge nor easily obtained;
2. Being capable, when being used in business activities, of rendering advantages to its holder over those who do not hold or use it;
3. Being kept secret by its owner with necessary measures so that it shall neither be disclosed nor easily accessible.

Article 85.-Subject matters not protected as business secrets The following confidential information shall not be protected as business secrets:

1. Personal identification secrets;
2. State management secrets;

3. National defense and security secrets;
4. Other confidential information irrelevant to business.

Chapter VIII ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS TO INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT-DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS

Section 1. REGISTRATION OF INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT-DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS

Article 86.-The right to register inventions, industrial designs and layout-designs

1. The following organizations and individuals shall have the right to register inventions, industrial designs and layout-designs:

- a/ Authors who have created inventions, industrial designs or layout-designs with their own efforts and expenses;
- b/ Organizations or individuals who have supplied funds and material facilities to authors in the form of job assignment or hiring unless otherwise agreed by the involved parties whose agreements are not contrary to the provisions of Clause 2 of this Article.

The Government shall provide for the right to register inventions, industrial designs and layout-designs created by using material and technical facilities and funds from the state budget.

Where more than one organizations or individuals have jointly created or invested in the creation of an invention, industrial design or layout-design, these organizations or individuals shall all have the registration right, which shall only be exercised with their consensus.

A person who has the registration right as provided in this Article may assign that right to other organizations or individuals in the form of a written contract, bequeathal or inheritance in according to the provisions of law, even where a registration application has been filed.

Article 87.-Right to register marks

1. Organizations or individuals shall have the right to register marks to be used for goods they produce or services they provide.
2. Organizations or individuals lawfully trading in products produced by others shall have the right to register marks for such products, provided that the producers neither use such marks for their products nor object to such registration.
3. Collective organizations lawfully established shall have the right to register collective marks to be used by their members under the regulations on use of collective marks. For signs indicating geographical origins of goods or services, organizations having the right to register them shall be collective organizations of organizations or individuals engaged in production or trading in relevant localities.
4. Organizations with the function of controlling and certifying quality, properties, origin or other relevant criteria of goods or services shall have the right to register certification marks, provided that they are not engaged in production or trading of such goods or services.

5. Two or more organizations or individuals shall have the right to jointly register a mark in order to become its co-owners on the following conditions:
 - a/ Such mark is used in the names of all co-owners or used for goods or services which are produced or dealt in with the participation of all co-owners;
 - b/ The use of such mark causes no confusion to consumers as to the origin of goods or services.
1. Persons having the registration right defined in Clauses 1, 2, 3, 4 and 5 of this Article, including those having filed registration applications, may assign the registration right to other organizations or individuals in the form of written contracts, bequeathal or inheritance according to law, provided that the assigned organizations or individuals satisfy the respective conditions on the persons having the registration right.
2. For a mark protected in a country being a contracting party to a treaty which prohibits the representative or agent of a mark owner to register such mark and to which the Socialist Republic of Vietnam is also a contracting party, then such representative or agent shall not be permitted to register such mark unless it is so agreed by the mark owner, except where a justifiable reason is available.

Article 88.-Right to register geographical indications

The right to register Vietnamese geographical indications belongs to the State.

The State allows organizations and individuals producing products bearing geographical indications, collective organizations representing such organizations or individuals or administrative management agencies of localities to which such geographical indications pertain to exercise the right to register such geographical indications. Persons who exercise the right to register geographical indications shall not become owners of such geographical indications.

Article 89.-Modes of filing registration applications for establishment of industrial property rights Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam and foreign organizations or individuals having production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam.

1. Foreign individuals not permanently residing in Vietnam, foreign organizations or individuals having no production or business establishments in Vietnam shall file applications for registration of establishment of industrial property rights through their lawful representatives in Vietnam.

Article 90.-The first-to-file principle

1. Where two or more applications are filed by many different parties for registration of the same invention, or for registration of industrial designs identical with or insignificantly different from each other, or for registration of marks identical with or confusingly similar to each other, for identical or similar goods or services, the protection title may only be granted to the valid application with the earliest priority or filing date among applications that satisfy all the conditions for the grant of protection titles.

2. Where there are two or more applications satisfying all the conditions for the grant of protection titles and having the same earliest priority or filing date, the protection title may only be granted to a single application out of these applications under an agreement by all applicants. Without such an agreement, all these applications shall be refused for the grant of a protection title.

Article 91.-Principle of priority

1. An applicant for registration of an invention, an industrial design or a mark may claim priority on the basis of the first application for registration of protection of the same subject matter if the following conditions are fully satisfied:

a/ The first application has been filed in Vietnam or in a country being a contracting party to a treaty containing provisions on priority right to which the Socialist Republic of Vietnam is also a contracting party, or in a country having agreed with Vietnam to apply such provisions;

b/ The applicant is a citizen of Vietnam or of a country defined at Point a of this Clause, who resides or has a production or business establishment in Vietnam or in a country defined at Point a of this Clause;

c/ The claim for the priority right is clearly stated in the application and a copy of the first application certified by the receiving office is enclosed;

d/ The application is filed within the time limit provided for in a treaty to which Vietnam is contracting party.

1. In an invention, industrial design or mark registration application, the applicant may claim the priority right on the basis of different earlier filed applications, provided that the corresponding contents of such earlier applications and the application are indicated.
2. An industrial property registration application enjoying priority right shall bear the priority date being the filing date of the first application.

Article 92.-Protection titles

Protection titles shall recognize owners of inventions, industrial designs, layout-designs or marks (hereinafter referred to as protection title owners); authors of inventions, industrial designs or layout-designs; subject matters, scope and term of protection.

Protection titles of geographical indications shall record organizations managing such geographical indications, organizations or individuals having the right to use such geographical indications, protected geographical indications, particular characteristics of products bearing such geographical indications, particular characteristics of geographical conditions and geographical areas bearing such geographical indications.

1. Protection titles include invention patent, utility solution patent, industrial design patent, certificate of registered semiconductor integrated circuit layout-design, certificate of registered mark and certificate of registered geographical indication.

Article 93.-Validity of protection titles

1. Protection titles shall be valid throughout the Vietnamese territory.

2. Invention patents shall each have a validity starting from the grant date and expiring at the end of 20 years after the filing date.
3. Utility solution patents shall have a validity starting from the grant date and expiring at the end of 10 years after the filing date.
4. Industrial design patents shall have a validity starting from the grant date and expiring at the end of 5 years after the filing date and may be renewed for two consecutive terms, each of 5 years.
5. Certificates of registered semiconductor integrated circuit layout-designs shall each have a validity starting from the grant date and expiring at the earliest date among the following:

a/ The end of 10 years after the filing date; b/ The end of 10 years after the date the layout-designs were first commercially exploited anywhere in the world by persons having the registration right or their licensees; c/ The end of 15 years after the date of creation of the layout-designs.

1. Certificates of registered marks shall have a validity starting from the grant date and expiring at the end of 10 years after the filing date and may be renewed for many consecutive terms, each of 10 years.
2. Certificates of registered geographical indications shall have an indefinite validity starting from the grant date.

Article 94.-Maintenance and prolongation of validity of protection titles

1. In order to maintain the validity of an invention patent or a utility solution patent, its owner shall have to pay validity maintenance fee.
2. In order to have the validity of an industrial design patent or a certificate of registered mark prolonged, its owner shall have to pay validity prolongation fee.
3. Fee rates and procedures for maintaining or prolonging validity of protection titles shall be provided for by the Government.

Article 95.-Termination of validity of protection titles

1. The validity of a protection title shall be terminated in the following cases: a/ Its owner fails to pay the validity maintenance or prolongation fee as prescribed; b/ Its owner declares to relinquish the industrial property rights; c/ Its owner no longer exists or the owner of a certificate of registered mark is no longer engaged in business activities without any lawful heir; d/ The mark has not been used by its owner or his/her licensee without justifiable reasons for 5 consecutive years prior to a request for termination of validity, except where the use is commenced or resumed at least 3 months before the request for termination; e/ The owner of a certificate of registered collective mark fails to supervise or ineffectively supervises the implementation of the regulation on use of collective marks; f/ The owner of a certificate of registered certification mark violates the regulation on use of certification marks or fails to supervise or ineffectively supervises the implementation of such regulation; g/ The geographical conditions decisive to reputation, quality or special characteristics of products bearing a geographical indication have changed resulting in the loss of such reputation, quality or characteristics of products.
1. Where the owner of an invention protection title fails to pay the validity maintenance fee before the set time limit, the validity of such protection title shall, upon the expiration of such time limit,

automatically terminate as from the first day of the first valid year for which the validity maintenance fee has not been paid. The state management agency in charge of industrial property rights shall record such termination in the National Register of Industrial Property and publish it in the Official Gazette of Industrial Property.

2. Where the owner of a protection title declares to relinquish industrial property rights provided for at Point b, Clause 1 of this Article, the state management agency in charge of industrial property rights shall decide to terminate the validity of such protection title from the date of receipt of the owner's declaration;
3. Organizations and individuals shall have the right to request the state management agency in charge of industrial property rights to terminate the validity of protection titles in cases specified at Points c, d, e, f and g, Clause 1 of this Article, provided that they have paid fees and charges. Based on the result of the examination of requests for termination of validity of protection titles and involved parties' opinions, the state management agency in charge of industrial property rights shall issue decisions on termination of validity of protection titles or notify the refusal to terminate the validity of protection titles.
4. The provisions of Clauses 1, 3 and 4 of this Article shall also apply to the termination of validity of international registrations of marks.

Article 96.-Invalidation of protection titles

1. A protection title shall be entirely invalidated in the following cases:

a/ The registration applicant has neither had nor been assigned the right to register an invention, industrial design, layout-design or mark; b/ The subject matter of industrial property fails to satisfy the protection conditions at the time the protection title is granted.

2. A protection title shall be partly invalidated when that part fails to satisfy the protection conditions.

Organizations and individuals may request the state management agency in charge of industrial property rights to invalidate protection titles in the cases specified in Clauses 1 and 2 of this Article, provided that they pay fees and charges.

The statute of limitations for exercising the right to request invalidation of a protection title shall be its whole term of protection. For marks, such statute of limitations shall be 5 years from the grant date, except where the protection title has been granted due to the applicant's dishonesty.

4. Based on the result of the examination of request for invalidation of a protection title and involved parties' opinions, the state management agency in charge of industrial property rights shall issue a decision on entire or partial invalidation of the protection title or notify the refusal to invalidate it.
5. The provisions of Clauses 1, 2, 3 and 4 of this Article shall also apply to the invalidation of international registrations of marks.

Article 97.-Amendments to protection titles

1. The owner of a protection title may request the state management agency in charge of industrial property rights to make amendments to the following information in such protection title, provided that the prescribed fees and charge are paid:

a/ Modifications, error corrections in relation to the name and address of the author or the protection title owner;

b/ Amendments to the description of particular characteristics, quality or geographical area bearing a geographical indication; amendments to the regulation on use of collective marks or the regulation on use of a certification mark.

1. At the request of the owner of a protection title, the state management agency in charge of industrial property rights shall have to correct errors caused at its fault in such protection title. In this case, the protection title owner is not liable to pay fees and charges.
2. The owner of a protection title may request the state management agency in charge of industrial property rights to narrow the scope of industrial property rights. In this case, the corresponding industrial property registration application shall be substantively re-examined and the requester shall pay the fee for substantive examination.

Article 98.-National register of industrial property

1. The national register of industrial property is a document recording the establishment, change and transfer of industrial property rights to inventions, industrial designs, layout-designs, marks and geographical indications under this Law.
2. Decisions on grant of protection titles, principal contents of protection titles and decisions on amendment, termination of validity or invalidation of protection titles, decisions on registration of industrial property right transfer contracts shall all be recorded in the national register of industrial property.
3. The national register of industrial property shall be compiled and kept by the state management agency in charge of industrial property rights.

Article 99.-Publication of decisions relating to protection titles

Decisions on grant, termination of validity, invalidation or amendment of protection titles for industrial property rights shall be published by the state management agency in charge of industrial property rights in the Official Gazette of Industrial Property within 60 days as from the date of issuance.

Section 2. INDUSTRIAL PROPERTY REGISTRATION APPLICATIONS

Article 100.-General requirements on industrial property registration applications

1. An industrial property registration application comprises the following documents: a/ A declaration for registration, made according to a set form; b/ Documents, samples and information identifying the industrial property subject matter registered for protection as specified in Articles 102 thru 106 of this Law; c/ Power of attorney, if the application is filed through a representative; d/ Documents evidencing the registration right, if such right is acquired by the applicant from another person; e/ Documents evidencing the priority right, if such right is claimed; f/ Vouchers of payment of fees and charges.

2. Industrial property registration applications and papers for transaction between the applicants and the state management agency in charge of industrial property rights shall be made in Vietnamese, except for the following documents, which can be made in another language but shall be translated into Vietnamese at the request of the state management agency in charge of industrial

property rights: a/ Power of attorney; b/ Documents evidencing the registration right; c/ Documents evidencing the priority right; d/ Other documents supporting the applications.

3. Documents evidencing the priority right in an industrial property registration application include: a/ A copy of first application(s) certified by the receiving office; b/ Deed of assignment of priority right if such right is acquired from another person. **Article 101.**-The requirement on the uniformity of industrial property registration applications

1. Each industrial property registration application shall request the grant of only one protection title for a single industrial property subject matter, except for the cases specified in Clauses 2, 3 and 4 of this Article.
2. Each registration application may request the grant of one invention patent or one utility solution patent for a group of inventions that are technically linked to form a single common inventive idea.
3. Each registration application may request the grant of one industrial design patent for several industrial designs in the following cases:

a/ Industrial designs of a set of products consist of numerous items expressing a single common inventive idea and used together or for a common purpose;

b/ An industrial design is accompanied by one or more variants, i.e., variations of such industrial design that express a single common inventive idea and that are not significantly different from such industrial design.

4. Each registration application may request the grant of one certificate of registered mark for one mark to be used for one or more different goods or services.

Article 102.-Requirements on invention registration applications

1. Documents identifying an invention registered for protection in an invention registration application shall include a description of the invention and an abstract of the invention. The invention description consists of the description section and the scope of protection of the invention.
2. The description of invention must satisfy the following conditions:

a/ Fully and clearly disclosing the nature of the invention to the extent that such invention may be realized by a person with average knowledge in the art;

b/ Briefly explaining the accompanied drawings, if it is required to further clarify the nature of the invention;

c/ Clarifying the novelty, inventive step and susceptibility of industrial application of the invention.

1. The scope of protection of inventions shall be expressed in the form of a combination of technical specifications which are necessary and sufficient to identify the scope of the rights to such inventions, and compatible with the description of inventions and drawings.
2. Abstracts of inventions must disclose principal features of nature of such inventions.

Article 103.-Requirements on industrial design registration applications

1. Documents identifying an industrial design registered for protection in an industrial design registration application include a description and a set of photos or drawings of such industrial design. The industrial design description consists of a section of description and a scope of protection of such industrial design.
2. The section of description of an industrial design must satisfy the following conditions:
 - a/ Fully disclosing all features expressing the nature of the industrial design and clearly identifying features which are new, different from the least different known industrial design, and consistent with the set of photos or drawings;
 - b/ Where the industrial design registration application consists of variants, the section of description must fully show these variants and clearly identify distinctions between the principal variant and other variants;
 - c/ Where the industrial design stated in the registration application is that of a set of products, the section of description must fully show features of each product of the set.
1. The scope of protection of industrial designs must clearly define features which need to be protected, including features which are new and different from similar known industrial designs.
2. The set of photos and drawings must fully define features of the industrial design.

Article 104.-Requirements on layout-design registration applications

Documents, samples and information identifying a layout-design registered for protection in a layout-design registration application include:

1. Drawings and photos of the layout-design;
2. Information on functions and structure of semiconductor integrated circuits produced under the layout-design;
3. Samples of semiconductor integrated circuits produced under the layout-design, if such layout-design has been commercially exploited.

Article 105.-Requirements on mark registration applications

1. Documents, samples, information identifying a mark registered for protection in a mark registration application include: a/ A sample of the mark and a list of goods or services bearing the mark; b/ Regulation on use of collective marks or regulation on use of certification marks.
2. The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in foreign languages, such words or phrases must be translated into Vietnamese.
3. Goods or services listed in a mark registration application must be classified into appropriate groups in accordance with the Classification List under the Nice Agreement on International Classification of Goods and Services for the purpose of mark registration, and published by the state management agency in charge of industrial property rights.
4. The regulation on use of collective marks consists of the following principal contents: a/ Name, address, grounds of establishment and operations of the collective organization being the owner of the mark; b/ Criteria for becoming a member of the collective organization; c/ List of organizations and individuals permitted to use the mark; d/ Conditions for use of the mark; e/ Measures for handling acts violating the regulation on use of marks.
5. The regulation on use of certification marks consists of the following principal contents: a/ The organization or individual being the mark owner; b/ Conditions for using the mark; c/ Characteristics of goods or services certified by the mark; d/ Methods of evaluating characteristics of goods or services and methods of controlling the use of the mark;
e/ Expenses to be paid by the mark user for the certification and protection of the mark, if any.

Article 106.-Requirements on geographical indication registration applications

1. Documents, samples and information identifying a geographical indication registered for protection in a geographical indication registration application include:

a/ The name or sign being the geographical indication;

b/ The product bearing the geographical indication;

c/ The description of peculiar characteristics and quality, or reputation of the product bearing the geographical indication and particular elements of natural conditions decisive to the peculiar

characteristics and quality, or reputation of the product (hereinafter referred to as the description of peculiar characteristics);

d/ The map of the geographical area bearing the geographical indication;

e/ Documents evidencing that the geographical indication is under protection in the country of origin in case of a foreign geographical origin;

2. The description of peculiar characteristics must have the following principal contents:

a/ Description of the relevant product, including raw materials, and physical, chemical, microbiological and perceptible properties of the product; b/ Method of identification of the geographical area bearing the geographical indication; c/ Evidence proving that the product originates from such geographical area, with the respective meaning provided for in Article 79 of this Law; d/ Description of local and stable methods of production and processing; e/ Information on relationship between the peculiar characteristics and quality, or reputation of the product and the geographical conditions as provided for in Article 79 of this Law; f/ Information on the mechanism of self-control of the peculiar characteristics or quality of the product.

Article 107.-Authorized representation in industrial property rights-related procedures

The authorization for carrying out procedures related to the establishment, maintenance, prolongation, amendment, termination and invalidation of protection titles must be made in writing in the form of a power of attorney.

A power of attorney must have the following principal contents: a/ Full name and address of the principal and the attorney; b/ Scope of authorization; c/ Valid term of authorization; d/ Date of making the power of attorney; e/ Signature and seal (if any) of the principal.

1. A power of attorney without any valid term shall be considered indefinitely valid and shall have its validity terminated only when the principal so declares.

Section 3. PROCEDURES FOR PROCESSING INDUSTRIAL PROPERTY REGISTRATION APPLICATIONS AND GRANTING PROTECTION TITLES

Article 108.-Receipt of industrial property registration applications, filing date

1. An industrial property registration application shall only be received by the concerned state management agency in charge of industrial property rights if it consists of at least the following documents and information:

a/ A declaration for registration of an invention, industrial design, layout-design, mark or geographical indication, which includes sufficient information to identify the applicant and a sample of mark, list of goods or services bearing the mark for a mark registration application;

b/ A description, including the scope of protection, for an invention registration application; a set of photos and drawings and a description, for an industrial design registration application; a description of peculiar characteristics of a product bearing geographical indication, for a geographical indication registration application;

c/ Voucher of payment of filing fee.

2. The filing date shall be the date on which the application is received by the concerned state management agency in charge of industrial property rights or the international filing date in case of applications filed under international treaties.

Article 109.-Formal examination of industrial property registration applications

1. Industrial property registration applications shall be subject to formal examination for evaluating their validity.

2. An industrial property registration application shall be considered invalid in the following cases: a/ It does not fulfill the formal requirements; b/ The subject matter stated in the application is ineligible for protection; c/ The applicant does not have the registration right, including where the registration right belongs to more than one organizations or individuals but one or several of them do not agree with the filing; d/ It is filed in contravention of regulations on the filing mode provided for in Article 89 of this Law; e/ The applicant fails to pay fees and charges.

3. For industrial property registration applications falling into the cases specified in Clause 2 of this Article, the state management agency in charge of industrial property rights shall carry out the following procedures:

a/ Issuing a notice of intended refusal to accept valid applications, clearly stating reasons and setting a time limit for the applicant to correct errors or to object such intended refusal;

b/ Issuing a notice of refusal to accept valid applications if the applicant fails to correct errors, improperly corrects errors or fails to make a justifiable objection to such intended refusal mentioned at Point a of this Clause;

c/ Issuing a notice of refusal to grant a certificate of registered semiconductor integrated circuit layout-design in case of an integrated circuit registration application;

d/ Carrying out procedures specified in Clause 4 of this Article if the applicant properly corrects errors or makes justifiable objection to the intended refusal to accept valid application mentioned at Point a of this Clause.

1. For industrial property registration applications not falling into the cases specified in Clause 2 of this Article, or in the cases specified at Point d, Clause 3 of this Article, the state management agency in charge of industrial property rights shall issue notices of acceptance of valid applications or carry out procedures for granting protection titles and recording them in the national register of industrial property as provided for in Article 118 of this Law, for layout-design registration applications.
2. Mark registration applications rejected according to the provisions of Clause 3 of this Article shall be considered having not been filed, except where they serve as grounds for claims for priority right.

Article 110.-Publication of industrial property registration applications

1. Industrial property registration applications which have been accepted as being valid by the state management agency in charge of industrial property rights shall be published in the Official Gazette of Industrial Property according to the provisions of this Article.
2. An invention registration application shall be published in the 19th month as from the filing date or the priority date, as applicable, or at an earlier time at the request of the applicant.

3. An industrial design registration application, a mark registration application or a geographical indication registration application shall be published within 2 months as from the date such application is accepted as being valid.
4. A layout-design registration application shall be published by mode of direct access at the concerned state management agency in charge of industrial property rights, provided that no reproduction is permitted; for confidential information in an application, such access shall be permitted only to competent authorities and involved parties in the process of carrying out procedures for invalidating protection titles or the process of carrying out procedures for handling right infringements.

Principal information on a layout-design registration application and the protection title for a layout-design shall be published within 2 months as from the grant date of such protection title.

Article 111.-Confidentiality of invention registration applications, industrial design registration applications before publication thereof

1. Before invention registration applications or industrial design registration applications are published in the Official Gazette of Industrial Property, the state management agency in charge of industrial property rights shall have to keep confidential information therein.
2. Cadres and public employees of the state management agency in charge of industrial property rights who disclose information in invention registration applications or industrial design registration applications shall be disciplined; if the information disclosure causes damage to applicants, they must pay compensations therefor according to the provisions of law.

Article 112.-Third party's opinions on the grant of protection titles

As from the date an industrial property registration application is published in the Official Gazette of Industrial Property till prior to the date of issuance of a decision on grant of a protection title, any third party shall have the right to express opinions to the concerned state management agency in charge of industrial property rights on the grant or refusal to grant a protection title in respect of such application. Such opinions must be made in writing and be accompanied by documents or must quote the source of information.

Article 113.-Request for substantive examination of invention registration applications

1. Within 42 months after the filing date or the priority date, as applicable, an applicant or any third party may request the concerned state management agency in charge of industrial property rights to substantively examine the application, provided that the substantive examination fee is paid.
2. The time limit for making request for substantive examination of an invention registration application involving a request for a utility solution patent shall be 36 months counting from the filing date or the priority date, as applicable.
3. Where no request for substantive examination is filed within the time limit specified in Clauses 1 and 2 of this Article, the invention registration application shall be considered having been withdrawn at the expiration of that time limit.

Article 114.-Substantive examination of industrial property registration applications

1. The following industrial property registration applications shall be substantively examined for evaluation of the eligibility for grant of protection titles for subject matters stated in such applications under protection conditions and for determination of the respective scope of protection:

a/ Invention registration applications which have already been accepted as being valid and involve requests for substantive examination filed according to regulations;

b/ Industrial design registration applications, mark registration applications or geographical indication registration applications which have been accepted as being valid.

2. Layout-design registration applications shall not be substantively examined.

Article 115.-Amendment, supplementation, division and conversion of industrial property registration applications

1. Before the concerned state management agency in charge of industrial property rights notifies a refusal or decides to grant a protection title, the applicant shall have the following rights:

a/ To amend or supplement the application;

b/ To divide the application;

c/ To request the recording of changes in name or address of the applicant;

d/ To request the recording of change of the applicant as a result of application transfer under a contract, bequeathal or inheritance, or under a decision of a competent agency;

e/ To convert an invention registration application involving a request for an invention patent into an invention registration application involving a request for a utility solution patent and vice versa.

2. The requesters for completion of procedures specified in Clause 1 of this Article shall have to pay fees and charges.

3. Any amendment or supplement to an industrial property registration application must not expand the scope of the subject matter already disclosed or stated in such application and must not change the nature of the subject matter subject to registration stated in the application and must ensure the uniformity of the application.

4. In case of division of an application, the filing date of the divided application shall be determined to be the filing date of the original application.

Article 116.-Withdrawal of industrial property registration applications

1. Before the concerned state management agency in charge of industrial property rights decides or refuses to grant a protection title, the applicant shall have the right to make written declaration on the withdrawal of the industrial property registration application in his or her own name or through an industrial property representation service organization, provided that the power of attorney clearly states the authorization for application withdrawal.

2. As from the time the applicant declares the withdrawal of the application, all further procedures related to such application shall be stopped; fee and charge amounts already paid in relation to the procedures which have not yet been commenced shall be refunded to the applicant at his/her request.
3. All invention or industrial design registration applications which have been withdrawn or are considered having been withdrawn before their publication and all mark registration applications which have been withdrawn shall be considered having never been filed, except where they serve as grounds for claims for priority right.

Article 117.-Refusal to grant protection titles

1. The grant of a protection title for an invention, industrial design, mark or geographical indication registration application shall be refused in the following cases:

a/ There are grounds to affirm that the subject matter stated in the application does not fully satisfy the protection conditions;

b/ The application satisfies the conditions for the grant of a protection title but is not with the earliest filing date or priority date as in the case specified in Clause 1, Article 90 of this Law;

c/ The application falls into a case specified in Clause 2, Article 90 of this Law but fails to get the consensus of all applicants.

1. The grant of a protection title for a layout-design registration application that does not fulfill the formal requirements specified in Article 109 of this Law shall be refused.
2. Where an industrial property registration application falls into the cases specified in Clauses 1 and 2 of this Article, the concerned state management agency in charge of industrial property rights shall carry out the following procedures:

a/ Notifying an intended refusal to grant a protection title, clearly stating the reasons therefor and setting a time limit for the applicant to make an objection to such intended refusal;

b/ Notifying the refusal to grant a protection title if the applicant makes no objection or makes unjustifiable objection to such intended refusal mentioned at Point a of this Clause;

c/ Granting a protection title and recording it in the national register of industrial property according to the provisions of Article 118 of this Law if the applicant has made a justifiable objection to the intended refusal mentioned at Point a of this Clause.

4. Where there appears an objection to the intended grant of a protection title, the relevant industrial property registration application shall be re-examined with regard to the matters against which the objection is made.

Article 118.-Grant of protection titles, entry into the register

Where an industrial property registration application does not fall into the cases of refusal to grant protection titles specified in Clauses 1 and 2 and at Point b, Clause 3, Article 117 of this Law and the applicant has paid fee, the state management agency in charge of industrial property rights shall decide to grant a protection title and enter it in the national register of industrial property.

Article 119.-Time limit for processing industrial property registration applications

1. An industrial property registration application shall have its form examined within one month from the filing date.
2. An industrial property registration application shall be substantively examined within the following time limits:
 - a/ For an invention, 12 months from the date of its publication if a request for substantive examination is filed before the date of application publication, or from the date of receipt of a request for substantive examination if such request is filed after the date of application publication;
 - b/ For an industrial design, a mark or a geographical indication, 6 months from the date of publication of the application.
1. The time limit for re-examination of an industrial property registration application shall be equal to two thirds of the time limit for the initial examination, and may, in complicated cases, be prolonged but must not exceed the time limit for the initial examination.
2. The duration for amendment or supplementation of applications shall not be counted into the time limits specified in Clauses 1, 2 and 3 of this Article.

Section 4. INTERNATIONAL APPLICATIONS AND PROCESSING THEREOF

Article 120.-International applications and processing thereof

1. Industrial property registration applications filed under treaties to which the Socialist Republic of Vietnam is a contracting party shall be collectively referred to as international applications.
2. International applications and processing thereof shall comply with the relevant treaties.
3. The Government shall guide the implementation of the relevant treaties' provisions on international applications, orders and procedures for processing thereof in compliance with the principles laid down in this Chapter.

Chapter IX OWNERS AND CONTENTS OF, AND LIMITATIONS ON INDUSTRIAL PROPERTY RIGHTS

Section 1. OWNERS AND CONTENTS OF INDUSTRIAL PROPERTY RIGHTS

Article 121.-Owners of industrial property objects

Owners of inventions, industrial designs or layout-designs mean organizations or individuals that are granted by the competent agency protection titles for respective industrial property objects.

Owners of marks mean organizations or individuals that are granted by the competent agency protection titles for such marks or have internationally registered marks as recognized by the competent agency or have well-known marks.

2. Owners of trade names mean organizations or individuals that lawfully use such trade names in business activities.
3. Owners of business secrets mean organizations or individuals that have lawfully acquired such business secrets and keep them secret. A business secret acquired by an employee or a performer of an assigned task during the performance of the hired job or assigned task shall be owned by the employer or the task assignor, unless otherwise agreed by the parties.
4. The owner of Vietnam's geographical indications is the State.

The State shall grant the right to use geographical indications to organizations or individuals that turn out products bearing such geographical indications in relevant localities and put such products on the market. The State shall directly exercise the right to manage geographical indications or grant that right to organizations representing the interests of all organizations or individuals granted with the right to use geographical indications.

Article 122.-Authors of inventions, industrial designs or layout-designs and their rights

1. Authors of inventions, industrial designs or layout-designs mean persons who have personally created such industrial property objects. Where two or more persons have jointly created industrial property objects, they shall be co-authors.
2. Moral rights of authors of inventions, industrial designs or layout-designs shall include the following rights:
 - a/ To be named as authors in invention patents, utility solution patents, industrial design patents or certificates of registered semiconductor integrated circuit layout-designs;
 - b/ To be acknowledged as authors in documents in which inventions, industrial designs or layout-designs are published or introduced.
3. Economic rights of authors of inventions, industrial designs or layout-designs are the rights to receive remunerations as provided for in Article 135 of this Law.

Article 123.-Rights of owners of industrial property objects

1. Owners of industrial property objects shall have the following economic rights:
 - a/ To use or authorize others to use industrial property objects according to the provisions of Article 124 and Chapter X of this Law;
 - b/ To prevent others from using industrial property objects according to the provisions of Article 125 of this Law;
 - c/ To dispose of industrial property objects according to the provisions of Chapter X of this Law.

2. Organizations and individuals that are granted by the State the right to use or the right to manage geographical indications according to the provisions of Clause 4, Article 121 of this Law shall have the following rights:

a/ Organizations which are granted the right to manage geographical indications may permit other persons to use such geographical indications according to the provisions of Point a, Clause 1 of this Article.

b/ Organizations and individuals that are granted the right to use or organizations which are granted the right to manage geographical indications may prevent other persons from using such geographical indications according to the provisions of Point b, Clause 1 of this Article.

Article 124.-Use of industrial property objects

1. Use of an invention means the performance of the following acts: a/ Manufacturing the protected product; b/ Applying the protected process; c/ Exploiting utilities of the protected product or the product manufactured under the protected process; d/ Circulating, advertising, offering, stocking for circulation the product mentioned at Point c of this Clause; e/ Importing the product mentioned at Point c of this Clause.

2. Use of an industrial design means the performance of the following acts: a/ Manufacturing products with appearance embodying the protected industrial design; b/ Circulating, advertising, offering and stocking for circulation products mentioned at Point a of this Clause; c/ Importing products mentioned at Point a of this Clause.

3. Use of a layout-design means the performance of the following acts:

a/ Reproducing the layout-design; manufacturing semiconductor integrated circuits under the protected layout-design; b/ Selling, leasing, advertising, offering or stocking copies of the protected layout-design, semiconductor integrated circuits manufactured under the protected layout-design or articles containing such semi-conductor integrated circuits; c/ Importing copies of the protected layout-design, semi-conductor integrated circuits manufactured under the protected layout-design or articles containing such semi-conductor integrated circuits.

4. Use of a business secret means the performance of the following acts: a/ Applying the business secret to manufacture of products, provision of services or trade in goods; b/ Selling, advertising for sale, stocking for sale or importing products manufactured with the application of the business secret;

5. Use of a mark means the performance of the following acts:

a/ Affixing the protected mark on goods, goods packages, means of business, means of service provision, transaction documents in business activities; b/ Circulating, offering, advertising for sale or stocking for sale goods bearing the protected mark; c/ Importing goods or services bearing the protected mark.

1. Use of a trade name means the performance of acts for commercial purposes by using it to name oneself in business activities, expressing it in transaction documents, signboards, products, goods, goods packages and means of service provision or advertisement.

2. Use of a geographical indication means the performance of the following acts:

a/ Affixing the protected geographical indication on goods or goods packages, means of business and transaction documents in business activities;

b/ Circulating, offering, advertising for sale or stocking for sale goods bearing the protected geographical indication;

c/ Importing goods bearing the protected geographical indication.

Article 125.-Right to prevent others from using industrial property objects

1. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications may prevent others from using such industrial property objects unless such use falls into the cases specified in Clauses 2 and 3 of this Article.
2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:

a/ Using inventions, industrial designs or layout-designs in service of their personal needs or for non-commercial purposes, or for purpose of evaluation, analysis, research, teaching, testing, trial production or information collection for carrying out procedures of application for licenses for production, importation or circulation of products;

b/ Circulating, importing, exploiting utilities of products having been lawfully put on the market, including overseas markets, except for products put on the overseas markets not by the mark owners or their licensees;

c/ Using inventions, industrial designs or layout-designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the Vietnamese territory;

d/ Using inventions or industrial designs by persons with the prior use right according to the provisions of Article 134 of this Law;

e/ Using inventions by persons authorized by competent state agencies according to the provisions of Articles 145 and 146 of this Law;

f/ Using layout-designs without knowing or having the obligation to know that such layout-designs are under protection;

g/ Using marks identical with or similar to protected geographical indications where such marks have acquired the protection in an honest manner before the date of filing applications for registration of such geographical indications.

h/ Using in an honest manner people's names, descriptive marks of type, quantity, quality, utility, value, geographical origin and other properties of goods or services.

3. Owners of business secrets shall not have the right to prevent others from performing the following acts: a/ Disclosing or using business secrets acquired without knowing or having the obligation to know that they have been unlawfully acquired by others; b/ Disclosing secret data in order to protect the public according to the provisions of Clause 1, Article 128 of this Law; c/ Using secret data specified in Article 128 of this Law not for commercial purposes; d/ Disclosing or using business secrets obtained independently; e/ Disclosing or using business secrets obtained by

analyzing or evaluating lawfully distributed products, unless otherwise agreed upon by analyzers or evaluators and owners of such business secrets or sellers of such products.

Article 126.-Acts of infringing upon the rights to inventions, industrial designs and layout-designs
The following acts shall be regarded as infringements of the rights of owners of inventions, industrial designs or layout-designs:

1. Using protected inventions, protected industrial designs or industrial designs insignificantly different from protected industrial designs, or protected layout-designs or any original part thereof within valid terms of protection titles without permission of owners;
2. Using inventions, industrial designs or layout-designs without paying compensations according to the provisions on provisional rights in Article 131 of this Law.

Article 127.-Acts of infringing upon the rights to business secrets

1. The following acts shall be regarded as infringements of the rights to business secrets:

a/ Accessing or acquiring information pertaining to business secrets by taking acts against secret-keeping measures applied by lawful controllers of such business secrets;

b/ Disclosing or using information pertaining to business secrets without permission of owners of such business secrets;

c/ Breaching secret-keeping contracts or deceiving, inducing, buying off, forcing, seducing or abusing the trust of persons in charge of secret-keeping in order to access, acquire or disclose business secrets;

d/ Accessing or acquiring information pertaining to business secrets of applicants for licenses for trading in or circulating products by taking acts against secret-keeping measures applied by competent agencies;

e/ Using or disclosing business secrets, while knowing or having obligation to know that they have been acquired by others engaged in one of the acts specified at Points a, b, c and d of this Clause;

f/ Failing to perform the secret-keeping obligation specified in Article 128 of this Law.

2. Lawful controllers of business secrets defined in Clause 1 of this Article include owners of business secrets, their lawful licensees and managers of business secrets.

Article 128.-Obligation to keep secret test data

1. Where the law requires applicants for licenses for trading in or circulating pharmaceuticals or agro-chemical products to supply test results or any other data being business secrets obtained by investment of considerable efforts, and where applicants request such data to be kept secret, the competent licensing agency shall be obliged to apply necessary measures so that such data are neither used for unhealthy commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.
2. From the submission of secret data in applications to the competent agency mentioned in Clause 1 of this Article to the end of a 5-year period as from the date the applicants are granted licenses, such agency must not grant licenses to any subsequent applicants in whose applications the said secret

data are used without the consent of submitters of such data, except for the cases specified at Point d, Clause 3, Article 125 of this Law.

Article 129.-Acts of infringing upon the rights to marks, trade names and geographical indications

1. The following acts if being performed without the permission of mark owners, shall be regarded as infringements of the rights to marks:

a/ Using signs identical with protected marks for goods or services identical with goods or services on the lists registered together with such marks;

b/ Using signs identical with protected marks for goods or services similar or related to those goods on services on the lists registered together with such marks, if such use is likely to cause confusion as to the origin of the goods or services;

c/ Using signs similar to protected marks for goods or services identical with, similar to or related to goods or services on the lists registered together with such marks, if such use is likely to cause confusion as to the origin of the goods or services;

d/ Using signs identical with, or similar to, well-known marks, or signs in the form of translations or transcriptions of well-known marks for any goods or services, including those unidentical with, dissimilar or unrelated to goods or services on the lists of those bearing well-known marks, if such use is likely to cause confusion as to the origin of the goods or services or misleading impression as to the relationship between users of such signs and well-known mark owners.

1. All acts of using commercial indications identical with, or similar to, others' trade names having been used earlier for the same or similar type of goods or services, that cause confusion as to business entities, establishments or activities under such trade names shall be regarded as infringements of the rights to trade names.

2. The following acts shall be regarded as infringements of the rights to protected geographical indications:

a/ Using protected geographical indications for products which do not satisfy the criteria of peculiar characteristics and quality of products bearing geographical indications although such products originate from geographical areas bearing such geographical indications;

b/ Using protected geographical indications for products similar to products bearing geographical indications for the purposes of taking advantage of their reputation and popularity;

c/ Using any sign identical with, or similar to, protected geographical indications for products not originating from geographical areas bearing such geographical indications and therefore misleading consumers as to that products originate from such geographical areas;

d/ Using protected geographical indications of wines or spirits for wines or spirits not originating from geographical areas bearing such geographical indication, even where the true origin of goods is indicated or geographical indications are used in the form of translations or transcriptions, or accompanied by such words as "category," "model," "type," "imitation" or the like.

Article 130.-Acts of unfair competition

1. The following acts shall be regarded as acts of unfair competition:

a/ Using commercial indications to cause confusion as to business entities, business activities or commercial origin of goods or services;

b/ Using commercial indications to cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services;

c/ Using marks protected in a country which is a contracting party to a treaty to which the Socialist Republic of Vietnam is also a contracting party and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is neither consented to by the mark owners nor justified;

d/ Registering or possessing the right to use or using domain names identical with, or confusingly similar to, protected trade names or marks of others, or geographical indications without having the right to use, for the purpose of possessing domain names, benefiting from or prejudicing reputation and popularity of respective marks, trade names or geographical indications.

1. Commercial indications specified in Clause 1 of this Article mean signs and information serving as guidelines to trading of goods or services, including marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods.
2. Acts of using commercial indications specified in Clause 1 of this Article include acts of affixing such commercial indications on goods, goods packages, means of service provision, business transaction documents or advertising means; selling, advertising for sale, stocking for sale and importing goods affixed with such commercial indications.

Article 131.-Provisional rights to inventions, industrial designs or layout-designs

1. Where an applicant for registration of an invention or industrial design knows that such invention or industrial design is being used by another person without prior use right for commercial purposes, the applicant may notify in writing the user of the filing of his/her application, clearly specifying the filing date and the date of application publication in the Official Gazette of Industrial Property so that the later shall terminate or continue such use.

2. For a layout-design which has, before the grant date of the certificate of registered semiconductor integrated circuit layout-design, been commercially exploited by the person with the registration right or his/her licensee, if such person knows that such layout-design is being used by another person for commercial purposes, he/she may notify in writing the user of his/her registration right so that the latter shall terminate or continue such use.

3. Where the person notified of contents specified in Clauses 1 and 2 of this Article continues using such invention, industrial design or layout-design, as soon as an invention patent, utility solution patent, industrial design patent or certificate of registered semiconductor integrated circuit layout-design is granted, the owner of such invention, industrial design or layout-design shall have the right to request the user of such invention, industrial design or layout-design to pay a compensation equivalent to the price for licensing of such invention, industrial design or layout-design within the relevant scope and duration of use.

Section 2. LIMITATIONS ON INDUSTRIAL PROPERTY RIGHTS

Article 132.-Elements limiting industrial property rights

Under this Law, industrial property rights may be limited by the following elements:

1. Right of prior users to inventions or industrial designs;
2. Obligations of owners, including:
 - a/ To pay remunerations to the authors of inventions, industrial designs or layout-designs;
 - b/ To use inventions or marks.
3. Licensing of inventions under decisions of state competent agencies.

Article 133.-Rights to use inventions on behalf of the State

1. Ministries and ministerial-level agencies shall have the right to, on behalf of the State, use or permit other organizations or individuals to use inventions in domains under their respective management for public and non-commercial purposes, national defense, security, disease prevention and treatment and nutrition for the people, and to meet other urgent social needs without having to obtain permission of invention owners or their licensees under exclusive contracts (hereinafter referred to as holders of exclusive right to use inventions) according to Articles 145 and 146 of this Law.
2. The use of inventions mentioned in Clause 1 of this Article shall be limited within the scope of and under the conditions for licensing provided for in Clause 1, Article 146 of this Law, except where such inventions are created by using material-technical facilities and funds from the state budget.

Article 134.-Right of prior use of inventions and industrial designs

1. Where a person has, before the publication date of an invention or industrial design registration application, used or prepared necessary conditions for use of an invention or industrial design identical with the protected invention or industrial design stated in such registration application but created independently (hereinafter referred to as the prior use right holder), then after a protection title is granted, such person shall be entitled to continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission of or paying compensations to the owner of the protected invention or industrial design. The exercise of the right of prior users of inventions or industrial designs shall not be regarded as an infringement of the right of invention or industrial design owners.

2. Holders of prior use right to inventions or industrial designs must not assign such right to others, except where such right is assigned together with the transfer of business or production establishments which have used or are prepared to use the inventions or industrial designs. Prior use right holders must not expand the use scope and volume unless it is so permitted by invention or industrial design owners.

Article 135.-Obligation to pay remunerations to authors of inventions, industrial designs or layout-designs

Owners of inventions, industrial designs or layout-designs are obliged to pay remunerations to their authors according to the provisions of Clauses 2 and 3 of this Article, unless otherwise agreed upon by the parties.

The minimum level of remuneration payable by an owner to an author is provided for as follows: a/ 10% of the profit amount gained by the owner from the use of an invention, industrial design or layout-design; b/ 15% of total amount received by the owner in each payment for licensing of an invention, industrial design or layout-design.

1. Where an invention, industrial design or layout-design is jointly created by more than one authors, the remuneration level provided for in Clause 2 of this Article shall be applicable to all co-authors. The co-authors shall agree by themselves on the division of the remuneration amount paid by the owner.
2. The obligation to pay remunerations to authors of inventions, industrial designs or layout-designs shall exist throughout the term of protection of such inventions, industrial designs or layout-designs.

Article 136.-Obligation to use inventions and marks

1. Owners of inventions are obliged to manufacture protected products or apply protected processes to satisfy the requirements of national defense, security, disease prevention and treatment and nutrition for the people or to meet other social urgent needs. When there arise the needs mentioned in this Clause but invention owners fail to perform such obligation, the competent state agency may license such inventions to others without permission of invention owners according to the provisions of Articles 145 and 146 of this Law.
2. Owners of marks are obliged to use such marks continuously. Where a mark has not been used for 5 consecutive years or more, the ownership right to such mark shall be invalidated according to the provisions of Article 95 of this Law.

Article 137.-Obligations to authorize the use of principal inventions for the purpose of using dependent inventions

1. A dependent invention means an invention created based on another invention (hereinafter referred to as principal invention) and may only be used on the condition that the principal invention is also used.
2. Where the owner of a dependent invention can prove that his/her invention makes an important technical advance as compared with the principal invention and has a great economic significance, he/she may request the owner of the principal invention to license such principal invention with reasonably commercial price and conditions.

Where the owner of a principal invention fails to satisfy the request of the owner of a dependent invention without justifiable reasons, the concerned competent state agency may license such

invention to the owner of the dependent invention without permission of the owner of the principal invention according to the provisions of Articles 145 and 146 of this Law.

Chapter X TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

Section 1. ASSIGNMENT OF INDUSTRIAL PROPERTY RIGHTS

Article 138.-General provisions on assignment of industrial property rights

Assignment of an industrial property right means the transfer of ownership right by owner of such industrial property right to another organization or individual.

1. Assignment of industrial property rights must be established in the form of written contracts (hereinafter referred to as industrial property right assignment contracts).

Article 139.-Restrictions on assignment of industrial property rights

1. Industrial property right owners may only assign their rights within the scope of protection.
2. Rights to geographical indications shall not be assigned.
3. Rights to trade names shall only be assigned together with the transfer of the entire business establishments and business activities under such trade names.
4. The assignment of the rights to marks must not cause confusion as to properties or origins of goods or services bearing such marks.
5. Rights to marks shall only be assigned to organizations or individuals that satisfy conditions for persons having the right to register such marks.

Article 140.-Contents of industrial property right assignment contracts An industrial property right assignment contract must have the following principal contents:

1. Full names and addresses of the assignor and the assignee;
2. Assignment bases;
3. Assignment price;
4. Rights and obligations of the assignor and the assignee.

Section 2. LICENSING OF INDUSTRIAL PROPERTY OBJECTS

Article 141.-General provisions on licensing of industrial property objects

1. Licensing of an industrial property object means the permission by the owner of such industrial property object for another organization or individual to use the industrial property object within the scope of his/her use right.
2. Licensing of industrial property objects must be established in the form of written contracts (hereinafter referred to as industrial property object license contracts).

Article 142.-Restrictions on licensing of industrial property objects

The right to use geographical indications or trade names must not be licensed.

The right to use collective marks must not be licensed to organizations or individuals other than members of the owners of such collective marks.

The licensee must not enter into a sub-license contract with a third party, unless it is so permitted by

the licensor. Mark licensees shall be obliged to indicate on goods and goods packages that such goods have been manufactured under mark license contracts.

Invention licensees under exclusive contracts shall be obliged to use such inventions in the same manner as the invention owners according to the provisions of Clause 1, Article 136 of this Law.

Article 143.-Types of industrial property object license contracts Industrial property object license contracts shall be of the following types:

1. Exclusive contract means a contract under which, within licensing scope and term, the licensee shall have an exclusive right to use the licensed industrial property object while the licensor may neither enter into any industrial property object license contract with any third party nor, without permission of the licensee, use such industrial property object;
2. Non-exclusive contract means a contract under which, within licensing scope and term, the licensor shall still have the rights to use the industrial property object and to enter into non-exclusive industrial property object license contracts with others.
3. Industrial property object sub-license contract means a contract under which the licensor is a licensee of the right to use an industrial property object under another contract.

Article 144.-Contents of industrial property object license contracts

1. An industrial property object license contract must have the following principal contents: a/ Full names and addresses of the licensor and the licensee; b/ Licensing bases; c/ Contract type; d/ Licensing scope of, covering limitations on use right and territorial limitations; e/ Contract term; f/ Licensing price; g/ Rights and obligations of the licensor and the licensee.
2. An industrial property object license contract must not have provisions which unreasonably restrict the right of the licensee, particularly the following provisions which do not derive from the rights of the licensor:

a/ Prohibiting the licensee to improve the industrial property object other than marks; compelling the licensee to transfer free of charge to the licensor improvements of the industrial property object made by the licensee or the right of industrial property registration or industrial property rights to such improvements;

b/ Directly or indirectly restricting the licensee to export goods produced or services provided under the industrial property object license contract to the territories where the licensor neither holds the respective industrial property rights nor has the exclusive right to import such goods;

c/ Compelling the licensee to buy all or a certain percentage of raw materials, components or equipment from the licensor or a third party designated by the licensor not for the purpose of ensuring the quality of goods produced or services provided by the licensee;

d/ Forbidding the licensee to complain about or initiate lawsuits with regard to the validity of the industrial property rights or the licensor's right to license.

3. Any clauses in the contract falling into the cases specified in Clause 2 of this Article shall be ex-officio invalid.

Section 3. COMPULSORY LICENSING OF INVENTIONS

Article 145.-Bases for compulsory licensing of inventions

1. In the following cases, the right to use an invention may be licensed to another organization or individual under a decision of the competent state agency defined in Clause 1, Article 147 of this Law without permission from the holder of exclusive right to use such invention:

a/ Where the use of such invention is for public and non-commercial purposes or in service of national defense, security, disease prevention and treatment and nutrition for people or other urgent needs of the society.

b/ Where the holder of exclusive right to use such invention fails to fulfill the obligations to use such invention provided for in Clause 1, Article 136 and Clause 5, Article 142 of this Law upon the expiration of a 4-year duration as from the date of filing the invention registration application and the expiration of a 3-year duration as from the date of granting the invention patent;

c/ Where a person who wishes to use the invention fails to reach an agreement with the holder of exclusive right to use such invention on the entry of an invention license contract in spite of his/her efforts made within a reasonable time for negotiation on satisfactory commercial price and conditions;

d/ Where the holder of exclusive right to use such invention is considered having performed anti-competition practices banned by competition law.

2. The holder of exclusive right to use an invention may request the termination of the use right when the bases for licensing provided for in Clause 1 of this Article no longer exist and are unlikely to recur, provided that such termination shall not be prejudicial to the invention licensee;

Article 146.-Conditions of limitation on the right to use inventions licensed under compulsory decisions

1. The right to use an invention licensed under a decision of a competent state agency must be compliant with the following conditions:

a/ Such licensed use right is non-exclusive;

b/ Such licensed use right is only limited to a scope and duration sufficient to achieve the licensing objectives, and largely for the domestic market, except for the cases specified at Point d, Clause 1, Article 145 of this Law. For an invention in semi-conductor technology, the licensing thereof shall be only for public and non-commercial purposes or for handling anti-competition practices according to the provisions of the competition law;

c/ The licensee must neither assign nor sub-license such right to others, except where the assignment is effected together with the transfer of his/her business establishment;

d/ The licensee shall have to pay the holder of exclusive right to use the invention a satisfactory compensation depending on the economic value of such use right in each specific case, and compliant with the compensation bracket set by the Government.

2. Apart from the conditions specified in Clause 1 of this Article, the right to use an invention licensed in any of the cases specified in Clause 2, Article 137 of this Law must also satisfy the following conditions

a/ The holder of exclusive right to use the principal invention shall also be licensed to use the dependent invention on reasonable terms;

b/ The licensee of the right to use the principal invention must not assign such right, except where the assignment is effected together with all rights to the dependent invention.

Article 147.-Competence and procedures for licensing of inventions under compulsory decisions

1. The Science and Technology Ministry shall issue decisions on licensing of inventions based on the consideration of requests for licensing in the cases specified at Points b, c and d, Clause 1, Article 145 of this Law. Ministries and ministerial-level agencies shall issue decisions on licensing of inventions in domains under their respective management in the cases specified at Point a, Clause 1, Article 145 of this Law after consulting opinions of the Science and Technology Ministry.

2. Decisions on licensing of inventions must set out appropriate use scope and conditions according to the provisions of Article 146 of this Law.

3. The state agency competent to decide on licensing of inventions shall have to promptly notify the holders of exclusive right to use such inventions of its decisions.

4. Decisions on licensing of inventions or on refusal of licensing of inventions may be subject to complaints or lawsuits according to the provisions of law.

5. The Government shall specify procedures for licensing of inventions defined in this Article.

Section 4. REGISTRATION OF CONTRACTS FOR TRANSFER OF INDUSTRIAL PROPERTY RIGHTS Article

148.-Validity of contracts for transfer of industrial property rights

1. For the industrial property rights established on the basis of registration according to the provisions of Point a, Clause 3, Article 6 of this Law, an industrial property right assignment contract shall be valid upon its registration with the state management agency in charge of industrial property rights.

2. For the industrial property rights established on the basis of registration according to the provisions of Point a, Clause 3, Article 6 of this Law, an industrial property object license contract shall be valid as agreed upon by the involved parties but shall be legally effective to a third party upon registration with the state management agency in charge of industrial property rights.

3. Validity of an industrial property object license contract shall be terminated ex-officio upon the termination of licensor's industrial property rights.

Article 149.-Dossiers for registration of contracts for transfer of industrial property rights

A dossier for registration of an industrial property object license contract or an industrial property right assignment contract shall comprise:

1. A declaration for registration, made according to a set form;
2. The original or a valid copy of the contract;
3. The original of the protection title, for case of industrial property right assignment;
1. Co-owners' written consent, or a written explanation of the reason for disagreement of any coowner with the right assignment where the industrial property rights are under joint ownership;
2. Vouchers of payment of fees and charges;
3. A power of attorney, if the dossier is filed through a representative.

Article 150.-Processing of dossiers for registration of contracts for transfer of industrial property rights

Order and procedures for receiving and processing dossiers for registration of industrial property object license contracts or industrial property right assignment contracts shall be specified by the Government.

Chapter XI INDUSTRIAL PROPERTY REPRESENTATION

Article 151.-Industrial property representation services

1. Industrial property representation services cover:

a/ Representing organizations or individuals before competent state agencies in the establishment and enforcement of industrial property rights;

b/ Providing consultancy on issues related to procedures for the establishment and enforcement of industrial property rights;

c/ Other services related to procedures for the establishment and enforcement of industrial property rights.

2. Industrial property representatives include organizations providing industrial property representation services (hereinafter referred to as industrial property representation service organizations) and individuals practicing industrial property representation of such organizations (hereinafter referred to as industrial property agents).

Article 152.-Scope of rights of industrial property representatives

Industrial property representation service organizations shall only provide services within the scope of authorization and may re-authorize other industrial property representation service organizations when they obtain written consents of authorizing parties.

Industrial property representation service organizations may waive their industrial property representation service business after having lawfully transferred all incomplete representation jobs to other industrial property representation service organizations.

Industrial property representatives must not perform the following activities: a/ Concurrently representing parties that dispute over industrial property rights; b/ Withdrawing applications for protection titles, declaring waiver of protection or withdrawing appeals against the establishment of

industrial property rights without consents of authorizing parties; c/ Deceiving or forcing their clients to enter into and perform contracts for industrial property representation services.

Article 153.-Responsibilities of industrial property representatives

1. Industrial property representatives shall have the following responsibilities:

a/ To clearly notify fee and charge amounts and rates, which are related to procedures for establishment and enforcement of industrial property rights, service charge amounts and rates according to the service charge tariff registered at the state management agency in charge of industrial property rights;

b/ To keep confidential information and documents related to cases of their representation;

c/ To truthfully and adequately inform all notices and requests of the state agency competent to establish and enforce industrial property rights; to deliver on time protection titles and other decisions to the represented parties;

d/ To protect rights and legitimate interests of the represented parties by promptly satisfying all requests of the state agency competent to establish and enforce industrial property rights in favor of the represented parties;

e/ To notify the state agency competent to establish and enforce industrial property rights of all changes in the names, addresses of and other information on the represented parties when necessary.

2. Industrial property representation service organizations shall bear civil liabilities toward the represented parties for representation performed by their industrial property agents on their behalf.

Article 154.-Conditions for industrial property representation service business

Organizations which satisfy the following conditions shall be allowed to provide industrial property representation services as industrial property representation service organizations:

1. Being law-practicing businesses or organizations, or scientific and technological service organizations lawfully established and operating;
2. Having the function of providing industrial property representation services, which is stated in their business registration certificates or operation registration certificates (hereinafter referred to collectively as business registration certificates);
3. Their heads or persons authorized by their heads must satisfy the conditions for industrial property representation service practice, specified in Clause 1, Article 155 of this Law.

Article 155.-Conditions for industrial property representation service practice

1. An individual who satisfies the following conditions shall be allowed to practice industrial property representation service: a/ Having industrial property representation service-practicing certificate; b/ Working for one industrial property representation service organization.

2. Individuals who satisfy the following conditions shall be granted industrial property representation service-practicing certificates:

a/ Being Vietnamese citizens with full capacity for civil acts;

b/ Residing permanently in Vietnam;

c/ Having university degrees;

d/ Having personally been engaged in the domain of industrial property law for 5 consecutive years or more or in the examination of assorted industrial property registration applications at the national or international industrial property offices for 5 consecutive years or more or having graduated from training courses on industrial property law recognized by competent agencies;

e/ Being not cadres or civil servants working in the state agency competent to establish and enforce industrial property rights;

f/ Passing examinations on industrial property representation profession, organized by competent agencies.

3. The Government shall specify programs on industrial property law training, examination of industrial property representation profession, and grant of industrial property representation service-practicing certificates.

Article 156.-Recording and deletion of names of industrial property representation service organizations, withdrawal of industrial property representation service-practicing certificates

1. Organizations and individuals that satisfy the conditions for industrial property representation service business or practice specified in Articles 154 and 155 of this Law shall be, at their request, recorded in the national register of industrial property representatives and published in the Official Gazette of Industrial Property by the state management agency in charge of industrial property rights.
2. Where there are grounds to confirm that an industrial property representative no longer satisfies the business or practice conditions specified in Articles 154 and 155 of this Law, the state management agency in charge of industrial property rights shall delete the name of such industrial property representative in the national register of industrial property and publish such deletion in the Official Gazette of Industrial Property.
3. Industrial property representation service organizations which violate the provisions of Clause 3, Article 152 and Article 153 of this Law shall be handled according to the provisions of law;
4. Industrial property agents who make professional mistakes while practicing or violate the provisions of Point c, Clause 3, Article 152 and Point a, Clause 1, Article 153 of this Law shall, depending on the nature and seriousness of their mistakes or violations, be subject to cautions, monetary fines or withdrawal of industrial property representation service-practicing certificates.

Part Four RIGHTS TO PLANT VARIETIES

Chapter XII CONDITIONS FOR PROTECTION OF RIGHTS TO PLANT VARIETIES

Article 157.-Organizations and individuals that have rights to plant varieties protected Organizations

and individuals that have rights to plant varieties protected mean those that select and breed or discover and develop plant varieties or invest in the selection and breeding or the discovery and development of plant varieties or are transferred rights to plant varieties.

Organizations and individuals defined in Clause 1 of this Article include Vietnamese organizations and individuals; organizations and individuals of foreign countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties; and foreign organizations and individuals that have permanent residence addresses in Vietnam or have establishments producing or trading in plant varieties in Vietnam.

Article 158.-General conditions for plant varieties eligible for protection

Plant varieties eligible for protection mean those which have been selected and bred or discovered and developed, are on the list of State-protected plant species promulgated by the Agriculture and Rural Development Ministry, and are new, distinct, uniform, stable and designated by proper denominations.

Article 159.-Novelty of plant varieties

A plant variety shall be deemed new if reproductive materials or harvested materials of such variety has not yet been sold or otherwise distributed for the purpose of exploitation in the Vietnamese territory by the registration right holder defined in Article 164 of this Law or his/her licensee one year before the filing date of the registration application; or for exploitation outside the Vietnamese territory six years before the filing date of the registration application for timber trees or vines, and four years for other plant varieties.

Article 160.-Distinctness of plant varieties

1. A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application or the priority date, as the case may be.
2. Plant varieties whose existence is a matter of common knowledge defined in Clause 1 of this Article mean those falling into one of the following cases: a/ Their reproductive materials or harvested materials have been widely used in the market of any country at the time of filing of the protection registration application;

b/ They have been protected or registered into the list of plant species in any country;
c/ They are subject matters of protection registration applications or registered into the list of plant species in any country, provided that these applications have not been rejected; d/ Their detailed descriptions have been published.

Article 161.-Uniformity of plant varieties A plant variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 162.-Stability of plant varieties A plant variety shall be deemed stable if its relevant originally described characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

Article 163.-Denominations of plant varieties

The registrant must designate a proper denomination for a plant variety which must be the same as the denomination registered in any country upon filing of the protection registration application.

The denomination of a plant variety shall be deemed proper if it is distinguishable from those of other plant varieties of common knowledge in the same species or similar species. Denominations of plant varieties shall be deemed improper in the following cases: a/ They consist of numerals only, except where such numerals are relevant to characteristics or the breeding of such varieties; b/ They violate the social ethics; c/ They may easily cause misleading as to features or characteristics of such varieties; d/ They may easily cause misleading as to identifications of the breeders; e/ They are identical or confusingly similar to marks, trade names or geographical indications protected before the date of publication of protection registration applications of such plant varieties; f/ They are identical or similar to denominations of harvested materials of such plant varieties; g/ They affect prior rights of other organizations or individuals.

1. Organizations and individuals that offer for sale or bring to the market reproductive materials of plant varieties must use the denominations of such plant varieties as stated in protection titles even after the expiration of the protection terms.
2. When denominations of plant varieties are combined with trademarks, trade names or indications similar to denominations of plant varieties already registered for sale offer or brought to the market, such denominations must still be distinguishable.

Chapter XIII ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES

Section 1. ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES

Article 164.-Registration of rights to plant varieties

1. To obtain protection of rights to plant varieties, organizations and individuals must file their applications for protection registration with the state management agency in charge of rights to plant varieties.
2. Organizations and individuals having the right to register plant varieties for protection (hereinafter referred to as registrants) include:

a/ Breeders who have personally selected and bred or discovered and developed the plant varieties with their own efforts and expenses;

b/ Organizations and individuals that fund breeders to select and breed or discover and develop plant varieties in form of job assignment or hiring, unless otherwise agreed upon;

c/ Organizations and individuals that are transferred or inherit the right to register for protection of plant varieties.

3. For plant varieties which are selected and bred or discovered and developed with the use of the state budget or under projects managed by the State, the rights to such plant varieties shall belong to the State. The Government shall specify the registration of rights to plant varieties mentioned in this Clause.

Article 165.-Mode of filing applications for registration of rights to plant varieties

1. Vietnamese organizations and individuals or foreign organizations and individuals that have permanent residence addresses in Vietnam or have plant variety production or trading establishments in Vietnam may file their applications for registration of rights to plant varieties (hereinafter referred to as protection registration applications) directly or through their lawful representatives in Vietnam.
2. Foreign organizations and individuals having no permanent residence addresses in Vietnam or no plant variety production and trading establishments in Vietnam may file protection registration applications through their lawful representatives in Vietnam.

Article 166.-First-to-file principle for plant varieties

1. Where two or more parties independently file protection registration applications on different days for the same plant variety, the plant variety protection certificate shall only be granted to the earliest valid registrant.
2. Where there are many protection registration applications for the same plant variety filed on the same day, the plant variety protection certificate shall only be granted to the registrant whose name is used for the filing of the sole application as agreed upon by all the other registrants. Where these registrants fail to reach agreement, the state management agency in charge of rights to plant varieties shall consider to grant the plant variety protection certificate to the party who is determined to be the first breeder who has selected and bred or discovered and developed such variety.

Article 167.-Priority principle for protection registration applications

1. A registrant may claim the priority right where a protection registration application is filed within 12 months from the date of filing the protection registration application for the same plant variety in a country which has concluded with the Socialist Republic of Vietnam an agreement on plant variety protection. The first filing date shall not be included in this time limit.
2. In order to enjoy the priority right, the registrant must express the claim for the priority right in his/her protection registration application. Within 3 months after filing the registration application, the registrant must produce copies of documents on the first application certified by the competent agency and samples or other evidence proving that the variety in both applications is the same and pay the fee. The registrant may supply necessary information, documents or materials to the state management agency in charge of rights to plant varieties for examination according to the provisions of Articles 176 and 178 of this Law within 2 years after the expiration of the duration for enjoying the priority right, or within an appropriate duration depending on the species of the plant variety stated in the application, after the first application is rejected or withdrawn.
3. Where a protection registration application is eligible for the priority right, the priority date shall be the first filing date.
4. Within the time limit specified in Clause 1 of this Article, the filing of another application or the publication or use of the plant variety being the subject matter of the first application shall not be considered a ground for rejecting the protection registration application eligible for the priority right.

Article 168.-Plant variety protection certificates and the national register of protected plant varieties
A protection certificate for a plant variety shall state the denomination and species of such variety, the name of the owner of rights to such plant variety (hereinafter referred to as the protection certificate holder), the name of the plant variety breeder and the protection term of rights to the plant variety.

1. The state management agency in charge of rights to plant varieties shall record the grant and contents of protection certificates in the national register for protected plant varieties, and archive such information.

Article 169.-Validity of plant variety protection certificates

1. Plant variety protection certificates shall be valid throughout the Vietnamese territory.
2. Plant variety protection certificates shall be valid from the grant date to the end of a period of 25 years for timber trees and vines; or 20 years for other plant varieties.
3. Plant variety protection certificates may have their validity terminated or be invalidated according to the provisions of Articles 170 and 171 of this Law.

Article 170.-Termination and restoration of validity of plant variety protection certificates

1. The validity of a plant variety protection certificate may be terminated in the following cases:

a/ The protected plant variety no longer satisfies the conditions of uniformity and stability as at the time of certificate grant;

b/ The protection certificate holder fails to pay the validity maintenance fee according to regulations;

c/ The protection certificate holder fails to supply necessary documents and reproductive materials for maintaining and preserving the plant variety according to regulations;

d/ The protection certificate holder fails to change the denomination of the plant variety at the request of the state management agency in charge of rights to plant varieties.
2. In the cases specified at Points a, c and d, Clause 1 of this Article, the concerned state management agency in charge of rights to plant varieties shall issue a decision on termination of validity of the plant variety protection certificate.
3. In the case specified at Point b, Clause 1 of this Article, upon the expiration of the time limit for payment of the validity maintenance fee, the concerned state management agency in charge of rights to plant varieties shall issue a decision on termination of validity of the plant variety protection certificate as from the first day of the next valid year in which the validity maintenance fee is not paid.
4. In the cases specified at Point a, Clause 1 of this Article, all organizations and individuals may request the state management agency in charge of rights to plant varieties to terminate the validity of the plant variety protection certificates. Based on the results of considering the application for cancellation of a plant variety protection certificate and the opinions of relevant parties, the concerned state management agency in charge of rights to plant varieties shall issue a decision to

terminate the validity of the certificate or to refuse the validity termination of the protection certificate.

5. In the cases specified in Clause 1 of this Article, the concerned state management agency in charge of rights to plant varieties shall publish such termination on a specialized magazine, clearly stating the reasons therefor, and concurrently send a notice thereon to the certificate holder. Within 30 days from the date of notification, the certificate holder may file a request for application of remedies to reasons for which the validity is terminated with the state management agency in charge of rights to plant varieties and pay the fee for restoration of validity of the plant variety protection certificate. Within 90 days after the date of filing the request, the protection certificate holder must remedy reasons for which the validity is terminated, for the cases specified at Points b, c and d, Clause 1 of this Article.

The state management agency in charge of rights to plant varieties shall consider and restore the validity of the protection certificate and publish it in a specialized magazine.

In the cases specified at Point a, Clause 1 of this Article, the validity of the plant variety protection certificate shall be restored after its holder successfully proves that the plant variety has satisfied the conditions of uniformity and stability and has been so certified by the state management agency in charge of rights to plant varieties.

Article 171.-Invalidation of plant variety protection certificates

1. A plant variety protection certificate shall be invalidated in the following cases:

a/ The plant variety protection registration application is filed in the name of a person who does not have the registration right, except where the right to such plant variety has been assigned to the holder of the registration right;

b/ The protected plant variety fails to satisfy the conditions of novelty or distinctness at the time of grant of the plant variety protection certificate;

c/ The plant variety fails to satisfy the conditions of uniformity or stability where the plant variety protection certificate is granted on the basis of results of technical test conducted by the registrant.

2. In the valid term of the plant variety protection certificate, all organizations and individuals may request the state management agency in charge of rights to plant varieties to invalidate the plant variety protection certificate. Basing itself on results of the examination of the requests for invalidation of plant variety protection certificates and opinions of relevant parties, the state management agency in charge of rights to plant varieties shall issue notices on refusal to invalidate or issue decisions on invalidation of plant variety protection certificates.

3. Where a plant variety protection certificate is invalidated, all transactions arising on the basis of the plant variety granted such protection certificate shall be null and void. The handling of null and void transactions shall comply with the Civil Code.

Article 172.-Modification or re-grant of plant variety protection certificates

1. Protection certificate holders may request the state management agency in charge of rights to plant varieties to modify or correct errors related to their names and addresses, provided that they shall pay fees and charges. Where such errors are made by the state management agency in charge of

rights to plant varieties, this agency must correct such errors and protection certificate holders shall not have to pay fees and charges.

2. Protection certificate holders may request the state management agency in charge of rights to plant varieties to re-grant plant variety protection certificates where their protection certificates are lost or damaged provided they shall pay fees and charges.

Article 173.-Publication of decisions related to plant variety protection certificates

Decisions on grant, re-grant, termination of validity, invalidation or modification of plant variety protection certificates shall be published by the state management agency in charge of rights to plant varieties in a specialized magazine on plant varieties within 60 days after such decisions are issued.

Section 2. PROTECTION REGISTRATION APPLICATIONS AND PROCEDURES FOR PROCESSING THEREOF

Article 174.-Protection registration applications

1. A protection registration application comprises the following documents: a/ A declaration form for registration made according to a set form; b/ Photos and technical declarations made according to a set form; c/ Power of attorney, where the application is filed through a representative; d/ Documents evidencing the registration right where the registrant is a transferee of the registration right; e/ Documents evidencing the priority right, where the application contains a claim for enjoying the priority right. f/ Vouchers of payment of fees and charges.

2. Protection registration applications and documents for transaction between registrants and the state management agency in charge of rights to plant varieties must be made in Vietnamese, except for the following documents which may be made in another language but must be translated into Vietnamese at the request of the state management agency in charge of rights to plant varieties: a/ Power of attorney; b/ Documents evidencing the registration right; c/ Documents evidencing the priority right; d/ Other documents in support of applications.

3. Documents evidencing the priority right of a registration application for protection of rights to a plant variety include: a/ Copies of the first application(s) certified by the receiving agency; b/ Papers on transfer or inheritance of the priority right if such right is acquired from another person.

4. Each application shall be registered only for the protection of one plant variety.

Article 175.-Receipt of protection registration applications, filing date

A protection registration application shall be received by the concerned state management agency in charge of rights to plant varieties only when it is enclosed with all the documents specified in Clause 1, Article 174 of this Law. The filing date of an application is the date on which such application is received by the concerned state management agency in charge of rights to plant varieties.

Article 176.-Formal examination of protection registration applications

1. The state management agency in charge of rights to plant varieties shall conduct the formal examination of applications within 15 days after receiving such applications to determine the validity of such applications.
2. A protection registration application shall be deemed invalid in the following cases:

a/ It fails to satisfy the formal requirements as specified;

b/ The plant variety stated in such application does not belong to a plant species on the list of protected plant species;

c/ It is filed by a person who does not have the registration right, even where the registration right belongs to many organizations or individuals but one or several of them do not agree to make the registration.

3. The state management agency in charge of rights to plant varieties shall carry out the following procedures:

a/ Notifying the refusal to accept the applications in the cases specified at Points b and c, Clause 2 of this Article, clearly stating the reasons therefor;

b/ Notifying the registrant of errors for correction in the cases specified at Point a, Clause 2 of this Article, and setting a time limit of 30 days after the receipt of the notice for the correction of such errors by the registrant;

c/ Notifying the refusal to accept the application where the registrant fails to correct errors or where the registrant does not make a reasonable appeal against the notice specified at Point b of this Clause;

d/ Notifying the acceptance of the application, requesting the registrant to supply samples of the variety to the testing institution for performance of technical tests and procedures specified in Article 178 of this Law where such application is valid or where the registrant has properly corrected the errors or made a justifiable opposition to the notice specified at Point b of this Clause.

Article 177.-Publication of protection registration applications

1. Where an application is accepted as valid, the concerned state management agency in charge of rights to plant varieties shall publish such valid application in a specialized magazine on plant varieties within 90 days from the date of application acceptance.
2. Published contents of an application include the serial number and filing date of the application, the representative agent (if any), the registrant, the owner, the denomination of the plant variety, the name of the plant species, the date on which the application is accepted as valid.

Article 178.- Substantive examination of protection registration applications

1. The state management agency in charge of rights to plant varieties shall conduct the substantive examination of applications already accepted as valid. The examination covers:

a/ Examination of novelty and proper denominations of plant varieties.

b/ Examination of results of technical tests of plant varieties.

2. Technical test means experiments conducted to determine the distinctness, uniformity and stability of varieties. 65

Technical test shall be conducted by the competent state agency or organizations or individuals that are capable of conducting the test of plant varieties in compliance with regulations of the Agriculture and Rural Development Ministry.

The state management agency in charge of rights to plant varieties may use previously obtained technical test results.

3. The time limit for examination of technical test results shall be 90 days from the date of receipt of such technical test results.

Article 179.-Modification and supplementation of protection registration applications

1. Before the concerned state management agency in charge of rights to plant varieties notifies the refusal to grant a plant variety protection certificate or the decision on grant of a plant variety protection certificate, the registrant shall have the following rights:

a/ To modify or supplement the protection registration application without changing its nature;

b/ To request the recording of changes in his/her name or address.

c/ To request the recording of change of the registrant due to the application assignment under a contract or as a result of inheritance or bequest.

2. The requester for carrying out of procedures specified in Clause 1 of this Article must pay fees and charges.

Article 180.-Withdrawal of protection registration applications

1. Before the concerned state management agency in charge of rights to plant varieties decides or refuses to grant a plant variety protection certificate, the registrant may withdraw the protection registration application. A request for application withdrawal must be made in writing.
2. From the moment the registrant withdraws the protection registration application, all subsequent procedures related to such application shall be stopped; fee and charge amounts already paid for procedures which have not yet been carried out shall be refunded at the request of the registrant.

Article 181.-Opinions of the third party on the grant of plant variety protection certificates

From the date of publication of a plant variety protection registration application in a specialized magazine on plant varieties until before a decision on grant of a plant variety protection certificate is issued, any third party can give opinions challenging the grant of such plant variety protection certificate to the state management agency in charge of rights to plant varieties. Such opinions must be made in writing and accompanied by documents and evidence to support them.

Article 182.-Refusal to grant plant variety protection certificates

A protection registration application shall be rejected and the grant of a plant variety protection certificate refused where the concerned plant variety fails to satisfy the conditions specified in Articles 176 and 178 of this Law. In case of refusal to grant a plant variety protection certificate, the state management agency in charge of rights to plant varieties shall carry out the following procedures:

Notifying the intended refusal to grant a plant variety protection certificate, clearly stating the reasons therefor and setting a time limit for the registrant to correct errors or make oppositions to the intended refusal;

Notifying the refusal to grant a plant variety protection certificate where the registrant fails to correct errors and makes no opposition to the intended refusal mentioned in Clause 1 of this Article;

1. Carrying out the procedures specified in Article 183 of this Law where the registrant has corrected errors or made a justifiable opposition to the intended refusal mentioned in Clause 1 of this Article.

Article 183.-Grant of plant variety protection certificates

Where a protection registration application is not rejected as specified in Article 182 of this Law and the registrant pays the fee, the state management agency in charge of rights to plant varieties shall decide to grant a plant variety protection certificate and record it in the national register of protected plant varieties.

Article 184.-Complaints about the grant or the refusal to grant plant variety protection certificates

1. The registrant and any third party may complain about the decision or the refusal to grant a plant variety protection certificate.
2. The settlement of complaints about decisions or refusals to grant plant variety protection certificates shall comply with the provisions of law on complaints and denunciations.

Chapter XIV CONTENTS OF AND LIMITATIONS ON RIGHTS TO PLANT VARIETIES

Section 1. CONTENTS OF RIGHTS TO PLANT VARIETIES

Article 185.-Rights of plant variety breeders The breeder of a plant variety shall have the following rights:

1. To have his/her name as a breeder recorded in the plant variety protection certificate, the national register of protected plant varieties, and published documents on plant varieties;
2. To receive remunerations according to the provisions of Point a, Clause 1, Article 191 of this Law.

Article 186.-Rights of protection certificate holders

1. A protection certificate holder shall have the right to exercise or authorize others to exercise the following rights to reproductive materials of a protected plant variety: a/ To conduct the production or propagation; b/ To process them for the purpose of propagation; c/ To offer them for sale; d/ To sell them or conduct other marketing activities; e/ To export them; f/ To import them; g/ To stock them for the purposes specified at Points a, b, c, d, e and f of this Clause.

1. to prevent others from using the plant variety according to the provisions of Article 188 of this Law.
2. To pass by inheritance or bequest or transfer the rights to the plant variety according to the provisions of Chapter XV of this Law.

Article 187.-Extension of rights of protection certificate holders

Rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties which originate from the protected plant variety, except where such protected plant variety itself originates from another protected plant variety; A plant variety is deemed to originate from a protected plant variety if such plant variety still retains the expression of the essential characteristics resulting from the genotype or combination of genotypes of the protected variety, except for differences resulting from impacts on the protected variety;
2. Plant varieties which are not definitely distinct from the protected plant variety;
3. Plant varieties, the production of which requires the repeated use of protected plant variety.

Article 188.-Acts of infringing upon rights to plant varieties

The following acts shall be regarded as infringements of rights of a protection certificate holder:

1. Exploiting or using rights of such protection certificate holder without his/her permission;
2. Using a plant variety denomination which is identical or similar to a denomination protected for a plant variety of the same species or a species closely linked to the protected plant variety.
3. Using a protected plant variety without paying the remuneration according to the provisions of Article 189 of this Law.

Article 189.-Provisional rights to plant varieties

Provisional rights to a plant variety are rights of the protection registrant of such plant variety, which arise from the date of publication of the protection registration application till the date of grant of a plant variety protection certificate. Where a plant variety protection certificate is not granted for such plant variety, the protection registrant shall not have these provisional rights.

Where the registrant is aware of the fact that the plant variety registered for protection is being used by another person for commercial purposes, the plant variety protection registrant may notify in writing that user of the fact that a registration application for protection of the plant variety has been filed, clearly specifying the filing date and the date of publication of such protection registration application, so that the latter shall stop or continue using the plant variety. Where the user already notified according to the provisions of Clause 2 of this Article continues using the plant variety, the plant variety protection certificate holder may, upon the grant of the certificate, request such plant variety user to pay a compensation amount equivalent to the licensing price of such plant variety within the corresponding use scope and duration.

Section 2. LIMITATIONS ON RIGHTS TO PLANT VARIETIES **Article 190.-Limitations on rights of plant variety protection certificate holders**

1. The following acts shall not be regarded as infringements of rights to protected plant varieties: a/ Using plant varieties for personal and non-commercial purposes; b/ Using plant varieties for crossbreeding for scientific research purposes; c/ Using plant varieties to create new plant varieties distinct from the protected plant varieties; d/ Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.

2. Rights to plant varieties shall not be applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought to the domestic or overseas markets by protection certificate holders or their licensees, except for the following acts:

a/ Acts relating to further propagation of such plant varieties;

b/ Acts relating to export of reproductive materials of such plant varieties to countries where the genus or species of such plant varieties are not protected, except where such materials are exported for consumption purpose;

Article 191.-Obligations of protection certificate holders and breeders of plant varieties

1. Protection certificate holders shall have the following obligations:

a/ To pay remunerations to breeders of plant varieties as agreed upon; in the absence of such agreement, the remuneration level must comply with the provisions of law;

b/ To pay the fee for maintenance of validity of plant variety protection certificates according to regulations.

c/ To preserve protected plant varieties, supply reproductive materials of protected plant varieties to the state management agency in charge of rights to plant varieties, and maintain the stability of protected plant varieties according to regulations.

2. Breeders of plant varieties shall be obliged to help protection certificate holders maintain reproductive materials of protected plant varieties.

Chapter XV TRANSFER OF RIGHTS TO PLANT VARIETIES

Article 192.-Licensing of plant varieties

1. Licensing of a plant variety means the permission of the protection certificate holder for another person to conduct one or several acts of his/her right to use the plant variety.
2. Where the right to use a plant variety is under co-ownership, the licensing of such plant variety to another person must be consented by all co-owners.

3. The licensing of a plant variety must be effected in the form of a written contract.
1. A plant variety licensing contract must not contain terms which unreasonably restrict rights of the licensee, particularly restrictions neither deriving from nor aimed at protecting rights of the licensor to the licensed plant variety.

Article 193.-Rights of parties to a licensing contract

1. The licensor may or may not permit the licensee to sublicense a third party.
2. The licensee shall have the following rights:
 - a/ To license the use right to a third party if it is so permitted by the licensor;
 - b/ To request the licensor to take necessary and appropriate measures against any infringements by a third party causing damage to the licensee;
 - c/ To take necessary measures to prevent a third party's infringements if within a time limit of 3 months from the date of receipt of the request mentioned at Point b of this Clause, the licensor fails to act as requested.

Article 194.-Assignment of rights to plant varieties

1. Assignment of rights to a plant variety means the transfer by the plant variety protection certificate holder of all rights to such plant variety to the assignee. The assignee shall become the plant variety protection certificate holder from the date of registration of the assignment contract with the state management agency in charge of rights to plant varieties according to procedures specified by law.
2. Where rights to a plant variety are under joint ownership, the assignment of such rights to another person must be consented by all co-owners.
3. The assignment of rights to a plant variety must be effected in the form of written contract.

Article 195.-Bases and conditions for compulsory licensing of plant varieties

1. In the following cases, the rights to use a plant variety shall be licensed to another organization or individuals under a decision of the competent state agency defined in Clause 1, Article 196 of this Law without permission of the protection certificate holder or his/her exclusive licensee (hereinafter referred to as the holder of the exclusive right to use a plant variety):

a/ The use of such plant variety is for the public interest and non-commercial purposes, in service of national defense, security, food security and nutrition for the people or to meet other urgent social needs;

b/ Persons having demand and capacity to use such plant variety fail to reach agreement with the holder of the exclusive right to use such plant variety on the entry into a license contract though they have made best efforts within a reasonable period of time to negotiate for satisfactory prices and commercial conditions;

c/ The holder of the exclusive right to use such plant variety is considered having performed anti-competition practices prohibited according to the provisions of competition law.

The holder of the exclusive right to use a plant variety may request the termination of the use right when the bases for licensing provided for in Clause 1 of this Article cease to exist and are unlikely to recur, provided that such use right termination is not prejudicial to the licensee.

The right to use a plant variety licensed under a decision of the competent state agency must satisfy the following conditions:

a/ Such licensed use right is non-exclusive;

b/ Such licensed use right is limited within a scope and duration sufficient to attain the licensing objectives, and largely for the domestic market, except for the cases specified at Point c, Clause 1 of this Article;

c/ The licensee must not assign the use right to another person, except where the assignment is made together with the transfer of his/her business establishment, and must not sub-license to others;

d/ The licensee must pay an adequate compensation to the holder of exclusive right to use the plant variety, taking into account the economic value of such use right in each specific case and in compliance with the compensation rate bracket promulgated by the Government;

4. The Government shall specify cases of compulsory licensing of plant varieties and the compensation rate bracket mentioned at Point d, Clause 3 of this Article.

Article 196.-Competence and procedures for licensing of plant varieties under compulsory decisions

1. The Agriculture and Rural Development Ministry shall issue decisions on licensing of plant varieties in the fields under its state management on the basis of considering licensing requests for the cases specified in Clause 1, Article 195 of this Law. Ministries and ministerial-level agencies shall issue decisions on licensing of plant varieties in the fields under their state management on the basis of consulting opinions of the Agriculture and Rural Development Ministry for the cases specified in Clause 1, Article 195 of this Law.

2. Plant variety licensing decisions must set the use scope and conditions in compliance with the provisions of Clause 3, Article 195 of this Law.

3. The state agency competent to decide on licensing of plant varieties must promptly notify holders of the exclusive right to use such plant varieties of such decisions.

4. Decisions on licensing of plant varieties or refusal to license plant varieties may be complained about or subject to lawsuits according to the provisions of law.

5. The Government shall specify procedures for licensing of plant varieties mentioned in this Article.

Article 197.-Rights of protection certificate holders in case of compulsory licensing of plant varieties
Protection certificate holders subject to compulsorily licensing of plant varieties shall have the following rights:

To receive compensations corresponding to the economic value of the licensed use right or equivalent to the licensing price under contracts with corresponding scope and term;

To request the state management agency in charge of rights to plant varieties to amend, terminate validity or invalidate of the compulsory licensing when the conditions for such compulsory licensing no longer exist and such amendment, termination of validity or invalidation does not cause damage to compulsory licensees.

Part Five PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Chapter XVI GENERAL PROVISIONS ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Article 198.- Right to self-protection

1. Intellectual property right holders shall have the right to apply the following measures to protect their intellectual property rights:

- a/ Applying technological measures to prevent acts of infringing upon intellectual property rights;
- b/ Requesting organizations or individuals that commit acts of infringing upon intellectual property rights to terminate their infringing acts, make public apologies or rectifications and pay damages;
- c/ Requesting competent state agencies to handle acts of infringing upon intellectual property rights according to the provisions of this Law and other relevant provisions of law;
- d/ Initiating lawsuits at courts or arbitration centers to protect their legitimate rights and interests.

1. Organizations and individuals that suffer from damage caused by acts of infringing upon intellectual property rights or discover acts of infringing upon intellectual property rights which cause damage to consumers or society shall have the right to request competent state agencies to handle such acts according to the provisions of this Law and other relevant provisions of law.
2. Organizations and individuals that suffer from damage or are likely to suffer from damage caused by acts of unfair competition shall have the right to request competent state agencies to apply the civil remedies provided for in Article 202 of this Law and the administrative remedies provided for by competition law.

Article 199.-Remedies against acts of infringing upon intellectual property rights

1. Organizations and individuals that commit acts of infringing upon intellectual property rights of other organizations and individuals shall, depending on the nature and seriousness of such infringements, be handled with civil, administrative or criminal remedies.
2. In case of necessity, competent state agencies may apply provisional urgent measures, measures to control intellectual property-related imports and exports, or measures to prevent and secure the administrative sanctioning according to the provisions of this Law and other relevant provisions of law.

Article 200.-Competence to handle acts of infringing upon intellectual property rights

Courts, inspectorates, market management offices, custom offices, police offices and People's Committees of all levels, within the ambit of their tasks and powers, are competent to handle acts of infringing upon intellectual property rights.

The application of civil remedies or criminal remedies shall fall within the competence of courts. In case of necessity, courts may apply provisional urgent measures provided for by law.

The application of administrative remedies shall fall under the competence of inspectorates, police offices, market management offices, custom offices and People's Committee of all levels. In case of necessity, these agencies may apply measures to prevent and secure the administrative sanctioning provided for by law.

1. The application of measures to control intellectual property-related imports and/or exports shall fall under the competence of custom offices.

Article 201.-Intellectual property assessment

1. Intellectual property assessment means the use by competent organizations or individuals of their professional knowledge and expertise to make assessment of and conclusion on matters related to intellectual property right infringement cases.
2. State agencies competent to handle acts of infringing upon intellectual property rights shall have the right to ask for intellectual property assessment while handling cases or matters they have accepted.
3. Intellectual property right holders and other related organizations and individuals shall have the right to request intellectual property assessment to protect their legitimate rights and interests.
4. The Government shall specify intellectual property assessment.

Chapter XVII HANDLING OF INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS WITH CIVIL REMEDIES

Article 202.-Civil remedies

Courts shall apply the following civil remedies in handling organizations and individuals that have committed acts of infringing upon intellectual property rights:

1. Compelling the termination of infringing acts;
2. Compelling the public apology and rectification;
3. Compelling the performance of civil obligations;
4. Compelling the payment of damages;
5. Compelling destruction, distribution or use for non-commercial purposes of goods, raw materials, materials and means used largely for the production or trading of intellectual property right-infringing goods, provided that such destruction, distribution or use does not affect the exploitation of rights by intellectual property right holders.

Article 203.-Right and burden of proof of involved parties

The plaintiff and the defendant in a lawsuit against intellectual property right infringement shall enjoy the right and bear the burden of proof provided for in Article 79 of the Civil Procedure Code and this Article.

The plaintiff shall prove that he/she is the intellectual property right holder with one of the following evidence:

a/ Copies of the copyright registration certificate, related right registration certificate or protection title; or an extract of the national register of copyright and related rights, the national register of industrial property or the national register of protected plant varieties;

b/ Necessary evidence proving the basis for establishment of copyright or related rights in case of absence of a copyright registration certificate, related right registration certificate; necessary evidence proving rights to business secrets, trade names or well-known marks;

c/ Copies of license contracts for intellectual property objects where the use right is licensed under contracts.

1. The plaintiff shall have to produce evidence of acts of infringing upon intellectual property rights or acts of unfair competition.
2. In a lawsuit against an infringement of the right to an invention which is a production process, the defendant shall have to prove that his/her products are produced by a process other than the protected process in the following cases:

a/ The product made by the protected process is new;

b/ The product made by the protected process is not new, but the invention owner believes that the product of the defendant is made by the protected process and fails to identify the process used by the defendant in spite of application of appropriate measures.

1. Where a party to a lawsuit against an infringement of intellectual property rights can prove that appropriate evidence proving his/her claims is under the control of the other party and therefore inaccessible, the former shall have the right to request the court to compel the latter to produce such evidence.
2. When making a claim for compensation for damage, the plaintiff must prove his/her actual damage and specify the basis for determining compensation for damage according to the provisions of Article 205 of this Law.

Article 204.-Principles of determination of damage caused by infringements of intellectual property rights

1. Damage caused by acts of infringing upon industrial property rights include:

a/ Material damage, including property losses, decreases in income and profit, loss of business opportunities, reasonable expenses for prevention and remedying of such damage;

b/ Spiritual damage, including damage to honor, dignity, prestige, reputation and other spiritual losses caused to authors of literary, artistic and scientific works; to performers; to authors of inventions, industrial designs, layout-designs; and breeders of plant varieties.

2. The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringing upon intellectual property rights.

Article 205.-Bases for determination of compensations for damage caused by infringements of intellectual property rights

1. Where the plaintiff can prove that an act of infringing upon intellectual property rights has caused material damage to him/her, he/she shall have the right to request the court to decide on the compensation level on one of the following bases:

a/ Total material damage calculated in an amount of money plus profit gained by the defendant as a result of an act of infringing upon intellectual property rights where the reduced profit amount of the plaintiff has not yet been calculated into such total material damage;

b/ The price of the licensing of an intellectual property object with the presumption that the defendant has been licensed by the plaintiff to use that object under a license contract within a scope corresponding to the committed infringing act;

c/ Where it is impossible to determine the level of compensation for material damage on the bases specified at Points a and b of this Clause, such compensation level shall be set by the court, depending on the damage extent, but must not exceed VND 500 million.

1. Where the plaintiff can prove that an act of infringing upon intellectual property rights has caused spiritual damage to him/her, he/she shall have the right to request the court to decide on the compensation level ranging from VND 5 million to VND 50 million, depending on the damage extent.
2. In addition to the damage compensation defined in Clauses 1 and 2 of this Article, industrial property right holders shall also have the right to request the court to compel organizations or individuals that have committed acts of infringing upon industrial property rights to pay reasonable costs of hiring attorneys.

Article 206.- Right to request the court to apply provisional urgent measures

1. Upon or after the initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:

a/ There exists a danger of irreparable damage to such intellectual property right holder;

b/ Goods suspected of infringing upon intellectual property rights or evidence related to the act of infringing upon industrial property rights are likely to be dispersed or destroyed unless they are protected in time.

2. The court shall decide to apply provisional urgent measures at the request of the industrial property right holder defined in Clause 1 of this Article before listening to the party subject to such measures.

Article 207.-Provisional urgent measures

1. The following provisional urgent measures shall be applied to goods suspected of infringing upon intellectual property rights or to raw materials, materials or means of production or trading of such goods:

a/ Seizure;

b/ Distrainment;

c/ Sealing; ban from alteration of original state; ban from movement;

d/ Ban from ownership transfer.

2. Other provisional urgent measures shall be applied according to the provisions of the Civil Procedure Code.

Article 208.-Obligations of persons requesting the application of provisional urgent measures

Persons requesting the application of provisional urgent measures are obliged to prove their right to request provided for in Clause 1, Article 206 of this Law with documents and evidence specified in Clause 2, Article 203 of this Law.

Persons requesting the application of provisional urgent measures are obliged to pay compensations for damage caused to persons subject to such measures in cases where the latter are found having not infringed upon industrial property rights. To secure the performance of this obligation, a person requesting the application of provisional urgent measures shall have to deposit a security in one of the following forms:

a/ A sum of money equal to 20% of the value of the goods subject to the application of provisional urgent measures, or at least VND 20 million where it is impossible to value such goods;

b/ A guarantee deed issued by a bank or another credit institution.

Article 209.-Cancellation of the application of provisional urgent measures

1. The court shall issue decisions on cancellation of provisional urgent measures already applied in the cases specified in Clause 1, Article 122 of the Civil Procedure Code or in cases where the provisional urgent measure debtor can prove that the application of provisional urgent measures is not well grounded .
2. In case of cancellation of a provisional urgent measure, the court shall consider the refund to the person requesting the application of such provisional urgent measure of the security defined in Clause 2, Article 208 of this Law. Where a request for the application of a provisional urgent measure is not well grounded, thus causing damage to the provisional urgent measure debtor, the court shall compel the requester to pay compensation for the damage.

Article 210.-Competence and procedures for application of provisional urgent measures

Competence and procedures for application of provisional urgent measures shall comply with the provisions of Chapter VIII, Part One of the Civil Procedure Code.

Chapter XVIII HANDLING OF INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS WITH
ADMINISTRATIVE AND CRIMINAL REMEDIES; CONTROL OF INTELLECTUAL PROPERTY-RELATED
IMPORTS AND/OR EXPORTS

Section 1. HANDLING OF INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS WITH
ADMINISTRATIVE AND CRIMINAL REMEDIES

Article 211.-Acts of infringing upon industrial property rights which shall be administratively sanctioned

1. The following acts of infringing upon industrial property rights shall be administratively sanctioned:

a/ Committing an act of infringing upon intellectual property rights which causes damage to consumers or society;

b/ Failing to terminate an act of infringing upon intellectual property rights though the intellectual property right holder has issued a written notice requesting the termination of such act;

c/ Producing, importing, transporting or trading in intellectual property counterfeit goods defined in Article 213 of this Law or assigning others to do so;

d/ Producing, importing, transporting or trading in articles bearing a mark or a geographical indication that is identical or confusingly similar to a protected mark or geographical indication or assigning others to do so.

The Government shall specify acts of infringing upon intellectual property rights which shall be administratively sanctioned, sanctioning forms and levels, and procedures for sanctioning such acts. Organizations and individuals that commit acts of unfair competition in intellectual property shall be sanctioned for administrative violations according to the provisions of competition law.

Article 212.-Acts of infringing upon industrial property rights which shall be criminally handled

Individuals who commit acts of infringing upon intellectual property rights involving elements which constitute a crime shall be examined for penal liability according to the provisions of criminal law.

Article 213.-Intellectual property counterfeit goods

1. Intellectual property counterfeit goods referred to in this Law include goods bearing counterfeit marks and goods bearing counterfeit geographical indications (hereinafter referred to as counterfeit mark goods) defined in Clause 2 of this Article and pirated goods defined in Clause 3 of this Article.
2. Counterfeit mark goods are goods or their packages bearing marks or signs which are identical with or indistinguishable from marks or geographical indications currently protected for those very goods without permission of mark owners or organizations managing such geographical indications.
3. Pirated goods are copies made without the permission of copyright holders or related right holders.

Article 214.-Forms of administrative sanctions and consequence remedies

1. Organizations and individuals that commit acts of infringing upon intellectual property rights defined in Clause 1, Article 211 of this Law shall be compelled to terminate their infringing acts and subject to one of the following principal sanctions:

a/ Caution;

b/ Monetary fine.

2. Depending on the nature and seriousness of their infringements, intellectual property rights-infringing organizations or individuals shall also be subject to one of the following additional sanctions:

a/ Confiscation of intellectual property counterfeit goods, raw materials, materials and means used mainly for production or trading of such intellectual property counterfeit goods;

b/ Suspension of business activities in domains where infringements have been committed for a definite time.

3. In addition to the sanctions specified in Clauses 1 and 2 of this Article, intellectual property rights-infringing organizations and individuals shall also be subject to one or several of the following consequence remedies:

a/ Compelled destruction or distribution or use for non-commercial purposes of intellectual property counterfeit goods as well as raw materials, materials and means used mainly for production or trading of such intellectual property counterfeit goods, provided that such destruction, distribution or use does not affect the exploitation of rights by intellectual property right holders;

b/ Compelled transportation out of the Vietnamese territory of transit goods infringing upon intellectual property rights or compelled re-export of intellectual property counterfeit goods, as well as imported means, raw materials and materials used mainly for production or trading of such intellectual property counterfeit goods, after infringing elements are removed from such goods.

4. The level of monetary fine specified at Point b, Clause 1 of this Article shall be set at least equal to the value of detected infringing goods but must not exceed five times such value. The Government shall specify method of determination of value of infringing goods.

Article 215.-Preventive measures to secure the administrative sanctioning

1. In the following cases, organizations and individuals shall have the right to request competent agencies to apply preventive measures to secure the administrative sanctioning specified in Clause 2 of this Article:

a/ Acts of infringing upon intellectual property rights are likely to cause serious damage to consumers or society;

b/ Infringement material evidence is likely to be dispersed or infringing individuals or organizations show signs of shirking their liabilities;

c/ To secure the enforcement of decisions on sanctioning of administrative violations.

2. Preventive measures to secure the administrative sanctioning applied according to administrative procedures to acts of infringing upon intellectual property rights include:

a/ Temporary custody of persons;

b/ Temporary custody of infringing goods, material evidence and means;

c/ Body search;

d/ Search of means of transport and objects; search of places where infringing goods, material evidence and means are hidden;

e/ Other administrative preventive measures according to the provisions of law on handling of administrative violations.

Section 2. CONTROL OF INTELLECTUAL PROPERTY-RELATED IMPORTS AND/OR EXPORTS

Article 216.-Measures to control intellectual property-related imports and/or exports

1. Measures to control intellectual property-related imports and exports include:

a/ Suspension of customs procedures for goods suspected of infringing upon intellectual property rights;

b/ Inspection and supervision to detect goods showing signs of intellectual property right infringement.

Suspension of customs procedures for goods suspected of infringing upon intellectual property rights means a measure taken at the request of intellectual property right holders in order to collect information and evidence on goods lots in question so that the intellectual property right holders can exercise the right to request the handling of infringing acts and request the application of provisional urgent measures or preventive measures to secure the administrative sanctioning. Inspection and supervision to detect goods showing signs of infringement of intellectual property rights means a measure taken at the request of intellectual property right holders in order to collect information so that they can exercise the right to request the suspension of customs procedures. In the course of application of the measures specified in Clauses 2 and 3 of this Article, if any intellectual property counterfeit goods are detected according to Article 213 of this Law, customs offices shall have the right and responsibility to apply administrative remedies to handle them according to the provisions of Article 214 and Article 215 of this Law.

Article 217.-Obligations of persons requesting the application of measures to control intellectual property-related imports and/or exports

1. Persons requesting the application of measure to control intellectual property-related imports and/or exports shall have the following obligations:

a/ To prove that they are intellectual property right holders by producing documents and evidence specified in Clause 2, Article 203 of this Law;

b/ To supply information sufficient to identify goods suspected of infringing upon intellectual property rights or to detect goods showing signs of intellectual property rights infringement;

c/ To file written requests to customs offices and pay fees and charges prescribed by law;

d/ To pay damages and other expenses incurred to persons subject to control measures in cases where the controlled goods are found having not infringed upon industrial property rights.

2. To secure the performance of the obligations specified at Point d, Clause 1 of this Article, a person requesting the application of the measure of suspension of customs procedures shall have to deposit a security in one of the following forms:

a/ A sum of money equal to 20% of the value of the goods lot subject to the application of the measure of suspension of customs procedures, or at least VND 20 million where it is impossible to value such goods lot;

b/ A guarantee deed issued by a bank or another credit institution.

Article 218.-Procedures for application of the measure of suspension of customs procedures

1. When persons requesting the suspension of customs procedures have fulfilled their obligations specified in Article 217 of this Law, customs offices shall issue decisions on suspension of customs procedures with regard to goods lots in question.
2. The duration of suspension of customs procedures shall be 10 working days from the date of issuance of the suspension decision. Where the customs procedure suspension requester has justifiable reasons, this duration may be prolonged but must not exceed 20 working days, provided that the requester deposits the security specified in Clause 2, Article 217 of this Law.
3. Upon the expiration of the duration specified in Clause 2 of this Article, if persons requesting the suspension of customs procedures do not initiate civil lawsuits and customs offices do not decide to accept the cases for handling of administrative violations of the goods lot exporters or importers according to administrative procedures, customs offices shall have the following responsibilities:

a/ To continue carrying out customs procedures for such goods lots;

b/ To compel persons requesting the suspension of customs procedures to compensate all the damage caused to the goods lot owners due to unreasonable requests for the suspension of customs procedures, and to pay expenses for warehousing and preservation of goods as well as other expenses incurred by customs offices and other related agencies, organizations and individuals according to the provisions of law on customs;

c/ To refund to persons requesting the suspension of customs procedures the remaining security amount after the obligation of paying compensations and expenses specified at Point b of this Clause is fulfilled.

Article 219.-Inspection and supervision to detect goods showing signs of intellectual property right infringement

Where an intellectual property right holder requests the inspection and supervision to detect goods showing signs of intellectual property right infringement, the customs office shall, when detecting such a goods lot, promptly notify the requester thereof. Within three working days from the date of notification, if such requester does not request the suspension of customs procedures with regard to the detected goods lot and the customs office does not decide to consider the application of the administrative remedies specified in Articles 214 and 215 of this Law, the customs office shall have to continue carrying out customs procedures for such goods lot.

Part Six IMPLEMENTATION PROVISIONS

Article 220.-Transitional provisions

1. Copyright and related rights protected under the legal documents effective before the effective date of this Law shall continue to be protected under this Law if they remain in term of protection on that date.

2. Applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, trademarks, appellations of origin of goods, layout-designs or plant varieties, which have been filed with competent agencies before the effective date of this Law, shall continue to be processed according to the provisions of the legal documents effective at the time of filing of such applications.
3. All rights and obligations conferred by protection titles granted according to the provisions of law effective before the effective date of this Law and procedures for maintenance, renewal, modification, licensing, ownership assignment, settlement of disputes relating to these protection titles shall be subject to the provisions of this Law, except for the grounds for invalidation of protection titles which shall only be subject to the provisions of legal documents effective at the time of grant of such protection titles.
4. Trade secrets and trade names which have been existing and protected under the Government's Decree No. 54/2000/ND-CP of October 3, 2000, on the protection of industrial property rights to trade secrets, geographical indications, trade names and the protection of rights against industrial property-related unfair competition shall continue to be protected under this Law.
5. From the effective date of this Law, geographical indications, including those protected under the Decree mentioned in Clause 4 of this Article, shall only be protected after their registration according to the provisions of this Law.

Article 221.-Implementation effect

This Law takes effect as from July 1, 2006.

Article 222.-Implementation guidance

The Government and the Supreme People's Court shall detail and guide the implementation of this Law.

This Law was passed on November 29, 2005, by the XIth National Assembly of the Socialist Republic of Vietnam at its 8th session.

Chairman of the National Assembly
NGUYEN VAN AN

59. Yemen

Although listed in WIPOLEX as relevant to traditional knowledge this law does not deal specifically with traditional knowledge or genetic resources. Some mention of TCE

Intellectual Property Law Law No. 19 for the Year 1994 Official Gazette No. 20 issued on 27 Jumada I, 1415 A.H. corresponding to 31 October, 1994

Presidential Law Decree No. 19 for the Year 1994 in respect of Intellectual Property

The President,

After perusal of the Constitution of the Republic of Yemen,

At the presentation of the Prime Minister,

And with the approval of the Council of Ministers,

Resolved,

Article 1

The Law of Intellectual Right aims at protecting the right of the author, discoverer and inventor to ensure the freedom of creation, enhancing technological development, regulating their utilization of their works, and protecting the society's interest in making benefit of the fruits of literary, scientific and artistic innovation.

PART ONE Author's Right

Chapter 1 The Author & His Rights

Article 2

The subject of the author's right shall be the creative works distinguished by innovation in the fields of literature, arts and science, whatever the form of the work, its purpose, production, importance or method are, and whether the work can be classified into a branch of the known branches of creation or not.

Article 3

1. A subject of copyright shall be each work in which expression is made in writing, sound, drawing, modeling and the like, in particular the following:
 1. -Written scientific, literary and artistic works. -
Works included in the arts of drawing, painting, carving, sculpture or architecture. -
Works delivered verbally, such as speeches, lectures, preachments and the like. -
Dramatic works and musical plays. -Music whether accompanied with words or not. -
Photographic and movie works.
 2. -Maps, geographical drawings and sketches.
-Model works whatever is the art related thereto.
-Works prepared for broadcasting by radio or television.
-Works related to applied arts, and in general every work in which expression

is made in writing, sound, drawing modeling, movement and the like.

2. The right of the writer shall include the title of the book if it has an innovative quality and is not a common term used to indicate the subject of the book.
3. Counterfeiting of drawings, symbols and all elements which distinguish the form of innovated products shall be prohibited if this leads to causing confusion to the public as regards the reality of the innovated work.
4. The right of the author shall include the translator of the work into another language as well as who changed it from its original colors to another color, who summarized, altered or explained it or commented on it in any manner that would render it in an innovated or new form, without prejudice to the rights of the original author.
5. The right of the author shall include the photographic product. However, this shall not prohibit others from taking new photographs of the photographed thing, even if the new photographs were taken under the same circumstances in which the first photograph was taken.

Article 4

The right of the writer shall not extend to:

1. Compiled works which include works other than those of the compiler, such as poetry, prose and music anthologies, as well as other compiled works, without prejudice to the rights of the original authors.
2. Every book whose author's rights have become public property.
3. Collected official documents, such as the texts of governmental and political announcements; texts of laws, decrees, regulations; courts decisions and all official documents. However, protection shall include the above-mentioned works if they appear to have a distinguishing quality of their compiler, which deserves protection, or if they are characterized by innovation or distinctive order.
4. Works which are not fit to be the subject of the right of an author, such as works which contain anthologies from the tradition or folklore, or whose author is unknown.

Article 5

The author's right shall include the following:

- a. The translator of a work previously translated.
- b. Who verified works of the tradition or commented thereon, even if they were previously verified or commented on.
- c. Who verified a set of folk innovations whose author is unknown, provided the reissue or verification contains a personal element characterized by creation or innovation. In all cases, this shall not prejudice the rights of the original author, translator or verifier.

Article 6

The Yemeni author's right to a creative work published in Yemen or abroad shall be recognized, and the non-Yemeni author's right shall also be recognized if the law of his country accords the same treatment to Yemenis, or according to international agreements in which the Republic of Yemen is a part thereto.

Article 7

The author's rights shall be established once the work is created. The drafts and excerpts shall be the right of the author if they have an innovative value. The same applies to works of art completion phases.

Article 8

Any one, whether he is a natural or legal person, who publishes a work attributing it to himself, by mentioning his name on the work or by any other way, shall be considered the author, unless the contrary is proved.

Article 9

Provision of the previous article shall apply to pseudonym; symbol or surname used to indicate a certain author, provided there is not the least doubt as to the identity of the author.

Article 10

A work may be published anonymously at the author's request.

Article 11

The author of a work who published his work under a pseudonym, a symbol, a surname or anonymously, may at any time reveal his identity, even if he previously agreed otherwise.

Article 12

The author shall have the right to the following:

1. To decide publishing a work and indicate the method of its publication.
2. Immunity and protection of a work.
3. To obtain remuneration commensurate with the nature of the work and its type, for its use by others, with the exception of the cases provided for by the law.

Article 13

The author shall have the right to utilize his production in the appropriate methods, in particular:

1. Printing an unspecified number of copies in any method, such as handwriting, by printing machines, offset, sound recording or movie or video recording.
2. Public performance of the creative work in seminars, music halls, stage, movie or paintings and photographs exhibitions.
3. Circulation in markets and national and international exhibitions.
4. Translation of a work to another language or other languages.
5. Reprinting a work.

Article 14

The rights contained in the previous article shall be independent of each other, and exercising one of them shall not affect exercising the other rights. These rights shall include the whole of the work as well as each part thereof.

Article 15

1. Third parties may not make benefit of the unpublished work except with the express approval of the author, even if this does not constitute an infringement upon the moral or financial rights of the author.
2. Making benefit of a published work shall be by reading it, quoting paragraphs or chapters from it or summarizing them for personal knowledge or for using them in studies a research and reference sould be made to the work and to the author, in particular to the following:
 1. Work title.
 2. Author's name.
 3. Place of issue.
 4. Date of issue.
 5. Chapter, paragraph or page number.

Article 16

Without the approval of the author and without paying the authorship remuneration but with referring to the name of the quoted author, a published work may be used for forming a new independent work as regards innovation, except converting a novel to a play or to a scenario or vice versa, and also except converting a play into a scenario or vice versa, as well as except changing a poem to a song and vice versa. The copyright in this case to the new work shall be to the person who made this new work by using other's work. Such right shall not prohibit others from using the work.

Article 17

1. A work shall be considered published if it was issued, publicly performed, publicly exhibited, broadcast by radio or television, or conveyed to an unlimited circle of people, or by other means whatever they are.
2. A work shall also be considered published if the industrial products containing the work of art were put on the market, or if a building was constructed according to an engineering design, and the like.
3. Informing about a work and presenting the contents or photocopies thereof shall not be considered a publication of the work. The right to a work shall be maintained as long as the work itself did not pass to an unlimited circle of people.

It shall be prohibited to issue a creative work without the author's name, unless it is an express wish of the author.

Article 19

When publishing a work or performing it in any manner, it shall be prohibited to make any modification or change thereto by deletion or addition without the author's consent, whether in the work itself, its title or the author's name. This includes the introductions, conclusions, explanations, comments, footnotes and illustrations by photographs. An exception shall be the works which require modifications which are necessary during execution, such as architectural works.

Article 20

The author may appoint a person who will be in charge of the protection of his works' immunity after his death. Such person shall exercise his authorities for the whole of his life. If the author does not

appoint any person for such purpose, protection of the author's works after his death shall be exercised by his sons and wife as well as the competent party. The competent party shall also exercise works immunity protection if there are no heirs, or if the author's right has expired with respect to them.

Article 21

The Council of Ministers shall specify in consultations with the concerned parties the authors' remuneration rates for the others' use of their works. If there is no approved rate, remunerations for the use of a work shall be determined as agreed by the two parties.

Article 22

The author's works may not be attached for settling his debts.

Article 23

The author's right for the economic use of his work or obtaining a remuneration shall extend for the whole of his life.

Article 24

After the death of the author, the author's right to the economic utilization shall be transferred to the heirs according to the rules of salaries and service benefits, and for a period of thirty years calculated as from January 1st of the year in which the author died.

Article 25

A movie or T.V. film producer shall have the right to the economic utilization of his work or obtaining remuneration for a period of twenty-five years as from the date of production which shall be calculated as from January 1st of the production year.

The owner of the author's rights to photographs shall have the right to their economic utilization or obtaining from those who use them remuneration for (10) years as from the date of issue, and such remunerations shall be calculated from January 1st of the year of issue.

Article 27

The broadcasting right to broadcasting programs shall be for two years, and shall be for three years for TV programs. The rights of authors, performers and their heirs shall be according to the general period.

Article 28

Quotation from a published work without reference to the work according to article (15) paragraph (2) shall be considered an infringement upon the author's rights, and shall deserve penalty and paying the appropriate compensation.

Chapter 2 Collective Works

Article 29

If many persons participate in making a creative work, each of them shall become entitled against others to the author's rights for the whole work. However, the right of each author to his work individually shall not abate.

Article 30

The relationship between coauthors shall be determined by agreement among them in a written contract.

Article 31

If the participation of all authors is listed under a different type of arts, each one of them shall have the author's right to the part pertaining to him, without prejudice to his right to the whole of the work.

Article 32

When many persons participate in lyrical music works, all the participants together shall have the right to a license for the public performance of the whole work, issuing it and making copies thereof. The author of the literary part, as well as the composer of the music shall have the right to publish the part pertaining to him alone, provided this will not aggrieve the others.

Article 33

The financial rights for the movie and TV film as a whole shall be for the producer, and each author shall maintain his moral right to the part pertaining to him.

Article 34

If a group makes a creative work under the supervision of a body or institution which undertakes to publish it under its management and name, and the work of the participants is for an intended purpose, the rights of the author to the whole work shall be for the body or institution which issues it, and each editor or author shall have the author's rights to the research or articles he writes.

Chapter 3 Registration Procedures

Article 35

For each creative work required to be registered, an application shall be submitted to the competent party, together with a copy of that work and the documents proving the right of ownership thereof. The competent party shall notify the applicant of the acceptance of the application for examination, rejecting it or requesting the completion of the necessary procedures for carrying out the registration.

After making sure about the ownership of the creative work and its benefit, the competent party shall register it in its own documents, indicating the name of the creator or creators, work address and the registration date according to the method specified in the regulations

Article 36

Registration shall result in protecting the creative work and prohibiting its use by any person without the consent of the holder of the registration certificate.

Article 37

The competent courts shall decide the validity of registration or its nullity in case of conflict in respect of the creative work required to be registered or used.

Chapter 4 Transfer of a Creative Work to the State Ownership

Article 38 Article 39

The bodies and institutions which issue scientific, literary and artistic magazines and periodicals and daily, weekly and monthly newspapers shall maintain all the author's rights pertaining to them in a continuous manner if such bodies or institutions have a continuing status.

Article 40

In case the public body or institution ceases to exist, the copyrights shall be directly transferred to the ownership of a similar governmental or private body or institution.

Chapter 5 Authorship Contract

Article 41

For the purpose of using his creative work, the author may conclude an authorship contract with the beneficiary, under which the author undertakes to present a work and hand it over to the beneficiary on the date specified in the contract, for using it in the method stipulated in the contract. The beneficiary shall undertake to make such use during the period specified in the contract and to pay remuneration to the author.

Article 42

An exception to the provision of the previous article shall be the works published in the newspapers and magazines. However, publication in a newspaper or a magazine shall not be considered a relinquishment of the copyright except according to a written contract published in the same newspaper or magazine accompanying the published work.

Article 43

Any condition contained in the contract concluded with the author which leads to placing him in a worse position compared with the provisions stipulated by law or the standard contract shall be considered null & void. In such case, the condition shall be canceled and replaced by the provisions stipulated by law or the standard contract.

Article 44

The contract shall be considered concluded once it is signed. In case the person or party, which benefits from the work violates the contract, the author shall be entitled to remuneration. If the violation is due to reasons beyond the control of the beneficiary or to force majeure, the author shall have the right to recover the work and publish it.

Article 45

1. If the author violates the authorship contract in such a manner as to result in rescinding the contract by the beneficiary, the author shall return to the beneficiary the remuneration he had received.
2. This is valid in particular if the author, as a result of his error, did not hand over the work on the date specified in the contract, performed the work not to the contract's conditions, showed dishonesty or indifference, violated his duty by not personally executing the contract or allowed others to use the work during the prohibition period.

Article 46

Agreement to a print, prints, recording, performance or a certain execution shall not be considered a relinquishment of other prints recordings, performances or execution, except if this is expressly contained in the contract, unless there is a defect of will in the agreement. Relinquishment of a certain right shall not be considered a relinquishment of another right.

Article 47

The amount of remuneration to be paid according to the authorship contract shall be decided by the agreement of both parties.

Article 48

Authorship contracts are:

1. Publication Contract -publishing the work or reprinting it.
2. Production Contract -the public performance of an unpublished work.
3. Artistic Assignment Contract -creation is a work of fine arts for the purpose of public performance.
4. Scenario Contract for using the work in a movie or a TV film, or broadcasting it by radio or TV
5. Industrial Ornamentation Contract -for using ornamentation art works in the industry.
6. Translation & Conversion Contract -for using creative works in literature, arts and sciences.

PART TWO The Right to a Discovery

Article 49

Discovery is to obtain knowledge of an existing matter previously unknown in the fields of laws, characteristics and phenomena related to the material world, including the discovery of materials or living things.

Article 50

Each Yemeni who obtains knowledge of an existing matter previously unknown in the fields of laws, characteristics and phenomena of the material world shall be considered as having made a discovery, and shall enjoy the rights provided for in this law, in particular the following:

1. His name or any name he deems appropriate shall be given to the discovery.
2. The person who made the discovery shall be paid on incentive remuneration whose amount shall be determined by a resolution by the Council of Ministers, and shall be paid to the discoverer as a lump sum.
3. The discoverer shall be granted a certificate proving that he has made the discovery, and that he has priority on the discovery.
4. After the remuneration is paid to the discoverer or to his successor, the discovery shall be the right of all. However, in the case of applying the discovery in the field of industrial or agricultural investment, the discoverer shall continue to enjoy the financial right according to the provisions of this law.

Article 51

The application to obtain the discovery certificate shall be submitted to the competent party by the discoverer or his successor, containing information on the discovery and supported by the necessary documents.

Article 52

The competent party shall indicate in the application within 15 days as from the date of its submission that the applicant is accepted to make the examination or that the necessary papers should be completed and advise him thereof. In all cases, he shall be referred to examination 10 days after the completion of procedures. In case the set period has elapsed without a notice or making an examination, the applicant may resort to the judicial authorities to request examination and claim compensation.

Article 53

When the application is accepted for examination, the application shall be referred during the period specified in the previous article to the concerned scientific centers to decide within three months as from the date of reference whether there is a discovery or not.

Article 54

After the concerned scientific centers decide on the discovery, they shall issue a resolution to register the discovery with the competent party, specify the date of its precedence, and advise the competent party about it in the methods stipulated in the regulations.

Article 55

The certificate of discovery shall be granted if there is no opposition within one year as from the date of the notice referred to in the previous article.

Priority of a discovery shall be determined to be the date of its first drafting in a magazine

report, meeting, statement, broadcasting by radio or TV or the like. If there is no such announcement of the discoverydraft, the date of submitting the application to the competent party shall be adopted.

Article 57

The courts shall decide on the dispute relating to the position of the discovery and the participation of many persons in making one discovery.

PART THREE The Right of the Inventor

Chapter 1 Invention & Creative Proposal

Section 1 Substantive Conditions

Article 58

1. Invention is an innovation which contains a solution for a technical assignment, characterized by substantial newness and has a positive result in any field of economy, culture, health or defense, such as innovatingwork tools, manufacturing material, finding a new industrial method or the technical of a scientific principle that gives direct industrial results.
2. It shall also be considered on invention the innovation not connected with technology, such as obtaining new types of seeds or discovering new methods for the treatment of diseases.

Article 59

1. The newness of an invention means that it has not been used before, in the sense that the
2. invention is new in the light of international technology, considering the scientific research achievements in Yemen and abroad.
3. Newness should be connected with the essence of things and not with secondary and side elements.

Article 60

1. The invention should be applicable i.e. can be manufactured or used in industry or agriculture.
2. The invention should also have actual benefit which would increase the rate of production or improve the quality of products and the like.
3. The benefit of the invention may be realized immediately or in the future.

Article 61

1. The invention may be complementary to an original invention which still enjoys legal protection, and so it is based on it and contains a development or improvement thereto. In this case, the patent of the relatinginvention shall be granted for the remaining period of the patent of the original invention.
2. Granting of the related invention patent shall not affect the rights of the patent owner of the original invention.

Article 62

1. The creative proposal for developing production aims at finding solutions to improve the applied technology, manufactured products, production technology, control systems, research or industrial safetytechnology, for the purpose of increasing work productivity and using energy, equipment and material more effectively.

2. It is sufficient for a creative proposal to contain local newness in the light of production quality at a certain time. It is also not stipulated that newness is substantial.

Article 63

1. Each Yemeni, whatever his age, domicile or work are shall enjoy the legal protection stipulated for the inventor or proposer.
2. The right of invention shall be decided for the Yemeni bodies and institutions in the following cases :
If the invention is the result of collective creation or if it is impossible to determine the role of each individual who shared in the invention patent shall be issued in the name of the body or institution at which or with the assistance of which the invention was made.
 1. If the invention is made as a result of a matter related to service, according to an assignment or assistance from the state, body or institution. In such case the patent of invention shall be issued in the name of the person who made the invention or who assisted in making it. Reference should be made in the patent to the name of the person who made the invention.

Article 64

1. The rights of inventor or proposer shall be decided for foreigners abroad according to an international agreement concluded between the Republic of Yemen and the state to which they belong, according to similar treatment. The same provision shall apply to foreign legal persons.
2. The Council of Ministers shall regulate the rules related to foreigners residing or working in Yemen.

Article 65

1. Granting an invention patent for inventions which violate the Yemeni social system and the provisions of the Islamic jurisprudence shall be prohibited.
1. A patent may not be granted for:
 1. Nonchemical inventions related to foodstuff, medicines or pharmaceuticals. If these products are manufactured in special chemical methods, a patent may be granted for the method of its manufacture, and not for the products themselves.
 2. New methods for the treatment of diseases.
 3. Biological methods for the production of new type of animals or plants.

Article 66

If a person presents a creative proposal for developing production and his proposal is accepted for application, he shall be granted a certificate attributing the proposal to him.

Article 67

The inventor or the person who submits the creative proposal for developing production should cooperate effectively with the concerned parties in the application of the invention or proposal and its development in future. He may participate in practicing the works related to the application of the invention or proposal according to the procedures stipulated in the regulations.

Section 2 Registration Procedures

Article 68

1. The inventor or his successor shall submit an application to the concerned parties containing a description of the invention and supported by the necessary documents.
2. The concerned party shall notify the applicant within ten days of the acceptance of his application for examination, or ask him to complete the required papers. Priority for the invention shall be decided as from the date of submitting the application, and this shall be indicated in the notice addressed to the applicant.
3. The invention shall be examined for its newness and the benefit expected from it, in the manner decided in the regulations.

Article 69

1. The owner of the patent for whom legal protection is decided and who wishes to make benefit of the priority of a previous application submitted in another country, should attach to his application submitted in Yemen a written statement of the date and number of the previous application and the country in which he or his predecessor submitted this application. He should submit within three months as from the date of the last application a photocopy of the previous application certified by the country in which it was submitted.
2. In this case the priority of the application submitted abroad shall be determined when the application is submitted in Yemen within one year as from the date of the application submitted abroad.

Article 70

1. A person who exhibits his invention in a Yemeni or international exhibition officially approved, and then submits an application in Yemen to obtain a patent of an invention, priority shall be decided for his application which shall be the date of opening the exhibition to visitors, if he submits the application in Yemen within six months as from the date of opening the exhibition.
2. The applicant should attach the required documents to his application, and these documents shall contain a certificate from the exhibition management indicating that his invention has been exhibited in the exhibition and specifying the date of opening the exhibition for visitors.

Article 71

1. The competent party shall issue within three months as a maximum as from the date of notifying the applicant of accepting his invention for examination a decision accepting his application together with a draft of the content of the invention, or rejecting the application and indicating the reasons thereof.
2. The applicant may in both cases within one month of notifying him of the decision oppose the decision in relation to the draft of the content of the invention or the reasons for rejecting the application. The competent party concerned with the opposition shall take a decision in this regard within two months as from the date of making the opposition.

Article 72

1. In case of accepting the invention, the competent party should announce it in the methods decided in the regulations once it is accepted.
2. Any interested party may within six months as from the date of announcing the invention object to the competent party for the registration of the invention.
3. Upon objection, the competent party shall notify in writing the person who submitted the registration application of the objection. The applicant should answer in writing to the objection within

nemonth notifying him thereof, otherwise he shall be considered as having relinquished the application.

Article 73

1. With the exception of the cases of confidential inventions, patents of invention should be registered in the patents register prepared for this purpose.
2. The patents of invention and the actions related thereto should be announced in the methods decided in the regulations.
3. Each relinquishment of a patent or a license to use the invention shall have no effect for the parties to the contract and vis-à-vis third parties unless it is recorded on the margin of the invention patent registration. The same shall apply to the assignment of right through inheritance.
4. The patents register shall be an evidence of the information contained in it, unless the contrary is proved.
5. Any person may have access to the patents register, or obtain an extract thereof or a photocopy of the registrations contained therein.

Article 75

1. The application for the creative proposal for developing production shall be submitted to the project relating to the proposal and its activity. If the proposal is applicable to many projects, the application shall be submitted to the ministry or to the competent administration.
2. The application shall contain a description of the proposal supported by the necessary documents.
3. The party to which the application is submitted shall send within ten days a notice to the applicant accepting his application for examination or asking him to complete the documents.

Article 76

1. The party to which the application is submitted should take within one month a decision accepting or rejecting the proposal, and indicate the reasons therefore, if such party is the same project to which the proposal is related, and within two months if the party is a ministry or an administration.
2. The applicant may oppose the decision within one month of notifying him thereof, and the party to which the application is submitted shall decide on this opposition within one month of its submission.

Section 3 Effects of Registration

Article 77

The inventor for whom the inventor's rights are decided may request granting him a patent of invention pertaining to him and arranging a monopoly for him on the invention.

The patent shall be granted for fifteen years calculated as from the date of the application submission. After that, the invention shall be the ownership of the state.

Third parties shall be prohibited from using the invention without the consent of the patent owner

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Article 78

A patent of invention may not be granted to the personnel working in the competent parties concerned with patents, whether they themselves have submitted the

Article 79

1. A person who used the invention independently of the inventor within the boundaries of Yemen before submitting his application, as well as who made the necessary arrangements for this purpose shall have the right to use the invention in future without paying a remuneration, and the judicial authorities shall decide on a dispute relating to this issue.
2. Such a right shall not be transferable except with the project, which makes benefit of it.

Article 80

1. The patent owner may grant a license to use the invention or completely relinquish the patent.
2. Relinquishment or granting a license should be made in writing.
3. The regulations shall regulate standard contracts for granting the license.

Article 81

1. If no agreement is reached with the patent owner in respect of granting a license under reasonable conditions, a person who wishes to use the invention may submit an application to the court for granting him a license to use the invention according to conditions determined by the court.
2. If the invention is of great importance to the state, and no agreement is reached with the patent owner in respect of relinquishing the patent or granting a license, the state may at a resolution by the Council of Ministers purchase the patent forcibly.

Article 82

All license contracts for the patents of invention shall be subject to the approval of the competent parties before contracting for them, whether these contracting parties are governmental or non governmental.

Article 83

The judicial authorities shall decide on the dispute in relation to attributing an invention to its maker and the participation in an invention, as well as in relation to priority in a creative proposal for developing production if the dispute is not resolved administratively.

Article 84

1. The court, at the request of any person, shall decide that an invention patent is null in the following cases:

- A. If the substantive conditions are not satisfied.
- B. If an application for a patent had been previously submitted.
- C. If it is revealed that the applicant has usurped the elements of the invention from the efforts of another person. In this case, the person whose efforts were usurped may request transferring the patent to him.

2.The decision that a patent is null shall result in its cancellation retroactively. The decision, when it becomes unobjectionable should be recorded on the margin of the patent registration and should be announced according to the procedures specified in the regulations.

Chapter 2 Industrial & Trade Marks and Industrial Drawings & Designs

Section 1 Industrial & Trade Marks

1] Substantive Conditions

Article 85

1. An industrial or trademark is the one taken as a sign to distinguish the products of an industrial, agricultural or commercial project, or to indicate the services of a project.
1. Elements of a mark.
 1. A mark consists of one element or more, which is either a drawing, expression, shape, object or other things.
 2. The mark may consist of a certain drawing, such as lines, inscriptions, pictures and symbol, or from specific terms, such as letters, figures, words and names.
 3. The mark may be composed of the shape of a distinctive object, even if this object is the outer covering of the products.

Article 86

1. A mark shall not be separated from the products or services which it distinguishes.
2. A mark may not be accepted for registration unless it is actually prepared for use.
3. A mark may not be registered except for a production or service project.

Article 87

1. The public sector's bodies and institutions may register a mark for controlling the products or services of the units attached to them as regards the source of products, elements of their composition and the method of their manufacture or characteristics, or as regards the type of services or any other characteristic to indicate making control and examination.
2. A collective mark may not be disposed of except with a license from the concerned minister.

Article 88

1. A mark devoid of any distinguishing characteristic shall not be accepted.
 - 2.The same shall also apply if the mark consists of shapes imposed by nature or by the function of products or services, or if it consists of a sign used in trade to determine products or services, or from the indication of a common name of products or services.
 - 3.In all cases, a mark shall not be accepted if it is not possible, for any reason, for the mark to be clearly distinguished from the products or services of various projects.

Article 89

A mark should be substantially distinguished from other marks. Accordingly, the following shall not be accepted for registration:

1. A mark similar to a mark filed or registered to the benefit of a third party, or if it is after that filed by a third party which has special priority for similar products or services.

2. A mark similar to an unregistered mark previously used by others in Yemen for similar products or services, if the use of the mark required to be registered results in confusion for the public.
3. A mark which is fully or partially identical with a famous mark or a well-known commercial name, or if it is an imitation or a translation of such mark or name, so that the use of the mark required to be registered will result in confusing the public.

Article 90

The following shall not be fit to be a mark:

1. Public logos, symbols, flags, medals and seals and the like pertaining to Yemen or to one of the countries, governments or international organizations, symbols of the red crescent, red cross and geographical names if their use causes confusion with respect to the source of the products, and photos of others unless their use is approved.
2. Any mark that may mislead the public as to the source or quality of the products or services.
3. Any mark which violates the Yemeni social system.

Article 91

1. Each Yemeni who has a production or service project, and each foreigner who has a similar project can request registration of his industrial or trademark.
2. The foreigners who have projects abroad and the legal foreign persons whose major activity is abroad shall have the right to register their industrial and trade marks according to article (120) of this law.

2] Registration Procedures

1. The application for the registration of a mark shall be submitted to the competent mark shall be submitted to the competent party. The application shall contain a description of the mark and a statement of the products or services for which the mark is required to be registered. It shall be referred in the registration application to the project for which the mark is required to be registered as regards its products or services, and the supporting documents shall be submitted.
2. The competent party shall notify the applicant within ten days that his application is accepted to be examined, or ask him to complete the necessary documents.
3. The application shall be examined in the method stipulated in the regulations.

Article 93

1. The competent party shall issue within one month as from the date of accepting the application for examination a decision approving the application, making modifications to the mark to make it clearer in order to avoid confusion with another mark, or that it is not fit for registration.
2. The applicant may oppose the decision of the competent party within one month as from the date of notifying him thereof. The competent party shall decide on this opposition within one month as from the date of its submission. Its decision may be opposed in the courts within a maximum period of one month as from the date of notifying the decision to the person who filed opposition.

Article 94

1. The competent party, in case the mark is accepted for registration, should announce it immediately when it is accepted, in the methods decided in the regulations.
2. Any interested party may file an opposition to the registration of a mark at the competent party within six months as from the date of the announcement.

3. The competent party shall notify the applicant immediately when there is an opposition. The applicant shall answer in writing to the opposition within one month as from the date of notifying him thereof, otherwise he shall be considered as having relinquished the application.

Article 95

1. The mark shall be registered in the register prepared for this purpose.
2. The application shall be granted a certificate of the mark's registration.
3. Registration shall have its effect as from the date of submitting the application. Cases of priorities shall be taken into consideration.
4. The effect of registration shall be limited to the products and services for which the mark was registered.
3. Registration shall be announced in the methods decided in the regulations.

Article 96

The provisions of articles 69 & 70 of this law shall apply to priority of the applications related to industrial and trademarks registered abroad, which are submitted by foreigners for whom legal protection is decided. These provisions shall also apply to applications related to industrial and trade marks exhibited in an exhibition.

Article 97

1. The marks register shall be evidence of the information contained therein unless the contrary is proved.
2. Any person may have access to the marks register and obtain an extract or photocopy of the registrations contained therein.
3. registrations contained therein.

3] Registration Effects

Article 98

Registration of an industrial or trademark shall result in prohibiting others from using it without the consent of the holder of the registration certificate. This applies to the products or services distinguished by the mark.

Article 99

1. Registration shall result in protecting the industrial and trade mark for a period of ten years starting from the date on which registration starts to have its effects, unless this period is renewed within the last year for another period, and so on.
2. The competent party shall notify the holder of the registration certificate in writing, within two months as from the expiry date of the period to renew the registration. If three months elapse after the expiry of the period without renewal, the competent party shall automatically cancel the registration.

Article 100

1. A mark may not be disposed of except with the project for which it is used to distinguish its products or services.
2. Disposal of a mark shall be made in writing.
3. Disposal of a mark shall not be valid between two parties or vis-à-vis third parties except from the date of recording the disposal on the margin of the mark's

registration and announcing the disposal in the methods stipulated in the regulations.

Article 101

A mark may be canceled at the request of the holder of the registration certificate. The court shall decide canceling a mark at the request of any interested party, or if its use ceases for five consecutive years without an acceptable excuse.

1. The court shall decide that a registration is null at the request of any interested party, or if substantive conditions are not satisfied for a registering a mark.
2. The decision that a registration is null shall result in canceling the registration certificate retroactively. When the decision becomes unobjectionable, the competent party shall cancel the registration, and this shall be announced in the methods decided in the regulations.

Section 2 Industrial Drawings & Designs

1] Substantive Conditions

Article 103

An industrial drawing or design is an innovated external form distinguished by newness, and aims at giving a type of industrial products a distinctive ornamentation by using a certain order of lines or colors, or by choosing a certain shape, whether this is made in a mechanical, manual or chemical method.

Article 104

The industrial drawing or design should be distinguished by absolute newness. It should be distinguished by absolute newness. It should not be one of the shapes included in the tradition or the usual exhibited shapes, whether as regards the industrial products required to be distinguished or others. The publication of creative innovated works in the field of arts shall not prohibit using them as industrial drawings or designs.

Article 105

1. Yemenis, wherever they reside, and foreigners residing in Yemen shall enjoy legal protection with respect to industrial drawings and designs.
2. As for foreigners residing abroad, protection shall be decided for them according to article (120) of this law.

2] Registration Procedures

Article 106

1. The maker of a drawing or design or who succeeds him in his rights shall submit an application for the registration of a drawing or design to the competent party, containing copies of the drawing or design, to which shall be attached the required documents. The application may extend to include a number of drawings or designs, which are similar to each other. The type of industrial products for which the drawing or design is required to be registered shall be indicated in the application.
2. The competent party shall notify the applicant within days that his application is accepted to be examined or ask him to complete the required documents.

3. The application shall be examined in the method stipulated in the regulations.

Article 107

1. The Administration shall issue within one month as from the date of accepting the application for examination a decision approving the application or rejecting it for lack of substantive conditions for the drawing or design, or because the drawing or design violates the Yemeni social system.
2. The applicant may oppose the decision of the concerned party within one month as from the date of notifying him thereof. The party shall decide on this opposition within one month as from the date of its filing. Its decision may be challenged at the courts within a maximum period of one month as from the date of notifying it to the party, which filed the opposition.

Article 108

1. The industrial drawing or design shall be registered in the register prepared for this purpose, and registration shall be announced in the methods decided in the regulations.
2. The effect of registration shall start as from the date of submitting the application, and cases of priority shall be taken into consideration.
3. The applicant shall be granted a certificate of registration in which shall be indicated the date of application, the number of drawings and designs and a statement of the products.

Article 109

Provisions of articles 69 & 70 shall apply to the priority of applications related to industrial drawings and designs registered abroad, which are submitted by foreigners for whom legal protection is decided, as well as to the applications for industrial drawings and designs which were exhibited in the exhibitions.

3] Effects of Registration

Article 110

Registration of a drawing or design shall result in prohibiting others from using any of them without the consent of the holder of the certificate of registration. This applies to industrial products distinguished by the drawing or design.

Article 111

1. Registration shall result in protecting the drawing or design for five years starting with the date on which registration becomes effective. Renewal of registration may be made two consecutive times, each for five years, by an application to be submitted during the last year of the period.
2. The competent party shall notify in writing the holder of the registration certificate, within one month as from the date of the period expiry, to renew the registration. If three months elapse after the expiry of registration without renewal, the competent party shall automatically cancel the registration.

Article 112

1. A drawing or design may not be disposed of except in respect of industrial products distinguished by such a drawing or design.
2. Relinquishment of a drawing or design as well as granting a license for its use shall be made in writing. The competent party shall issue standard contracts to regulate granting of licenses.

3. Disposal of a drawing or design shall have no effect between the contracting parties or vis-à-vis third parties except after so indicating on the margin of the drawing or design registration and announcing the disposal in the methods decided in the regulations.

Article 113

1. The court shall decide that a registration is null at the request of an interested party in the following cases:

A. If substantive conditions are not satisfied for the drawing or design registration.

B. If the holder of the certificate or his predecessor usurped the elements of the drawing or design. In this case, the party whose effort was usurped may request transferring the registration certificate to him.

2. The decision that a registration is null shall result in canceling the registration certificate retroactively. When the decision becomes unobjectionable, the competent party shall cancel the registration. The cancellation shall be announced in the methods decided in the regulations.

Section 3 Violation of Protection

Article 114

Any one who knowingly imitates or counterfeits a registered drawing, design or mark, uses a registered drawing, design or trade which is imitated or counterfeited, fixes on his products or attaches to his services a drawing, design or mark registered for others, sells or offers for sale or circulation or acquires for the purpose of sale products on which there is unlawfully imitated, counterfeited or fixed it, shall be considered as having violated the legal protection decided for the industrial and trade drawing, design and mark, and the provisions of the next articles shall apply to him.

Article 115

The holder of the registration certificate may request from the courts one of the following:

1. Remove the infringement by publishing in the newspapers or by other means the committed violation.
2. Seize the products, goods, coverings, papers and others on which the drawing, design or mark was fixed, or for which imitation or counterfeiting was used.
3. Confiscate these things and deduct their sale proceeds from the compensations or fines.
4. Destroy these things when necessary.
5. Order the infringer to refrain from using the mark in future.

Article 116

1. The holder of a registration certificate may also request compensation for any harm he has sustained because of violation of the protection decided for the drawing, design or mark.
2. The judicial authorities may appoint an expert to determine the proceeds resulting from the unlawful use of the drawing, design or mark, and seize these proceeds.

Article 117

1. All registrations of industrial and trade marks which were issued before issuing this law

shall be valid in the Republic of Yemen, unless there are many owners of one mark. The mark shall continue to be valid, the same as it was, until otherwise is indicated in the marks register.

2. Owners of one mark should settle this condition among themselves by a written agreement certified within one year as from the date this law becomes effective, and the competent party shall be notified thereof.
3. After the elapse of one year in case of disagreement, the competent party shall take the appropriate decision on the issue within six months. The owners of the mark shall be notified of the decision of the competent party.
4. In case the mark owner opposes the decision of the competent party, he may resort to courts within three months as from the date of receiving the decision.

PART FOUR General & Conclusive Provisions

Article 118

If many persons participate in the authorship of one work or making one discovery, one invention or one proposal, each one of them shall have right in the authorship, discovery, invention or proposal, and to obtain a certificate proving his right, with a reference that the discovery, invention or proposal was jointly made.

Article 119

A person who assisted the author, discoverer or inventor shall not be considered a participant in the authorship, discovery or invention. An example to this is the person who made preparatory works, carried out secretarial work, assisted in technical work, supervised work progress or the like.

Article 120

The rights of a discoverer, inventor and proposer shall be decided for foreigners abroad according to an international agreement concluded between the Republic of Yemen and the country to which they belong, or according to the same mutual treatment. The same provision shall apply to foreign legal persons. The Council of Ministers shall regulate the rules relating to foreigners residing or working in Yemen.

Article 121

All the rights of an author, discoverer, inventor or proposer shall be transferred by succession according to the rules of remuneration and termination benefits.

Article 122

Where there is no provision for the issues of discovery and invention, the rights of authorship shall apply.

Article 123

The courts shall have jurisdiction to try all lawsuits resulting from the application of the provision of this law.

Article 124

1. Without prejudice to any severer penalty provided for in this law or any other law, any one who commits one of the following acts shall be punished with a fine of not less than Riyals 10,000 or with imprisonment for a period not exceeding six months:

A. Infringement upon a right of the author's, discoverer's or inventor's rights provided for in this law.

B. Attributing to oneself by way of publication a book, invention, discovery or creative proposal made by others.

2. All the above shall be without prejudice to the right of compensating the aggrieved party.

Article 125

Agreement to violate the provisions of this law shall not be allowed, unless this is to the benefit of the author, discoverer or inventor.

Article 126 Article 127

Any provision which is in conflict with the provisions of this law, in particular with the resolution of the Command Council enacting law No. (45) for 1976 in respect of trade marks and names issued in Saudi Arabia.

Article 128

This Law Decree shall go into effect as from the date of its issue, and shall be published in the Official Gazette.