

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 semiconductor products schematics, drawings or models and of marks and other distinctive commerce signs are subject to seizure and confiscation and may be pawned.

Article 7 Proof of the rights

1. The proof of industrial property rights referred to in this Code is assured by means of titles, corresponding to the diverse modalities.

2. The titles must contain the elements necessary for a perfect identification of the rights they pertain to.

3. Industrial property rights certificates issued by international organizations to produce effect in Cape Verde, have the same value as the titles referred to in the preceding numbers.

4. Certificates of contents analogous to the respective title may be issued to title-owners.

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, whose non-

observance may imply not granting it or affecting the respective validity, is reinstated if so requested.

2. The duly fundamented written request must be presented within two months counting from the cessation of the fact that impeded compliance with the deadline, but in any case, it will only be accepted within one year counting from the end of the unobserved deadline.

3. The omitted act must be complied with within the two-month period referred to in the preceding number, along with the payment of a fee to reinstate the rights.

4. The provisions of this article do not apply to the deadlines referred to in No. 2 and 3 of Articles 12, 17 and 350 and when, with regard to the same industrial property right, there is a pending declaration of expiration process regarding the same industrial property rights.

5. The requestor or the title holder whose rights are reinstated may not invoke the same before a third party, in good faith, during the period that runs between the loss of the conferred rights and publication of the mention of their reinstatement, may have started the exploration or the commercialization of the object of the right or made effective and serious preparations for its exploration and commercialization.

6. In the case of requests for registration or registration, the third party that may prevail from the provisions of the preceding number may, within two months counting from the date of publication of the mention of the reinstatement of these rights, deduce opposition against the decision that reinstates the requestor or the owner of such rights.

CHAPTER II ADMINISTRATIVE PROCEEDINGS

Article 9 Legitimacy to take legal action

Any party having an interest in taking a legal action is entitled to do so, before the National Institute of Industrial Property.

Article 10 Legitimacy to promote legal action

1. Legal actions and terms of process may only be promoted by:

- a) The interested party or right owner itself if established or domiciled in [Cape Verde](#) ;
- b) Official agent of the of the industrial property;
- c) Appointed lawyers.

2. The entities referred to in the preceding number may always view process documents and obtain photocopies of the documents that interest them, which are always duly authenticated upon request.

3. When the parties are represented by an appointed representative, notifications should be addressed directly to that representative.

4. Save for indication to the contrary from the requestor or right owner, notifications are addressed to the last representative who intervened in the process, independently of who makes the payments of the fees for the upkeep.

5. Should irregularities or omissions be detected in the promotion of a specific act, the party is notified directly to comply with the applicable legal precepts within the non-extendable deadline of one month, under penalty of inefficacy of that act, but without losing the priorities it is entitled to.

Article 11 **Priority**

1. Save for the exceptions foreseen in this Code, the patent, utility model, or the registration is granted to whoever first submits a request correctly with the required elements.

2. If the requests are submitted by mail, precedence is attributed on the basis of the registration date or the date post stamped.

3. Should two requests pertaining to the same right be submitted simultaneously or have identical priority, they are not processed before the question of priority being first resolved by the interested parties, by agreement or in a competent Court.

4. If the request is submitted by an interested party neither domiciled nor established in **Cape Verde** the same shall be notified to appoint a representative, within one month, if it has not done so yet under the terms of subparagraphs b) or c) or No. 1, of the preceding Article.

5. Non-compliance with the notification in the preceding number will lead to non-approval of the request.

6. If, from the outset, the request is not accompanied by all the elements required, the priority shall begin to count from the day and time, in which the last pending document is presented.

7. If the invention, design or model, mark, name or insignia of establishment, logotype, award, denomination of origin, geographical indication has been altered relatively to the initial publication in the Official government publication for such notices, and the priority of the alteration shall count from the date the amendment was requested.

8. Without prejudice for the provisions of No. 4 of article 52 and of No. 3 of article 117 if, upon performing an examination it is concluded that a request for a patent, utility model or registration was not correctly prepared, the requestor is notified to resubmit the request within the modality indicated to him/her.

9. Before a dispatch is issued, the requestor may, on his/her own initiative, resubmit the request in a modality different from that initially presented.

10. Once the dispatch is issued, during the period allowed for appeal, or if an appeal is in progress, until the court's decision is known, the requestor may transmit the rights ensuing from the request, limit its object or add any documents or declarations to the process.

11. In the case foreseen in the preceding number and with a view to an eventual appeal, any other interested party may add documents or declarations to the process.

12. In the cases foreseen in Nos. 8 and 9, the request is again published in the Official government publication for such notices , and the requestor will continue to be entitled to the priorities already attributed to him/her.

13. Up to the moment of the decision other formal rectifications may be authorized, as long as they are requested, fundamentally, which are object of publication.

Article 12

Claim to the right of Priority

1. Anyone who has correctly submitted a request for a patent, utility model, certificate of utility, invention author certificate, design or model registration, or mark, in any of the member countries of the Union or the WTO or in any intergovernmental agency with competence to grant rights that produce effect in Cape Verde, as well as its successor, is entitled to the right of priority to file a request in Cape Verde, as established in Article 4 of the Paris Union Convention on the Protection of Industrial Property.

2. Any request formulated with the same value as that of a regular national request, under the terms of the national law of each Member State of the Union of the WTO, or of bilateral or multilateral treaties celebrated between member countries of the Union or the WTO, confers a right of priority.

3. Any and all requests submitted under conditions that allow the date of submission to be established in the country under consideration is a considered a normal national request, independently of anything that may, subsequently, affect it.

4. Consequently, the request subsequently filed in Cape Verde, before the expiration of the priority deadline, cannot be invalidated by facts that occurred during this period, specifically by another request, or by the publication of the invention, the design or the model or of its exploration.

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 intervening party in any process, when solicited by the National Institute of Industrial Property, to clarify the situation, is freely evaluated at the time of decision, without prejudice to the inversion of the onus of proof when the contra-interested party has, culpably, made it impossible to obtain that proof.

Article 22 Subsequent formalities

Upon expiration of the deadlines foreseen in Article 17, the allegations of the parties shall be examined. At the end of the examination, the process shall be documented, and made ready for dispatch.

Article 23 *Ex-officio* modification of the decision

1. If, before publication of a dispatch, it is determined that the same should be modified, the process is submitted to dispatch by a higher authority, with information on the fact that came to be known and that prompt revocation of the decision emitted.
2. A dispatch by a higher authority is understood to be one that is emitted at a higher hierarchy in relation to the one that effectively signed the decision that is to be modified.

Article 24 General Grounds for denial

1. The following constitute grounds for denial:
 - a) Non-payment of fees;

- b) Non-filing of the elements necessary to completely document a process;
- c) Non-observance of indispensable formalities or procedures for granting a right;
- d) Recognition of the fact that the requestor proposes to engage in unfair competition or that said unfair competition is possible independently of the requestor's intention;
- e) Violation of public order rules.

2. In the cases of sub-paragraphs a) to c) of No. 1, the process cannot be submitted for dispatch without prior notification to the requestor to normalize his request, within a deadline established in the notification.

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.
3. The intervening parties or any other interested parties may request, before the National Institute of Industrial Property, that they be issued a certificate of the final dispatch on the request and the respective documentation, even before the corresponding notice is published in the Industrial Property Bulletin.
4. Any one interested may also request a certificate of the registrations made and of the documents and process on file, as well as photographic or ordinary copies of the drawings, photographs, plants and models filed with the requests for patents, utility models or registration, but only when the respective processes have reached the publicity phase, there is no harm to third party rights and classified documents or documents that reveal commercial or industrial secrets are not at issue.
5. In any process, the publicity phase is considered to have been reached when the request has been published in the Industrial Property Bulletin.
6. Without prejudice to the provisions of the preceding numbers, the National Institute of Industrial Property may supply information on requests for marks registration, of names and of insignias of establishment, of logotypes and awards, of denomination of origin and of geographic indications, even before the publicity stage is reached.

Article 30 Annotations

1. The following are subject to annotation at the National Institute of Industrial Property:
 - a) The transmission and renunciation of private rights;
 - b) Granting of exploration, contractual or mandatory licenses;
 - c) The constitution of rights of warranty or usufruct, as well as seizures and confiscations;
 - d) Judicial actions to nullify or to annul private rights;

- e) The facts or decisions that modify or extinguish private rights;
2. The facts referred to in the preceding number can only produce effect with regard to third parties after the date of the respective annotation.
 3. The facts subject to annotation, even if they are not annotated, may be invoked among the parts themselves or their successors.
 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.
3. The declaration of renunciation is made in a written request that is attached to the respective process.
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

1. The sentence emitted may be appealed under the terms of the civil process general law, without prejudice for the provisions of the number that follows.

2. The decision of the Appeals Court cannot be appealed to the Supreme Court of Justice, without prejudice for the cases in which such is always admissible.

Article 47

Publication of the Final Decision

The provisions of No. 3 of Article 35 are applicable to appeals.

**SUBCHAPTER II
RECOURSE TO ARBITRATION**

**Article 48
Arbitration Court**

1. Without prejudice to the possibility of appeal to other extra-judicial mechanisms for conflict resolution, an arbitration court may be constituted to consider all the issues susceptible of judicial appeal.
2. The cases in which there exist cross-interests are exceptions from the provisions of the preceding number, save when the same accept the arbitral compromise.

**Article 49
Arbitral commitment**

1. The interested party who proposes to resort to arbitration, in the ambit of the conflicts foreseen in No. 1 of the preceding article, may request celebration of an arbitral commitment, under the terms of the Voluntary Arbitration law.
2. The submission of a written request, under the preceding number, suspends the judicial appeal deadlines.
3. Approval of the arbitral commitment by the State is object of a dispatch by the Minister of Economy, to be emitted within 30 days, counting from the date the written request is submitted.

**Article 50
Constitution and operation**

The arbitral court is constituted and functions under the terms foreseen in the Voluntary Arbitration law.

**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 produce, treat or utilize biologic material.
2. (a) Patents can be obtained for any inventions, whether they pertain to products or to processes, in all the domains of technology, as long as these inventions abide by the provisions of the preceding number.

(b) Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
3. New processes to obtain already known products, substances or compositions can, likewise, are the objects of patents.
4. The protection of an invention that abides by the conditions established in No. 1 may be made as a patent or as a utility model, at the option of the requestor.
5. The same invention may be simultaneously and successively, the object of a request for a patent and for a utility model.

Article 52 Limitations as to the object

1. The following are exceptions to the provisions of the preceding article:
 - a) The discoveries, as well as the scientific theories and the mathematical methods;
 - b) The materials and the substances already existing in nature and the nuclear materials;
 - c) The aesthetic creations;
 - 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 respective patent is filed in **Cape Verde** within 12 months;
 - b) The disclosures resulting from evident abuse in relation to the inventor or its successor under any title, or of publications unduly made by the National Institute of Industrial Property.
2. The provisions of subparagraph a) of the preceding number are applicable only if the requestor proves, within three months counting from the date the patent is requested, that the invention was effectively divulged under the terms foreseen in the referred subparagraph.

Article 58 **General rule regarding the right to a patent**

1. The right to the patent belongs to the inventor and his or her successors by any title.

2. If there are two or more authors of the invention, either has the right to request the patent in benefit of all.

Article 59 **Special rules on patent ownership**

1. If the invention is made during the execution of a work contract in which the inventive activity is foreseen, the right to the patent belongs to the respective enterprise.

2) In the case referred to in the preceding number, if the inventive capacity is not especially remunerated, the inventor has the right to remuneration, in harmony with the importance of the invention.

3) Independently of the conditions foreseen in No. 1:

a) If the invention is integrated in its activity, the enterprise has the right to opt for the patent by paying a remuneration in harmony with the importance of the invention and may take over the respective property, or reserve the right to its exclusive exploration, to the acquisition of the patent or to the faculty of requesting or acquiring a foreign patent;

b) The inventor must inform the enterprise of the invention it may have made, within three months counting from the date in which the latter is considered concluded;

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 applicable to inventions made to order, with the necessary adaptations.

8. Save for provisions to the contrary, the preceding precepts are applicable to the State and administrative bodies, as well as to its functionaries and servants under any title whose activity is carried out by law, regulations, or contract.

9. The recognized inventor’s rights cannot be the objects of prior renunciation.

Article 60
Rights of the Inventor

1. If the patent is not requested in the inventor's name, the latter has the right to have its name mentioned, as such, in the written request and in the patent title.
2. If the inventor so requests in writing, his name may not be mentioned, as such, in the publications arising from the request.

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 claim.
3. For the purposes of the provisions of No. 1) of article 11, priority is granted to the patent request that first files, aside from the elements required in subparagraph a) of No. 1, a synthesis of the description of the invention's object or, in substitution thereof and when a prior request priority is claimed, the indication of the number and date of the prior request and of the agency where the same was filed.

Article 62

Documents to be filed

1. The following elements must be added to the patent request, written in the Portuguese language and in duplicate;
 - a) Reivindication of what is considered new and that characterizes the invention;
 - b) Description of the object of the invention.
 - c) Drawings necessary to the perfect understanding of the description;
 - d) Summary of the invention;
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 proceeded 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.
 - a) Consists in a brief “exposé” of what is referred to in the description, claims and drawings and must not have, preferably, more than 150 words.
 - b) Serves exclusively to provide technical information and shall not be taken into consideration for any other purposes, specifically to determine the extent of the protection requested.

Article 63 Bio-technological Inventions

1. In the cases where the invention has to do with biological material that is not accessible to the public and that cannot be described in the patent request so as to allow its execution by a person skilled in the matter, or to imply the utilization of this type of material, the description is considered sufficient only for the purpose of obtaining a patent, if:
 - a) The biological material has been deposited up to the date the patent request is filed at the recognized deposit institution, such as the international deposit institutions that have

acquired this status in conformity with the Budapest Treaty, of 28 April 1977, on International Recognition of the Deposit of Microorganisms for Procedures on the matter of Patents.

b) The patent request includes the pertinent information that the requestor disposes of regarding the characteristics of the deposited material;

c) The patent request mentions the deposit institution and the deposit number.

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 therefrom, except for experimental purposes, save for express renunciation by the requestor or by the patent owner, with regard to this commitment.

4. Should the patent request be denied or withdrawn, access to the deposited material may remain, at the request of the depositor, limited to an independent expert for 20 years, counting from the date the patent request is filed. In this case, the provisions of No. 3 apply.

5. The depositor's requests, referred to in subparagraph b) of No. 2 and No. 4, may be presented only up to the date the technical preparations for the publication of the patent request are considered concluded.

6. When the biological material deposited in conformity with the provisions of the preceding numbers ceases to be available at the recognized deposit institution, a new deposit of the material is permissible under the conditions foreseen in the Budapest Treaty.

7. Any new deposit must be accompanied by a declaration signed by the depositor, certifying that the biological material object of the new deposit is identical to that initially deposited.

Article 64 **Deadline for delivery of descriptions and drawings**

The description of the models of invention and the drawings may be delivered to the National Institute of Industrial Property within one month counting from the date of the request filed in **Cape Verde** .

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 summary and the International classification according to the Strasburg Agreement.
2. The publication referred to in the preceding number cannot take place before 18 months have elapsed, counting from the date the patent request is filed at the National Institute of Industrial Property of the reivindicating priority.
3. The publication may be anticipated at the express request of the requestor.
4. Upon publication, any person can request a copy of the elements contained in the process.
5. Without prejudice for the provisions of the preceding articles, the reivindications or expressions that infringe the provisions of No. 2 of article 61 are suppressed, ex-officio, both the title of the patent and in the publications resulting from the request.

Article 67

Opposition

The publication of the request in the Industrial Property Bulletin starts the deadline for filing complaints by whoever feels harmed by granting the patent.

Article 68

Review of the invention

1. The National Institute of Industrial Property promotes a review of the invention, taking into consideration all the elements contained in the process.
2. If there is no opposition, a report of the review is prepared within three months, counting from the date of publication of the request in the Industrial Property Bulletin.
3. If there is opposition, the report is elaborated within three months counting from the date the last processual piece referred to in article 17 is filed.

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 sufficient, a notice of denial or of partial granting is published, in harmony with the review report.
9. If the applicant does not reply to the notification, the grant of the patent shall be refused, and a notice will be published in the Industrial Property Bulletin.

Article 69 **Partial Granting**

1. If it is a case of simply delimiting the protected material, eliminate claims, drawings, sentences from the summary or the description or to alter the title or the subject of the invention, in harmony with the notification and if the requestor does not voluntarily proceed to these modifications the National Institute of Industrial Property can do them and publish, thus, the notice of partially granting the respective patent, in the Industrial Property Bulletin.
2. The publication of the notice mentioned in the preceding number must contain the indication of eventual alterations on the subject, the claims, the description or the summary.
3. The partial granting must be proffered in such a way that the refused part does exceed the limits contained in the review report.

Article 70 **Alterations to the request**

1. If the request is altered during the review phase, the notice to grant the patent published in the Industrial Property Bulletin must so state.
2. The alterations introduced in the request during the review phase are communicated to the reivindicators, if there are any, for the purpose of appeal.

Article 71 **Unity of Invention**

1. The same request cannot ask for more than one patent, nor can it ask for more than one patent for a single invention.
2. A plurality of inventions, interconnected in such a way that they constitute a single inventive general concept, is considered a single invention.

Article 72 **Divisible applications**

When the deadlines foreseen in No. 1 of article 27 end, the patent pamphlet can be published.

Article 73 Grounds for denial

1. In addition to the provisions of article 24, the patent is denied when:
 - a) The invention lacks novelty, inventive activity or is not susceptible of industrial application;
 - b) Its object is included in provisions of articles 52 or 53.
 - c) The subject or title given to the invention encompasses a different object, or there is divergence between the description and drawings and the respective duplicates;
 - d) Its object is not described so as to permit the execution of the invention by any person skilled in the subject matter.
 - e) It is considered a design or model because of its description and reivindications;
 - f) There is an infraction to article 58 or 59.
2. In the case foreseen in subparagraph f) of the preceding number, rather than denying the patent total or partial transmission may be granted in favor of an interested party, if so requested.

Article 74 Notification of definitive dispatch

A notification is made of the definitive dispatch, under the terms of No.1 of article 16, with indication of the Industrial Property Bulletin in which it was published.

SUBSECTION II THE EUROPEAN WAY

(* Cape Verde is not a member state of the European Patent Convention; thus, the following provisions appear to be inappropriate and can be deleted unless Cape Verde officials believe they should remain and the country can otherwise qualify for participation in the Convention)**

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.
4. The protection conferred by a patent with regard to a process that allows the reproduction of a biological material endowed with specific properties, by virtue of the invention, includes biological material obtained directly by this process and any other biological material obtained from the biological material obtained directly, by reproduction or multiplication, in identical or differentiated form and endowed with the same properties.
5. The protection conferred by a patent regarding a product that contains a genetic information or that consists in a genetic information, includes, with the reservations in the provisions of subparagraph a) of No. 3 of Article 53, any material in which the product is incorporated, in which it is contained and exercises its function.
6. In derogation of the provisions of paragraphs 3) to 5) of this Article:
 - a) The sale, or other form of commercialization, by the patent-owner, or with consent thereof, of plant reproduction material to a farmer, for the purpose of agricultural exploration, implies permission for the farmer to use the product of his harvest to proceed, himself, to the reproduction or multiplication of his exploration;
 - b) The sale, or other form of commercialization by the patent owner, or with the consent thereof, of reproduction animals or any other animal reproduction material to a farmer implies permission for the farmer to utilize the protected animals for agricultural purposes, with such permission including making the animal or any other animal reproduction material available to prosecute its agricultural activity, but not its sale, with a view to a reproduction activity for commercial purposes or in the ambit of commercial purposes.

Article 98 **Inversion of the onus of proof**

If a patent has for object the fabrication process of a new product, the same product fabricated by a third party shall considered as having been fabricated by a patented process, unless there is proof to the contrary.

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 N°.**" or "**Pat. N°.**"

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. (***) **Cape Verde officials should determine whether this provision is appropriate for Cape Verde; if so the applicable Convention should be inserted for the one specified – if suitable)**

Article 103 Depauperation of the right

(*) The following two paragraphs refer to exhaustion of the patent right throughout the European Economic Space, which would be 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 provision for exhaustion of this right anywhere, including the European Economic Space.)**

1. The rights conferred by the patent do not permit its owner to prohibit the acts relative to the products protected by it, upon their commercialization, by the patent-owner or with his consent, in the European Economic Space.

2. The protection referred in Nos. 3 to 5 of article 97, does not include biological material obtained by reproduction or multiplication of a biological material commercialized by the patent owner or by the consent thereof, In the European Economic Space, if the reproduction or multiplication result necessarily, from the utilization for which the biological material was placed in the market, as long as the material obtained is not, next, utilized for other reproductions or multiplications.

Article 104 Non-hindrance

1. The rights conferred by patent cannot be denied in the national territory and before the date of the request, or on the date of the priority when reivindicated, to anyone who, in good faith, may have attained by his own means to the knowledge of the invention and utilized it or made effective and serious preparations with a view to its utilization.

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

1. Anyone who has to answer for obligations contracted with another, or who is expropriated therefrom, can be deprived of a patent, under the terms of the law.
2. Any patent can be expropriated for public utility, by payment of just indemnization, if the need to disseminate the invention, or of its utilization by public entities, so requires.
3. The provisions of the Expropriations Code shall apply. (***** Is there a comparable Cape Verde Code? If so, a determination should be made whether its provisions are sufficient to deal with terms of this Article)**)

Article 106

Mandatory exploration

1. The patent owner is obligated to explore the patented invention, directly or by means of an intermediate person, and commercialize the results obtained so as to satisfy the needs of the national market.
2. The exploration shall be initiated within four years, counting from the date the patent is requested, or within three years, counting from the date the patent is granted, whichever is longer.
3. It is possible to enjoy the patent rights, without discriminating as to the local of the invention, the technology domain and the fact that the products are imported from any country member of the Union or the WTO, or produced locally.

Article 107

Mandatory Licenses

1. Mandatory licenses may be granted over a certain patent, when one of the following cases occur:
 - 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 case, taking into account the economic value of the license.

3. The decision relates to the granting of a mandatory license or that grants or denies the remuneration is susceptible of judicial recourse or other independent review by a distinct higher national authority.

Article 108

License for lack of exploration of the invention

1. Upon expiration of the deadlines referred to in No. 2 of article 106, the owner who, without just motive or legal basis, explores the invention, directly or by means of a license, or does not do so in such a way as to respond to the national needs, may be obligated to grant exploration license of the same.

2. The patent-owner who ceases to explore the patent for three consecutive years, without just motive or legal basis, may also be obligated to grant licenses for the exploration of the patent.

3. The objective difficulties of a technical or juridical nature, independent of the will or the situation of the patent owner, that make exploration of the patent impossible or insufficient, are considered just motives. Financial or economic difficulties are not considered just motives.

4. As long as a mandatory license remains in effect, the patent-owner cannot be obligated to grant another license, before the former has been canceled.

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 reivindicated 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 of the conditions in which such exploration is executed, are of primordial importance to public health or to national defense.

3. Likewise, it is considered that reasons of public interest exist when non-exploration or insufficiency in quality or the quantity of the exploration executed imply grave losses to the country's economic or technologic development.

4. Granting a license for reasons of public interest is the competence of the Government.

Article 111 **Mandatory license requests**

1. Mandatory licenses may be requested at the National Institute of Industrial Property. The requestor must submit the elements of proof that will fundament his request.

2. The mandatory license requests are examined in the order in which they are requested at the National Institute of Industrial Property.

3. Once the mandatory license request is received, the National Institute of Industrial Property notifies the patent owner to say what he deems convenient, within two months, and present the respective proof.

4. The National Institute of Industrial Property evaluates the allegations by the parties and the invention exploration guarantees offered by the mandatory license requestor, and decides, within two months, if the license should be granted.

5. In the affirmative case, it will notify both parties to, within one month, appoint an expert who, together with the expert from the National Institute of Industrial Property, agrees, within two months, to the conditions of the mandatory license and the indemnization to be paid to the patent-owner.

Article 112 **Notification and appeal to granting or denying a license**

1. Both parties are notified by the National Institute of Industrial Property of the granting of the license or denial thereof, as well as the respective conditions of exploration.

2. The decision of the National Institute of Industrial Property that granted or denied a license, or only the conditions under which the same was granted, may be appealed to the competent Court, under the terms of articles 39 and following, within three months counting from the date of notification referred to in the preceding number.

3. A favorable decision to grant the license takes effect only two months after the final Court decision and after the National Institute of Industrial Property annotates it, where all the respective fees are paid, as if for an ordinary license.

4. An extract of the registration referred to in the preceding paragraph is published in the Industrial Property Bulletin.

SECTION V **INVALIDITY OF THE PATENT**

Article 113 **Nullity**

Aside from the provisions of article 33, the patents are nulled in the following cases:

a) When its object does not satisfy the requisites of novelty, inventive activity and industrial application;

b) When its object is not susceptible of protection under the terms of articles 51, 52, and 53;

c) When it is recognized that the title or subject given the invention pertains to a different object;

d) When its object is not described so as to permit its execution by anyone competent on the matter.

Article 114 **Declaration of nullity or partial annulment**

1. One or more reivindications may be declared nulled, or annulled, but a reivindicacion cannot be declared partially nulled, nor can a reivindicacion be partially annulled.
2. Should nullity or annulment of a reivindicacion be declared, the patent continues to be in effect relatively to the remaining reivindicacions whenever the latter can constitute the object of an independent patent.

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 notifies 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

1. New inventions that imply inventive activity may be protected as utility models if they are susceptible of industrial application.

2. Utility models aim to protect the inventions through a simpler and speedier administrative procedure than that used for the patents.
3. The protection of an invention under the conditions established in No. 1 can be done, at the requestor's option, as a utility model or as a patent.
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 art;
2. An invention is considered to imply inventive activity:
 - a) If, to an expert in the specialty, the invention does not result in an evident manner, from the state of the art;
 - b) If it presents a practical or technical advantage to the fabrication or utilization of the product or the process in question.
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.
4. The provisions of articles 56 and 57, with the necessary adaptations, are applied to utility models.

Article 121
General rule on the right to utility model

The provisions of article 58 are applicable to utility models.

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 reivindication

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 Nº.**" 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**.
2. If the object of a utility model is a product, it confers to its owner the right to prohibit third parties, without his consent, to produce, utilize, offer for sale, sell or import the product for these purposes.
3. If the object of the utility model is a process, it confers to its owner the right to prohibit third parties, without his consent, to utilize the process as well as the utilization or offer for sale, the sale or the importation of products obtained directly by this process, for these purposes.

4. The owner of the utility model may oppose to all the acts that constitute a violation of his invention, even if they are founded on another utility model with a subsequent priority date, without the need to oppose the titles or ask for annulment of the utility models in which this right is founded.

5. The rights conferred by the utility model shall not go beyond the ambit defined in the reivindications.

Article 145
Limitation to the rights conferred by the utility model

1. The rights conferred by the utility model cannot include:
 - a) The acts executed for private use, without commercial purposes;
 - b) The acts executed for experimental purposes that involve the protected object.
2. The provisions of subparagraphs d), e), and f) of article 102, are applicable to the utility models.

Article 146
Depauperation of the right

The rights conferred by utility models do not permit the owner to prohibit the acts pertaining to the protected products, upon their commercialization, by the owner or by consent thereof, in the European Economic Space.

Article 147
Non-opposability

The provisions of Article 104 are applicable to utility models.

SECTION IV
CONDITIONS OF UTILIZATION

Article 148
Loss and expropriation of the utility model

The provisions of Article 105 are applicable to utility models.

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.

SECTION V
INVALIDITY OF UTILITY MODELS

Article 151
Nullity

1. Aside from the provisions of article 33, utility models are made null in the following cases:
 - a) When its object does not satisfy the requisites of novelty, inventive activity or industrial applicability;
 - b) When its objects are not susceptible to protection, under the terms of articles 117, 118 and 119;
 - c) When it is recognized that the subject or title given the invention encompasses a different object;
 - d) When the object is not described in a manner that will permit its execution by any person competent on the matter.
2. Only the utility models whose invention has been subject to a review can be declared null.

Article 152
Declaration of nullity or partial annulment

The provisions of article 114 are applicable to utility models.

CHAPTER II
SCHEMATICS OF SEMICONDUCTOR DEVICES

SECTION I
GENERAL PROVISIONS

Article 153
Definition of semiconductor product

Semiconductor product is the final or intermediate form of any product that, cumulatively:

- a) Consists of a material body that includes a layer of semiconductor material;
- b) Possesses one or more layers composed of conductive, insulating or semi-conductor material, laid-out in accordance with a predetermined three-dimensional model;
- c) Is designed to carry out an electronic function, whether exclusively or in conjunction with other functions.

Article 154
Definition of schematic of a semiconductor product

Schematic of a semiconductor product is the set of related images, whether fixed or codified, that represent the three dimensional layout of the layers that constitute the product, in which each unit possesses a layout, or part of a layout, of a surface of the same product, in any phase of its fabrication.

Article 155
Object of legal protection

1. Only the schematics of semiconductor products that result from the intellectual effort of their creator and are not known in the semiconductor industry are eligible for legal protection **whether or not incorporated in an article.**

2. Likewise, the schematics of elements known in the semiconductors industry are also entitled to legal protection, as long as the combination of these elements, in their ensemble satisfies the conditions foreseen in the preceding number.

3. The protection granted the schematics of semiconductor products applies only to schematics as such, with the exclusion of any other concept, process, system, technique or codified information incorporated therein.

4. Every creator of a final or intermediate semiconductor schematic has the exclusive right to dispose of this schematic, as long as it satisfies the legal requirements, specifically with regard to registration.

5. The registration cannot, however, be made, after two years counting from the date of the first commercial exploration of the schematic, anywhere, nor after 15 years have elapsed counting from the date in which the schematic was fixed, or codified for the first time, if it was never explored.

Article 156
General rule about the right to register

The provisions of article 58 are applicable to semiconductor products.

Article 157
Special rules on ownership registration

The provisions of article 59 are applicable to semiconductor products.

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 reproduced, or ordered before that moment, but he should pay to the owner of the registration an amount equivalent to an adequate royalty, as would be required under the protection of a freely negotiated license pertaining to a schematic of this type.

Article 166 **Depauperation of the right**

The rights conferred by the registration of the schematic do not allow the title-holder to forbid the acts pertaining to the schematics, or to the semiconductor products protected by it, after their commercialization, by the title-owner, himself, or with his consent, in the European Economic Space.

Article 167 **Un-opposability**

The provisions of article 104 are applicable to the rights conferred by registration of semiconductor product schematics.

SECTION IV CONDITIONS OF USAGE

Article 168 Loss and Expropriation of Registration

Article 105 is applicable to the semiconductor product schematics.

Article 169 Mandatory Exploration License

The provisions of Articles 106 to 112 apply to the semiconductor schematics in cases where the mandatory licenses have a public, non-commercial purpose.

SECTION V INVALIDITY OF THE REGISTRATION

Article 170 Nullity

In addition to the provisions of Article 33, the registration of the semiconductor product topography is null in the following cases:

- 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

CHAPTER III DRAWINGS OR MODELS

SECTION I

GENERAL PROVISIONS

Article 173 Definition of Drawing or Model

The Drawing or Model designates the ornament or aesthetic aspect of an article, including the total or partial appearance of a product resulting from the characteristics of, namely, lines, contours, colors, form, texture or materials of the product itself and of its ornamentation.

Article 174 Definition of Product

1. Product designates any industrial or crafted article, including, among others, the components for assembling a complex product, packaging, presentation elements, graphic symbols and the typographic characters, excluding computer programs.
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 its technical function; and

b) The characteristics of the appearance of a product that must necessarily be reproduced in its exact form and exact dimensions, so as to permit that the product into which the industrial model or design is incorporated, or in which it is applied, be it mechanically connected to the other product, be it placed inside, around or against that other product, so that both can perform their functions.

7. The registration of an industrial model or design is possible under the conditions defined in articles 177 and 178, if its purpose is to permit a multiple assembly of 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 reivindicated 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 reivindicated.

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 reivindicated 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 reivindicated, the date of that priority.

2. Nº 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, reivindicates a right of priority beginning on that date, under the terms of Article 12.

4. The requestor who intends to benefit from the provisions of numbers 1 and 2, or to reivindicade a priority according to the preceding number, must file document proving the referred disclosure, or proof of exposition of the products in which the drawing or model was incorporated, or was applied, within three months from the date of the registration request.

Article 181

General rule on the right to register

The provisions of Article 58 apply to drawings or models.

Article 182

Special rule on ownership of the registration

Article 59 applies, without prejudice to the provisions of the copyright law.

Article 183

Rights of the creator

The provisions of article 60 apply to drawings or models.

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 reinvindicate 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 reinvindicated, 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 elements that appear in the representation of the design or model or of the sample filed, omitting mentions of the eventual novelty, to the unique character or to the technical value of the design or model;
- b) Graphic or photographic representations, in duplicates, of the drawing or model. Should the object of the request be a bi-dimensional design and also include a request for postponement of publication, according to the provisions of article 190, the respective representations may be substituted by a unit or a sample of the product in which the design is incorporated or applied, without prejudice to filing it when the postponement period ends;
- c) A photolithograph or another medium that may be required by the National Institute of Industrial Property, with the reproduction of the object whose industrial model or design is to be registered, but, in the case of a request to postpone publication, the final part of the preceding subparagraph shall be applied;

d) Documental proof of the authorization by the copyright owner, when the design or model is the reproduction of a work of art that is not in the public domain or of a general model, of the respective author, if it is not the requestor;

2. The elements referred in the preceding number must abide by the formal requisites fixed by dispatch of the President of the Executive Board of the National Institute of Industrial Property.

3. The graphic or photographic representations of the design or model referred to in No. 1 of article 187 must be numbered sequentially, in accordance with the total number of designs or models that are to be included in the same request.

4. The applicant may of his own initiative, or from a notification from the National Institute of Industrial Property, submit the actual subject matter or other perspective photographs that help to form a more exact idea of the industrial model or design.

5. When, in the requests to register a design or model, a combination of colors is reivindicated:

a) The graphic or photographic representations must exhibit the reivindicated colors and the novelty description must make reference to them;

b) As long as the required fees are paid, the requestor may solicit that the publication be made in colors as long as the medium used, required by the National Institute of Industrial Property, shows the reivindicated colors.

Article 186 **Unity of the request**

1. No more than one registration can be requested in one written document and to each design or model corresponds a separate registration.

2. Industrial models or designs that constitute the various parts indispensable to form a whole shall be included in a single registration.

Article 187 **Multiple requests**

1. Without prejudice to the provisions of the preceding article, industrial models or designs that possess the same preponderant distinctive characteristics may be included in a single registration, up to a maximum of ten, so as to constitute a group of interrelated objects, with regard to the purpose of their use or application.

2. Each of the designs or models included in the request or multiple registrations may be separated or transmitted independently of the remainder.

3. If it is understood that some of the objects included in a multiple request do not constitute a design or model under the terms of articles 173 and 174, the requestor is notified to proceed to the respective reformulation into a utility model, conserving the date of the initial request as the request date.

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 formal irregularities in the request, the requestor is notified to correct them within one month.
3. If the corrections are not made within the established deadline, it is denied and the respective notice published in the Industrial Property Bulletin, with reproduction of the design or model and a transcript of the decision referred to in subparagraph a) of No. 1, Article 185.

Article 189 Publication

1. If the request is file in normal form or normalized under the terms of No. 2 of the preceding article, the registration request is published in the Industrial Property Bulletin, with reproduction of the design or model and a transcript of the decision referred to in subparagraph a) of No. 1, Article 185.
2. The publication referred to in the preceding number is done within six months, counting from the date of the registration request, unless a postponement or advance of the publication is requested.
3. Once published, anyone may request copies of the elements contained in the process.
4. The provisions of n° 5, article 66, apply to drawings and models.

Article 190 Postponement of the Publication

1. On filing a request to register, the requestor may solicit that its publication be postponed for a period not greater than 30 months counting from the date the request is filed or the priority reivindicated
2. The requests for postponement of publication that are filed after the date of the request to register are object of an evaluation and decision by the National Institute of Industrial Property.
3. If publication is postponed, the design or model is entered in the register of the National Institute of Industrial Property, but the request shall not be published.
4. Whenever the requestor solicits the postponement of the publication, the National Institute of Industrial Property publishes a notice of the postponement four months after the date the request is filed, which includes indications that, at least, identify the requestor, the date the request is filed and the postponement period solicited.
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.
2. The provisional registration title is delivered to the requestor within one month counting from the date the payment referred to in the preceding number is made.
3. The validity of provisional registration title ceases the moment a review is requested.

Article 193 **Request for review**

1. The review may be solicited during the request phase as long as the provisional registration is kept valid.
2. Whoever requests the review must pay the respective fee within one month counting from the date the request is made.
3. If the owner of the provisional registration intends to file court action to defend the rights that the registration confers upon him, he must mandatorily solicit from the National Institute of Industrial Property the review referred to in the article that follows. The provisions of article 5 apply.

Article 194 **Review**

1. The National Institute of Industrial Property promotes the review of the drawing or model, if solicited by the requestor or an interested party.
2. In case there is no opposition to this review, a report is always prepared within three months, counting from the date the review is solicited, or upon publication of the request in the Industrial Property Bulletin, if the review is solicited during the request phase.
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.
7. If from the response, it is concluded that the registration can be granted, a notice to that effect is published in the Industrial Property Bulletin.

8. If the response to the notification is considered to be insufficient, a notice of denial or a partial granting notice is published, in harmony with the review report.

9. If the request fails to respond to the notification, the registration is denied, and a notice of denial is published in the Industrial Property Bulletin.

Article 195 Partial Granting

1. If it is just a case of delimiting the material protected, eliminating phrases from the description, altering the title or subject, or eliminating some objects included in the same multiple request, in harmony with the notification and if the requestor does not proceed voluntarily to make those modifications, the National Institute of Industrial Property should make them and publish, thus, a notice of partial granting of the respective request to register.

2. The publication of the notice referred to in the preceding number must contain the indication of eventual alterations, referred to therein.

3. The partial granting must be proffered so that the part that is denied does not exceed the limits contained in the review report.

Article 196 Alterations of the Request

1. If the request suffers alterations during the review phase, the granting notice published in the Industrial Property Bulletin must so indicate.

2. The alterations introduced in the request, during the review phase are communicated to the claimants, if any, for appeal purposes.

Article 197 Reasons for denial

1. Aside from the provisions of Article 24, the registration is denied if:

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 reivindicaded 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 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)**

Article 206

inalterability of the designs or models

1. As long as the registration remains in effect, the designs or models should remain unaltered.
2. The amplification or reduction, to scale, does not affect the inalterability of the designs or models.

Article 207

Alteration in the designs or models

1. Any alterations in the essential specific characteristics of design or model may be registered, provided it fulfills the requisites established in article 176.
2. Modifications introduced in the design or model by the owner of the registration, that alter only unimportant details, may be object of new registration or registrations.
3. The registration or registrations referred to in the preceding number must be annotated in the initial title and in all the titles of registrations made under the same provisions.
4. Registrations of modified designs or models referred to in the preceding subparagraph revert to the public domain at the end of their validity.

SECTION IV NULLITY OF THE REGISTRATION

Article 208 Nullity

Aside from the provisions of article 33, the registrations are null when the design or model:

- 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 reivindicaded 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.

SECTION V PRIOR PROTECTION

SUBSECTION I GENERAL PROVISIONS

Article 211 Object of the request

The designs or models for textiles or clothing, or of other activities regulated by decree from the Minister of Economy can be object of a request for prior protection.

Article 212 Request for prior protection

1. The prior protection request referred to in the preceding article and the respective reproductions are entrusted to credible technological entities with which the National Institute of Industrial Property can celebrate protocols.
2. The prior protection request protection, entrusted to the credible technological entities referred to in the preceding number, is forwarded to the National Institute of Industrial Property, within fifteen days from the date of receipt, accompanied by a certificate issued by the Institute and the amount of the corresponding fees.
3. Prior protection is granted to the requestor who, abiding by the requisites foreseen in article 214, is filed first. The precedence of the applications is determined by the date of receipt at those entities.
4. The characteristics of the reproductions are fixed by dispatch from the President of the Executive Board of the National Institute of Industrial Property, under proposal of the entities referred to in No. 1.

Article 213 Conservation in secrecy and filing regimes

The reproductions referred to in the preceding article must be kept in secrecy during the prior protection validity period and after the validity period, they must be archived.

SUB-SECTION II PROTECTION REQUEST PROCESS

Article 214 Form of the request

1. The request for prior protection of a design or model is done in writing, in the Portuguese language, indicating:
 - a) The applicant's name, firm or commercial denomination, nationality, residence and place of establishment;
 - b) The number of reproductions to be registered, up to a maximum of 100;
 - c) The subject or title that synthesizes the object or objects intended to be protected, or the purpose they are destined for;
 - d) The creator's name and country of residence.
2. The request must be signed by the requestor or his representative.
3. Fantasy expressions used to designate the design or model do not constitute object of protection.

SUBSECTION III EFFECTS OF THE PRIOR PROTECTION REQUEST

Article 215 Duration

The duration of the prior protection is six months, counting from the filing date of the respective request in the National Institute of Industrial Property.

Article 216 Correcting the request

If the prior protection request, remitted by the credible technologic entities, does not abide by the requisites foreseen in article 214, the National Institute of Industrial Property shall notify the requestor to correct it within one month. The prior protection counts from the date of the correction.

Article 217 Rights conferred by the prior protection

Prior protection confers the right of priority for the purpose of an eventual registration request, under the terms of articles 173 and following.

Article 218 Expiration

The prior protection expires when the deadline foreseen in article 215 runs out or, when the registration request is filed for any of the drawings or models the same pertains to, under the terms of article 173 and following.

Article 219 **Conversion of the request**

During the period of validity period of the prior protection, only its beneficiaries may request the respective registrations foreseen under the terms of articles 173 and following, for the same designs or models.

Article 220 **Request to register for administrative acts or in Court proceedings**

If the beneficiary of the prior protection proposes to intervene in administrative processes against or if he proposes to enter with Court action based on the design or 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 exclusive use of the requestor, except when, in trade, the signs have acquired a distinctive character.

3. At the request of the requestor or claimant, the National Institute of Industrial Property indicates, in the granting dispatch, which of the constitutive elements of the mark is not for the exclusive use of the requestor.

Article 224 **Property and exclusiveness**

1. The registration confers to the title-owner the right of property and exclusiveness for the mark for the products and services it is destined to **as set forth in Article 258**.

2. The State may, likewise, be entitled to the right of property and exclusiveness for the marks it uses, as long as it fulfils the legal requirements.

Article 225 **The right to register**

The right to the registration of the mark goes to whoever has a legitimate interest in it, namely:

a) Industrials or manufacturers, to signal out their products;

b) Dealers, to signal out the products of their trade;

c) Farmers and producers, to signal out the products of their activity;

d) Creators or artists, to signal out the products of their art, occupation or profession;

e) Service providers, to signal out their respective activities.

Article 226 **Registration by agent or representative of the title-owner**

If the agent, or representative of the owner of a mark registered in one of the member countries of the Union or the WTO, but not registered in **Cape Verde**, requests the registration of that mark in his own name, without authorization of the referred title-owner, the

latter has the right to oppose to the registration requested, unless the agent or representative justifies his conduct.

Article 227 Free mark

1. Whosoever uses a free or unregistered mark for a period not greater than six months has, during that period, the right of priority to register the mark. He may even contest the registration requested by some one else.
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 products or services, or establishes norms they must abide by.
2. This sign serves to be utilized on the products or services submitted to that control or for which the norms were established.

Article 231 Right to Registration

1. The registration of the collective marks is the right of:
 - a) Collective persons to whom a mark of guarantee or of certification is legally attributed or recognized and can apply it to certain and specific qualities of the products or services;

b) Collective persons who provide tutelage control or certify economic activities, to signal out the products of those activities, or that originate in certain regions, according to their purposes and under the terms of their respective statutes or organic law.

2. The collective persons referred to in sub-paragraph b) in the preceding number must promote the insertion in the respective organic laws, statutes or internal regulations, the provisions in which they designate the persons that are entitled to 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

1. A notice of the filing of the request is published in the Industrial Property Bulletin, in order that an objection may be raised by anyone who feels harmed by the eventual granting of the registration.
2. The publication referred to in the preceding number must contain the reproduction of the mark, the classification of both products and services in the respective classes, under the terms to the Nice Agreement, and mention the indications referred to in article 233 No. 1.
3. It behooves the National Institute of Industrial Property to verify check the classification referred to in the preceding number, correcting it, if needed be.

Article 237
Subsequent formalities

1. Upon the end of the deadline for filing complaints, or when the discussion has ended, the National Institute of Industrial Property proceeds to study the process, which consists in the review of the registered mark and its comparison with other marks and distinctive trade signs.
2. The dispatch should be emitted within twelve months, counting from the date of publication in the Industrial Property Bulletin that contains the notice of the request.
3. The registration is granted when, upon concluding the review no fundament for denial was found and the complaint, if there was one, is considered unfounded.
4. The registration is denied right away, when the complaint is considered to be well founded.
5. The registration is denied provisionally when the review reveals foundation for a denial and the complaint, if there is one, has not been considered unfounded.
6. A notification is made of the provisional denial and the requestor must respond, within two months, under the under penalty of the denial becoming definitive. This deadline may be prorogated, for a like period, at the request of the interested party.
7. New prorogations of the deadline referred to in the preceding number may be granted only if no harm is done to the rights of third parties, and the prorogation are justifiable.
8. If, from the requestor's response, it is concluded that the denial is unfounded, or that the objections raised have been resolved, a dispatch is emitted within two months counting from the filing of the referred response, without prejudice to the provisions of No. 7 of Article 11.
9. If, upon the requestor's response there is no alteration of the evaluation, the provisional denial becomes object of definitive dispatch.

10. The deadlines foreseen in No. 2 and 9 of this article can be prorogated only by dispatch of the competent member of the Executive Board of the National Institute of Industrial Property.

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

Article 238

Grounds for refusal of registration

1. In addition to the provisions of article 24, registration of a mark is denied when:

a) The mark consists of signs that cannot be graphically represented;

b) The mark is constituted by signs without any distinctive character;

c) The mark is constituted exclusively by signs or indications referred to in subparagraphs b) to e) of No. 1, article 223.

d) There is infraction to the provisions of article 226.

e) Where a mark has been applied for or registered in good faith, or where rights to a mark have been acquired through use in good faith before the date of the application of the provisions like those that are the subject of TRIPS, Section 3, Geographical Indications; or before a geographical indication is protected in its territory of origin, that the mark is identical with or similar to a geographical indication shall not be a ground for refusal or a challenge to the validity of a registration or the right to use the mark.

2. In the case foreseen in subparagraph d) of the preceding number, rather than denying the registration, its total or partial transmission may be granted the title owner, if so requested.

3. Registration is not denied to a mark constituted exclusively by signs or indications referred to in subparagraphs a), c) and d) of No. 1, article 223, if the mark has acquired a distinctive character.

Article 239

Other grounds for denial

The registration of marks is also refused if the marks are contrary to the provisions of articles 222, 225 and 235, or that contain, in all or in of their elements:

a) Flags, coats-of-arms, shields, and emblems or other signs belonging to the State, to the municipalities or other public entities, national or foreign, or to international intergovernmental organizations of which one or more countries of the Union are members, without the competent authorization, whether or not they have coverage under article 6 of the Convention of the Paris Union of 20 March 1883.

b) Distinctives, stamps and official marks, of oversight or guarantee, pertaining to marks intended for products or services, identical or similar to those to which the same have to be applied, unless so authorized;

c) Coats of arms or heraldic insignia, medals, decorations, surnames, titles and honorific distinctions the requestor is not entitled to or, when he is entitled to them, their use results in disrespect or loss of prestige being brought upon a similar sign;

- d) The emblem or denomination of the Red Cross or of agencies to which the government has granted exclusive rights to its usage, save for special authorization;
- e) Fantasy medals or designs susceptible of being confusion with the official decorations or with the medals and awards conferred at official contests and expositions;
- f) The firm, commercial denomination, logotype name and insignia of establishment, or only part of the characteristics of the same, which do not belong to the requestor, or that the requestor is not authorized to use, if it is susceptible of inducing the consumer into error or confusion;
- g) Names, photographs or any expressions or figurations, without first obtaining authorization from the persons they pertain to and, if the latter are deceased, from their heirs or relatives until the fourth degree or, if they cause disrespect or loss of prestige to those persons;
- h) Signs that constitute copyrights or industrial property rights infractions;
- i) Signs with a high symbolic value, namely religious symbols, save if authorized;
- j) Expressions or figures contrary to the moral and good costumes, as well as being offensive to the national or community legislation, or of public order;
- l) Signs that are susceptible of inducing the public into error, namely pertaining to the nature, qualities, utility or geographic origin of the product or service the mark is destined for;
- m) Reproduction or imitation, in whole or in part, of a mark previously registered by another person, for identical or similar products or services, that could induce the consumer into error or confusion, or that includes the risk of association with their registered marks.

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 Verde competent authority to be 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 is likewise denied if the mark, even if destined for products or services without identity or affinity, constitutes translation, or is like or similar to a previous prestigious mark in Cape Verde and whenever the use of the subsequent mark seeks to take undue advantage from the distinctive character or from the prestige of the mark, or may cause it damage.

2. No. 1 is applicable to the provisions of No. 2 of the preceding article, with the understanding that in this case, the registration of the mark shall be required for the products or services that gave it that prestige.

Article 243 **Declaration of Consent**

The registration of a mark susceptible of being confused with marks or other industrial property rights previously registered, requires a declaration of consent from the title owners of those rights and from the owners of exclusive licenses, if there are any, and the contracts do not state otherwise.

Article 244 **Partial denial**

When there are motives for denial of the registration of a mark, only in what regard to some of the products or services for which it was requested, the denial applies only to those products or services.

Article 245 **Concept of Imitation or usurpation**

1. A registered mark is considered imitated or usurped by another, in whole or in part, when, cumulatively:

- a) The registered mark has priority;
- b) Both are destined to designate identical or similar products or services;

c) Both have such graphic, figurative, phonetic or other similarity that they easily induce the consumer into error or confusion, or that incorporates a risk of association with a previously registered mark, so that the consumer cannot distinguish between them except after an attentive review or comparison;

2. For the purposes of subparagraph b) of No. 1:

a) Products or services that are inserted in the same class of the Nice classification may be considered similar;

b) Products or services that are not are inserted in the same class of the Nice classification may be considered similar;

3. The use of certain fantasy denomination that is part of a registered mark from someone else is considered an imitation or partial usurpation of the mark.

(Cape Verde is not a member state of the Madrid Agreement or the Madrid Protocol; thus, the Article 246 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)**

(Cape Verde is not a member state of the European Community; thus, the Article 247 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 European Community law)**

(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.

Even if proof of use of the mark has not been presented, the renovation may be deferred, but the registration continues to be 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 reinvoked 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 nº 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^{to} 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.

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.

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

The following are considered awards:

- a) The decorations for merit conferred by the **Cape Verde government** or by foreign States;
- b) The medals, diplomas and pecuniary prizes or prizes of any other nature, obtained in official or officially recognized expositions, realized in or in foreign countries;
- c) The diplomas and certificates of analysis or commendation issued by laboratories and other State Services or by organizations qualified for such purposes;
- d) The titles of supplier to the Head of State, Government or other official entities or establishments, national or foreign;
- e) Any other prizes or demonstrations of preference of official character.

Article 272 Conditions of the mention of the awards

The awards may not be applied to products or services different from those to which they were conferred.

Article 273 Ownership

The awards, of any kind, conferred to industries, dealers, farmers and other entrepreneurs constitute their own property.

SECTION II REGISTRATION PROCESS

Article 274 Request

The request to register awards is filed in a writing, in the Portuguese language, indicating:

- a) The requestor's name, firm or commercial denomination, his nationality and domicile or place of establishment;
- b) The awards to be registered, the entities that confer them and the respective dates;
- c) The products or services, which deserved the award;
- d) The name of the establishment the award is connected with, in whole or in part, when such is the case.

Article 275 Instruction of the requestor

1. To the written request must be attached the originals or certified photocopies of the diplomas or other documents proving the granting of the award;
2. Proof that the award was granted may also be provided by attaching a duly legalized copy of the official publication in which the award was conferred or published, or only the part of said document necessary and sufficient to identify the same.
3. The National Institute of Industrial Property may require the Portuguese translations of the diplomas or other documents written in foreign languages.
4. The registration of the awards including references to names or emblems of establishment shall imply their prior registration.

Article 276 Grounds of Refusal

In addition to the provisions of article 24, the registration of awards is denied when:

- a) By their nature, the awards may not be included in any of the categories foreseen in this Code;
- 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

1. Whosoever has a legitimate interest and, specifically, farmers, breeders, industrialists, dealers and other entrepreneurs, residing or established in any part of the Portuguese territory, has the right to adopt a name or an insignia to designate their establishment or make it known, under the terms of the provisions that follow.

Article 283 Constitution of the name of establishment

The following may constitute name of establishment:

- a) The fantasy or specific denominations;
- b) Historical names, except if their use becomes an offense to the consideration that is generally attributed to such names;
- c) The name of the property or place of the establishment, when admissible or accompanied by a distinctive element;
- d) The name or distinctive elements of the firm or commercial denomination and the owner's pseudonym or nickname;
- e) The establishment's branch of activity when accompanied by distinctive elements.

Article 284 Constitution of the insignia of establishment

1. Any external sign composed of figures or drawings, simple or combined with the names or denominations referred to in the preceding article, or with other words or slogans, provided that the ensemble is adequate to make the establishment stand out, is considered an insignia of establishment
2. The ornamentation of the façades and of part of the shops, warehouses or factories exposed to the public, as well as colors of a flag, may constitute an emblem as long as they individualize perfectly the respective establishment.

Article 285 Grounds for refusal

1. The following cannot be part of the name or insignia of establishment:
 - a) The individual name that doesn't belong to the requestor, unless consent or the legitimacy of use are proven;
 - 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 n^o 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

1. The same establishment can have only one name and insignia registered.

2. If, with regard to the same establishment, more than one registration of name or insignia are requested, the requestor is notified to choose just one of them and desist from the others.

3. If, with regard to the same establishment, there is more than one registration of name or of insignia, the respective title-owner is notified to choose just one of them and renounce the others.

4. If the notifications referred to in sub-paragraphs 2 and 3 are not complied with, only the first registration request is processed. The remaining one are denied or declared expired, according to the case.

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, NULITY, 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 II REGISTRATION PROCESS

SUBSECTION I NATIONAL REGISTRATION

Article 307 Request

1) The requests to register the denominations of origin or the is filed on a written document, in the Portuguese language, which indicates:

a) The name of the public or private, singular or collective person qualified to acquire the registration;

b) The name of the product or products, including the denomination of origin or geographical indication;

c) The traditional or regulated conditions of use of the denomination of origin, or of the geographical indication, and the boundaries of the respective locality, region or territory.

2) The terms of the process to register the name of establishment, with the necessary adaptations are applicable to granting the registration.

Article 308 **Grounds for denial**

In addition to the dispositions of Article 24, the registration of the denominations of origin or the geographical indication are refused or may be invalidated if:

a) It was requested someone unqualified to acquire it;

b) It cannot be considered a denomination of origin or a geographical indication, under the provisions of article 305;

c) It constitutes a reproduction or imitation of a previously registered denomination of origin or geographical indication;

d) It is susceptible of inducing the public into error, namely regarding its nature, the quality and the geographical origin of the respective product;

e) It constitutes an infraction of industrial property rights or copyrights;

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

g) It favors acts of unfair competition.

h) It is a geographical indication recognized by another country with respect to products or services that is identical with the term customary in common language as the common name for such products or services in Cape Verde

(* Cape Verde is not a member state of the Lisbon Agreement; thus, the Article 309 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, NULITY, ANNULLMENT** **AND EXPIRATION THE REGISTRATION**

Article 310 **Duration**

The denominations of origin and the geographical indications shall be valid indefinitely and their ownership is protected by application of the rules in this Code, by special legislation, as well as by those clauses decreed against false indications of origin, independently of registration, and whether or not they are part of a registered mark.

Article 311 **Indication of the registration**

During the validity period of the registration, the products in which the respective uses are authorized, can display the following mentioned:

- a) "Registered denomination of Origin" or "DO";
- b) "Registered Geographical Indication" or "GI":

Article 312 **Rights conferred by the registration**

1. The registration of the denomination of origin or of the geographical indication shall confer the right to prevent:

- a) Use, by a third party, in the designation or presentation of a product, of any means that indicate or suggest that the product in question originates in a geographical area different from the true place of origin in a manner which misleads the public as to the geographical origin of the product;
- b) The utilization that constitutes an act of unfair competition, in the sense of article 10 bis of the Paris Convention, as it results from the Stockholm Revision of 14 July, 1967;
- 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, whenever the use of the same seeks, without a just motive, take undue advantage of the distinctive character or the prestige of the previously registered denomination of origin or the geographical indication or may cause them harm.

5. The provisions of the previous paragraphs does not prevent a seller in the course of trade from affixing its name, address or mark to products from a region, a country or territory different from that in which the same products are sold except where such name is used in such a manner as to mislead the public. In this case, the mark of the producer or the maker cannot be suppressed.

Article 313

Nullity

In addition to the provisions of Article 33, the registration of a denominations of origin or of a geographical indications may be refused or declared null when it infringes the provisions of paragraphs 1, 2 and 3 of Article 312.

Article 314

Annulment

1. In addition to the provisions of Article 34 the registrations of a designation of origin or of a geographical indication may be annulled when, in granting them, there was infringement of subparagraphs a) c) e) and g) of Article 308
2. Annulment actions must be proposed within 10 years, counting from the date of the dispatch that granted the registration, without prejudice to the provisions of the number that follows.
3. The right for request annulment of registrations made in bad faith does not expire.

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 origin or a geographical indication transforms itself into a simple generic designation of a fabrication process or a specific type of product.
2. Wine products, mineral-medicinal waters and other products whose geographical denomination of origin is object of special protection and oversight in the respective country, constitute exceptions to the provisions of the preceding number.

TITLE III

INFRACTIONS

CHAPTER I

GENERAL PROVISIONS

Article 316

Industrial property guarantees

The industrial property has the guarantees established in the law for property in general and is especially protected under the provisions of this Code and other legislations and conventions in effect.

Article 317

Unfair Competition

Unfair competition consists in any act contrary to the honest norms and uses in any branch of economic activity, namely:

- a) Acts susceptible of causing confusion with the enterprise, an establishment, the products, services or competitors, no matter the means employed;

- b) False statements made in the course of an economic activity, for the purpose of discrediting the competitors;
- c) The unauthorized invocations or references made for the purpose of benefiting from the credit or the reputation of a name, establishment or mark belonging to another;
- d) False indications of the credit or reputation pertaining to the enterprise or establishment's own capital or financial situation, the nature or ambit of its activities and business and the quality or quantity of its clientele;
- e) False declarations about the nature, quality or utility of the products or services, as well as the false indications of origin, of locality, of region or of territory, factory, shop, property or establishment, no matter the means adopted;
- f) Suppression, hiding or alteration, by the vendor or any other intermediary, of the denomination of origin or geographical indication of the products or the registered mark or the product or the producer, in products destined to be sold and were not modified while being conditioned.

Article 318
Protection of undisclosed information

Under the provisions of the preceding article, the disclosure, acquisition or utilization of a competitor's business secrets, without consent, constitute an illicit act as long as the information:

- a) Is secret, in the sense that it is not generally known or easily accessible, in whole or in its exact configuration and connection of its constitutive elements, to persons of the circles that normally deal with the type of information in question;
- b) Has commercial value for the fact that it is secret;
- c) Has been the object of considerable diligences, attending to the circumstances, on the part of those who legally maintain the control of the information, in order to keep them secret.

Article 319
Apprehensions by Customs

- 1) All products or merchandise that bring by any direct or indirect form, false indication or denomination of origin, marks or names that are illegally used or applied or display indication of an offense established in this Code, are apprehended by the Customs in the act of importation or exportation
- 2) When the violation is obvious, the apprehension is carried out by initiative of the customs officials, themselves, who will immediately notify the interested party, allowing him the opportunity to normalize the object of the apprehension carried out preventively, without prejudice, however, to the responsibilities already incurred.
- 3) The apprehension may, likewise, be carried out at the request of anyone interested in doing so.

4) The apprehension expires if, within 10 work days, counting from the date of the respective notification to the right-owner, validation is not requested, in court, by the Public Ministry or the harmed parties.

5) The deadline foreseen in the preceding number may be prorogated by a like period, in duly justified cases.

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

The procedure for crimes foreseen in this Code depends on the complaint.

Article 330
Destination of the apprehended objects

1. The objects apprehended as the result of a crime foreseen in this Code, as well as the materials or instruments that may have been predominantly utilized to commit these crimes, are declared lost to the State, unless the offended right-owner gives express consent that such objects be introduced in the commercial circuits or that they be disposed of in some other manner.

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 singular person.

Article 333
Violation of name and Insignia rights

Whosoever, without consent of the right-owner, uses in his establishment, in announcements, correspondence, products or services, or by any other form, name or insignias that constitutes reproduction, or that is imitation of name or insignias already registered by someone else is punished with a fine of 3,000 to 30,000 euros if a collective person, and to 7,500 euros is a singular person.

Article 334
Violation of an exclusive logotype

Whosoever, without consent of the right-owner:

- a) Alleges, falsely, the existence of an entity under article 302 to obtain the registration of a logotype or for merely speculative or for unfair competition;
- 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 registered by someone else;
- c) Uses as logotype any of the signs indicated in subparagraphs a), f) and g) of No. 1 article 285,

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

Article 335
Preparatory acts

Whosoever, without the right-owner's consent, and with the intention of preparing the execution of acts referred to in articles 321 and 327 of this Code, produces, imports, acquires or keeps for self use, or for someone else's use, constitutive of registered signs of marks, names, insignias, logotypes, denomination of origin or geographical indications, is punished with a fine accumulating for up to 120 days, and a fine between 3,000 and 30,000 euros for a collective person, and between 750 and 7,500 for a singular person.

Article 336
Use of illicit marks

1. Whosoever, uses as distinctive unregistered signs, any of the signs indicated in subparagraphs a) to e), g) and l) of article 239, 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.

2. The products or articles with the marks prohibited under the terms of the preceding number may be apprehended and declared lost to the State, by request of the Public Ministry.

Article 337
Untoward use of name, insignia or logo

Whosoever, illegitimately uses in the name or insignia of his establishment, or in the logotype, whether registered or not, the expressions, names or figures referred to in subparagraphs b) to e) of No.1 article 285, 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.

Article 338
Untoward invocation or use of private rights

Whosoever,

- a) Presents himself as the owner of an industrial property right foreseen in this diploma that does not rightly belong to him or that has been declared null or expired;
- 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 I CAUTIONARY PROCEDURES MEASURES

Article 339 Unspecified Precautionary Measures

In the cases in which any of the illicit acts foreseen in this Code are verified and whenever the objective is not, exclusively, the apprehension foreseen in the article that follows, cautionary measures may be decreed, under the terms in which the Civil Process Code so establishes for the common cautionary procedure.

Article 340 Confiscation

1. The confiscation consists in the judicial apprehension of the goods, or of any other objects, in which the violation of a civil right of a design or a model or a mark is manifest, under the terms of subparagraph f) of article 239, of names, or insignias of establishment or logotypes, or in the apprehension of the instruments that are to be used only for the practice of these illicit acts.

2. The requestor of the confiscation presents proof of his industrial property right and of the harmful fact to this right.

1. Subsidiarily, the provisions of the Civil Process Code pertaining to confiscations are applicable.

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.
2. The objects in which a crime foreseen in this Code are manifest, as well as the materials and instruments that may have been predominantly utilized to commit that crime are always apprehended.
3. Independently of the complaint, presented by the offended party, the judiciary authority order an expert exam of the apprehended objects, referred to in the preceding number, whenever it is deemed necessary if they are or not produced or commercialized by the legal owner or by someone else with the owner's consent.

Article 343
Documenting the contra-ordination processes

Documenting the contra-ordination processes, foreseen in this Code, is within the competences of the General Inspector of the Economic Activities

Article 344
Trial and application of sanctions

It behooves the Board of Directors of the National Institute of Industrial Property, to decide on and apply the accessory sanctions foreseen in this Code.

Article 345
Destination of the proceeds from the fines

The proceeds from the fines applied are distributed as follows:

- a) 60 % for the State;
- b) 20 % for the General Inspection of Economic Activities;
- c) 20% for the National Institute of Industrial Property.

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.

5. Fees pertaining to registrations are paid jointly with the respective titles, after the date in which they are granted and up to a maximum period of six months counting from the respective date of publication in the Industrial Property Bulletin.

6. Subsequent payment of periodic fees, pertaining to all other registrations, are paid in the last six months of the validity period of the respective right.

7. The fees referred to in the preceding number may, still, be paid with surcharge, within six months counting from the right's expiration date.

Article 350 **Revalidation**

1. The revalidation may be requested for any patent, utility model or registration title that has expired for non-payment of the fees, within one year counting from the date of publication of the expiration date in the Industrial Property Bulletin.

3. The revalidation referred to in the preceding number can be authorized only upon payment of three times the fees past due and without prejudice the third party rights.

Article 351 **Reduction**

1. The requests for patents, utility models and registration of semiconductor products schematics that can provide proof that income they generate does not permit them to pay the expenses to maintain their respective rights are exempt from payment of 80% of the fees, up to the 7th annuity, if they so solicit before the respective request is filed.

2. It behooves the Executive Board of the National Institute of Industrial Property to examine the proof mentioned in the preceding number and to decide upon the request, by dispatch.

Article 352 **Restitution**

1. At the request of the interested party and by deliberation of the Executive Board of the National Institute of Industrial Property, or decision of the competent member of the Executive Board upon which such competence is delegated, the fees are restituted to the interested parties whenever it is recognized that they were paid unduly, according to the criteria established by that body.

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 the notice referred to in the preceding number is published in the Industrial Property Bulletin.
4. Having elapsed the deadline foreseen in the preceding number without the past due fees being paid, the respective industrial property right is declared expired.
5. The interested party must request in court that the official notification be made to the National Institute of Industrial Property.
6. At the end of action, or if the confiscation or seizure is lifted, the judge must inform of it to the National Institute of Industrial Property, ex-officio or at the request of the interested party.

Article 354
Rights belonging to the State

The industrial property rights belonging to the State are subject to the formalities and charges pertaining to the request for them, to granting them and to their renovations and revalidations, when explored or used by any kind of enterprise.

TITLE V
THE BULLETIN OF INDUSTRIAL PROPERTY

Article 355
The Industrial property bulletin

The National Institute of Industrial Property publishes the Industrial Property Bulletin monthly.

Article 356
Contents

- 1) The following is published in the Industrial Property Bulletin:
 - 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;

j) Other acts and issues that must be brought to the public's attention.

2. The Industrial Property Bulletin must include, aside from announcements related to the matter they deal with, the addresses of official agents in exercise of their functions.

Article 357 Index

It is the responsibility of the services at the beginning of each civil year, to elaborate the index of all the issues inserted in the numbers of the Industrial Property Bulletin pertaining to the previous year.

Article 358 Distribution

1- The Industrial Property Bulletin may be distributed to learning establishments and to national services of interest, to the World Intellectual Property Organization, to foreign industrial property services and to other national and foreign entities on an exchange basis.

2. The Industrial Property Bulletin may also be acquired by those interested in it, by paying the respective subscription or the single unit price shown on it.