

UNION OF THE COMOROS
Unity – Solidarity – Development

President of the Union

Moroni, 26 November 2010

DECREE No. 10-173/PR

On the establishment, powers,
organization and operation of the
Comorian Intellectual Property Office

THE PRESIDENT OF THE UNION

HAVING REGARD to the Constitution of the Union of the Comoros of 23 December 2001;

HAVING REGARD to the referendum law revising the Constitution of the Comoros of 23 December 2001, enacted by Decree No. 09-066/PR of 23 May 2009;

HAVING REGARD to the Convention establishing the World Intellectual Property Organization of 1967, amended in 1979, and ratified by the Comorian Government on 3 April 2005;

HAVING REGARD to Law No. 64-1360 of 31 December 1964 on trademarks and service marks;

HAVING REGARD to the Law of 11 March 1957 on literary and artistic property;

HAVING REGARD to Decree No. 10-066/PR of 21 June 2010 on the Government of the Union of the Comoros;

HAVING REGARD to Decree No. 10-067/PR of 21 June 2010 appointing the Ministers attached to the Office of the President of the Union of the Comoros;

Following a proposal by the Minister of Industry, Labour, Employment and Women in Business;

Having heard the Council of Ministers;

HEREBY DECREES:

**CHAPTER I:
GENERAL PROVISIONS**

Article 1: Pursuant to this Decree, a public institution with its own legal personality and financial autonomy, entitled the Comorian Intellectual Property Office (OCPI), is hereby established with its head office in Moroni.

Article 2: The Comorian Intellectual Property Office shall be subject to joint technical supervision by the Ministry of Industry and the Ministry of Culture.

The purpose of their supervision shall be:

- to ensure that the Office's competent bodies comply with the provisions of this Decree;
- to monitor enforcement of the legislation and regulations concerning public institutions.

The Office shall also be subject to the financial control exercised by the State over public institutions, in accordance with the legislation in force.

Article 3: The purpose of the Comorian Intellectual Property Office shall be:

- to keep the national industrial property registers and to enter any deeds affecting ownership of industrial property titles;

- to keep negative certificates concerning entries in the Trade Register and in the alphabetical list of natural persons which led to the relevant deeds being issued;
- to disseminate to the public any information needed for the protection of inventions and the registration of traders in the Trade Register, and to undertake any activities that promote awareness and provide training in such areas;
- collective management of copyright, related rights and the protection of expressions of the traditional cultural heritage that forms part of the national heritage;
- management of the interests of foreign professional collective management organizations within national territory under agreements it may reach with them.

Article 4: Pursuant to Article 3 above, the Comorian Intellectual Property Office shall be empowered:

- to receive applications for industrial property titles, to register, issue and publish them, in accordance with the provisions of the law on protection of industrial property;
- in relation to the Trade Register, to receive copies of applications for listing in the Trade Register concerning registration, modifications or deletions from the central Trade Register, in accordance with the provisions of the law on the Commercial Code;
- to oppose the registration of a protected trade name or sign as commercial property;
- to receive, examine, register and publish industrial designs filed and to issue ownership deeds, where necessary;
- to grant licences and authorizations to exploit industrial and commercial property rights on behalf of and in the interest of the right holders. Owners of the rights granted shall be informed of any action concerning them.

Persons listed in the central Trade Register may request the Office to issue registration certificates for their trade names, trading names and signs, as well as certificates and copies concerning other entries in the Register, as provided in the Commercial Code.

The Office shall also be responsible for:

- disseminating the technical information to be found in industrial property titles, subject to the provisions in the law on the protection of industrial property;
- conducting studies on industrial property and the Trade Register, and for taking any measures intended to adapt national and international law to the needs of inventors and traders on a permanent basis.

For this purpose, it shall propose to the supervisory authority any reforms it considers useful in this respect. It shall take part in:

- preparing international agreements and technical representation of the Comoros in competent international intellectual property organizations in general;
- within its competence, implementing international agreements on industrial property, copyright and related rights, *inter alia*, based on its administrative relations with the International Bureau of the World Intellectual Property Organization and its cooperation with other offices and international and regional organizations on intellectual property matters;
- making available to the public any technical or legal documents on industrial property, subject to the provisions in the law on the protection of industrial property, as well as the central Trade Register, in accordance with the provisions of the law on the Commercial Code;
- managing the official industrial property catalogue and the compendium of information on the names of traders, trade names and signs.

The Office may create data banks for the purpose of utilizing the documentation, if necessary, in liaison with other lists or registers.

The Office shall promote the industrial and commercial property, copyright and related rights system, in particular by establishing departments responsible for the following at the island level:

- assisting and informing the public on industrial property and the Trade Register;
- receiving applications for industrial property titles and for negative certificates;
- issuing reports and receipts concerning applications for industrial property titles and negative certificates intended for entry in the Trade Register;
- conducting computerized research in the Office's database as part of its assistance to the public in relation to industrial property and the Trade Register;
- organizing awareness activities and promotion of industrial property and the Trade Register at the local and island level;
- preparing training and dissemination programmes on intellectual property.

Article 5: The Comorian Intellectual Property Office shall also be responsible for:

- exclusive management and administration in national territory of all rights concerning public performances, broadcasting, public wired or wireless communications, graphic or mechanical reproduction, translation, adaptation or any other mode of exploitation of works protected by the law or by copyright, related rights and rights concerning expressions of traditional cultural heritage, as well as resale rights;
- signature of agreements with fellow institutions on the management and administration abroad of all the rights indicated in the preceding subparagraph, at the request of their national right holders;
- administering the said rights in national territory on behalf of foreign authors in accordance with reciprocal representation agreements signed with their representatives;
- granting licences and authorizations for the exploitation of works, expressions of traditional cultural heritage, performances, phonograms, videograms and broadcasting programmes protected by the law, on behalf of and in the interest of right holders;
- receiving the proceeds from the said licences and authorizations and distributing them to beneficiaries;
- issuing approval for the import of artistic works;
- receiving remuneration for private copies, subject to the cases authorized by the law, and distributing it to beneficiaries;
- receiving fair remuneration for the use of phonograms and videograms and distributing it to beneficiaries;
- helping to combat piracy of protected literary and artistic works.

As part of these responsibilities, the Office may undertake any real estate and/or securities transactions that may assist in fulfilling its objectives.

CHAPTER II: ADMINISTRATIVE AND OPERATIONAL BODIES OF THE OCPI

Article 6: The Comorian Intellectual Property Office shall be administered by a Board of Directors and managed by a Director-General appointed in accordance with Article 14 below.

BOARD OF DIRECTORS

Article 7: The Board of Directors shall be composed of representatives of the administration and of the following federations of professional associations:

- a representative of the Ministry of Industry;
- a representative of the Ministry responsible for culture;
- a representative of the Ministry of Finance;
- a representative of the Ministry of Justice;
- a representative of writers;
- a representative of artists;
- a representative of the University of the Comoros;
- a representative of the Comorian Employers' Organization (OPACO).

Article 8: Members of the Board shall be appointed by a joint order of the Ministers responsible for technical supervision, following a proposal by the bodies concerned, for a renewable term of three years.

Article 9: Members who no longer possess the status under which they were appointed shall automatically cease to belong to the Board of Directors.

Article 10: The Board of Directors shall elect its chair from among its members.

The Directorate-General shall act as secretary of the Board's meetings.

Article 11: The Board of Directors shall meet in regular session twice a year after being convened by its chair in order to:

- approve the profit and loss account for the preceding financial year;
- examine and approve the budget for the next financial year;
- evaluate implementation of annual programmes;
- adopt the programme of activities for the next financial year.

It may meet in special session at the request of the Office's Director or of a majority of its members.

It may invite to its meetings any person whose presence is deemed useful.

Article 12: The Board of Directors' discussions shall be valid if at least half its members are present or represented. Its decisions shall be taken by simple majority. In case of a tied vote, that of the chair shall prevail.

At least ten days before the meeting, the items on the agenda of regular sessions shall be transmitted to the Board's members.

Article 13: The Board of Directors may decide to set up any committee to deal with matters put before it by the Director of the Office and make any relevant proposals. It shall decide on the committee's composition and operating methods.

It may present a request to the President of the Union to dismiss the Director-General if there is any misappropriation of the Office's assets or serious misconduct of management likely to be prejudicial to the Office's proper functioning.

MANAGEMENT OF THE OFFICE

Article 14: The Comorian Intellectual Property Office shall be managed by a Director-General appointed by decree of the President of the Union, adopted in the Council of Ministers.

Article 15: The Directorate of the Comorian Intellectual Property Office shall consist of the following:

- an industrial and commercial property division;
- a copyright and related rights division;
- a documentation, communication and information division;
- a legal affairs and disputes division;
- an administrative and financial directorate.

A joint order of the Ministers responsible for technical supervision shall determine the Office's organizational framework in accordance with the first subparagraph above and taking into account actual budgetary resources.

Article 16: Under the authority and control of the Board of Directors, the Director-General shall be responsible for the administration, management and functioning of the Office's services.

In this connection:

He shall carry out the decisions of the Board of Directors.

He may be authorized by the Board of Directors to settle particular matters.

He shall delegate some of his prerogatives and responsibilities to the heads of the Office's various competent divisions.

Article 17: The Director-General of the Office shall forward the following to the Board of Directors for approval:

- a report on implementation of the budget for the previous financial year;
- a report on the status of technical implementation of the programme of activities;
- a report on the statement of financial accounts;
- audit reports.

Approval by the Board of Directors shall only correspond to a discharge if the annual audit report has been approved by the Ministries responsible for technical and financial supervision without any objections.

Article 18: Under the higher authority of the Board of Directors, the Director-General shall have the power to recruit, appoint, dismiss, discipline and manage the careers of all the Office's staff in accordance with the provisions of this Decree.

Article 19: The Office's staff shall be composed of:

- officials recruited by the Office in accordance with its staff rules;
- officials of government departments made available to the Office, in accordance with the legislative provisions in force.

At their request, the persons concerned may be incorporated into the Office on the terms to be determined in the decree on the special status of the Office's staff.

The situation accorded by the aforementioned status of staff incorporated in application of the preceding paragraph shall under no circumstances be less favourable than the situation of the persons concerned at the time of their incorporation.

The services provided in government departments by the aforementioned staff shall be considered as having been provided within the Comorian Intellectual Property Office.

CHAPTER III: ORGANIZATION OF FINANCE AND ACCOUNTS

Article 20: The Comorian Intellectual Property Office shall have an annual budget approved by the Board of Directors at the second regular session each year.

The Office's budget shall include:

1 – Income:

- industrial property-related income;
- income received for copyright and related rights;
- the proceeds of remuneration for services provided by the Office in relation to the protection of signs and trade names;
- repayable advances from the State and public or private bodies, as well as loans authorized in accordance with the legislation in force;
- donations, legacies and miscellaneous income;
- State subsidies;
- subsidies other than those granted by the State;
- miscellaneous funds received, *inter alia*, from the management and administration of international conventions and agreements on the protection of industrial and commercial property and copyright and related rights;
- any other income related to its activities.

2 – Expenditure:

- operational and investment expenditure;
- reimbursement of advances and loans;
- any other expenditure related to its activities.

Article 21: Debts of the Comorian Intellectual Property Office shall be collected in accordance with the legislation on collection of the State's debts.

Article 22: The Office's financial year shall commence on 1 January and end on 31 December of the same year. It shall comply with the regulations on commercial accounts and the general accounting plan in force.

The Director-General shall be the chief authorizing office for the Office's budget.

Article 23: The Administrative and Financial Director shall be appointed by the Director-General subject to the approval of the Board of Directors. He shall be assisted by a public accountant appointed by the Minister of Finance.

Article 24: The services provided by the Office shall be remunerated at the rates appearing in the general schedule drawn up by the Director-General and approved by the Board of Directors.

Any services of an exceptional nature or importance which are not listed in the general schedule shall be the subject of a contract or agreement between the Office and the beneficiaries of its services.

In the absence of any rates, payment is determined according to the actual total cost of the service, taking into account the general expenses incurred, adding a profit margin deemed adequate in view of the Office's competitive position.

[Translator's note: the Articles follow in sequence, but the chapter numbers jump from Chapter III to Chapter VI]

CHAPTER VI: MISCELLANEOUS PROVISIONS

Article 25: The Office shall be subrogated to the rights and obligations of the State for all surveys, works, supplies and transport, and for any other agreements and contracts, concerning industrial property, the Trade Register, or copyright concluded prior to the date of publication of this Decree in the Official Journal.

Article 26: The Government of the Union shall grant a quarterly subsidy of KMF five million for a period of three years as of the date of the Office's actual establishment.

Article 27: The State property and real estate needed to fulfil its responsibilities shall be made available to the Office, in accordance with the terms set out in the regulatory provisions in force.

Real estate in the public domain leased to the Office for its full enjoyment shall be managed in accordance with the regulations on land and real estate in the public domain, the proceeds from any sale thereof shall accrue to the State, except for the assets added to the real estate, which may be reserved for the Office.

Article 28: The Ministries responsible for supervising the Office and the Ministry of Finance and Budget shall be responsible for implementing this Decree in accordance with their competence.

Article 29: This Decree shall be registered, published in the Official Journal of the Union of the Comoros and circulated as required.

AHMED ABDALLAH MOHAMED SAMBI