

**DRAFT**

**INDUSTRIAL PROPERTY CODE**

**OF**

**CAPE VERDE**

**\*\*\* Industrial Property Bulletin – throughout the Code substitute for this phrase, the name of the official Cape Verde government publication for the equivalent of this publication**

**\*\*\* Official Bulletin –in Article 115 (3) substitute for this phrase and wherever else it occurs for the name of the official Cape Verde government publication for the equivalent of this publication**

**\*\*\* National Institute of Industrial Property – throughout the Code substitute for this phrase, the name of the Cape Verde government authority that has responsibility for industrial property**

**\*\*\* Public Ministry – throughout the Code substitute for this term, the name of the equivalent Cape Verde government authority**

**\*\*\* Lisbon’s Commerce Court – in Article 40 substitute for this term, the name of the appropriate court in Cape Verde**

**\*\*\* Appeals Court and Supreme Court of Justice – in Article 46 and wherever else they occur substitute for these terms, the name of the appropriate courts in Cape Verde**

**\*\*\* Voluntary Arbitration Law - in Articles 49 and 50 and wherever else it occurs elsewhere substitute for this term, the name of the appropriate law in Cape Verde**

**\*\*\* Ministry of Economy – in Article 49 and wherever else it occurs substitute for this term, the name of the appropriate ministry in Cape Verde**

**\*\*\* President of the Executive Board of the National Institute of Industrial Property - in Article 62 (2) and wherever else it occurs substitute for this phrase, the name of the appropriate title**

## **PART I**

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1 Function of the Industrial Property**

The function of the industrial property is to guarantee fair competition, by attributing private property rights to diverse technical processes of production and development of wealth.

#### **Article 2 Ambit of the Industrial Property**

Industry and commerce, as such, fishing, agricultural, forestry, livestock and extracting industries, as well as the natural or fabricated products and the services, are all included in the ambit of industrial property.

#### **Article 3 Ambit of personal application**

1. This Code is applicable to all persons, singular or collective, who are nationals of Cape Verde or of the member states of (a) the International Union for the Protection of Industrial Property, hereinafter designated as the Union, under the terms of Paris Convention of 20 March 1883 and its revisions, or (b) the World Trade Organization, hereinafter designated as WTO, independently of the condition of domicile or establishment, except for special provisions on competence and procedure.

2. The nationals from any other States that have a real and effective industrial or commercial establishment, in the territory of one of the member countries of the Union or the WTO, shall be treated in the same manner as the nationals of the country members of the Union or the WTO.

3. With regard to any other foreign nationals, the provisions of the Conventions between Cape Verde and the respective countries shall be observed. In the absence of such Convention, the reciprocity regime shall apply.

#### **Article 4 Applicability**

1. Rights conferred by patents, utility models and registrations shall apply in the entire national territory.

2. Without prejudice for the dispositions of the number that follows, granting industrial property rights implies juridical presumption of the requisites for granting the rights.

3. The registration of awards guarantees the veracity and authenticity of the titles that grant the awards and guarantees to the owners its exclusive use, for an indefinite period.

4. The registration of trademarks, names and insignias of establishment, of logotypes and denominations of origin and geographical indications, constitute grounds for refusal or annulment of social denominations or firms that may be confused with them, if the authorization or alteration requests are subsequent to the registration request.

5. The annulment actions resulting from the application of the provisions of the preceding number are permissible only within 10 years counting from the date of publication in the official government publication for such notices of the constitution or the alteration of the commercial denomination or collective person's firm, except when they are proposed by the Public Ministry.

#### **Article 5 Provisional Protection**

1. The request for a patent, utility model or registration to provisionally confers upon the requestor protection identical to that which would be conferred by granting the right, beginning on the date of the respective publication in the official government publication for such notices. The provisional right will be taken into account in the calculation of possible indemnity.

2. The provisional protection referred to in the preceding number may be opposed, even before the publication, by any one who may have been notified of submittal of the request and received the necessary elements contained in the process.

3. Sentences pertaining to proposed actions based on provisional protection may not be proffered prior to granting or the definitive denial of the patent, utility model or registration.

#### **Article 6 Guarantee Rights**

The rights ensuing from patents and utility models, as well as from registration of

5. On request of the applicant or title-owner, the following are, likewise, issued:
  - a) Certificates of the requests;
  - b) Certificates protecting the rights of industrial property granted by international organizations to produce effect in **Cape Verde** .

**Article 8**  
**Restitution of the Rights**

1. The requestor or title-owner of an industrial property that, in spite of all the diligence demanded by circumstances, may not have complied with a deadline,



relatively to the initial publication in the Official government publication for such

5. A subsequent request that has the same object as a request previously submitted is considered as first request, and the date it is filed marks the beginning of the priority deadline, as long as, on the date it is filed the prior request has been withdrawn, abandoned or denied, without being submitted to public exam, without having permitted the rights to subsist, and yet, without having served as basis for a claim to the right of priority.

6. In the case foreseen in the preceding number, the prior request cannot serve again as basis for claiming the right of priority.

7. Anyone who wants to prevail on a prior request priority must file a declaration in which it indicates the country, the date and the number of the request. The same can be filed within up to three months counting from the end of the priority deadline.

8. Should several priorities be claimed in the same request the deadline established will be that of the oldest request.

9. A request for a priority, a patent, utility model, model or design registration cannot be denied based on the fact that the requestor claims multiple priorities, even if said priorities originate in different countries, nor by virtue of the fact that a request claiming one or more priorities contains one or more elements that were not included in the requests whose priority is now claimed, under the condition that, in both cases, there is a unity of invention, or of creation in the case of designs or models.

10. A priority cannot be denied based on the fact that certain elements of the invention, or of the creation in the case of designs or models, for which a priority is claimed, are not included among the claims formulated or among the reproductions of the drawings or models submitted with the request in the country of origin, as long as the set of pieces in the request reveal those elements, precisely.

11. If upon an examination it is revealed that a request for a patent or for a utility model contains more than one invention, or in the case of the registration of the registration of multiple designs or models, that the objects do not possess the same distinctive preponderant characteristics, the requestor may, on his own initiative or in compliance with a notification, divide the request into a specific number of divisionary requests, each maintaining the date of the initial request and, if such is the case, the benefit or the right to priority.

12. The requestor may also, on his own initiative, divide the request for a patent, utility model or of registration of design or model, maintaining the date of the original request as date for each divisionary request and, if such is the case, the benefit of the right of priority.

### **Article 13** **Proof of the Right to Priority**

1. The National Institute of Industrial Property may demand from whoever invokes a right to priority that they present, within two months counting from the respective notification date, an authenticated copy of the first request, and a certificate of the date it was filed and, if necessary, of a translation into the Portuguese language.

2. The deadline foreseen in the preceding number may, for acceptable reasons, be prorogued for an identical period.



3. No fee will be paid if the copy of the request is presented within the deadline established in the preceding number.

4. Non-compliance with the provisions of this article will result into the loss of the claimed right of priority.

#### Article 14 Normalization

If any irregularities are detected, prior to the publication of the notice in the Industrial Property Bulletin, the requestor is notified to **make** the necessary normalization.

#### Article 15 Notarization of Signatures

Signatures of documents not filed by an official agent of the industrial property or by a constituted attorney are always notarized under legal terms.

#### Article 16 Notifications

1. The intervening parts in the administrative process are notified of the final decisions of the National Institute of Industrial Property.

2. If there are complaints about any process, the National Institute of Industrial Property will notify the applicant immediately.

3. Identical notifications shall be made if any complaint, exposé, request for expiration, and other processual pieces are added to the request.

#### Article 17 Deadline for complaints and challenges

1. Complaints can be filed within up to two months, counting from the date of publication of the request in the Industrial Property Bulletin.

2. The applicant may respond to complaints, in the challenge, within two months counting from the date of notification.

3. Supplementary exposés may be accepted when deemed necessary to better clarify the process.

4. At the request of the interested party, filed within the deadlines established in Nos. 1 and 2, said deadlines may be prorogues for an additional month and the opposing party must be notified of the prorogation.

5. A new prorogation for an equal period can be granted, when so justified for acceptable reasons.

6. At the request of the interested party and with the concurrence of the opposing party, consideration of the case may be suspended for a period not greater than four months.

7. The study may also be suspended *ex officio* or at the request of the interested party; consideration of the case may be suspended, for a period during which a prejudicial cause is verified that could affect the decision on the case.

### **Article 18 Copies of Briefs Filed**

1. The complaints and other processual pieces are filed with a duplicate, which must introduce all the documents attached to the original.

2. The duplicate referred to in the preceding number is forwarded to the opposing party by the National Institute of Industrial Property.

### **Article 19 Annexation and returning of documents**

1. Documents shall be annexed to the piece in which the referred facts are alleged.

2. When it can be demonstrated that it was impossible to obtain them opportunely, the documents can also be annexed under the terms of the article that follows.

3. Annexation of impertinent or unnecessary documents is denied, even if they are annexed in time. Annexation is also denied to any disrespectful or inconvenient writings, or when they contain useless repetition of allegations already produced.

4. The documents referred to in the preceding number are returned to the parties, who are notified, in writing and through their representatives, in order to receive them in the established deadline, failing which, they are filed apart from the process.

5. The notifications referred to in the preceding paragraph are sent to all the parties alike.

### **Article 20 Late complaints**

The complaints and analogous documents filed after the established deadline, as well as the documents referred to in No. 2 of the preceding article, can be annexed to the process only by an authorization dispatch, in which case the opposing part shall be notified.

### **Article 21 Inspections**

1. To support or clarify the allegations produced in the process, the interested party may, with justification, request that the National Institute of Industrial Property inspect any establishment or other local. The request shall not be approved without first hearing the targeted party.

2. Expenses resulting from the inspection are charged to the party that requests it.

3. The party that requested the inspection may freely call it off, before it is started.

4. The deposited sums should be returned, at the request of the interested party, in the event of a timely desistance or non-approval of the inspection request.
5. The inspection may also be carried out by initiative of the National Institute of Industrial Property, if it is deemed indispensable for a perfect clarification of the process.
6. Refusal of cooperation by any interveni

**Article 25**  
**Alteration or correction of non-essential elements**

1. Any alteration or correction that does not affect the essential and characteristic elements of the patent, or of the utility model or of the registration, may be authorized, in the same process.
2. No request for alteration, or correction, foreseen in this article may be received if, regarding the same right of industrial property, there is pending an expiration declaration process.
3. The alterations or corrections referred to in No. 1, above, are published, for the purpose of appeal, under the terms of articles 39 and following of this Code, and annotated in the respective titles.

**Article 26**  
**Documents Attached to other processes**

1. Except for powers-of-attorney, which are always attached to each of the processes, even if the requestor is represented by the same representative, the process documents may be attached to one of them and referred to in the remaining documents.
2. In case of an appeal, foreseen in articles 39 and following, the appellant is obligated to complete, at its own expense, by means of certificates, the processes in which such documents are referred to.
3. Non-compliance with the procedures set forth in the preceding numbers must be mentioned in the cover letter that remits the process to consideration by a judge.

**Article 27**  
**Delivery of the rights granting title**

1. The industrial property rights granting titles are delivered to interested parties only after one month has elapsed over the allowed deadline for appeal or, should there have been an appeal, after the judicial decision or the final arbitral decision is known.
2. Having the fee for the respective emission been paid, delivery of the title is made to the title owner, or to his representative, upon signature of a receipt.

**Article 28**  
**Counting of deadlines**

1. The deadlines established in this Code are continuous.
2. The right owners are notified of the deadline for payment of the annuity, renovation and revalidation, for merely informative purposes.
3. The absence of the notification referred to in the preceding number does not constitute justification for non-payment of the fees on their due.

## **Article 29 Publication**

1. The acts that must be published are brought to the knowledge of the parties, and the public in general, by inserting them in the Industrial Property Bulletin.
2. Publication in the Industrial Property Bulletin has the same effect as direct notification to the parties and, save provision to the contrary, sets the beginning of the deadlines established in this Code.

4. The annotation is made on the title, at the request of any of the interested parties, substantiated with the proof documents related to the fact they pertain to.
5. After the annotation, the title is returned to the requestor and the request, as well as the documents are attached to the respective process.
6. A notice on the annotation is published in the Industrial Property Bulletin.

### **CHAPTER III TRANSMISSION AND LICENSES**

#### **Article 31 Transmission**

1. The rights ensuing from patents, utility models, registration of semi-conductor products schematics, drawings or models and marks, may be transmitted, totally or partially, free of charge or onerously.
2. The provisions of the preceding number apply to rights ensuing from the respective requests.
3. Rights ensuing from registration requests or from the registration of names and insignias of establishment can be transmitted, gratuitously or onerously, with **or without the** establishment or part of the establishment, to which they are connected.
4. Without prejudice to the provisions of the number that follows the transmission of the establishment involves the respective name and insignia, which may continue just as they are registered, save if the transmitter reserves them for another establishment, present or future.
5. If in the name or insignia of establishment or in the mark figures the individual name, the firm or the commercial denomination of the owner or the requestor of the respective registration, or of whoever represents him, a clause will be necessary to effect its transmission.
6. The transmission by an inter living act must be proven by written document, but if the annotation of the transmission is required by the transmitter, the receptor must, also, sign the document that so proves or make a declaration that it accepts the transmission.

#### **Article 32 Contractual licenses**

1. The rights referred to in article 1 of the preceding article may be the object of an exploration license, total or partial, gratuitously or onerously, in a specific zone or country-wide, for the duration of the license or for a shorter period.
2. The provisions of the preceding number are applicable to the rights ensuing from the respective requests, but its denial implies expiration of the license.
3. The license contract must be written.

4. Save for stipulation to the contrary, for all intents and legal purposes the licensee is entitled to the faculties conferred the owner of the right object of the license, except for the provisions of the numbers that follow.
5. The license is presumed to be non-exclusive.
6. An exclusive exploration license is understood to be one that grants the owner the right to renounce the faculty of granting other licenses for the rights objects of the license, as long as said license remains in effect.
7. The granting of an exclusive exploration license does not prevent the respective owner from also exploring directly the right object of the license, save for stipulation to the contrary.
8. Unless otherwise stipulated, the right obtained by means of an exploration license cannot be alienated without written consent of the right's owner.
9. If granting sublicenses is not included in the license contract, the same can only be granted by written authorization of the right's owner.

## **CHAPTER IV TERMINATION OF INDUSTRIAL PROPERTY RIGHTS**

### **Article 33 Nullity**

1. Industrial property rights are totally or partially made null when:
  - a) Its object is not susceptible of protection;
  - b) In granting it, procedures and formalities indispensable for granting the rights were ignored.
  - c) Public order rules are violated.
2. The nullity can be invoked at any time by any interested party.

### **Article 34 Annullability**

1. Industrial property titles are totally or partially annulable and the owner is not entitled to them, namely:
  - a) When they are not entitled to the right;
  - b) When they are granted by ignoring the rights foreseen in articles 58, 59, 121, 122, 156, 157, 181, 182 and 226.
2. In the cases foreseen in subparagraph b) of the preceding number, the interested party may, rather than the annulment and if legal conditions are met, solicit total or partial reversion of the title in his favor.

**Article 35**  
**Procedure for the Declaration of Revocation and Annulment**

1. The declaration of nullity or the annulment can result only from a judicial decision.
2. The Public Ministry or any other interested party have legitimacy for attempting the actions referred to in the preceding number. Aside from the registered right against which the action is proposed may be cited, along with all who, on the date of publication of the annotation foreseen in subparagraph b) of No. 1 article 30, may have requested annotation of derived rights in the National Institute of Industrial Property.
3. When the final judicial decision is emitted, the Court's administrative office shall remit a typed copy, or a copy in some other medium considered adequate, to the National Institute of Industrial Property, for publication of the text and corresponding notice, as well as the respective annotation, in the Industrial Property Bulletin.

**Article 36**  
**Effects of the nullity and annulment declarations**

The retroactive applicability of the nullity or the annulment declarations is not contrary to the effects produced in compliance of an obligation, final sentence, transaction, even if not homologated, or in consequence of acts of an analogous nature.

**Article 37**  
**Expiration**

1. Industrial property rights expire:
  - a) When its validity period expires;
  - b) For non payment of fees;
2. The causes of expiration foreseen in the preceding number produce effect only if invoked by some interested party.
3. Any interested party, may likewise, request annotation of the expiration foreseen in No. 1, if it has not done so yet.

**Article 38**  
**Renunciation**

1. The title owner may renounce its rights of industrial property as long as he declares so expressly to the National Institute of Industrial Property.
2. The renunciation may be partial, if the nature of the industrial property right so permits.

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4. If the request for renunciation is not signed by the owner himself, his representative must add a power of attorney with special powers.

5. Renunciation does not affect the annotated derived rights as long as the respective owners, duly notified, substitute themselves for the principal right owner in the conservation of the titles, to the extent necessary to safeguard these rights.

## **CHAPTER V APPEAL**

### **SECTION I JUDICIAL APPEAL**

#### **Article 39 Decisions that can be appealed**

1. Decisions from the National Institute of Industrial Property:

a) That grants or denies industrial property rights;

b) Pertaining to transmissions, licenses, declarations of expiration or of any other act that affect, modify or extinguish industrial property rights, may be appealed to the competent Court of plain jurisdiction

#### **Article 40 Competent Court**

1. For the appeals foreseen in the preceding article Lisbon's Commerce Court is competent.

#### **Article 41 Legitimacy**

1. The requestors and the claimants and yet those who are directly and effectively harmed by the decisions of the National Institute of Industrial Property, have legitimacy to appeal such decisions.

2. Those who did not file complaints against the process, but who demonstrate an interest in maintaining the decisions of the National Institute of Industrial Property may also intervene in the appeal, as accessories.

#### **Article 42 Deadline**

The appeal must be filed within two months counting from the date of publication of the dispatch in the Industrial Property Bulletin, or of the date of the respective certificate, requested by the appellant, when it precedes publication of the dispatch.

**Article 43**  
**Response-remittance**

1. Once the process is distributed, a copy of the petition is remitted to the National Institute of Industrial Property, with the respective documents, so that the entity that emitted the dispatch being appealed may respond to it deems convenient to respond and remits, or determines that the process object of the dispatch be remitted to the Court.
2. If it is found that the process contains sufficient elements of information to makes things clear to the Court, it is returned within 10 days, accompanied by a cover letter.
3. Otherwise, the cover letter, containing the response to the appellant's allegations in the petition, is returned within 20 days.
4. When, for justified reason, the deadlines fixed in the preceding numbers cannot be met, the National Institute of Industrial Property shall solicit the Court, opportunely, the respective prorogation, for the time and under the terms it considers so necessary.

**Article 44**  
**Citation to the opposing Party**

1. Once the Court received the process, the opposing part, if there is one, is cited to respond within 30 days, if so desired.
2. Citation to the party is done through the office of a hired attorney or, if there is none, in the notary's office of the industrial property's official agent that has represented that party in the administrative process; in this case, however, the party is advised that it can intervene in the process only through a hired attorney.
3. When the deadline for response is ended, the process is closed for a final decision, which is issued within 15 days, save in the event of a just impediment.
4. The sentence that alters or revokes, totally or partially, the appealed decision, substitutes for that decision in the precise terms in which it is emitted.
5. The National Institute of Industrial Property is not considered the opposing party, in any circumstance.

**Article 45**  
**Requisition for technicians**

When an issue that requires better information is raised in an appeal, or when the Court deems it convenient, the latter may, at any moment, requisition the presence, at a day and time it designates, of the technician or technicians in whose opinions the appealed dispatch was based, so that the technicians may present verbally to the Court, the clarifications deemed necessary.

**Article 46**  
**Appeal from the judicial decision**



**TITLE II  
INDUSTRIAL PROPERTY JURIDICAL REGIME**

**CHAPTER I  
INVENTIONS**

**SUBCHAPTER I  
PATENTS**

**SECTION I  
GENERAL PROVISIONS**

**Article 51  
Object**

1. New inventions, implying inventive activity, if susceptible of industrial application can be the object of a patent, even when they pertain to a product composed of biologic material, or that contains biologic material, or to a product that permits to

d) The projects, the principles and the methods pertaining to the exercise of intellectual activities in the matter of games or in the domain of economic activities, as well as computer programs, as such, without any contribution;

e) The presentations of information;

2. Human or animal bodies surgical or therapeutic treatment methods and the diagnostic methods applied to human or animal bodies cannot be patented. However, the products, substances or compositions utilized in any of these methods can be patented.

3. The provisions of No. 1 exclude patentability only when the object for which a patent is requested is limited to the elements mentioned in it.

### **Article 53** **Limitations regarding the patent**

1. Inventions whose commercial exploration is contrary to the law, the public order, the public health and the good costumes are excluded from patentability. Their exploration cannot be likewise considered for the simple fact that they are prohibited by legal provision or regulation.

2. Under the terms of the preceding number the following cannot be patented, namely:

a) Human cloning processes;

b) Processes that modify the human being's germinal genetic identity;

c) The use of human embryos for industrial or commercial purposes;

d) Processes that modify the genetic identity of animals that can cause them suffering without any substantial medical utility for human beings or the animal, as well as the animals obtained from these processes.

3. The following cannot be objects of patents:

a) The human body, in the various stages of its constitution and of its development, as well as the simple discovery of one of its elements, including the sequence or partial sequence of a gene, without prejudice to the provisions of subparagraph b) of No. 1 of the article that follows.

b) Plant varieties and animal breeds, as well as essentially biological processes to obtain plants or animals. (\*\*\*) Excluding plant variety protection is contrary to TRIPS Article 27(3)(6) - Cape Verde should include protection for plant varieties in this Code or provide for protection by a separate code)

### **Article 54** **Special cases of patentability**

1. The following can be patented:

- a) A state of the art substance, or composition for the execution of one of the methods cited in No. 2 of article 52, on the condition that its utilization in any method referred therein not being state of the art;
  - b) A new invention, which implies inventive activity and is susceptible of industrial application that applies to any isolated element of the human body or produced in other form by a technical process, including a sequence or a partial sequence of a gene, even if the structure of this element is identical to that of a natural element, as long as the industrial application of a sequence or of a partial sequence of a gene is expressly observed and described concretely in the patent request
  - c) An invention that has plants or animals as objects, if its technical executability is not limited to a specific plant variety or animal breed;
  - d) A biological substance isolated from its natural environment or produced on the basis of a technical process, even if it preexists in the natural state;
  - e) An invention that has as object a microbiological or other technical processes, or products obtained by these processes.
2. It is understood as an essentially biological process for obtaining plants or animals, any process that consists, wholly, in natural phenomena, such as crossing or selection;
  3. It is understood as a microbiological process any process that utilizes a microbiological substance, that includes an intervention on a microbiological substance, or that produces a microbiological substance.
  4. It is understood as biological matter any substance that contains genetic information and be self-replicable or replicable in a biological system.

#### **Article 55 Patentability requisites**

1. An invention is considered new when it is not included in the state of the art.
2. An invention is considered to imply inventive activity if, for an expert in the specialty, it does not result in an evident manner from the state of the art.
3. An invention is considered susceptible of industrial application if its object can be fabricated or utilized in any type of industry or in agriculture.

#### **Article 56 State of the art**

1. The state of the art is constituted by anything that, inside the country or outside of it, was made accessible to the public before the date of the patent request, by description, utilization or by any other means in such a way as to be understood and worked by those skilled in the art.

2. Also considered to be state of the art is the contents of patents or utility models requested on a date prior to the patent request, to produce effect in Cape Verde and that are not yet published.

**Article 57**  
**Un-opposable Disclosures**

1. The following will not harm the novelty of the invention:

a) Disclosures to scientific organizations, technical professional associations, or by reason of tenders, expositions in Cape Verde or International fairs , recognized officially or ex-officio in any country of the Union, if the request for the

- c) If, during this period, the inventor requests a patent for the invention, the deadline to inform the enterprise is of one month counting from the date the respective request is filed at the National Institute of Industrial Property;
- d) Non-compliance with the obligation referred in paragraphs b) and c), on the part of the inventor, imply general civil and labor responsibility (\*\*\*) “imply general civil and labor responsibility” should be read as “can lead to the loss of inventor’s rights”)
- e) The enterprise may exercise its right of option within three months; counting from the date it receives the notification from the inventor.
- 4) If, under the provisions of subparagraph e) of the preceding number, the remuneration due the inventor is not totally paid within the established deadline, the enterprise shall lose the right to the patent referred to in preceding numbers, in favor of the inventor.
5. The inventions whose respective patents were requested during the one year following the date in which the inventor ceases to work at the enterprise are considered as having been made during the execution of the work contract.
6. If in the hypotheses foreseen in Nos. 2 and 3, the parties do not reach agreement, the issue is resolved by arbitration.
7. Save for convention to the contrary, the provisions of Nos. 1, 2, 4 and 5 are



**SECTION II  
PATENT PROCESS**

**SUB-SECTION I  
NATIONAL PROCESS**

**Article 61  
Form of the request**

1. Patents shall be requested in writing, in the Portuguese language, and indicate or contain:

- a) The name, firm or commercial denomination of the requestor, the nationality, domicile or place in which it is established;
- b) The subject or title that summarizes the object of the invention;
- c) The name of the inventor's country of residence;
- d) If a request has been made elsewhere, the country where the first request was filed, the date, and number of request, should the requestor wish to claim the right of priority;
- e) Mention of the fact that a utility model was requested for the same invention, if such is the case, under the terms of No. 5 of article 51;
- f) Signature of the inventor or of his representative.

2. Fantasy expressions used to designate the invention do not constitute object of a TAutilit contain:

2. The elements referred to in No. 1 must abide by the formal requisites established by dispatch of the President of the Executive Board of the National Institute of Industrial Property.
3. The reivindications define the object of the protection requested and must be clear, concise, correctly written, based on the description and containing, when appropriate:
  - a) A preamble that mentions the object of the invention and the technical characteristics necessary to define the claimed elements, but that, when combined amongst themselves, become part of the state of the art;
  - b) A characterization part preceded by the expression «characterized by» and expounding in the technical characteristics that, together with the characteristics indicated in the preceding paragraph, define the extent of the requested protection.
4. The description should indicate, in brief and clear fashion, without reservations or omissions, everything that constitutes the object matter of the invention, and contain a detailed explanation of, at least, one way to execute the invention, in such a way that a person skilled in the art can execute it.
5. Drawings must be sufficiently illustrated only to the extent necessary to comprehend the invention.
6. The summary on the invention, to be published in the Industrial Property Bulletin.

2. Access to deposited biological material must be assured by delivery of a sample:
  - a) By the date of first publication of the patent request, solely by the persons to whom such right has been granted by national law;
  - b) Between the first publication of the request and the granting of the patent, to any person that requests it or, at the request of the depositor, only to an independent expert;
  - c) After the patent has been granted, and even if the event of cessation of a patent for invalidity or expiration, to any person who solicits it.
3. The delivery is effected only if the person who solicits it commits herself, for the duration of validity of the patent:
  - a) Not to provide to third parties any sample of the deposited biological material or of any material derived from it;
  - b) Not to utilize any sample of the deposited material or of a material derived

**Article 65**  
**Examination as to Form**

1. Once the request has been filed at the National Institute of Industrial Property, an examination as to form is made, within one month, to verify if it fulfills the requisites established in articles 61, 62 and 63.
2. Should the National Institute of Industrial Property verify that the request has formal irregularities, the requestor is notified to correct them within one month.
3. If the corrections are not made within the established deadline, the request is denied and the respective notice is published in the Industrial Property Bulletin. In this case, the publication foreseen in the article that follows does not take place.

**Article 66**  
**Publication of the request**

1. If filed correctly, or corrected under the terms of No. 2 of the preceding article, the patent request is published in the Industrial Property Bulletin with a transcript of the

4. If it concluded from the review that the patent could be granted, the respective notice is published in the Industrial Property Bulletin.
5. If it is concluded from the review that the patent cannot be granted, the report, accompanied with copies of all the elements cited in it, is sent to the requestor with notification to respond to the observations made, within two months.
6. If, after the requestor's response, objections to granting the patent still persist, a new notification is made to clarify the points still in doubt, within one month.
7. When, from the requestor's response, it is verified that the patent can be granted, the respective notice is published in the Industrial Property Bulletin.
8. If the response to the notifications is not considered suff



**SECTION III  
EFFECTS OF THE PATENTS**

**Article 97  
Ambit of the protection**

1. The ambit of the protection conferred by the patent is determined by the content of the reivindications. The description and the drawings shall serve to interpret the ambit of the protection.
2. If the object of the patent pertains to a process, the rights conferred by that patent include the products obtained directly by the patented process.
3. The protection conferred by a patent with regard to biological material, endowed with specific properties by virtue of the invention, includes any biological material obtained from the referred biological material, by reproduction or multiplication, in identical or differentiated form, and endowed with the same properties.

**Article 99**  
**Validity period**

A patent is valid for 20 years, counting from the date of the respective request.

**Article 100**  
**Patent indication**

During the validity period of the patent, its owner can use in the products the word "**Patented**", "**Patent Nº.**" or "**Pat. Nº.**"

**Article 101**  
**Rights Conferred by a Patent**

1. The patent confers the exclusive right to explore the invention in any part of the territory of **Cape Verde**.
2. The patent also confers to its owner the right to prevent third parties to produce, offer, store, introduce in trade, or utilize the product object of a patent, or the importation and possession of same, for some of the purposes mentioned, without the owner's consent. **Where the subject matter of a patent is a process, the patent confers to its owner the right to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.**
3. The patent owner can oppose all the acts that constitute a violation of his patent, even if they are based on another patent with a subsequent priority date, without the need to object to the titles, or to ask for the annulment of the patents in which this right is founded.
4. The rights conferred by the patent cannot exceed the ambit defined by the reivindications.
5. By paying a fee, the owner of a patent title may solicit the National Institute of Industrial Property to limit the ambit of protection of the invention through the modification of the reivindications.
6. If from the review, it is concluded that a limitation request can be approved, the National Institute of Industrial Property publishes a notice of the mention to modify the reivindications. If the request cannot be approved, the requestor shall be so informed.

**Article 102**  
**Limitations to the rights conferred by a patent**

The rights conferred by the patent do not include:

- a) Private acts executed not for commercial purposes;
- b) The preparation of medications as needed for individual cases, by medical prescription in a pharmacy's laboratory, nor acts relative to medications thus prepared;



c) Acts executed exclusively for tests or experiments, including experiments for the preparation of the administrative processes necessary for the approval of products by the competent official agencies. However, industrial or commercial exploration of these products cannot be initiated prior to the verification of the expiration date of the patent that protects them;

d) The utilization on board ships from other countries members of the Union or the WTO of the object of the patented product on the ship's body, the machinery, the masts, tools and other accessories, when they enter, temporarily or accidentally, in the Territorial waters, as long as the referred invention is exclusively utilized for the ship's needs;

e) The utilization of the object of the patented invention in the construction of air or overland operated vehicles of the other countries members of the Union or the WTO, or the accessories of these vehicles when they enter, temporarily or accidentally, in national territory;

f) The acts foreseen in article 27 of the Convention of 7 December 1944 regarding international civil aviation, if they pertain to aircrafts from another State, to which, however, are applied the provisions of the referred article.

2. The provisions of the preceding number do not apply when the knowledge results from illicit acts, or against the good costumes, practiced against the patent owner.
3. The onus of proof falls on whoever invokes the situations foreseen in No. 1.
4. Prior utilization, or preparations thereof, based on the information referred to in subparagraph a), of No. 1, of article 57, do not detract from good faith.
5. In the cases foreseen in No. 1, the beneficiary has the right to proceed, or initiate, the utilization of the invention, to the extent of prior knowledge, for the purposes of the enterprise itself, but can transmit it jointly with the commercial establishment in which the invention is used.

## **SECTION IV CONDITIONS OF USE**

### **Article 105 Loss and expropriation of a patent**

- a) Non-exploration or insufficient exploration of the patented invention;
- b) Interdependence among patents;
- c) For reasons of public interest.

2. Mandatory licenses shall be non-exclusive and can be transmitted only with the part of the enterprise or the establishment that utilizes them. The scope and duration of such a license shall be limited to the purpose for which it was authorized and shall be authorized predominantly for the supply of the domestic national market.

3. The mandatory licenses can be granted only when the potential licensee has made efforts to obtain a contractual license from the patent-owner on acceptable commercial terms and such efforts have not been successful within a reasonable period.

4. The mandatory license can be revoked, without prejudice for the adequate protection of the legitimate interests of the licensees even when the circumstances that gave rise to them cease to exist and are not susceptible of repeating themselves. The competent authority can reevaluate the continuation of the referred circumstances upon a fundamented request.

1. When a patent has semi-conductor technology as object, only mandatory licenses can be granted, for public and not commercial purposes, or to remedy a practice determined after judicial or administrative process to be anti-competitive.

2. The patent-owner shall receive an adequate remuneration for each concrete

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5. A mandatory license may be canceled if the licensee does not explore the invention so as to respond to national needs.

### **Article 109 Dependent licenses**

1. When it is not possible to explore an invention, protected by a patent, without prejudice to the rights conferred by a prior patent and the invention in the second patent shall involve an important technical advance of considerable economic significance or relation to the invention claimed in the first patent and the inventions serve different industrial purposes, the license can only be granted if it can be verified that the first invention is indispensable to the exploration of the second and only on the part necessary to execute the latter. The owner of the first patent is entitled to just indemnization. The use authorized by the mandatory license shall be non-assignable except with assignment of the second patent.

2. When a mandatory license is granted, the prior patent owner can also require that a mandatory cross-license be granted on reasonable terms to the invention claimed in the subsequent patent.

3. When an invention has for object a process for the preparation of a chemical, pharmaceutical or food protected by a patent in effect, and whenever this process patent represents a notable technical progress with regard to the previous patent, the owner of the process patent as well as the owner of the product patent have the right to require a mandatory license over the patent of the other owner.

4. When the acquirer of a plant variety cannot obtain or explore a plant acquisition right without infringing a prior patent, he may require a mandatory license for the non-exclusive exploration of the invention protected by the patent, to the extent that this license is necessary to explore the same plant variety, against payment of an adequate remuneration.

5. Whenever a license of the type foreseen in the preceding number is granted, the patent-owner is entitled to a reciprocal license, under reasonable terms of usage, to utilize this plant variety.

6. When the owner of a biotechnological invention cannot explore the invention without infringing a prior plant variety right, he may require a mandatory license for the non-exclusive exploration of the variety protected by this acquisition right, against the payment of an adequate remuneration.

7. Whenever a license foreseen in the preceding license is granted, the owner of the acquisition right is entitled to a reciprocal license, under reasonable conditions, to utilize the protected invention.

8. The requestors of the licenses referred to in Nos. 4 and 6 must prove that:

a) They addressed the patent or plant acquisition right owner, to obtain a contractual license, in vain;

b) The plant variety, or invention, represents an important technological progress, of considerable economic interest, relatively to the invention reivindicaded in the patent or the plant variety to be protected.

9. The provisions of this article apply, equally, whenever one of the inventions is protected by a patent and the other by a utility model.

**Article 110**  
**Public interest**

1. A patent-owner may be obligated to grant a license for the exploration of the respective invention, by reason of public interest.

2. Reasons of public interest are considered to exist when the beginning, the increase or the generalization of the exploration of an invention, or the improvement

2. The decision of the National Institute of Industrial Property that granted or denied

## SECTION VI

### COMPLEMENTARY CERTIFICATE FOR THE PROTECTION OF DRUGS AND PHYTO-PHARMACEUTICAL PRODUCTS

#### Article 115 Request of the certificate

1. The request for a complementary certificate of protection for drugs and for phytopharmaceutical products, filed at the National Institute of Industrial Property, must include a written request, written in the Portuguese language, which indicates:

a) The name, the firm or commercial denomination of the requestor, his residence and/or domicile or place where he is established;

b) The patent number as well as the name of the invention protected by that patent;

c) The number and the date of the first authorization to place the product in the market in and, should this not be the first authorization of placement in the European Economic Space, the number and the date of that authorization. **(\*\*\* It appears European Economic Space can be deleted for the reasons given earlier)**

2. To the request must be added the first authorization to place in the market in **Cape Verde** that permits identifying the product, and which should include, namely the number and date of the authorization, as well as the summary of the characteristics of the product.

3. The denomination of the authorized product and the legal provision under which the authorization process transpired must be indicated, as well as a copy of the publication of that authorization in the Official Bulletin, if the authorization referred in the preceding number is not the first for placement of the product in the European Economic Space, such as drug or phytopharmaceutical product. **(\*\*\* It appears European Economic Space can be deleted for the reasons given earlier)**

#### Article 116 Review and publication of the request

1. Once the request is filed at the National Institute of Industrial Property, the respective review is made to verify if it was filed within the deadline and that it fulfills the provisions of the preceding article.

2. If the certificate request and the product that is its object satisfy the conditions foreseen in the Regulation (EC) No. 1768/92, of the Council of 18 June 1992, pertaining to the creation of a complementary certificate of protection for the phytopharmaceutical products and those established in this Code, in all that does not harm the former, the National Institute of Industrial Property grants the certificate and publishes the request and the notice of having granted it in the Industrial Property Bulletin. **(\*\*\* “Regulation (EC) No. 1768/92, of the Council of 18 June 1992 can be deleted because it refers to a European Community regulation that would not necessarily be applicable in Cape Verde)**

3. If the request of certificate does not fulfill the conditions referred to in the preceding number, the National Institute of Industrial Property will notify the requestor to proceed, within two months, to verify the irregularities verified.
4. When, from the requestor's answer, the National Institute of Industrial Property verifies that the request of certificate fulfills the conditions required, it publishes the request of certificate and the notice that grants it in the Industrial Property Bulletin.
5. The request is denied if the requestor does not comply with the notification, and the request as well as the denial notice shall be published in the Industrial Property Bulletin.
6. Without prejudice to the provisions of No. 3, the certificate is denied if the request or the product to which it pertains does not satisfy the conditions foreseen in the respective Regulation, nor do they fulfill the conditions established in this Code. The request and notice of denial are published in the Industrial Property Bulletin.
7. The publication must include, at least, the following indications:
  - a) Name and address of the requestor;
  - b) Number of the patent;
  - c) Name of the invention;
  - d) Number and date of the authorization to place the product on the market in , as well as identification of the product object of the authorization;
  - e) Number and date of the first authorization to place the product on the market in the European Economic Space, if such is the case;
  - f) Granting notice and validity period of the denial notice, as the case may be.

## **SUBCHAPTER II UTILITY MODELS**

### **SECTION I GENERAL PROVISIONS**

#### **Article 117 Object**



4. The same invention may be object, simultaneously or successively, of a patent request and a utility model request.

5. The utility model ceases to produce effect after a patent is granted for the same invention.

**Article 118**  
**Limitations as to object**

The provisions of article 52 are applicable to utility models.

**Article 119**  
**Limitations as to utility model**

The following cannot be the object of a utility model:

a) Inventions whose commercial exploration is contrary to law, public order, public health and the good costumes. The exploration cannot, however, be considered as such, for the simple fact that the product is prohibited by law or regulation;

b) Inventions pertaining to biological material;

c) Inventions pertaining to chemical and pharmaceutical substances and processes;

**Article 120**  
**Requisites of granting**

1. An invention is considered new when it is not included in the state of the artame w7d

**Article 122**  
**Entitlements for Utility Model**

The provisions of article 59 are applicable to utility models.

**Article 123**  
**Rights of the Inventor**

The provisions of article 60 are applicable to utility models.

**SECTION II**  
**UTILITY MODEL PROCESS**

**SUBSECTION I**  
**NATIONAL PROCESS**

**Article 124**  
**Form of request**

1. The request for a utility model is filed in writing, in the Portuguese language, and should indicate the following:

- a) The name, the firm or commercial denomination of the requestor, his nationality and domicile or place of establishment;
- b) The subject or title that synthesizes the object of the invention;
- c) The inventor's name and country of residence;
- d) The country where the first request was filed, the date and number of that request, if the requestor proposes to reivindicar the right of priority;
- e) Mention that a patent was requested for the same invention, if such was the case, under the terms of No. 5 of article 51;
- f) Signature of the requestor or representative thereof.

2. The fantasy expressions utilized to designate the invention do not constitute object of revindication

3. For the purpose of the provisions of No.1 of article 11, priority is given the utility model request that first filed, aside from the elements required in subparagraph a) of No. 1, a synthesis of the invention's description or, in substitution thereof, when a prior request priority is reivindicada, the indication of the number and date of the prior request and of the agency where the request was filed.

**Article 125**  
**Documents to file**

The provisions of article 62 are applicable to utility models.

**Article 126**

## **Deadline for filing the descriptions and drawings**

The provisions of article 64 are applicable to utility models.

### **Article 127 Review as to form**

1. Once the utility model request has been filed at the National Institute of Industrial Property, it is reviewed as to form, within one month, to verify if it fulfills the requisites established in articles 124 and 125.
2. If the National Institute of Industrial Property verifies formal irregularities in the request, it notifies the requestor to correct them, within a month,
3. If the corrections are not made within the established deadline, the request is denied and the respective notice is published in the Industrial Property Bulletin. In this case, the publication foreseen in the article that follows does not take place.

### **Article 128 Publication of the request**

1. Having been requested normally or been normalized under the terms of No. 2 of the preceding article, the utility model request is published in the Industrial Property Bulletin, with a transcript of the summary and of the International Classification, under the terms of the Strasburg Agreement.
2. The publication referred to in the preceding number is done within up to six months counting from the date of the. It may, however, be speeded up at the express request of the requestor.
3. The publication may likewise be postponed at the requestor's request, for a period not greater than 18 months counting from the date of the utility model or reivindicaded priority request.
4. The postponement ceases from the moment a review is requested, by third parties or by the requestor.
5. Once publication takes place, anyone can request copies of the elements contained in the process.
6. The provisions of No. 5, article 66 applies to utility models.

### **Article 129 Opposition**

The provisions of article 67 apply to utility models.

### **Article 130 Granting of provisional title**

1. If a review is not requested and if there is no opposition, the utility model is granted provisionally and the requestor is notified to pay the fee pertaining to granting the provisional title.

2. The provisionally granted title is delivered to the requestor within one month counting from the date of the payment referred to in the preceding number.
3. The validity of the provisional granting title ceases as soon as a review of the invention is requested.

### **Article 131 Request for review**

1. The review can be solicited in the request phase or during the validity period of the provisional utility model.
2. The review fee must be paid by whoever requests to do so, within one month, counting from the date of the written request.
3. If the owner of the provisionally granted utility model proposes to interpose judicial action to defend the rights conferred by the model, he must mandatorily request the review referred to in the article that follows at the National Institute of Industrial Property. The provisions of article 5 apply.

### **Article 132 Review of the invention**

1. The National Institute of Industrial Property promotes the review of the invention at the request of the requestor or of any interested party.
2. If there is no opposition a report on the review is prepared within three months:
  - a) Counting from the date in which the review was requested;
  - b) Or after publication of the request in the Industrial Property Bulletin, if the review is solicited during the request phase;
3. If there is opposition, the review is done within, counting from the filing of the last procedural piece referred to in article 17.
4. If it is concluded from the review that the utility model can be granted, a notice of the granting is published in the Industrial Property Bulletin.
5. If, on the contrary, it is concluded that the utility model cannot be granted, the report is sent to the requestor, with a copy of all the documents cited in it, with the notification to respond to the observations made, within two months.
6. If, upon the requestor's response, objections to granting the utility model subsist, a notification is made to clarify the points still in doubt, within one month.
7. When it is concluded from the response, that the utility model can be granted, a granting notice is published in the Industrial Property Bulletin.
8. If the response to the notification is considered insufficient, a notice to deny or of partial granting is published, in harmony with the review report.

9. If the requestor does not respond to the notification, the utility model is denied, and a denying notice is published in the Industrial Property Bulletin.

**Article 133**  
**Partial granting**

The provisions of Article 69 are applicable to utility models.

**Article 134**  
**Alterations of the request**

The provisions of Article 70 are applicable to utility models.

**Article 135**  
**Unit of the invention**

The provisions of Article 71 are applicable to utility models.

**Article 136**  
**Publication of pamphlets**

The provisions of Article 72 are applicable to utility models.

**Article 137**  
**Grounds for denial**

1. In addition to the provisions of Article 24 a utility model may be denied if:
  - a) An invention lacks novelty, inventive activity or is not susceptible of industrial application;
  - b) The object is included in the provisions of Articles 118 or 119.
  - c) The subject or title given the invention encompasses a different object or if the description and drawings diverge from respective duplicates;
  - d) The object is not described in a manner that permits the execution of the invention by any person competent on the matter;
  - e) It is considered a model or design, by its description or reivindication;
  - f) There is an infraction to the provisions of articles 58 and 59.
2. In the case foreseen in subparagraph f) of the preceding number, rather than denial of the utility model, total or partial transmission may be granted in favor of the interested party, if so requested.

**Article 138**  
**Notifications of definitive dispatch**

The provisions of Article 74 are applicable to utility models.

**SUBSECTION II**  
**BY WAY OF THE COOPERATION TREATY ON MATTERS OF PATENTS**

**(\*\*\* Cape Verde is not a member state of the Patent Cooperation Treaty; thus, the Article 139 appears to be inappropriate and can be deleted unless Cape Verde officials believe it should remain and the country can otherwise qualify for participation under the Treaty)**

**SECTION III**  
**EFFECTS OF THE UTILITY MODEL**

**Article 140**  
**Ambit of protection**

1. The ambit of the protection conferred by the utility model is determined by the content of the reivindications, with the description and the drawings serving to interpret them.
2. If the object of the utility model pertains to a process, the rights conferred include the products obtained directly by the patented process.

**Article 141**  
**Inversion of the onus of proof**

The provisions of Article 98 are applicable to utility models.

**Article 142**  
**Duration**

1. The duration of the utility model is six years, counting from the date the request is filed.
2. In the last six months of validity of the utility model, the owner may request its prorogation for two years.
3. In the last six months of the current period referred to in the preceding number, the owner may file a second and last request to prorogue the duration of the protection, for a new period of two years.
4. The duration of the utility model cannot exceed 10 years, counting from the date the respective request is filed.

**Article 143**  
**Indication of utility model**

During the validity period of the utility model, its owner may use, on the products, the expression "**Utility Model N<sup>o</sup>.**" or "**U.M. No....**"

**Article 144**  
**Rights conferred by the utility model**

1. The utility model confers the exclusive right to explore the invention in any part of the territory of Cape Verde.



**Article 149**  
**Mandatory exploration**

The provisions of Article 106 are applicable to utility models.

**Article 150**  
**Compulsory licenses**

The provisions of articles 107 to 112 are applicable to the utility models.

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b) Possesses one or more layers composed of conductive, insulating or semiconductor material, laid-out in accordance with a predetermined three-dimensional model;

c) Is designed to carry out an electronic function, whether exclusively or in

**Article 158**  
**Rights of the creator**

The provisions of article 60 are applicable to semiconductor products.

**Article 159**  
**Applicable norms**

The provisions pertaining to patents, in all that is not contrary to the nature of that private right, are applicable to semiconductor product schematic.

**SECTION II**  
**REGISTRATION PROCESSES**

**Article 160**  
**Form of request**

The provisions of articles 61, 62 and 64 to 72, with the necessary adaptations, apply to the requests to register semiconductor schematic requests.

**Article 161**  
**Grounds for denial**

1. Apart from the dispositions of article 24, the registration of a semiconductor product is denied if:

- a) The schematic of the semiconductor product is not considered as such from the viewpoint of articles 153 and 154;
- b) The schematic of a semiconductor product does not abide by the requisites established in article 155.
- c) The subject or title given the schematic of a semiconductor product encompasses a different object, or the description and drawings diverge from the respective duplicates.
- d) Its object is not described so as to permit the execution of the semiconductor product schematic by a person competent on the matter;
- e) There is infraction to the provisions of articles 58 and 59.

2. In the event foreseen in subparagraph e) of the preceding number, rather than a denial of the registration, a total or partial transmission may be granted to the interested party, if so requested.

### **SECTION III EFFECTS OF THE REGISTRATION**

#### **Article 162 Duration**

The registration is valid for 10 years, counting from the date of the respective request, or the date the schematic was explored for the first time, anywhere, if sooner.

#### **Article 163 Indication of the Registration**

During the validity period of the registration, its owner may use on the semiconductor products fabricated through the utilization of the protected schematics, the capital letter "T", in one of the following forms:

**T, "T", [T], T , T\* or T**

#### **Article 164 Rights conferred by registration**

1. The registration of the schematic confers on its owner the right to exclusive use in all the **national** territory, producing, fabricating, selling or exploring the schematic **in its entirety or any part thereof**, or the object to which it applies, with the obligation to do so effectively and in harmony with market needs.

2. Registration of the schematic further confers to its owner the right to authorize or forbid any of the following acts:

- a) Reproduction of the protected schematic **in its entirety or any part thereof**;
- b) Importation, sale or distribution by any other form, for commercial purposes of a protected schematic, of a semi-conductor product in which the protected schematic is incorporated, or of an article in which is incorporated a semi-conductor product of this type, only to the extent in which an illegally reproduced schematic continues to be included.

#### **Article 165 Limitation to the rights conferred by registration**

1. The rights conferred by registration of the schematic does not encompass:
  - a) Private reproduction of a schematic for non-commercial purposes;
  - b) Reproduction for the purpose of analysis, evaluation or teaching;
  - c) The creation of a distinct schematic, from the analysis or evaluation referred to in the preceding subparagraph that may benefit from the protection foreseen in this Code;
  - d) The performance of any of the acts referred to in No. 2 of the preceding article, relatively to a semiconductor product in which is incorporated an illegally

reproduced schematic, or to any other article which incorporates a semiconductor product of this type, if the person who executed or ordered the execution of these acts did not know, nor should know, at the moment of the acquisition of the semiconductor product or of the article in which this semiconductor product was incorporated, that the same incorporated an illegally reproduced schematic;

e) The knowledge of any of the acts in question regarding the products in his possession, after the moment in which the person referred to in the preceding paragraph receives sufficient information that the schematic was illegally

- a) When its object does not satisfy the requisites foreseen in articles 153, 154 and 155.
- b) When it is recognized that the title or subject given to the schematic encompasses a different object;
- c) When its object is not described in such a manner as to permit its execution by any person competent in the matter;

**Article 171**  
**Declaration of partial nullity or annulment**

The provisions of article 114 apply to the registrations of semiconductor product schematics.

**Article 172**  
**Expiration**

Aside from the provisions of article 37, the registration of a semiconductor product schematic expires:

- a) After 10 years have elapsed, counting from the last day of the civil year in which the registration request was formally filed, or from the last day of the civil year during which the schematic was explored commercially, anywhere, if such is the case;
- b) If the schematic has not been commercially explored, fifteen years after the date it had been fixed, or was codified for the first time

2. Complex product designates any product composed of multiple components susceptible of being removed therefrom to demonstrate it and replaced in it for reassembly.

### **Article 175 Limitations regarding the registration**

The drawings or models, which are contrary to the public order, cannot be registered.

### **Article 176 Granting Requisites**

1. The new or original drawings or models with unique character are entitled to legal protection.

2. Drawings and models that, not being entirely new, represent new combinations of known elements or different layouts of the elements already used, so as to confer uniqueness to the respective objects, are also entitled to legal protection.

3. Without prejudice to the provisions of the preceding numbers, the same requestor may, up until the diffusion of the drawing or model, file for the registration of other drawings or models that differ from the one initially filed only in very insignificant details.

4. An industrial model or design applied or incorporated in a product that constitutes a component of a complex product shall be considered novel and unique in character, whenever, cumulatively:

a) It can reasonably be considered that even after being incorporated into the complex product, it will continue to be visible during the normal use of the complex product; and

b) To the extent that the visible characteristics of that component itself meets the requisite of novelty and uniqueness of character.

5. For the purposes of the provisions of subparagraph a) of the preceding number, normal usage is understood to be the normal usage by the final user, excluding the acts of conservation, maintenance or repair.

6. The following are not protected by the registration:

a) The characteristics of the appearance of a product, determined exclusively, by

interchangeable products or their interconnection in a modular system, without prejudice to the provisions of sub-paragraph b), above.

8. If the registration has been refused, under the terms of paragraphs b) and e) to g) of n° 1 of Article 197 or declared null or annulled under the terms of articles 209 and 210, the drawing or model may, nevertheless, still be registered, or the respective right maintained in an altered form, provided that, cumulatively:

a) Its identity is maintained;

b) The necessary alterations are introduced so as to meet the requisites of protection.

9. The registration or its maintenance in an altered form, referred to in the preceding number, may be accompanied by a declaration whereby the owner partially renounces the right to the industrial model or design, or by a court decision whereby partial nullity has been declared or the registration has been partially annulled.

### **Article 177 Novelty**

1. The design or model is considered novel if, prior to the respective request to register or for the reivindicaded priority, no identical design or model was published in country or in the outside.

2. Industrial designs or models are considered identical if they differ only in insignificant details.

### **Article 178 Unique character**

1. A design or model is considered to be unique in character if the global impression that it gives to the informed user differs from the global impression caused on the same user by any design or model disclosed to the public prior to the date of the request to register or of the priority reivindicaded.

2. In the evaluation of the unique character, the degree of freedom the creator disposes of to execute the design or model, is taken into account.

### **Article 179 Disclosure**

1. For the purposes of Articles 177 and 178, an industrial design or model is considered to be disclosed to the public if it has been published upon registration or in any other circumstance, presented in an exposition, or made known by any other way, except if these facts could not reasonably have been brought to the knowledge of the specialized circles of the sector in question that operate in the **Cape Verde**, in the course of their current activity, before the date of the registration request or of the reivindicaded priority. **(\*\*\* Reference to the European Union can be deleted unless Cape Verde officials would like to make knowledge there applicable to the disclosure issue)**

2. However, the design or model is not considered disclosed to the public by the simple fact that it was disclosed to a third party under explicit or implicit conditions of confidentiality.

### **Article 180** **Un-opposable Disclosures**

1. For the purposes of Articles 177 and 178, the design or model to be registered is not considered disclosed to the public whenever, cumulatively, it was disclosed:

a) By the creator, his successor, or a third party, as the result of information they provided or measures taken by the creator, successor or third party;

b) During the twelve month period preceding the date in which the registration request is filed, should a priority be reinvoked, the date of that priority.

2. N° 1 is, likewise, applicable if the drawing or model is disclosed to the public as a result of an abuse by the creator or the successor.

3. The requestor of a registration of a drawing or model that has exposed products that incorporate the drawing or model, or to which the drawing or model was applied, at an official or officially recognized international exposition, that it integrated in the ambit of the provisions of the Convention on International Expositions, signed in Paris on 22 November 1928, and revised on 30 November 1972, may, if solicited within six months from the date of the first exposition of those products, reinvokes a right of priority beginning on that date, under the terms of Article 12.



**SECTION II  
REGISTRATION PROCEDURE**

**Article 184  
Form of the request**

1. The request to register a drawing or model is done in writing in the Portuguese language that indicates or contains:

- a) The name, the firm or commercial denomination of the requestor, his nationality and domicile or place where he is established;
- b) The indication of the products in which the drawing or model is destined to be applied or incorporated;
- c) The creator's name and country of residence;
- d) The country in which the first request was filed, the date and the number of that request, should the requestor intend to reivindicare the right of priority;
- e) Signature of the requestor or his agent.

2. Fantasy expressions used to designate the drawing or model do not constitute object of protection.

3. For the purposes of the provisions of No. 1 article 11, priority shall be granted to the request to register the drawing or model that first filed, aside from the elements required in subparagraph a), No. 1, a representation of the drawing or model or, in substitution thereof, when a prior request for priority is reivindicaded, the number and date of the prior application and the agency where the application was filed.

**Article 185  
Documents to be filed**

1. To the request to register shall be added the following elements, written in the Portuguese language:

- a) The description, in duplicate, in no more than 150 words, referring only to the



**Article 188**  
**Review as to Form**

1. Once the request to register is filed at the National Institute of Industrial Property, it will be reviewed within one month, to verify compliance with the requisites of articles 184 to 187.
2. Should the National Institute of Industrial Property verify finds that there are

5. At the request of the requestor, publication of the solicited postponement may take place before the end of the postponement period, if all the legal formalities are complied with.

6. The postponement of the publication is without effect from the moment third parties or the requestor asks for a review.

### **Article 191 Opposition**

The publication of the request in the Industrial Property Bulletin initiates the beginning of the deadline for complaints to be filed by anyone who feels harmed by the granting of the registration.

### **Article 192 Provisional registration**

1. If a review is not requested and there is no opposition, a provisional registration is granted and the requestor is notified to pay the fee applicable to the provisional registration.

3. If there is opposition, the report is prepared within three months, counting from the date the last processual piece referred to in article 17 is filed.
4. If it is concluded from the review that the registration can be granted, a notice to that effect is published in the Industrial Property Bulletin.
5. If it is concluded from the review that the license cannot be granted, the report is forwarded to the requestor, together with a copy of all the documents cited in it, with a notification to respond to the observations made, within two months.
6. If, after the applicant's response, there are still objections to the granting of the registration, another notification is made to, within one month, clarify the points still in doubt.

- a) The design or model does not conform to article 173;
  - b) The design or model violates the provisions of articles 176 to 180 or does not fulfill the conditions of articles 176 to 180;
  - c) There is infraction to the provisions of Articles 58 or 59, with the necessary adaptations;
  - d) The design or model interferes with a prior design or model, disclosed to the public after the date of the request or the date of the reivindicated priority, and that is protected from a prior date by a request to register or a registration of a design or model;
  - e) A distinctive sign is utilized in a subsequent design or model and the community right, or the provisions that regulate that sign, confer the right to prohibit that utilization;
  - f) The design or model constitutes an unauthorized use of a work protected by copyright;
  - g) The drawing or model constitutes an untoward utilization of any of the elements enumerated in article 6 of the Paris Convention for Protection of Industrial Property, or of other badges, emblems and hallmarks not included in the Convention but that bear particular public interest in Cape Verde .
2. The foundation provided for in subparagraph c) of the preceding number, will be analyzed only if so invoked by the right-owner regarding the design or model;
  3. The foundations foreseen in subparagraphs d) to f) of n° 1 of the preceding number, shall only be analyzed if so invoked by the requestor or the controversial right-owner.
  4. The foundation foreseen in subparagraph g) of the preceding number, shall be analyzed only if so invoked by the person or entity affected by the utilization in question.

#### Article 198

#### Notification of the definitive dispatch

Notification of the definitive dispatch is made, under the terms of No. 1 of article 16, with indication of the Industrial Property Bulletin in which the respective notification will be published.

### SECTION III EFFECTS OF THE REGISTRATION

#### Article 199

#### Ambit of the Protection

1. The ambit of the protection conferred by the registration encompasses all the designs or models that do not give rise to a different global impression on the informed user.

2. In the evaluation of the ambit of the protection, the degree of freedom the creator disposed of to execute the design or model must be taken into consideration.

### **Article 200** **Relationship with Copyrights**

Any registered design or model benefits, equally, from the protection conferred by the legislation in matters of copyrights, from the date the design or model was created or defined, in any form.

### **Article 201** **Duration**

1. The duration of the registration is five years counting from the date of the request. It can be renewed for like periods up to a maximum of 25 years.

2. The renewals referred to in the preceding number must be requested during the last six months of registration's validity.

### **Article 202** **Indication of design or model**

During the validity period of the registration its owner may use, on the products, the expression "design or model N°." or the abbreviations " D M n°."

### **Article 203** **Rights Conferred by the registration**

1. The registration of a design or model confers to its owner the exclusive right to use it and to prohibit its utilization by third parties **when such acts are undertaken for commercial purposes**, without his consent.

2. The utilization referred to in the preceding paragraph encompasses, especially, fabrication, offerings, placing on the market, importation, exportation or the utilization of a product in which the design or model is incorporated, **or substantially copied**, or applied, as well as the storage of the product for the same purposes.

### **Article 204** **Limitation of the rights conferred by the registration**

The rights conferred by the registration do not include:

- a) Private acts executed for noncommercial purposes;
- b) Acts for experimental purposes;
- c) Acts of reproduction for reference or for educational purposes, provided that they are compatible with fair trading practices, do not unduly harm the normal exploration of the design or model, and mention the source;
- d) Equipment on board of ships and aircrafts registered in another country, when they transit temporarily through the national territory;

e) The importation of spare parts and accessories for repair of those ships and aircrafts.

f) Repairs in those ships and aircrafts.

**Article 205**  
**Depauperation of the right**

Rights conferred by registration do not permit the owner to prohibit the acts pertaining to products in which a design or model object of prior protection by the registration was incorporated or to which they were applied, when the product has been commercialized, by the owner himself or with his consent, in the European Economic Space. (\*\*Reference to exhaustion of the right throughout the



- a) Is not a design or model in conformity with the provisions of article 173;
  - b) Violates the provisions of article 175;
  - c) Does not fulfill the conditions of articles 176 to 180;
  - d) Interferes with a prior design or model, disclosed after the date of the request for registration or reivindicated priority, and which is protected from a prior date.
  - e) Constitutes an untoward utilization of any of the elements enumerated in article 6 of the Paris Convention for the Protection of Industrial Property, or of other badges, emblems and hallmarks not included in article 6 of the said Convention that bear particular public interest in .
2. Only the registrations of drawings or models that have been object of a review can be declared null.

### **Article 209 Annulability**

1. Aside from the provisions of article 34, the registrations are annulable whenever:
- a) A distinctive sign is used in a subsequent design or model and the community right or the provisions that regulate that sign conferred the right to prohibit such use;
  - b) The design model constitutes an unauthorized use of a work protected by copyrights.
2. In the cases foreseen in the preceding number, only the registrations of designs or models that have been object of a review can be annulled.

### **Article 210 Declaration of nullity or partial annulment**

1. The registration of one or more objects that are parts of the same registration can be declared null, but nullity or partial annulment of the registration pertaining to an object cannot be declared.
2. In the event of a declaration of nullity or of partial annulment of one or more objects, the registration continues in effect for the remaining part.



c) The subject or title that synthesizes the object or objects intended to be

model, he must mandatorily solicit a review by the National Institute of Industrial Property, under the terms of article 194.

#### **Article 221 Fees**

1. For each prior protection a fee is due, according to the number of reproductions that the same contains. The fee is set under the terms of article 346.
2. Non-payment of the fee implies non-acceptance of the prior protection request.

### **CHAPTER IV MARKS**

#### **SECTION I GENERAL PROVISIONS**

##### **SUBSECTION I Marks of products or services**

#### **Article 222 Constitution of the mark**

1. The mark may be constituted by a sign or a group of signs susceptible of graphical representation, namely words, including names of persons, drawings, letters, numbers, sounds, the shape of the product or respective packaging, as long as they are adequate to distinguish the products or services of one enterprise from those of others.
2. The mark may, likewise, be constituted by publicity phrases for the products or services they pertain to, as long as they possess a distinctive character, independently of the protection attributed to by copyrights.

#### **Article 223 Exceptions**

1. The following do not fulfill the conditions of the preceding article:
  - a) Marks without any distinctive character;
  - b) Signs constituted exclusively by the shape imposed upon them by the very nature of the product, by the shape of the product necessary to obtain a technical result or the shape that confers a substantial value to the product;
  - c) The signs constituted exclusively, by indications that may be used commercially to designate the kind, quality, quantity, destination, value, geographical origin, epoch or means of production of the product or of the service rendered, or other characteristics of the same;
  - d) The marks constituted, exclusively, by signs or indications that have become customary in the current language or in the fair and constant trade habits;

e) The colors, except where they are combined among themselves or with graphics, sayings or other elements, in a peculiar and distinctive manner.

2. The generic elements referred to in sub-paragraphs a), c) and d) of the preceding number, that enter into the composition of a mark will not be considered to be of the

2. The veracity of the documents offered as proof of this right of priority is freely evaluated, except if they are authentic documents.

## **SUB-SECTION II COLLECTIVE MARKS**

### **Article 228 Definition**

1. Collective mark is understood to be an association mark or a certification mark.
2. The signs or indications utilized in trade to designate the geographical origin of the products or services may constitute a collective mark or sign.
3. The registration of the collective mark gives, further, to its owner the right to discipline the commercialization of the respective products or services, under the conditions established by law, in the statutes or in the internal regulations.

### **Article 229 Association mark**

An association mark is a specific sign belonging to an association of singular or collective persons, whose members use it, or intend to use it, for products or services related to the object of the association.

### **Article 230 Certification mark**

1. Certification mark is a specific sign belonging to a collective person that controls

use the mark, the conditions under which it should be used and the rights and obligations of the concerned parties in the case of usurpation or counterfeiting.

3. The alterations to the organic laws, statutes or internal regulations, that modify the regime of the collective mark, produce effects only in relation to third parties if they are communicated to the National Institute of Industrial Property by the administration of the agency that owns the registration.

### **Article 232**

#### **Applicable provisions**

The provisions of the present Code pertaining to marks of products and services, with the appropriate adaptations, are applicable to the collective marks.

## **SECTION II**

### **REGISTRATION PROCESS**

#### **SUBSECTION I**

#### **NATIONAL REGISTRATION**

### **Article 233**

#### **Request**

The request to register a mark is done in writing, in the Portuguese language, indicating:

- a) The name, firm or commercial denomination of the applicant, his nationality and residence or place of establishment;
- b) Products or services the mark is destined to cover, grouped by the order of classes of the international classification of products and services and designated in precise terms, preferably by the terms of the alphabetical list of the referred classification;
- c) The express indication that the mark is of association, or of certification, should the requestor propose to register a collective mark;
- d) The express indication that the mark is three-dimensional or a sound mark;
- e) The number of the registration of the award figured or referred to in the mark;
- f) The colors in which the mark is used, if they are reivindicated as distinctive element;
- g) The country where the first request to register the mark was filed, the date and number of that request, should the requestor propose to reivindicade the right of priority;
- h) Indication of the date from which it uses the mark, in the case foreseen in article 227;
- i) The signature of the requestor or the respective representative.

2. For the purposes of the provisions of No. 1, article 11, priority is granted to the request to register that first files a representation of the proposed mark, together with the elements required in the preceding number.

### **Article 234** **Documenting the request**

1. The following documents that will abide by the formal requisites established by dispatch of the President of the Executive Board of the National Institute of Industrial Property should be attached to the request:

- a) Two graphic representations of the mark, whenever possible, in photocopy or drawing, printed or glued on the space of the form reserved for them;
- b) A photolithograph or another medium, that may be required by the National Institute of Industrial Property, with the reproduction of the sign to be registered;
- c) Graphic representation, by musical phrases, of the sounds that enter in the composition of the mark.

2. The request should also be accompanied by the following elements:

- a) Authorization of the registration-owner of a foreign mark of which the requestor is the agent or representative in **Cape Verde** ;
- b) Authorization of a person whose name, firm, commercial denomination, logotype, name or insignia of establishment, or picture, appear in the mark;
- c) Indication of the legal, statutory dispositions or internal regulations, which discipline its usage, in the case of collective mark;
- d) Authorization **by the competent authorities** to include in the mark, **or as an element of the mark**, any flags, arms, shields, symbols, coat of arms or other emblems of the State, municipalities or other public or private entities, national or foreign, as well as badges, stamps and official marks, indicating any inspection and warranty, private emblems or denomination of the Red Cross or of any other agencies of a similar nature;
- e) Diploma of decorations or other distinctions, referred to or reproduced in the mark, that should not be considered as rewards according to the concept expressed in the chapter that follows;
- f) Certificate from the competent registration proving the right to include in the mark the name or any reference to a certain rustic or urban property and the owner's authorization, to that effect, if the owner is not the requestor;
- g) Authorization from the prior registration's title owner and of the owner of the exclusive license, if there is one, and save for disposition to the contrary in the contract, for the purposes of the provisions of article 243.

3. The absence of the requisites referred to in No. 2 does not detract from the relevance of the request for the purpose of property.



4. When the mark contains inscriptions in little known characters, the applicant should present the transliteration and, if possible, the translations of those inscriptions.

**Article 235**  
**Unicity of the registration**

The same mark, destined for the same product or service, can have only one registration.

**Article 236**  
**Publication of the request**





**Article 240**  
**Imitation of unregistered packages or labels**

1. Registration is also denied to marks that, under the terms of subparagraphs b) and c) of No. 1, article 245, constitute reproduction or imitation of a specific external aspect, namely packaging, or label, with the respective form, color and disposition of sayings, medals, awards and other elements, proven to have been used by someone else with their registered marks.

2. The parties interested in the denial of the registrations of the marks referred to in this article may intervene in the respective process only after the request to register its mark has been filed with the external aspect elements referred to in the preceding number.

**Article 241**  
**Notorious marks**

1. Registration is denied to mark that, in whole or in essential part, constitutes a reproduction, imitation or translation of another mark considered by the competent Cape Verde authority to be notoriously known in Cape Verde as the mark of a person other than the requestor, if applied to identical or similar products or services and may be confused with it, or if, from that application, it is possible to establish an association with the owner of the notorious mark.

2. The parties interested in the denial of the registration of the marks referred to in the preceding number can intervene in the respective process the request to register is filed for the mark that gives rise and to and substantiates their interest.

3. Ex-officio or at the request of an interested party the National Institute of Industrial Property shall refuse or cancel the registration, and to prohibit the use, of a mark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the Cape notorious in Cape Verde as being already the mark of a person entitled to the benefits of the Union and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitute a reproduction of any such notorious mark

**Article 242**  
**Marks of prestige**

1. Without prejudice to the provision of the preceding article, the request to register

## Article 243

**(\*\* Cape Verde is not a member state of the Madrid Agreement or the Madrid Protocol; thus, the Articles 248 through 254 appear to be inappropriate and can be deleted unless Cape Verde officials believe they should remain and the country can otherwise qualify for participation under either treaty)**

### **SECTION III EFFECTS OF THE REGISTRATION**

#### **Article 255 Duration**

The registration is valid for 10 years, counting from the date it is granted. It can be renewed indefinitely for identical periods.

#### **Article 256 Legal Presumption of Registration**

Every five years, counting from the date of the registration, save when the respective renewal fees are due, a declaration of the intention of use the mark should be filed with the National Institute of Industrial property.

2. The declaration referred to in the preceding number is filed within one year, which starts sixth months before and ends six months after the term of the five year period it pertains to.

3. The marks for which the declaration is not filed are not opposable by third parties, and the expiration of the respective registration is declared by the National Institute of Industrial Property at the request of any interested party, or when harm to rights of third parties are verified, at the moment other registrations are granted.

4. If expiration of the registration has not been solicited or declared, the same is considered plainly in effect, anew, as long as the title owner shows proof of use of the mark.

5. Even if proof of use of the mark has not been presented, the renovation may be deferred, but the registration continues to de subject to application of No. 3 and 4.

6. In the case foreseen in No. 3, the registration title-owner is always notified.

**(\*\* Cape Verde is not a member state of the Madrid Agreement or the Madrid Protocol; thus, the Article 256 (7) appears to be inappropriate and can be deleted unless Cape Verde officials believe it should remain and the country can otherwise qualify for participation under either treaty)**

8. Should there be an extension subsequent to the registration, that declaration cannot be required before 5 years have elapsed, counting from the date of the extension.

**Article 257**  
**Indication of the Registration**

During the validity period of registration, its title-owner may use in his products the words "Registered Mark" or the initials "R.M." or simply "®".

**Article 258**  
**Rights conferred by the registration**

Registration of the mark confers to its title-owner the right to prevent third parties from using, without his consent, in the exercise of their economic activities, any sign, equal to or similar to those for which the mark was registered, and that, as a result of the similarity between the signs and the affinity of the products or services, may create a risk of confusion, or association in the mind of the consumer. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

**Article 259**  
**Depauperation of the right**

1. The rights conferred by the registration do not permit its title-owner to prohibit the use of the mark on products commercialized by the owner himself or with his consent, in the European Economic Space. (\*\*Reference to exhaustion of the right throughout the European Economic Space is suitable for European Community members. However, since Cape Verde is not a European Community member Cape Verde officials should determine if they prefer to include this reference)

2. The provision of the preceding number is not applicable whenever there are legitimate motives, namely when the state of those products is modified or altered after their placement in the market.

**Article 260**  
**Limitation on the rights conferred by registration**

The rights conferred by registration of the mark do not, permit the holder to prevent third parties from using what follows in their economic activity, as long as it is done according to the norms and honest practices in industrial and commercial matters:

- a) Their own name and address;
- b) Indications pertaining to the kind, quality, amount, purpose, value, geographical origin, epoch and means of production of the product or of rendering the service, or to other characteristics of the products or services;
- c) The mark, whenever it is necessary to indicate the destination of a product or service, namely under the form of accessories or spare parts.

**Article 261**  
**Inalterability of the mark**

1. The mark must remain unaltered, and any change in its elements is subject to a new registration.
2. Exceptions from the provisions of the preceding number are the simple modifications that do not detract from the identity of the mark and only affect only its proportions, the material in which it was minted, recorded or reproduced and the paint or the color, if the latter has not been expressly reivindicated as one of the mark's characteristics.
3. Likewise, the inclusion or removal of the express indication of the product or service the mark is destined for and of neither the production year, nor the alteration to the title-owner's domicile or place of establishment shall not detract from the identity of the mark.
4. The nominative mark is subject to the rules of inalterability, with regard to the expressions that constitute it, and may be used with any figurative aspect as long as it does not offend third party rights.

**SECTION IV**  
**TRANSMISSION AND LICENSES**

**Article 262**  
**Transmission**

1. The registrations of marks are transmissible, if that is not susceptible of inducing the public into error regarding the origin of the product or service or the character essential to its evaluation.
2. When the transmission is partial with regard to products or services, a copy of the process, including the right to the title, must be requested, to serve as basis for an autonomous registration.
3. The provisions of the preceding numbers apply to the request to register and, in the event of a partial transmission, the new request preserves the priorities they were entitled to.
4. The owner of a registered mark shall have the right assign the mark with or without the transfer of the business to which the mark belongs.

**Article 263**  
**Limitations to the transmission**

Marks registered in the name of entities that serve as tutelage of or that control economic activities are not transmissible, save for special provision of law, statutes or internal regulations.



## **Article 264 Licenses**

The title-owner of the mark registration may invoke the rights conferred by the registration against the licensed party who infringes any clause, or provision of the license contract, especially with regard to the mark's validity period, identity, the nature of the products or services for which the license was granted, the delimitation of the zone or territory or the quality of the products manufactured or services rendered by the license-owner.

## **SECTION V CANCELLATION OF THE MARK REGISTRATION OR OF THE RIGHTS RESULTING FROM IT**

### **Article 265 Nullity**

1. Aside from the provisions of article 33, the mark registration is null when, in process of granting it, the provisions of the following subparagraphs are infringed:
  - a) Subparagraphs a) to c) of n° 1, article 238;
  - b) Subparagraphs a) to e) and l) of article 239;
2. The provision of No. 3, article 238, with the necessary adaptations, is applicable, to the nullity actions.

### **Article 266 Annulability**

1. Aside from the provisions of Article 34, the mark registration is annulable:
  - a) When, in the process of granting it, the provisions of article 226, paragraphs f) to h) and m) of articles 240 <sup>to</sup> 242 have been infringed;
  - b) When it is discovered that the registration title-owner intends to engage in unfair competition, or when unfair competition is likely, regardless of the title-owner's intentions.
1. The party interested in the annulment of the registration of a mark, based on the provisions of articles 241 or 242, should request the registration of the mark that gives rise to the annulment request, for the products or services that gave it notoriety or prestige, respectively.
2. The registration cannot be annulled if the prior mark, invoked in opposition, does not satisfy the condition of serious usage, under the terms of article 268.
4. The annulment actions should be proposed within 10 years, counting from the date of the granting dispatch, without prejudice to the right to request annulment of the mark registered in indescribable bad faith.

Article 267  
Preclusion by tolerance

1. The title-owner of a registered mark who, with foreknowledge of the fact has tolerated, for a period of five consecutive years, the use of a subsequently registered trademark, ceases to have the right, based on his prior mark, to request the annulment of the registration of the subsequent mark, or to oppose to its use, with regard to products or services in which the subsequent mark has been used, save if the registration of the subsequent mark was made in bad faith.
2. The five-year period foreseen in the preceding number is counted from the moment title-owner became aware of the fact.
3. The subsequent mart title-owner cannot oppose to the prior right, even if that right can no longer be invoked against the subsequent mark.

Article 268  
Use of the mark

1. The following are considered serious use of the mark:
  - a) The use of the mark, as it is registered, or that doesn't differ from it except in elements that do not alter its distinctive character, in harmony with the provisions of article 261, done by the registration title-owner or by his license-owner, with duly recorded license;
  - b) The use of the mark, just as it is defined in the preceding subparagraph, for products or services for exports only,
  - c) The use of the mark by a third party, as long as it is under the control of the title-owner and for the purpose of maintaining the registration.
2. Whatever is done with the consent of the title-owner is considered use of the collective mark.
3. Whatever is done by a qualified person is considered use of the guaranty or certification mark.
4. The beginning or resumption of serious use within the three months immediately prior to the submission of an expiration request, counted from the end of an uninterrupted period of five years of non-use, is not, however, taken into account if the diligences for the beginning or resumption of the use occur only after the title-owner learns that the expiration request may be filed.

Article 269  
Expiration

1. In addition to the provisions of article 37 expiration of the registration should be declared if the mark has not been object of serious use during five consecutive years, save for justifiable reason and without prejudice to the provisions of No. 4 of article 268.

2. Expiration of the registration should also be declared if, after the date on which the same was made:
  - a) The was transformed into the usual designation in the trade of the product or service for which it was registered, as a consequence of the activity or inactivity of the title-owner.
  - b) The mark became susceptible of inducing the public into error, namely with regard to the nature, quality and geographic origin of those products or services, because of the use of the mark by its owner, or by a third party with his consent, for the products or services for which the mark was registered
3. Expiration of a collective mark registration should be declared:
  - a) If the collective person for whom the mark was registered stops existing;
  - b) If that collective person consents that the mark is used in a way contrary to its general purposes or statutory provisions.
4. The registration does not expire, before the expiration is declared, serious use of the mark has already started or resumed, without prejudice to the provisions of No. 4 of the preceding article.
5. The deadline referred to in the preceding number begins with the registration of the mark. For the international marks, it is the date of registration with the International Secretariat.
6. When there are motives for the expiration of a mark registration, with regard to only some of the products or services for which the registration was made, expiration affects only such products or services.
7. Circumstances arising independently of the will of the owner of the mark which constitute an obstacle to use of the mark, such as import restrictions on or other government requirements for goods or services protected by the mark, shall be recognized as valid reasons for non-use and shall be considered in connection with any determination involving expiration of a registration.

### **Article 270** **Request for declaration of expiration**

1. The requests for declaration of expiration are filed with the National Institute of Industrial Property.
- 2) These requests may be founded on any of the motives established in No. 1 through 3 of the preceding article, or on motives that indicate the lack of usage of a mark and its unopposability with regard to third parties.
3. Without prejudice to the provisions of No. 5, the title-owner of record is always notified of the request for declaration of expiration, in order to respond, if so desired, within two months.
4. At the request by the interested party, filed in due time, the deadline referred to in the preceding number may be extended for another month.

5. New prorogations, for like periods, may be granted only for justifiable reasons if there is no opposition from an opposing party.
6. It behooves the title-owner or the licensee thereof, if there is one, to provide proof of use of the mark. Without such proof, the mark is presumed to be not used.
7. Once the deadline for response has elapsed, the National Institute of Industrial Property decides, within two months, on the declaration of expiration of the registration.
8. The expiration process extinguishes if, before the decision, the respective request is cancelled.
9. The expiration produces effects only after it has been declared in a process that runs its course at the National Institute of Industrial Property.
10. The expiration is annotated and a notice thereof is published in the Industrial Property Bulletin.

## **CHAPTER V AWARDS**

### **SECTION I GENERAL PROVISIONS**

#### **Article 271 Object**

## Article 273

- b) It has been proven that they have been applied to products or services other than those for which they were conferred;
- c) There has been transmission of their property without transmission of the establishment, or of part of interest thereto, when applicable;
- d) If it is proven that the award has been revoked or doesn't belong to the requestor.

**Article 277**  
**Restitution of the documents**

1. At the end of the deadline to appeal, the diplomas or other documents included in the process are restituted to the requestors that solicit them in writing, and substituted in the process by certified photocopies.
2. The restitution is done against a receipt, which will be attached to the process.

**SECTION III**  
**USE AND TRANSMISSION**

**Article 278**  
**Indication of Awards**

The use of legitimately obtained awards is permitted, independently of registration, but only when the same has been registered can the reference or a copy of same be accompanied by the designation "Registered Award " or by the abbreviations "R. A." "RR" or «RR».

**Article 279**  
**Transmission**

Transmission of the award property is done with the legal formalities required for the transmission of the goods of which they are accessories.

**SECTION IV**  
**EXTINCTION OF THE REGISTRATION**

**Article 280**  
**Annulment**

In addition to the provisions of Article 34, the registration is annulable when the award tile is cancelled.

**Article 281**  
**Expiration**

1. The registration expires when the granting of the award is revoked or cancelled.
2. Expiration of the registration determines extinction of the use of the award.

**CHAPTER VI**  
**NAME AND INSIGNIA OF ESTABLISHMENT**

**SECTION I**  
**GENERAL PROVISIONS**

**Article 282**  
**Right to register**

- b) The firm or commercial denomination that does not belong to the requestor, or simply characteristic part of same, if it is susceptible of inducing the consumer into error or confusion, unless consent or legitimacy of use are proven;
  - c) The expressions "former warehouse", "former house", " former factory" and other similar expressions referring to establishments whose name or emblem are registered in someone else's favor, unless consent of the respective owner is proven;
  - d) The expressions "former employee", "former master", "former manager" and other similar expressions, referring to another single or collective person, unless consent is proven;
  - e) Indications of blood relations and the expressions "heir", "successor", "representative" or "agent" and the like, unless legitimacy of use is proven;
  - f) Everything that pertains to marks in No. 1 of article 238 and in subparagraphs a) to e) and h) to j) of article 239;
  - g) The constituting elements of the mark, or design or model, protected by another, for products identical or similar to those manufactured or sold in the establishment for which the name or emblem is intended, or for identical or similar services rendered in it;
  - h) Names, designations, figures or drawings that are reproductions or imitations of logotype, or name, or insignia of establishment already registered by somebody else.
  - i) The designations «national», «portuguese», «luso», «Lusitanian» or others with similar sense, when the establishment does not belong to single or collective person of Portuguese nationality.
2. The authorization to use names or distinctives and other elements of the same nature, are considered transmissible by legal succession, unless expressly restricted.
3. The provision of subparagraph h) of nº 1, does not prevent two or more persons with equal patronymic names from including them in the name or insignia of their respective establishments, as long as they are perfectly distinguishable.

## **SECTION II REGISTRATION PROCESS**

### **Article 286 Request**

1. The request to register a name or insignia of establishment is filed in a written document, in the Portuguese language, indicating:
- a) The name, the firm or commercial denomination of the applicant, his nationality and domicile;



- b) The name or insignia whose registration is requested.

**Article 287**  
**Instruction of the Application**

1. The following documents should be attached and they should be in compliance with the formal requisites established by the President of the Executive Board of the National Institute of Industrial Property:

- a) Two graphic representations of the insignia, whenever possible in photocopy or drawing, printed or pasted in the space provided for that purpose in the form;

- b) A photolithograph, or some other medium to be defined by the National Institute of Industrial Property, showing a reproduction of the sign of the insignia intended to be registered.

2. The following should be attached to the request, when required:

- a) A real estate registration certificate or other documents of proof in the case of paragraph c) of article 283.

- b) Documents of proof of the necessary authorizations and justifications.

- c) A declaration stating that for the same establishment, there is no prior registration of identical denomination or firm or so similar that it is susceptible of inducing the consumer into error or confusion.

3. Non-fulfillment of the requisites referred to in preceding number does not hinder the relevance of the request for priority purposes. However, the registration may not be granted without first fulfilling all the requisites listed above.

**Article 288**  
**Declaration of Consent**

The provisions of article 243, with the necessary adaptations, are applicable to the registration of names and insignias of the establishment.

**Article 289**  
**Uniqueness of the registration**

**Article 290**  
**Publication of the request**

A notice of the request is published in the Industrial Property Bulletin, to allow objections to be raised by anyone who feels harmed by the possible granting of the registration.

**Article 291**  
**Subsequent Formalities**

The processing formalities of article 237, pertaining to marks, with the necessary adaptations, are applicable to the request to register the names and the insignias of an establishment.

**Article 292**  
**Denial**

In addition to the provisions of article 24, registration of the name or the insignia of establishment is denied whenever provisions of articles 283 to 285, 288 and 289 are infringed.

**SECTION III**  
**OF THE EFFECTS OF REGISTRATION**

**Article 293**  
**Duration**

The registration is valid for 10 years, counting from the date the registration is granted. The registration may be renewed indefinitely for like periods.

**Article 294**  
**Indication of the name or of the insignia of establishment**

During the validity period of registration, the title-owner may use in the name or in the insignia the designation "Registered name" or "Registered insignia" or simply "RN" or "RI".

**Article 295**  
**Rights conferred by the registration**

1. The registration of the name or of the insignia confers upon the right-owner the right to prevent third parties from using any identical sign or one likely to be confused with it in their establishments, without his consent.
2. The registration confers, further, the right to prevent the use of any sign that contains the registered name or insignia.

**Article 296**  
**Inalterability of names or of insignias of establishment**

1. The name or the insignia should remain unaltered. Any alteration in the constituting elements is subject to a new registration.
2. The inalterability of insignias should be understood, with the necessary adaptations, to be in compliance with article 261 No. 2, 3 and 4.

**SECTION IV**  
**TRANSMISSION, NULLITY, ANNULABILITY AND EXPIRATION OF**  
**REGISTRATION**

**Article 297**  
**Transmission**

The transmission of the registration of the name or insignia must observe the legal formalities required for the transmission of the establishment to which they are accessory.

**Article 298**  
**Annulment**

1. In addition to the provision of Article 33, the registration of name or of insignia of establishment is null when it is granted in violation to the provisions or articles 283 to 285.
2. The registration is also null when, in granting it, the following provisions pertaining to marks were infringed:
  - a) In subparagraphs a) to c) of article 238.
  - b) In subparagraphs a) to e) and i) to l) of article 239.
3. Article 238, No. 3, with the necessary adaptations, is applicable to the nullity proceedings.

**Article 299**  
**Annulment**

1. In addition to the provisions in Article 34, the registration is annulable:
  - a) When granting it infringes the provisions of article 285.
  - b) When it is verified that the title-owner proposes to engage in unfair competition or that unfair competition is possible independently of intention.
2. The annulment action must be proposed within 10 years, counting from the date of the dispatch granting the registration, without prejudice to the provisions of the number that follows.

3. The right to request the annulment of name of establishment name registered in bad –faith does not elapse.

### **Article 300 Expiration**

1. In addition to the provisions in Article 37, the registration expires:

- a) By reason of closing or liquidation of the establishment;
- b) For non-use of the name or of the insignia during five consecutive years, save for justifiable reason:
- c) When the situation referred to in article 289, No. 3, occurs;

2. In the case referred to in subparagraph c) of the preceding number, expiration is not declared without prior notification of the registration-owner, who may, within two months, opt for a name or for an insignia. In the latter case, the remaining ones will be declared expired.

## **CHAPTER VII LOGOS**

### **Article 278 Constitution of the logos**

A sign or a group of signs susceptible of graphic representation that may serve as reference to any entity that renders services or commercializes products may constitute the logotype.

### **Article 302 Right to Logotype**

Any public or private, individual or collective entity, which has a legitimate interest in it, has legitimacy to request the registration of a logotype.

### **Article 303 Indication of Logos**

During the validity period of the logotype registration, the owner can use in the designation "Registered Logotype" or "Registered Logo"

### **Article 304 Applicable rules**

The provisions pertaining to names and to insignias of establishment, with the necessary adaptations, are applicable to logotypes.

**CHAPTER VIII**  
**DENOMINATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS**

**SECTION I**  
**GENERAL PROVISIONS**

**Article 305**  
**Definition and ownership**

1) Denomination of origin is understood to be the name of a country, or a region or specific locality in that country, used to designate or identify a product:

a) Originating in that region, specific locality or country;

b) Whose quality, or characteristics are owed essentially or exclusively to the geographical environment, including natural and human factors, and whose production, transformation and creation take place in a limited geographical area;

2) Certain traditional designations, geographical or not, that designate a product originating in a region, or specific locality, and that satisfy the conditions foreseen in subparagraph b) of the preceding number, are likewise considered denominations of origin.

3) A geographical indication is understood to be the name of a country, or a region of a specific locality in that country used to designate or identify a product:

a) Originating in that region, specific locality or that country;

b) Whose reputation, specific quality or other characteristic may be attributed essentially to such geographical origin and whose production, transformation and creation take place in a limited geographical area.

4) The denomination of origin and the geographical indication, when registered, shall constitute the common property of the residents or persons established in the locality, region or territory, in a serious and effective manner and may be used indistinctively, by those who, in the respective area, work in any type of characteristic production, when authorized by the owner of the registration.

5) The exercise of this right shall not depend on the importance of the exploration, nor in the nature of the products. Consequently, the denomination of origin or geographical indication may apply to any characteristic product originating in the locality, region or territory, under traditional and usual or duly regulated conditions.

6) In the case of homonymous geographical indications for wines, protection shall be given to each indication subject to the provisions of paragraph d) of Article 312. The National Institute of Industrial Property shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

**Article 306**  
**Regional Demarcation**

If the boundaries of the locality, region or territory to which a particular denomination or indication belongs have not been demarcated by law, the same are declared by the officially recognized entities that superintend the type of production in the respective locality, who will take into account the fair and constant uses, combined with the higher interests of the national or regional economy.

**SECTION**

f) It is offensive to the law, public order or the good costumes;

c) Use by whosoever, without authorization from the registration-owner.

d) Registration and use of a geographical indication which, although literally true as to the country, region or locality in which the products originate, falsely represents to the public that the products originate in another country.

2. The words that constitute a denomination of origin or a legally defined geographical indication, protected and monitored, cannot figure, in any form, in (a) designations, tags, labels, advertisements or any other documents pertaining to products that do not originate from the respective delimited regions, or (b) a mark which contains or consists of the geographical indication with respect to products not originating in the territory indicated, if use of the indication in the mark for such products in Cape Verde is of such nature as to mislead the public as to the true place of origin.

3. This prohibition subsists even when the true origin of the product is mentioned or the geographical indication is used in translation, or if the words belonging to those denominations or indications are accompanied by qualifiers such as "kind", "type", "quality" or similar others and applies to the use of any expression, display or graphic combination susceptible of inducing the consumer into error or confusion.

4. Likewise prohibited is the use of denomination of origin or geographical indications with prestige in Cape Verde, for products without identity or affinity,



**Article 315**  
**Expiration**

1. The registration expires at the request at the request of any interested party, when, according to fair, ancient and constant economic activities, a denomination of

registered mark or the product or the producer, in products destined to be sold and were not modified while being conditioned.

**Article 318**

**CHAPTER II  
ILICIT CRIMINAL AND CONTRA-ORDINATIONS ACTS**

**SECTION I  
GENERAL PROVISIONS**

**Article 320  
Subsidiary Law**

Subsidiarily, the norms of Decree-Law No. 28/84 of 20 January apply, specifically with regard to criminal and contra-ordination responsibility of collective persons and responsibility for acting in someone else's behalf, whenever the contrary does not result into provisions of this Code.

**SECTION II  
ILICIT CRIMINAL ACTS**

**Article 321  
Violation of the exclusiveness of the patent,  
utility model or schematic of semiconductor product**

Whosoever, without consent of the right owner:

- a) Produces the artifacts or products that are object of a patent, utility model, or schematic of a semiconductor product;
- b) Employs or applies the means or processes that are object of a patent, utility model or schematic of a semiconductor product;
- c) Imports or distributes products obtained by any of the referred modes,

is punished with up to three years of imprisonment or a fine of up to 360 days.

**Article 322  
Violation of the exclusive rights  
pertaining to designs or models**

Whosoever, without consent of the right owner:

- a) Reproduces or imitates, totally or in some of their characteristic parts, a registered design or model;
- b) Explores a registered design or model belonging to someone else;
- c) Imports, or distributes designs or models obtained by any of the modes referred in the preceding subparagraphs,

is punished with up to three years of imprisonment or a fine of up to 360 days.

**Article 323**  
**Counterfeiting, Imitation and Illegal Use of a mark**

Whosoever, without consent of a right-owner:

- a) Counterfeits, totally or partially, or by any other means reproduces a registered mark;
- b) Imitates in whole or in some of its characteristic parts, a registered mark;
- c) Uses the counterfeit or imitated marks;
- d) Uses, counterfeits or imitates notorious marks, whose registration has already been applied for in ;
- e) Uses, even if in products or services without identity or affinity, marks that constitute translation or are equal or similar to prior marks, whose registration has already requested and that enjoy prestige in , or in the European Union if they are Community marks, whenever the subsequent use of the mark seeks, without a just motive, to take undue advantage of the distinctive character or of the prestige of the prior marks, or may harm them;
- f) Uses in his products, services, establishment or enterprise, a registered mark belonging to someone else,

is punished with up to three years of imprisonment or a fine of up to 360 days.

**Article 324**  
**Sale, circulation or concealment of products or articles**

Whosoever sells, places in circulation, or conceals counterfeit products, by any of the modes and under the conditions referred to in articles 321 to 323, with foreknowledge of the situation, is punished with imprisonment of up to one year or with a fine of up to 120 days.

**Article 325**  
**Undue Use of denominations of origin and Geographic Indications**

Whosoever:

- a) Reproduces or imitates, totally or partially, a registered denomination of origin or geographic indication;
- b) Not having the right to use a denomination of origin, or of a geographic indication, uses in his products signs that constitute reproduction, imitation or translation of the same, even if the true origin of the product is indicated or if the denomination or indications accompanied by expressions such as “gender”, “type”, “quality”, “manner” “imitation”, “rival of”, “superior to” or similar others,

is punished with 3 years imprisonment or a fine of up to 360 days.

**Article 326**  
**Patent, utility models and registrations of**  
**designs or models obtained in bad faith**

1) Whosoever who, in bad faith, manages to obtain a patent, utility model or registration of a design or model that does not legitimately belong to him, under the terms of articles 58, 59, 121, 156, 157, 181 and 182, is punished with imprisonment up to one year or with a fine of up to 120 days.

2) In the sentence to condemn, the Court annuls, ex-officio, the patent, the utility model or the registration, at the request of the interested party, and transmits them in favor of the inventor or the creator.

3) The request to transmit the patent, the utility model or the registration, referred to in the preceding number, may be attempted judicially, independently of criminal proceedings that the crime may warrant.

**Article 327**  
**Registration obtained or maintained with abuse of right**

Whosoever requests, obtains, maintains in effect, in his own name, or in the name of third party, the registration of a mark, of a name, of an insignia or of a logotype, that constitutes a reproduction or imitation of a mark or commercial name belonging to a citizen of any of the Union countries, independently of the fact that, in our country, it enjoys the priority established in article 12, with the proven objective of constraining that person to a patrimonial provision that incurs for her a loss, or to obtain from her illegitimate economic advantage, is punished with imprisonment of up to 3 years or a fine of up to 360 days.

**Article 328**  
**Registration of non-existent acts or**  
**acts executed with concealment of the truth**

Whosoever, independently of the violation of third party rights, causes to register a legally non-existent act or with manifest concealment of the truth is punished with imprisonment up to 3 years or fines of up to 360 days.

**Article 329**  
**Complaint**  
**Article 329**

2. The objects declared lost as referred in the preceding number are totally or partially destroyed whenever it is not possible to eliminate the part of them or the distinctive sign affixed on it, that constitutes violation of the right in question.

### **SECTION III ILICIT CONTRAORDINATIONS**

#### **Article 331 Unfair Competition**

Whosoever practices any of the unfair competition acts described in articles 317 and 318 is punished with a fine between 3.000 and 30.000 euros if a collective person, or between 750 to 7.5000 euros if a singular person.

#### **Article 332 Invocation or illegal use of awards**

Whosoever, without the consent of the right-owner;

- a) Invokes or mentions an award registered in someone else's name;
- b) Uses or falsely entitles himself the owner of an award that was not granted to him or that never existed;
- c) Uses drawings or any indications that constitute imitations of awards he is not entitled to in correspondence or publicity, in the tabloids, façades or showcases of the establishment or by any other means,

is punished with a fine of 3.000 to 30.000 euros if a collective person, and 750 to 7.500 euros, if a singu TD.001Tw[naeTJT\*.04Tc0 e a) euros if a colle and6TJ/TT Tywne( fineth3wTC

b) Uses on printed forms, in his establishments, on products or by any other form, a sign that constitutes reproduction or imitation of a logotype already

b) Unduly uses or applies the indications of a patent, utility model or of registration authorized only to the owners of the respective rights by articles 100, 143, 163, 202, 257, 278, 294, 303 and 311.

c) While the owner of an industrial property right, uses the right for products or services different from those the registration protects,

is punished with a fine between 3,000 and 30,000 euros, if a collective person and between 750 and 7,500 euros if a singular person.

### **CHAPTER III PROCESS**



**SECTION II**  
**PENAL PROCESS AND CONTRAORDINATIONS**

**Article 341**  
**Assistants**

Apart from those to whom the penal process law confers the right to constitute assistants, the entrepreneurial associations legally established also have legitimacy to intervene in this capacity in the criminal processes foreseen in this Code.

**Article 342**  
**Oversight and Apprehension**

1. Before an inquiry is started and without prejudice to the provisions of article 329, the criminal police agencies carry out, ex-officio, oversight and preventive diligences.

## **TITLE IV FEES**

### **Article 346 Setting the fees**

Fees are due for the diverse acts foreseen in this Code, to be fixed by joint Ordinance from the Ministers of Finance and of the Economy, under proposal by the Executive Board of the National Institute of Industrial Property.

### **Article 347 Forms of Payment**

1. All the amounts that constitute revenue for the National Institute of Industrial Property are paid in cash, check or postal money order, having attached the documents in which the acts in the price list are included. Upon being conferred they are processed according to the public accounting rules applicable to the National Institute of Industrial Property.

2. The national Institute of Industrial Property may foresee other forms of payment, without prejudice to the provisions of the preceding number.

### **Article 348 Counting of periodic fees**

1. The annual fees pertaining to patents, to utility models, and to registration of semiconductor products schematics and the five-year payments pertaining to the registration of drawings or models count from the date of the respective requests.

2. The annual fees pertaining to complementary certificates of protection certificates count from the day after the end of the respective patent validity date.

3. The periodic fees pertaining to all the other registrations count from the date they are granted.

4. Whenever, due to a judicial decision or the application of transitory provisions, the beginning date of validity of the patents, of the utility models and of the registrations do not coincide with the date referred to in the preceding numbers, the counting of the respective annuities or periodic fees is done from that date.

### **Article 349 Payment deadlines**

1. The first two annuities pertaining to patents, utility models and registration of semiconductor products schematics and the first five-year period pertaining to drawings or models are considered included in the respective request fees, save when article 4 of the preceding article is applicable.

2. The annuities and the subsequent five-year periods are paid in the six months that precede the respective due dates, even if the rights have not yet been granted.

3. Without prejudice to the provisions of the preceding number and of No. 1 of the article that follows, the first payment of the subsequent annuities pertaining to the rights in the European and international processes, requested to be valid in , may be made within a deadline that cannot exceed three months, past the first anniversary that follows the validation date of the referred rights.

4. The first annuity for complementary protection is paid in the last six months of validity of the respective patent. Payment is not due when the certificate validity period is less than six months; the subsequent annuities are paid in the last six months that precede their due date.

2. The amounts deposited to defray expenses for unauthorized inspections, or inspections that were opportunely desisted from, are restituted at the request of whoever made the referred deposit.

**Article 353**  
**Suspension of payment**

1. As long as action is pending in Court on any industrial property right, or the confiscation or seizure that may befall the same right, the expiration of the respective patent, utility model or registration cannot be declared, for non-payment of the periodic fees that become past due.

2. Upon emission of the final Court decisions referred to in the preceding number, a notice of the fact is published in Industrial Property Bulletin.

3. All the fees due must be paid, without any surcharge, within one year counting from the date of the final Court decision.

- a) Notices of requests for patent utility models and registration;
- b) Alterations of the initial request;
- c) Notifications of expiration;
- d) Granting and denials;
- e) Renovations and revalidations;
- f) Declaration of intention to use and proofs of use;
- g) Declarations of renunciations and desistance;
- h) Transmissions, granting of exploration licenses, alteration of identity and residence of the right-owners;
- i) Final court decisions regarding industrial property;