

# **Industrial Property Act of Seychelles**

**(Draft)**

Recognizing the role adequate protection and enforcement of industrial property plays in encouraging local inventive and innovative activities, stimulating transfer of foreign technology, promoting foreign direct investment, creating a competitive business environment and discouraging unfair practices [enhancing free and fair trade practice] th

- (1) "Authorised officer" means a police officer or any officer or class or description of officers appointed by the Minister to exercise the powers and perform the duties conferred and imposed on an authorised officer by this Act.
- (2) "Certification Mark" means a sign or combination of signs capable of designating any specific characteristic, including quality, origin or methods of production, of goods and services and which are used by other persons under the control of the owner of the mark.
- (3) "Convention country" means a country or territory, other than Seychelles, which is a party to the Paris Convention or the Patent Cooperation Treaty or an intellectual property agreement to which Seychelles is a party;
- (4) " Collective mark" means

integrated circuit, or such a three dimensional disposition prepared for an integrated circuit intended for manufacture ;  
(20)

industrial property title”) or application for an Industrial Property title may be transferred by sale or inheritance or any other means in accordance with this Act and relevant laws.

(2) Such transfer shall be recorded with the institute, upon payment of fees prescribed in the regulations.

## **6. Application of International Treaties**

The provisions of any international treaties in respect of industrial property to which the republic of Seychelles is a party shall apply to matters dealt with by this Act, and in case of conflict with provisions of this Act, shall prevail over the later.

# **Part II**

## **Patents**

### **Chapter 1- General Provisions**

#### **7. Patentable inventions**

(1) An invention is patentable if it is new, involves an inventive step and is industrially applicable. ( 1 )

## **8. Matters excluded from patent protection**

(1) The following shall not be patentable:

- (a) Inventions contrary to public order or morality;
- (b) Plant or animal varieties<sup>1</sup> or essentially biological processes for the production of plants or animals other than microbiological processes and the products of such processes;
- (c) Schemes, rules or methods for doing business, for performing purely mental acts or for playing games;
- (d) Discoveries, scientific theories and mathematical methods;
- (e) Methods for treatment of the human or animal body by surgery or therapy, as well as diagnosis





(6) An applicant who is not domiciled or who has no established business in Seychelles shall appoint an agent who is domiciled in Seychelles.

(7) Application shall be accompanied by power of attorney when it is made by an agent.

### **13. Unity of invention and division of application**

(1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications (“divisional applications”), provided that each divisional application shall not go beyond the disclosure in the initial application.

(3) Where an application is divided, each divisional application shall be entitled to the filing date or, where applicable, the priority date of the initial application.

(4) The fact that a patent has been granted on an application that did not comply with the



## **16. Information Concerning Corresponding Foreign Application for Patents**

(1) The applicant shall, at the request of the Institute, furnish it with the date and number of any application for a patent filed by him abroad relating to the same or essentially the same inventions as that claimed with the Institute.

(2) The applicant shall, at the request of the Institute, furnish it with the following documents relating to the foreign applications referred to in sub-section (1):

- (a) A copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- (b) a copy of the patent granted on the basis of foreign patent application;
- (c) a copy of any final decision rejecting the foreign application or refusing the grant of the patent requested in the foreign application.

(3) The applicant shall, at the request of the Institute, furnish it with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in sub-section (2).

## **17. Filing Date**

(1) The Institute shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains;

- (a) an express or implicit indication that the granting of a patent is sought;
- (b) indications allowing the identity of the applicant to be established; and
- (c) a part which, on the face of it, appears to be a description of an invention.

(2)

as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(3) Where the application refers to drawings, which in fact are not included in the application, the Institute shall invite the applicant to furnish the missing drawings. If the applicant complies with the said invitation, the Institute shall accord as the filing date the date of receipt of the missing drawings. Otherwise, the Institute shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

## **18. Examination of Application**

(1) The Institute, after according a filing date, shall examine whether the application complies with the requirements of section 12 (2) and (3) of this Act and the Regulations pertaining thereto and those requirements of this Act and the Regulations.

(2) When, upon formal examination, the application is not in conformity with the requirements laid down in this Act and in the Regulation, the Institute shall call upon the applicant to amend the application. If the applicant fails to amend as required within a period of two month, the application shall be considered withdrawn.

## ***Chapter 4-Grant of a patent, Duration of a patent and Annual Fees***

### **19. Grant of a Patent and Changes in a Patent**

(1)A patent shall be granted, where the Institute finds that the conditions referred to in section 18 (1) are fulfilled.<sup>5</sup> Otherwise it shall refuse the application and notify the applicant of that decision.

(2) When a patent is granted the Institute shall:

- patent,
  - (c) record the patent, and
  - (d) make available copies of the patent to any person on payment of the prescribed fee.
- (3) The Institute shall upon request of the patentee, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred thereby, provided that the change may not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

## **20. Rights conferred by patent**

- (1) The patent shall confer on a patentee the exclusive right to exploit the patented invention in Seychelles. The exploitation of the patented invention in Seychelles by persons other than the patentee shall require the latter's agreement.
- (2) For the purposes of this Act, "exploitation" of a patented invention means any of the following acts:
- (a) when the patent has been granted in respect of a product :
    - (i) making, importing, offering for sale, selling and using the product;
    - (ii) stocking such product for the purposes of offering for sale, selling or using;
  - (b) when the patent has been granted in respect of a process:
    - (i) using the process;
    - (ii) doing any of the acts referred to in subsection (2) (a) in respect of a product obtained directly by means of the process.
- (3) The patentee shall, in addition to any other rights, remedies or actions available to him, have the right, except under circumstances provided under Sections 21, 22 and 27 of this Act, to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

## **21. Limitations of right**



## ***Chapter 5- Non-Voluntary licences***

### **25. Grounds for issuance of a Non voluntary license**

A non voluntary license for the exploitation of a patented invention may be issued where:

- (1) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of a patented invention;
- (2) the patented invention is not or insufficiently

## **27. Grant of Non-voluntary license**

- (1) Where the Institute finds the application to be satisfactory, it shall decide to grant a non- voluntary license.
- (2) Where a decision is made to grant a non-voluntary license, it shall be registered and announced in the official gazette.
- (3) The grant of the non-voluntary licence shall not exclude:
  - (a) the exploitation of the patented invention or conclusion of licence contracts  
by the patentee; or
  - (b) the grant of other non-voluntary licences.
- (4) Where a non voluntary license is granted based on an application under Section 25(5) the owner of the earlier patent or his licensee shall be entitled to a cross- license on reasonable terms to use the invention claimed in the subsequent patent.

## **28. Rights and obligations of beneficiary of non-voluntary Licence**

- (1) Any person who is granted non-voluntary license shall have the right to exploit the patented invention in Seychelles to meet the needs of the domestic market according to the terms set down in the decision granting the licence.
- (2) The person who is granted a non voluntary licence may only transfer the right under sub section (1) together with the enterprise or part of the enterprise within which the patented invention is exploited.
- (3) A person who is granted a non-voluntary licence for the exploitation of a patented inventionsnenveno4-7(xA6he)

## **29. Termination of Non voluntary license**

The Institute shall terminate the non voluntary licence, at the patentee's request, where:

- (1) the reasons for granting non voluntary license have ceased to exist; or
- (2) the beneficiary of the non voluntary licence failed to respect the terms and conditions set by the institute when deciding to grant the non voluntary licence.

## ***Chapter 6- Termination, Surrender and Invalidation of a Patent***

### **30. Termination of a Patent**

A patent shall terminate if:

- (1) The patentee surrenders it by a written declaration to the Institute; or
- (2) The annual fee is not paid in due time.

### **31. Surrender of a Patent**

Surrender of a patent:

- (1) may be limited to one or more claims of the patent,
- (2) shall be immedi 1 Tfaf1222(diquest,.c())Tj/TT4 1 Tf2.169 0 TD.0015 Tc24titJ-3.2815t)4.9(dy a)8.-21.p

- (a) subject matter of the patent is not an invention within the meaning of section 3(18) or does not meet the requirements of patentability or excluded from patent protection according to Sections 7 and 8 of this Act;
  - (b) description does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art; or
  - (c) owner of the patent is not the inventor or the employer of the inventor or his successor in title.
- (3) Any invalidated patent, or claim or part of a claim, shall be regarded null and void from the date of grant of the patent.
- (4) The final decision of the court shall be notified to the Institute, which shall record it and publish a reference thereto as soon as possible.

### **33. Transfer of patent**

In the event a dispute over the rights relating to the patent arises, the interested person who won the case may ask the court to transfer the title to him instead of invalidating it under section 31.

## **Part III**

### **Utility Models Certificates**

#### **34. Protection of Minor Inventions**

- (1) A minor invention that possesses novelty and industrial applicability shall give rise to a right to protection.
- (2) The right shall be evidenced by a utility model certificate issued by the Institute.



### **35. Non-existence of novelty**

(1) A minor invention shall not be considered new if, at the time of filing of the application, it has already been described in printed publications, made available to the public or has already been publicly used in Seychelles.

(2) Any description or use, within six months prior to the filing of the application, shall not destroy novelty if it is based on the work of the applicant.

### **36. Non-protectable Subject matters**

The following shall not be protected by utility model certificate:

(1) Changes in the shape, proportions or material of a patented object or of one that forms part of the

### **39. Conversion of Patent Applications to Applications for Utility Model Certificates and Vice-Versa.**

(1) At any time before the grant or refusal of a patent an applicant for a patent may, upon payment of the prescribed fee, convert his application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(2) At any time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee convert his application into a patent application, which shall be accorded the filing date of the initial application.

(3) An application may not be converted more than once under sub-sections (1) and (2).

### **40. Duration of Utility Model Certificate**

(1) A utility model certificate is granted , without the possibility of renewal, for a period of ten years<sup>6</sup>beginning from the filing date of the corresponding application

(2) Application for renewal of the certificate shall be filed, with the Institute within 90 days prior to the expiration of the period of protection upon payment of the prescribed fees.

### **41. Application of rules on patents**

The relevant provisions of Part II of this Act shall apply *mutatis mutandis* to utility models certificates.

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<sup>6</sup> Different laws provide different duration of protection of utility models. There are laws that Egypt IP code provides for protection of utility models for a non renewable period of seven years beginning from the date of filing this include Egypt and the Gambia ( see article 30 Law on protection of Intellectual Property Rights and section 17 (3) (a) industrial property Act of Egypt and the Gambia respectively), the laws that provides for a period of ten years beginning from date of filing include Burundi ( Article 145). Rwanda (article 83, law on the protection of Intellectual property, and Kenyan Industrial Property Acts ( section 82). However, the Kenyan law provides that the date of protection commences form the date of grant of title not from the date of filing an application. The stakeholders may decide which of the approach to adopt.

***Part IV***  
***Industrial Designs***

**42. Protection of Industrial Designs**

(1) An Industrial Design shall be protected under this Act if it is new.

(2) An industrial design shall be considered new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

(3) Notwithstanding the provisions of sub-section (2), the disclosure to the public of the industrial design shall not be taken into consideration if it occurred within six months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or an abuse committed by a third party in

## **44. Ownership of Industrial design**





(1) The registration and protection of an industrial design shall be valid for a period of five years from the filing date of the application for registration.<sup>10</sup> Such period may be extended for two further consecutive periods of five years through the payment of the prescribed fee. A period of grace of six months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge.

(2) Application for renewal of protection shall be filed with the Institute within 90 days prior to the expiration of the period of protection upon payment of the prescribed fees.

## **51. Surrender of industrial design registration certificate**

Section 31 shall apply mutatis mutandis to surrender of industrial design registration certificate.

## **52. Invalidation**

(1) Any interested person may request the court to invalidate the registration of an industrial design.

(2) The court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of sections 3 (13), 42 and 43 is not

### **53. Non Voluntary licenses**

The provisions of Sections 25 to 29 shall apply *mutatis mutandis* to industrial designs.

## **Part V**

### **Layout-Designs of Integrated Circuits**

#### ***Chapter One- Requirements for Protection***

### **54. Subject Matter of Protection**

(1) The lay out designs of integrated circuits may be protected under this Act only when it is original within the meaning of Section 55.





(b) Where the applicant fails to submit drawings of a layout design with the original application, but corrects the application for the registration of the layout design within the period specified the date of receipt of the corrections shall be deemed to be the date of filing of the application.

(c) Where the applicant fails, after communication by the Institute, to correct the application within the period specified, the application shall be deemed not to have been filed.

(5) Each application for protection of a layout-design shall be subject to the payment of the prescribed fee. If the fee is not paid, the Institute shall notify the applicant that the application will be deemed not to have been filed unless payment is made within two months from the date of the notification. If the application fee is not paid within that time limit, the application shall be deemed not to have been filed.

## **58. Registration and Publication**

(1) Where the application complies with the requirements of Section 57, the Institute shall register the layout-design in the Register of Layout-Designs without examination of the originality of the layout-design, the right of the applicant to protection or the accuracy of the facts detailed in the application ;

(2) The Register of Layout-Designs shall contain the number, title, filing date and, where indicated in the application under Section 57 (2) (d), the date of first commercial exploitation, anywhere in the world, of the layout-design as well as the name and address of the right holder and other prescribed particulars.

(3) Any person may consult the Register of Layout-Designs and obtain extracts there from, subject to the payment of the prescribed fee.

(4) The registration of a layout-design shall be published in the Official Gazette.

## **59. Scope of protection and Rights granted**

article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.

(3) The right holder shall, in addition to any other rights, remedies or actions available to him, have the right, except under sections 60 and 62 of this Act, to institute court proceedings against any person who infringes his right, by performing, without any agreement, any of the acts referred to in sub section (1) or who performs acts which make it likely that infringement will occur.

## **60. Limitation of Right**

The scope of protection and the rights granted under section 59 shall not extend to:

(a)

(2) The protection granted to a layout-design under this Act shall terminate at the end of the tenth calendar year from the date of commencement of such protection.

## **62. Non voluntary licenses**

(1) Subject to Subsection (2), the provisions of Sections 25 to 29 shall *mutatis mutandis* apply to registered layout-designs of integrated circuits.

(2) Non voluntary licenses of registered layout-designs shall be granted only for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

## **63. Invalidation**

(1) Any interested person may request that the registration of a layout-design be invalidated on the grounds that:

- (a) the layout-design is not protectable under sections 3(19), 54 and 55;
- (b) the right holder is not entitled to protection under Section 56; or
- (c) where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design, the said application was not filed within the time limit referred to in Sections 54 (2).

(2) Where the grounds for invalidation are established with respect only to a part of the layout-design, only the corresponding part of the registration shall be invalidated.

(3) A request for invalidation of the registration of the layout-design shall be filed with the Court. The request shall state the grounds on which it is based.

(4) In the event of a dispute over the right to the layout-design registration, the interested person may ask the Court to transfer the title to him instead of invalidating it.



to be likely to deceive or cause confusion. In the case of use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(2) For the purposes of Subsection (1) (f), in determining whether a mark is well known, consideration shall be given to the degree of recognition of the mark in the relevant sector of the public in Seychelles, including the degree of recognition arising from the advertising of the mark in Seychelles.

(3) Notwithstanding the provisions of sub section (1), the Institute or the court may decide that a mark has acquired secondary meaning or distinctiveness through continued use. In such a case, the mark shall be registered.

### **67. Right of Prior User**

The prior user of a mark whose name does not appear in the Register or who does not have an application pending under subsection 66 (1) (h), may oppose an application for registration of a similar or identical mark by another person for similar or identical goods, provided he:

(a) proves that he has used that mark in good faith for at least six months prior to the filing

- (2) When the mark consists of a sign that is not visually perceptible, the application shall contain a graphical reproduction of the mark. Such reproduction shall be specific and may not consist merely of a general description of the sign.
- (3) Where the applicant wishes to claim colour as a distinctive feature of the mark, he shall submit a statement to that effect as well as the name or names of the colour or colours claimed and an indication, in respect of each colour, of the principal parts of the mark which are in that colour.
- (4) Where the applicant wishes to apply for a three-dimensional mark, he shall submit a statement to that effect.
- (5) The application shall be accompanied by power of attorney when it is made by an agent.
- (6) An applicant who is a foreigner shall appoint an agent who is domiciled in Seychelles.
- (7) The applicant may at any time withdraw the application or reduce the list of goods or services covered in the application.

## **69. Right of Priority**

- (1)

## **70. Filing date**

(1) The Institute shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains:

(a) an express or implicit indication that registration of the mark is requested;

(b) information allowing the applicant's identity to be established;

(c) indications sufficient to contact the applicant or his representative if any,

(d) a reproduction of the mark;

(e) the list of goods or services for which registration of the mark is requested.

(2) If the Institute finds that the application did not, at the time of receipt, fulfil the requirements referred to in sub-section (1), it shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(3) Notwithstanding to the provisions of sub sections (1) and (2), no filing date shall be accorded before the required fee is paid.

## **71. Examination**

(1) The Institute shall examine and determine whether the application meets the requirements of Section 3 (20), 65 and 66 of this Act and related provisions of the regulations.

(2) Where the Institute finds that the requirements referred to in subsection (1) have not been satisfied, it shall invite the applicant to make the required corrections; if the applicant does not comply with the invitation, the application shall be considered withdrawn;

(3) When the Institute finds that the application is acceptable after its examination, it shall publish a notice inviting opposition against the registration of the mark in the official Gazette at the cost of the applicant.

## **72. Opposition**

(1) Any person may, within the period of thirty days and in the manner prescribed by the Regulations and upon payment of the prescribed fee, lodge an opposition against the registration of the mark with the Institute on grounds that one or more of the requirements of sections 3(20),65 and 66 of this Act, and the regulations pertaining thereto are not fulfilled.

(2) The Institute shall immediately send a copy of the opposition to the applicant. The applicant shall send to the Institute a counter-statement stating the grounds on which he relies for his application within one month after receipt of the opposition or such further time not exceeding three months in



all, as the Institute may allow. If the applicant does not do so, he shall be deemed to have abandoned his application.

(3) If the applicant sends a counter-statement, the Institute shall furnish a copy of the counter statement of the applicant to the person who made opposition and after hearing the parties and examining the merits of the case, it shall decide to whether or not to proceed with the registration of the mark.

(4) The Institute shall furnish copies of its decision under subsection (3) to the applicant and the person who lodged the opposition within the period prescribed by the Regulations.

### **73. Pending Cases**

(1) After an application is published and until the registration of the mark, the applicant shall enjoy the same privileges and rights as he would have, if the mark had been registered; provided, however, that it shall be valid defence to an action brought in respect of an act done after the application was published, if the defendant establishes that the mark could not have been validly registered at the time the act was done.

(2) Infringement proceedings may not be initiated before the date on which the mark is in fact registered

### **74. Registration of the Marks**

## **75. Right to Appeal**

- (1) Any person aggrieved by the final decision of the Institute on the registration of a mark shall have the right to appeal to the court.
- (2) An appeal pursuant to subsection (1) shall be submitted to the court within 60 days from the date of notification of the decision to the person concerned.

## ***Chapter 3-Rights conferred by Registration; Duration and Renewal of Registration***

### **76. Rights conferred by Registration**

- (1) A registered mark shall confer on the owner the exclusive right of use of the mark for all goods or services for which it is registered. The use of a registered mark, in relation to any goods or services for which it has been registered; by any person shall require the agreement of registered owner.
- (2) The registered owner of a mark shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the trade mark by using, without his agreement, the mark as aforesaid or who performs acts which make it likely that infringement will occur. The right shall extend to the use of a sign similar to the registered mark and use in relation to goods or services similar to those for which the mark has been registered, where confusion may arise in the public.

### **77. Limitation of Rights**

- (1) The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in and outside of Seychelles by the registered owner or with his consent.
- (2) Registration of a mark shall not confer upon its owner the right to preclude third parties from using the registered mark for information purposes, such as sales promotion or comparative advertising, provided that such use is not of such a nature as to deceive the public or does not constitute unfair competition.

(3) Registration of a mark shall not confer upon its owner the right to preclude third parties from bona fide use of their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, time of production or supply of their goods or services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

## **78. Duration of Registration**

Without prejudice to the provisions of sections 80, 81 and 82 of this Act, the registration of a mark shall be for a period of seven years<sup>12</sup> from the filing date of the application for registration.

## **79. Renewal of registration**

(1) Registration of a mark may, upon request of the owner and payment of renewal fee prescribed by the regulations, be renewed for consecutive periods of seven years each.

(2) At the time of the renewal, no change may be made in the mark or in the list of goods or services in respect of which the mark is registered, except that certain goods or services may be eliminated from the list.

(3) Renewal of the registration of a mark shall be made within three mont

## **80. Renunciation of Right**

- (1) The owner of a registered mark, who wishes to renounce the registration either wholly or in respect of part of the goods or services, for which the mark is registered, may submit his application to the Institute for the abandonment of the registration of the mark.
- (2) When a registered mark has been subject to a license contract, the request for the renunciation of the right shall be accepted only upon submission of a written declaration by which the licensee consents to the renunciation.
- (3) The Institute, upon receiving the application submitted pursuant to subsection (1), shall cause the publication of such renunciation in an official gazette.
- (4) Renunciation of registration shall be effective only after the decision for cancellation has been entered into the register.

## **81. Removal on Grounds of non use**

- (1) Any interested person may request the court<sup>13</sup> to order the removal of a mark from the register in respect of any of the goods or services for which it is registered on the ground that the mark has not been used by the registered owner or a licensee for uninterrupted period of three years or more.
- (2) A mark shall not be removed if it is proved that special circumstances prevented the use of the mark and that there was no intention not to use or to abandon it in respect of those goods or services.

## **82. Invalidation of Registration**

- (1) Any interested person may request the court to invalidate the registration of a mark.
- (2) The court shall invalidate the registration, if the person requesting the invalidation proves that any of the requirements of sections 3(20), 65 and 66 is not fulfilled;
- (3) Any invalidation of a registration of a mark shall be deemed to have been effective as of the date of registration, and it shall be recorded and a reference thereto published in an official gazette.

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<sup>13</sup> Some laws such as Ethiopian trade mark law and the Rwandan IP law give such a power to the IP office. Stake

## ***Chapter 5-Collective marks, Certification marks and trade names***

### **83. Collective marks**

(1) Subject to the subsections (2) (3), and (4), the provisions of the sections of the chapter dealing with marks, shall apply to collective marks.

(2) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the regulations governing the use of the collective mark.

(3) The registered owner of a collective mark shall notify the institute of any changes made in respect of the regulations referred to in subsection (2).

(4) In addition to the grounds provided in section 82 (2), the court shall invalidate the registration of a collective mark if the person requesting the invalidation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the regulations referred to in subsection (2) or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

### **84. Certification mark**

(1) Subject to Sub Sections (2), (3),

**85. Trade name**

(1)

(2) The abandonment of a mark shall be deemed to have been effective as of the date on which the license contract has become effective, and it shall be recorded and a reference thereto published in the Official Gazette.

(3) A registered collective mark or an application for the registration of a collective mark may not be the subject of a license contract.

## ***Chapter 7-Geographical Indications***

### **88. Availability of Protection**

Protection under this Act shall be available-

(1) against the use of a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory;

(2) against a geographical indication that is identical or similar to a well-known mark, for related goods or services, if the use of that geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the geographical indication with the owner of the well-known mark, or constitutes unfair exploitation of the reputation of the mark;

(3) against the use of a geographical indication which, even if identifying goods truly

## **90. Geographical indications excluded from protection**

The following geographical indications shall be excluded from protection:

- (1) geographical indications which do not fit to the definition of section 3(10);
- (2) geographical indications which are contrary to public order and morality;
- (3) geographical indications which are not protected in their country of origin or cease to be protected in their country of origin, or which have fallen into disuse in this country ;
- (4) indications for goods which are identical to the term commonly used in current language  
as the common name for these goods in Seychelles.

## **91. Right to file application**

(1) The following shall have the right to file an application for protection of geographical indications:

- (a) natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the goods specified in the application, as well as groups of such persons; or



- (a) the name, address and nationality of the natural or legal person filing the application and the capacity in which the applicant is applying for registration;
  - (b) the geographical indication for which registration is requested;
  - (c) the geographical area to which the registration of the indication shall apply;
  - (d) the goods for which the geographical indication shall apply;
  - (e) the quality, reputation or other characteristics of the goods for which the geographical indication is used.
- (2) The application shall be subject to payment of the prescribed fee.

### **93. Examination of application**

- (1) The Institute shall examine the application and verify that it complies with the conditions set out in Sections 3(10), 90, 92 and with the relevant provisions of the regulations.
- (2) When the Institute finds that the application is acceptable after its examination, it shall cause the application, as accepted, to be published in the prescribed manner.

### **94. Opposition**

- (1) Any interested person may, within the periods set and in the prescribed forms, lodge an opposition to the registration of a geographical indication with the Institute, on the grounds that one or more of the conditions set out in 3(10), 90, 92 has not been met.
- (2) The Institute shall send a copy of the opposition to the applicant. The applicant shall send to the Institute a counter-statement stating the grounds on which he relies for his application within one month after receipt of the opposition or such further time not exceeding three months in all, as the Institute may allow. If the applicant does not do so, he shall be deemed to have abandoned his application.
- (3) If the applicant sends a counter-statement, the Institute shall furnish a copy of the counter statement of the applicant to the person who made opposition and after hearing the parties and examining the merits of the case, it shall decide to

## **95. Registration**

(1) The Institute shall register a geographical indication and issue to the applicant a certificate of registration upon payment of the fee prescribed by the regulations where it finds that:

- (a) the conditions referred to in this Act and the Regulations are fulfilled; and
- (b) the request for registration of the geographical indication has not been opposed; or it has been opposed and the opposition has been rejected.

(2) Where the Institute finds that the conditions referred to in subsection (1) are fulfilled, it shall register the mark, publish a reference to the registration and issue to the applicant a certificate of registration. Otherwise it shall refuse the application and notify its decision to the applicant in writing explaining the reasons for its decision.

## **96. Rights conferred**

(1) Producers engaged in production in the geographical area specified in the register shall have the right to use, for commercial purposes, a registered geographical indication for the goods indicated in the register and prevent all third parties from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the geographical indication is registered.

(2) Any interested person or group of producers or consumers may institute proceedings with the court to prevent, in relation to geographical indications, :

- (a) the use, in the designation or presentation of goods, of any means indicating or suggesting that the goods in question come from a geographical region other than the true place of origin in a way

## **98. Misleading marks**

(4) Any invalidation of a registration of a geographical indication shall be deemed to have been effective as of the date of registration, and it shall be recorded and a reference thereto published as soon as possible.

## **Part VII**

### **Unfair Competition and**

- (a) a mark, whether registered or not;
- (b) a trade name;
- (c) any distinctive sign other than a mark or a trade name;
- (d) a product's external appearance;
- (e) the presentation of goods or services ;
- (f) a famous person or a well-known fictional character.

### **103. Damaging Another's Goodwill or Reputation**

respect to the:

- (a) manufacturing process of a product;
- (b) suitability of goods or services for a specific use [purpose];
- (c) quality or quantity or other characteristics of goods or services;
- (d) geographical origin of goods or services;
- (e) conditions on which goods or services are offered or supplied;
- (f) price of goods or services or the mode of calculation.

### **105. Discrediting another's Enterprise or Its Activities**

(1) Any false or abusive allegation which, in the course of industrial or commercial activities, discredits or is likely to discredit another's enterprise or its activities, in particular the goods or services offered by such enterprise, shall constitute an act of unfair competition

(2) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to the:

- (a) manufacturing process for goods;
- (b) suitability of goods or services for a specific use [purpose];
- (c) quality or quantity or other characteristics of goods or services;
- (d) conditions on which products or services are offered or supplied;
- (e) price of goods or services or the mode of calculation.

### **106. Unfair Competition concerning Undisclosed Information**

(1) Any act or practice which, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others, of undisclosed information without the consent of the person lawfully in control of that information, (hereinafter referred to as "the rightful holder") and in a manner contrary to honest business practices shall constitute an act of unfair competition.

(2) The disclosure, acquisition or use of confidential information by others without the consent of the rightful holder may, in particular, result from:

- (a) industrial or commercial espionage;
- (b) breach of contract;
- (c) breach of confidence;
- (d) inducement to commit industrial or commercial espionage, breach of

confidence or contract;  
(e) acquisition of confidential information by a third party who knew or was grossly negligent in failing to know that this acquisition entailed one of the foregoing acts.

(3) For the purposes of this Section, information shall be considered "undisclosed information" if:

- (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) it has commercial value because it is secret; and
- (c) its legitimate holder has taken reasonable steps, under the circumstances, to keep it secret.

(3) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in

(a) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to appropriate authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural or chemical products which utilize new chemical entities; or

(b) the disclosure of such data, except where necessary to protect the public, or unless measures have been taken to ensure that the data are protected against unfair commercial use.

## **Part VIII**

### **Industrial Property Rights enforcement**

#### ***Chapter 1-General Provisions***

##### **107. General Principles**

The general principles of enforcement of industrial property rights shall include the following:

- (1) The procedures concerning the enforcement of intellectual property rights shall be fair and equitable;
- (2) The procedures shall not impose overly burdensome requirements concerning mandatory personal appearances;
- (3) Parties to a legal proceeding shall be allowed to be represented by independent legal counsel;
- (4) Infringement claims shall be substantiated with relevant evidence, and
- (5) Measures or remedies against infringement shall be effective to prevent and deter infringement and adequate to redress the harm done.

### **108. Remedies against Infringements of Rights**

(1) The remedies against infringement of industrial property rights, made available under this Act include:

- (a) Provisional Measures,
- (b) Civil Remedies, and
- (c) Criminal remedies.

(2) The industrial property rights holder or the person authorized by him may seek for any or more or all of the above remedies.

(3) The Court may order cumulative remedies as it deems appropriate.

### **109. Reversal of Burden of Proof**

(1) For the purposes of civil proceedings in respect of the infringement of rights of the patentee, if the subject matter of a patent is a process for obtaining a product, the Court may order the defendant to prove that the process used to obtain an identical product is different from the patented process.

(2) Any identical product when produced without the consent of the patentee shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process if:

(a) the product obtained by the patented process is new; or

(b) there is a substantial likelihood that the identical product was made by the process and the patentee has been unable through reasonable efforts to determine the process actually used.

(3) In ordering the production of evidence to the contrary, the Court shall take into account the legitimate interests of the alleged infringer in not disclosing his manufacturing and business secrets.



## **110. Evidence**

(1) The Court may, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of the claims which lies in the control of the opposing party, order that this evidence be produced by the opposing party, subject, in appropriate cases, to conditions which ensure the protection of confidential information.

(2) Where infringement is committed in a commercial scale, the Court may, upon request of a party or when found appropriate, order the production of communication of banking, financial or commercial

notification of the decision. In the review proceedings, the Court shall give the parties concerned an opportunity of being heard and shall confirm, modify or revoke the decision within a reasonable period after the notification of the decision.

(5) The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

(6) Where the applicant does not initiate court proceedings leading to a decision on the merits of the case within twenty working days or thirty one calendar days, whichever is longer, from the notification of the decision ordering provisional measures or within any other reasonable period determined by the Court in the decision, the Court shall revoke the provisional measures upon request of the defendant.

(7) Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an industrial property right, the court shall order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

## **112. Damages**

(1) The court shall order the infringer, who knowingly, or with reasonable grounds to know, engaged in infringing activity, to pay damages adequate to compensate for the injury the right holder has suffered because of an infringement of his industrial property right. In determining the amount of damages awarded to the right holder, the Court may consider:

- (a) the value of the infringed-on good or service, measured by the suggested retail price or other legitimate measure of value submitted by the right holder;
- (b) the loss of earnings incurred by the right holder;

### **113. Other Remedies**

(1) The court may, upon the request of the plaintiff [applicant], order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

(2) The Court may, whenever this is considered adequate under the circumstances to create an effective deterrent to further infringement, taking due account of the need for proportionality between the seriousness of the infringement and the remedies as well as the legitimate interest of third parties, order the:

(a) seizure and forfeiture of the infringing goods and any of the materials or implements the predominant use of which has been in the commission of the act of infringement;

(b) goods, materials or implements be destroyed, or be disposed of outside the channels of commerce, without compensation of any sort, in such a manner as to avoid any harm caused to the right holder.

(3) In respect of counterfeit goods, the simple removal of the mark or geographical indication unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

(4) The Court shall also, wherever this is considered adequate, taking due account of the conditions set out in sub section (1), order that materials or implements the predominant use of which has been the creation of infringing goods be disposed of outside the channels of commerce without compensation of any sort in such a manner as to minimize the risks of further infringement.

### **114. Information to the Right holder**

The Court shall order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services and of their channels of distribution unless this would be out of proportion to the seriousness of the infringement.

### **115. Indemnification of Defendant**

(1) The Court shall order an applicant, at whose request measures were taken and who has abused enforcement procedures, to provide to a defendant wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

(2) The court shall order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

(3) Public authorities and officials shall be exempted from liability to appropriate remedial measures where actions were taken or intended in good faith in the course of the administration of any law pertaining to the protection or enforcement of industrial property rights.

## **116. Appeals**

(1) Any decision by the Court in infringement proceedings shall be subject to an appeal to the Supreme Court<sup>14</sup>.

(2) The appeal shall be filed within sixty (60) days from the notification of the decision.

## **117. Time Limits**

Civil proceedings shall be initiated within five years from the date on which the right holder knew or had reasons to know the infringing acts, except in case of infringing use of distinctive signs in bad faith or for unfair competition purposes, for which there will be no time limits to initiate the proceedings.

## ***Chapter 3-Criminal Procedures and Remedies***

### **118. Criminal Offence**

(1) Any person who, except under limited justifiable circumstances provided under this Act, without the consent of a patent or utility model right holder:

(a) manufactures the product that is protected by a patent or utility model;

(b) uses a process invention or minor invention that is patented or protected by utility model certificate,

(c) exports, sells, displays or offers for sale, has in stock, conceals or receives, a

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<sup>14</sup> The appellate court will be determined based on the court that will serve as a first instance court. For the purpose of this draft the High court is taken as the first instance court.

product manufactured using a patented invention or minor invention protected  
by utility model, or a product obtained by a patented process invention; or  
(d) imports a product that is the object of an invention or minor invention protected  
by patent or utility model, or obtained by a process invention patented into

in stock a product that bears a false geographical indication; or

(b) Uses, on a product, container, wrapping, ribbon, label, invoice, circular, poster, or any other means of divulgation or advertising, modifiers such as "type", "species", "genus", "system", "similar", "substitute", "identical", or equivalent terms, that do not safeguard the true source of the product, shall commit an offence.

(5) Any person who, without the authorization of a registered layout designs right holder:

(a) reproduces, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in Section 55 of this Act; or

(b) imports, sells or otherwise distributes for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design, shall commit an offence.

## **119. Criminal Sanctions/Penalties<sup>15</sup>**

(1) Unless otherwise heavier penalty is provided for under the criminal law, whoever intentionally violates an industrial property right protected in Seychelles and commits any one of the offences under section 118, shall be punished with rigorous imprisonment of a term not less than 1 year and not more than 5 years.<sup>16</sup>

(2) Unless otherwise heavier penalty is provided for under the criminal law, whoever by negligence violates a right protected under the Industrial Property Act shall be punished with rigorous imprisonment of a term not less than 6 months and not more than 3 years.

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<sup>15</sup> Considering the adverse impact of counterfeits and products that infringe industrial property rights as well as the need for deterring potential infringers' severe penalties are proposed. A minimum penalty is provided to deal with the problem associated with unrestricted discretionary power. In order to help the court impose different penalties depending on the gravity of the offence, a wide range of imprisonment and fine are included and examples of factors that may be taken into account in determining the penalties are incorporated in the provision.

<sup>16</sup> The duration of penalty vary from laws to laws. The laws of Ethiopia and Rwanda provide a penalty of ten years for intentional infringement of an offence. The copyright law of Seychelles imposes five years of imprisonment and 30,000 SR as fine ( see article 21 (6). Stake holders may take note of this and decided a heavier penalty.

(3) The court may in addition to imprisonment

## **121. Registers**

- (1) SIPI shall maintain separate registers for patents, industrial designs, layout designs, marks, certification or collective marks and geographical indications
- (2) All the recordings provided for in this Act shall be entered into the said registers.
- (3) The Registers may be consulted by any person, who may obtain extracts there from, under the conditions prescribed in the Regulations.

## **122. Correction of errors**

The Institute may, subject to any provision in the regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with it or in any recording entered into pursuant to this Act or the regulations

## **123. Extension of Time**

If the Institute is satisfied that the circumstances justify it, it may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act and the regulations issued there under, upon notice to the parties concerned and upon such terms as it may direct. The extension may be granted though the time for doing thmpe(x)on o-8.9(fo)6.urtng



