

## **COUNCIL OF MINISTERS**

### **Legislative Decree No. 4/2007 Of 20 August 2007**

1. In Cape Verde, matters pertaining to industrial property are regulated, essentially, by the Industrial Property Code, approved by the Decree No. Decree No. 30.679, of 24 August 1940, made extensive to Cape Verde, with the necessary adaptations, by Ordinance No. 17.043, of the Colonies Ministry of 20 February 1959, published in the Official Bulletin of Cape Verde of 14 May of the same year.
2. Subsequently, and already in this century, that is in the Official Bulletin No. 14, I Series, of 5 May 2003, the Decree-Law 7/2003, of 7 April 2007 was published with the sole intent to update the fees contained in the table annexed to that Code.
3. The passage of time, together with the ever growing internationalization of the economy and the consequent integration in it on a global scale, as well as the inception of new technologies and the onset of new concepts and instruments in the domain of activities connected with trade, industry and services, led to and determine the adaptation of the basic legislation regarding industrial property, specifically the Industrial Property Code, to the demands of modern life.
4. More and more, economic development is based on and sustained by the technologic and scientific development.
5. The inventive and creative activities constitute one of the fundamental vectors of the scientific and technological development, which, in turn, constitute one of the safest pillars for economic growth to the extent that they open new ways and point to new solutions that lead to more and better results in less time and at lower costs, guaranteeing, therefore, the efficacy of means and instruments in the production of goods and in providing services.
6. On the other hand, in a global economy that becomes more and more open, globalized and integrated, competition gains a dimension never seen before, even in a small space such as Cape Verde's with the industrial property function gaining particular relevance as a regulator of disputes, assuring the necessary fairness among competitors, promoting the necessary protection of the diverse technical processes of production and development of wealth.
7. Besides, the nearing and inevitable accession of Cape Verde to the WTO – World Trade Organization, demands the elimination of some incompatibilities and omissions established by the current legislation (or resulting from the absence of legislation), consequently making possible the free circulation of new technologies, knowledge, goods and services, and that the existing legislation regulating industrial property be adapted to this new reality, adopting principles, concepts and institutes, currently consacrated world-

wide and, in particular, adopting some rules ensuing from existing agreements of that World Organization.

8. On the other hand, it was sought to harmonize the present legislation with the international rules in the matter of industrial property, namely the commercial issues related to industrial property, commonly known as the TRIPS Agreement, as well as the provisions of the International Conventions that regulate the matter, adapting it explicitly and directly to the most relevant principles so as to equip the country with a modern legal instrument that is up to date, effective and adapted to international rules.

9. The new international scenario turned competitiveness into an unquestionable element of survival for companies. The change in behavior worldwide has been demanding the adoption of actions that assist in following up the accelerated evolution countries, among them, Cape Verde, have been going through. In this context, the Industrial Property represents a strategic competitive instrument, with decisive impact before the industrial and scientific community.

10 Thus, the Industrial Property (IP) may become one of the basic mechanisms to drive the growth and development of the micro and small enterprises.

11. In as much as few entrepreneurs, and particularly the Cape Verdean ones, have knowledge of the Industrial Property regime, numerous business opportunities are lost that could have been taken advantage of with the correct utilization of a good internal and external industrial property policy. The entrepreneur who knows Industrial Property is more attentive to what happens in the market and observes, in particular, the innovative products that can improve his/her competitiveness.

12. The Industrial Property is the means capable of attributing property titles to marks and patents, preventing other competitors from utilizing such property unduly. If these processes are planned and administered well, they generate value and additional businesses for the micro and small entrepreneur.

13. The “Industrial Property” designates a set of rights among which figure the invention patents, the utility models, the factory, commerce or trade marks, names and insignias of establishment, logotypes, denomination of origin and geographic indication, awards, etc.

14. The world economy is going through a moment of profound crisis and of great challenges. An economy that is supposedly modern, competitive and that is guided by the market laws has to be endowed with juridical mechanisms that protect and guarantee to its citizens the private rights on the so-called creation of the spirit (intellectual property), that constitute – without a doubt, the cultural and scientific patrimony that supports the entire economic, social, cultural and technological development of a country.

15. The recognition of the intellectual and financial efforts by others and the protection of their creation is, therefore, an obligation of any State, if for no other reason, to incentivate

the creative activity, and more over, to guarantee, to guarantee its permanence and sustainability.

16. However, recognition alone is not enough. It is also necessary to guarantee material stimuli, which is to say the right of perception of a pecuniary compensation for the utilization by third parties, of the object of his/her creation, be it a literary work, a musical composition, or yet the invention of a mark, in short, all the object of the intellectual property. Therefore, it is the intention of the Government to proceed to modernize and adapt the base law that regulates the aspects of the industrial property to new demands of development.

17. In spite of the existing constraints, we believe that the spirit creators, whether owners of intellectual property objects, for reasons already cited are not totally unprotected because the Civil Code grants them some protection in the defense of their rights. Besides, the fundamental law – the Constitution of the Republic of Cape Verde - establishes peremptorily in its Article 68 that “all the rights to private property, its transmission in life or upon death, are guaranteed in accordance with the Constitution and the law”

18. However, it is our understanding that that the creators themselves, through corporations created to the effect, must promote the “fight” to recognize the private rights of intellectual property. Because no one better than they can make their rights prevail.

19. If we pay attention to the news that have appeared lately in our media, The recourses interposed in the courts for alleged violation of intellectual property rights, we can say that the fight has begun. And in it, the support of the Government can be counted on , above all with regard to fair competition.

20. Today it is universally recognized that IP plays a decisive role in the development of the national and regional economies. Countries, especially those with a developed economy, recognize in depth the competitive advantages resulting from the utilization of the patents system to protect the new technological processes and the new products against their abusive use by competitors, and for that reason, one of the highest priorities is attributed to technical information.

21. For the DCs – Developing Countries, the industrial property may play a very important role in facilitating the transfer of technologies, if the owners of the technologies come to the conclusion that the DCs have an IP protection system that protects them from abusive use of their technology, but the technical and scientific information contained in the patents can play an important role as a source of research that cannot be ignored in the ambit of any research and development program.

22. Besides, the industrial property plays a role in disciplining trade. The products are commercialized in the national or external markets, not by their technical or scientific name but principally by their trademark, through which the consumer relates with specific qualities and characteristics of the products.

23. On the other hand, the trademark is a strategic factor of companies, reason why the choice of country where the requests for registration correspond to the election of the market where the respective products are to be launched. Hence, the registered trademark is not a mere decorative element of the products, it plays an economic role of the utmost importance.

24. Beyond this, Cape Verde's adhesion to the principal International Conventions, in matters related to IP, Para além disso, a adesão às principais Convenções Internacionais em matéria de P.I., constitutes a valuable contribution to the international integration of States, in addition to guaranteeing a privileged relationship between member States, permits that, by right there be benefits from the respective international cooperation programs.

25. It is important to state that the intellectual property problem and its protection is in today's world, a matter that pertains to all of us. We deal with it each passing moment and for that reason, we hope that this legislative initiative will serve as catalyst to truly valorize, defend and utilize the intellectual property in our country.

26. It is, therefore, in this context that the new Industrial Property Code is approved. The Code now approved, composed of 284 Articles, incorporated in several titles and chapters, inspired in the principles of comparative law and particularly in the orientations ensuing from the conventions inherent in the accession to the WTO, seeks to amply develop all matters related to industrial property, compiling and including in its midst some topics of typically regulatory nature, in a simple language, oftentimes descriptive, solely with the objective of facilitating its handling and its consultation by all those who need to utilize it in the exercise of their scientific, creative and economic activities.

Thus, in conformity with the legislative authorization granted by Law No. 8/VII/2007, of 6 March 2007; and in the use of the faculty conferred by subparagraph b) of No.2 of Article 203 of the Constitution, the Government decrees the following:

## **Article 1**

### **Approval**

The Industrial Property Code, annexed to this legislation of which it is an integral part, is hereby approved.

## **Article 2**

### **Remissions**

References to the previous Code are considered made to the Industrial Property Code approved by this legislation.

**Article 3**  
**Transitory disposition**

1. Until the Industrial Property Bulletin is created by Ordinance of the member of Government responsible for industrial property, the publications referred to by the Code approved by this legislation are made in the Series III of the *Official Bulletin*.
2. Until the specific agency responsible for the management of the matters pertaining to Industrial Property, all the acts inherent in this matter shall be the competence of the General Directorate of Industry and Energy.
3. All the requests presented before this legislation goes into effect should follow normal procedures in accordance with the norms contained in the legislation that authorized filing them.

**Article 4**  
**Revocation**

1. The Industrial Property Code approved by Decree No. 30.679 of 24 August 1940, and made extensive to Cape Verde by Ordinance No. 14.043, of 20 February 1959 is hereby revoked.
2. Decree Law No. 7/2003, of 7 April 2007 is hereby revoked from the date the new legislation that approves the fees for the acts foreseen in the Industrial Property Code now approved goes into effect.

**Article 5**  
**Effective date**

This legislation and the Industrial Property Code approved by it go into effect on the day following that of its publication.

Reviewed and approved in Council of Ministers.

*José Maria Pereira Neves - José Brito - Cristina Duarte*  
*- José Manuel Andrade*

Promulgated on 20 August 2007.

Publish it.

The President of the Republic, PEDRO VERONA RODRIGUES PIRES.

Referended on 20 August 2007.

The Prime Minister, *José Maria Pereira Neves*.

# **INDUSTRIAL PROPERTY CODE**

## **TITLE I GENERAL PROVISIONS**

### **Article 1 Objective of the legislation**

This Code establishes the Industrial Property regime and the principles to which the same is subject to.

### **Article 3 Âmbit 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 the international Industrial Property organizations of which Cape Verde is a part, independently of the condition of domicile or establishment, except for special provisions on competence and procedure.
2. For the purpose of this legislation, the nationals from any other States that have real and effective domicile in the territory of one of the member countries of the International Organizations of which Cape Verde is a part shall be treated in the same manner as the nationals of the country members of those International Organizations.
3. The regime of reciprocity shall be applied in the cases not covered by the preceding numbers.

### **Article 4 Function of 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 5 Garanty of industrial property**

1. The industrial property is entitled to the same guarantees established in the law for property in general, and of those foreseen in the International Conventions to which Cape Verde is a part, in this Code and especially in other legislation.
2. 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 6**

### **Applicability**

1. The industrial property rights are applicable 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 marks, names and insignias of establishment, logotypes, and denomination of origin and of geographic indications constitutes a right of exclusive use of the same by the respective owners. When their registration is precedent, it constitutes grounds for the refusal by the competent services to register others that may be confused with them.
5. The precedent registration constitutes grounds for refusal by the competent services to register others that can be confused with them.
6. The right to request the annulment referred to in the preceding number are permissible only within 10 years counting from the date of the annulable practice or from the date of publication in the *Official Bulletin*, of the constitution or the alteration of the commercial denomination or collective person's firm.

## **Article 7**

### **Unfair competition**

1. Persons who are nationals of Cape Verde or of the member states of the international Industrial Property organizations of which Cape Verde is a part, are guaranteed the right to oppose unfair competition.
2. Any dishonest commercial or industrial property related competition constitutes unfair competition. Specifically:
  - a) All acts susceptible of being confused in any way with a competitor's establishment, products or the industrial or commercial activities;
  - b) False commercial claims susceptible of discrediting a competitor's establishment, products or the industrial and commercial activities; and
  - c) The commercial indications or claims whose use are susceptible of inducing the public in error regarding the nature of a competitor's method of fabrication, characteristics, possible uses or the quantity of goods.

## **Article 8**

### **Provisional protection**

1. The request for a patent, utility model or registration 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.
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 9**

### **Proof of the rights**

1. The proof of industrial property rights referred to in this Code is assured by means of titles.
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 industrial property 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 10**

### **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 231 and 235 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.

## **TITLE II**

### **JURIDICAL REGIME OF INDUSTRIAL PROPERTY**

#### **CHAPTER I**

##### **Inventions**

##### **Section I**

##### **Patents**

##### **Sub-Section I**

##### **General Provisions**

##### **Article 11**

##### **Object**

1. New inventions, implying inventive activity, if susceptible of industrial application can be the object of a patent, independently of the product or processes utilized or the technology they pertain to.

2. New inventions, 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 process that permits to produce, treat or utilize biologic material.

## **Article 12**

### **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 13**

### **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
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 14**

### **Unopposed 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 member country of international Industrial Property organizations of which Cape Verde is a part, 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 successors under any title, or of publications unduly made by the Organ responsible for Industrial Property.
2. The disclosures referred to in 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 15**

### **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 16, 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 16**

### **Limitations regarding the patent**

1. The following cannot be patented:

*a)* Scientific theories and mathematical methods;

*b)* Materials and substances already existing in nature and the nuclear materials;

*c)* Aesthetic creations;

*d)* The projects, the principles and the methods of the exercise of intellectual activity in matters of gambling or in the domain of economic activities;

*e)* The presentations of information.

2. The methods of surgical or therapeutic treatment of the human body or animals or the diagnostic methods applied to the human body or animals may not be patented. However, the products, substances or compositions used in any of these methods may be patented.
3. The dispositions of No. 1 excludes patentability only when the object for which a patent is solicited is limited to the elements in the request.

### **Article 17**

#### **Exclusion from patentability**

1. Inventions whose commercial exploration is contrary to the law, the public order, the national security, the public health and the good costumes are excluded from patentability, 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.

2. 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, without prejudice to the provisions of the International Agreements Cape Verde may have adhered to. sem prejuízo do previsto nos Acordos Internacionais a que Cabo Verde haja aderido.

### **Article 18**

#### **Protection of the patent**

1. The protection of an invention that abides by the conditions established in Article 12 may be made as a patent or as a utility model, at the option of the requestor.
2. The same invention may be simultaneously and successively, the object of a request for a patent and for a utility model.

**Article 19**  
**General rule of patent ownership**

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 20**  
**Special rules of 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 Organ responsible for 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, under general terms;
  - 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.

**Article 21**  
**Requesting or providing service**

1. Save for convention to the contrary, the provisions of the preceding Article, with the necessary adaptations, are applicable to inventions made by request or as services rendered.

8. Save for provisions to the contrary, the dispositions of the preceding Article are applicable to the State and to other collective public entities.

**Article 22**  
**Prohibition of prior renunciation**

The recognized inventor's rights cannot be the objects of prior renunciation

**Article 23**  
**Availability of the patent**

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

**Article 24**  
**Mandatory mention**

1. If the patent is not requested by the inventor or in the inventor's name, the inventor 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.

**Article 25**  
**Remission**

In all that is not expressly foreseen for the other private industrial property rights and is not contrary to the nature of each right, the provisions of this Code with regard to patents are applicable, with the necessary adaptations.

**Sub-Section II**  
**Patent Process**

**Article 26**  
**Form of the request**

Patents shall be requested in writing, and the request should 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;

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. The requests may be filed electronically under the terms to be regulated by the member of the Government responsible for Industrial Property.

### **Article 27**

#### **Documents to be filed**

The following elements must be added to the patent request, in duplicate:

a) Description of the object of the invention;

b) Reivindication of what is considered new and that characterizes the invention;

c) Drawings necessary to the perfect understanding of the description;

d) Summary of the invention.

### **Article 28**

#### **Content**

1. The reivindications define the object of the protection requested and must be clear, concise, correctly written, based on the description of the object of the invention.

2. The description should indicate, 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.

3. Drawings must be sufficiently illustrated only to the extent necessary to comprehend the invention.
4. The summary on the invention consists in a brief “exposé” of what is referred to in the description, claims and drawings, and serves exclusively to provide technical information

### **Article 29** **Bio-technological inventions**

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 and duly recognized international deposit institution;
- 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

### **Article 30** **Deadline for delivery of descriptions and drawings**

The description of the models of invention and the drawings may be delivered to the Organ responsible for industrial property within one month counting from the date of the request filed in Cape Verde .

### **Article 31** **Review as to form**

1. Once the request has been filed, an examination as to form is made, within one month, to verify if it fulfills the requisites established.
2. Should formal irregularities be verified in the request, the requestor is notified to correct them within one month. Caso se verifi que que existem no pedido irregularidades de carácter formal, o requerente é notifi cado para corrigi-las, no prazo de um mês.
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. .



## **Article 32**

### **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 classification of the international Industrial Property Agreements of which Cape Verde is a part.
- 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 reivindicated 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 26 are suppressed, ex-offício, both the title of the patent and in the publications resulting from the request.

## **Article 33**

### **Opposition**

The publication of the request starts the deadline referred to in Article 235 for filing complaints by whoever feels harmed by granting the patent.

## **Article 34**

### **Review of the invention**

1. The Organ responsible for 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.
3. If there is opposition, the report is elaborated within three months counting from the date the last processual piece referred to in the Article.
4. If it concluded from the review that the patent could be granted, the respective notice is published.
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.

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 requestor does not reply to the notification, the grant of the patent shall be refused, and a notice will be published.

### **Article 35**

#### **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 Organ responsible for Industrial Property can do them and publish, thus, the notice of partially granting the respective patent.

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 36**

#### **Alterations to the request**

1. If the request is altered during the review phase, the notice to grant the patent published 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 37**

#### **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 38**

#### **Divisible applications**

When the deadlines foreseen in No. 1 of Article 245, the patent pamphlet can be published.

### **Article 39**

#### **Grounds for denial**

1. In addition to the provisions of Article 242, 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 16 and 17.

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 Articles 236 and 237.

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 40**

#### **Notification of definitive dispatch**

A notification is made of the definitive dispatch, under the terms of No.1 of Article 234, with indication of the Industrial Property Bulletin in which it was published.

### **Sub-Section III**

#### **Effects of the Patent**

### **Article 41**

#### **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 16, any material in which the product is incorporated, in which it is contained and exercises its function.

#### **Article 42** **Permission to third parties**

1. 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.
2. 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.
3. The permission referred to in No. 2 above does not include any sale, with a view to a reproduction activity for commercial purposes or in the ambit of commercial purposes.

#### **Article 43** **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 be considered as having been fabricated by a patented process, unless there is proof to the contrary.

#### **Article 44**

##### **Validity period**

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

#### **Article 45**

##### **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 46**

##### **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.
3. 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.
4. 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 .
5. The rights conferred by the patent cannot exceed the ambit defined by the reivindications.
6. By paying a fee, the owner of a patent title may solicit the Organ responsible for Industrial Property to limit the ambit of protection of the invention through the modification of the reivindications.
7. If from the review, it is concluded that a limitation request can be approved, the Organ responsible for 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 47**

##### **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 organizations of which Cape Verde is a part 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 organizations of which Cape Verde is a part, 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.

#### **Article 48** **Non-hinderance**

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 14, 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.

#### **Sub-Section IV Conditions of Use**

##### **Article 49 Loss of the patent**

Anyone who has to answer for obligations contracted with another can be deprived of a patent, under the terms of the law.

##### **Article 50 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.

##### **Article 51 Non discrimination**

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 international organizations of which Cape Verde is a part, or produced locally.

##### **Article 52 Expropriation for public utility**

Any patent can be expropriated for public utility, under the terms of the law, by payment of just indemnization, if the need to disseminate the invention, or of its utilization by public entities, so requires.

##### **Article 53 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. 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. Mandatory licenses shall be non-exclusive and can be transmitted only with the part of the enterprise or the establishment that utilizes them.
  4. 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.
  5. 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.
  6. When a patent has semi-conductor technology as object, only mandatory licenses can be granted, for public and not commercial purposes.
  7. The patent-owner shall receive a just and adequate remuneration for each concrete case, taking into account the economic value of the license. The decision that grants or denies the remuneration is susceptible of judicial recourse.

#### **Article 54**

##### **License for lack of exploration of the invention**

1. Upon expiration of the deadlines referred to in No. 2 of Article 50, 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.



**Article 55**  
**Non mandatory issuance of the license**

As long as a mandatory license remains in effect, the patent-owner cannot be obligated to grant another license .

**Article 56**  
**Cancellation of the license**

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

**Article 57**  
**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 both inventions serve distinct 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.
2. When inventions are protected by dependent patents serve the same industrial purposes and a mandatory license is granted, the owner of the prior patent can also demand the granting of a mandatory license on 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 number 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 58**

#### **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 59**

#### **Mandatory license requests**

1. Mandatory licenses may be requested at the Organ responsible for 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 Organ responsible for Industrial Property.

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

4. The Organ responsible for 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 Organ responsible for Industrial Property, agrees, within two months, to the conditions of the mandatory license and the indemnization to be paid to the patent-owner.

#### **Article 60**

##### **Notificação e recurso da concessão ou recusa da licença**

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

2. The decision of the Organ responsible for Industrial Property that granted or denied a license, may be appealed to the competent Court.

3. The favorable decision to grant the license must be annotated by Organ responsible for Industrial Property.

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

#### **Sub-Secção V**

##### **Invalidity of the Patente**

#### **Article 61**

##### **Nullity or partial annulment**

Aside from the provisions of Article 255, 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 12, 16, and 17;

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.

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

**Sub-Secção VI**  
**Complementary Certificate for the Protection**  
**of Drugs and Phytopharmaceutical Products**

**Article 62**  
**Pedido de certificado**

1. The request for a complementary certificate of protection for drugs and for phytopharmaceutical products must include a written request that indicates:
  - a)* The name, the firm or commercial denomination of the requestor, his nationality and the 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 Cape, the number and the date of that authorization.
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 medicament of pharmaceutical product.

**Article 63**  
**Review and publication of the request**

1. If the certificate request and the product that is its object satisfy the conditions foreseen in this Code, the Organ responsible for Industrial Property grants the certificate and publishes the request and the notice of having granted it.
2. If the request of certificate does not fulfill the conditions referred to in the preceding number, the Organ responsible for Industrial Property notifies the requestor to proceed, within two months, to correct the irregularities verified.

3. When, from the requestor's answer, the Organ responsible for Industrial Property verifies that the request of certificate fulfills the conditions required, it publishes the request of certificate and the notice that grants it.
4. The request is denied if the requestor does not correct the irregularities and a denial notice is published.
5. Without prejudice to the provisions of No. 2, 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.
6. 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 Cape Verde, 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;

## **Section II**

### **Utility Models**

#### **Sub-Section I**

#### **General Provisions**

#### **Article 64**

#### **Nature**

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

#### **Article 65**

#### **Objective**

Utility models aim to protect the inventions through a simpler and speedier administrative procedure than that used for the patents.

## **Article 66**

### **Option**

1. The protection of an invention under the conditions established in Article 64 can be done, at the requestor's option, as a utility model or as a patent.
2. The utility model ceases to produce effect after a patent is granted for the same invention.

## **Article 67**

### **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 customs;
- b) Inventions pertaining to biological material;
- c) Inventions pertaining to chemical and pharmaceutical substances and processes.

## **Sub-Section II**

### **Utility Model Process**

## **Article 68**

### **Form of request**

1. The request for a utility model is filed in writing, 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 reinvigorate 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 20;
  - f) Signature of the requestor or representative thereof.

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

3. For the purpose of the provisions of No. 2 of Article 226, 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 reivindicated, the indication of the number and date of the prior request and of the agency where the request was filed.

4. The requests may be filed electronically under the terms to be regulated by the member of the Government responsible for Industrial Property.

### **Article 69** **Review as to form**

1. Once the utility model request has been filed it is reviewed as to form, within one month, to verify if it fulfills the requisites established.

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.

### **Article 70** **Publicação do pedido**

1. Having been requested normally or been normalized under the terms of No. 2 of the preceding Article, the utility model request is published, with a transcript of the summary and of the International Classification for Industrial Property of which Cape Verde is a part.

2. The publication referred to in the preceding number is done within up to six months counting from the date of the utility model request. 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 reivindicated 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.

## **Article 71**

### **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 72**

### **Requesting the review**

1. The review can be solicited in the request phase or during the validity period of the provisional utility model.
2. 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 Organ responsible for Industrial Property.

## **Article 73**

### **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 three months, counting from the filing of the last procedural piece referred to in Article 235.
4. If it is concluded from the review that the utility model can be granted, a notice of the granting is published.
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, another 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.
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.

#### **Article 74** **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 subject or title given the invention encompasses a different object or if the description and drawings diverge from respective duplicates;
  - c) The object is not described in a manner that permits the execution of the invention by any person competent on the matter;
  - d) It is considered a model or design, by its description or reivindication;
  - e) The object is included in the provisions of this Code;
  - f) If the request, as formulated, infringes any of the rules of this Code.
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.

#### **Sub-Section III** **Effects of the Utility Model**

#### **Article 75** **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 76**

##### **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 new request to prorogue for a new period of two years.

4. The duration of the utility model cannot, under any circumstance, exceed 10 years, counting from the date the respective request is filed.

#### **Article 77**

##### **Indication of utility model**

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

#### **Article 78**

##### **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 79**  
**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.

**Article 80**  
**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,

**Sub-Section IV**  
**Invalidity of the Unitility Model**

**Article 81**  
**Nullity**

1. Aside from the provisions of Article 255, 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;
  - 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.

## **CHAPTER II**

### **Schematics of Semiconductor products**

#### **Section I**

#### **General Provisions**

##### **Article 82**

##### **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 semiconductor material, laid-out in accordance with a predetermined three-dimensional model;
- c) Is designed to carry out an electronic function, whether exclusively or in conjunction with other functions.

##### **Article 83**

##### **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 84**

##### **Objecto de protecção legal**

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.
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.

**Article 85**  
**Exclusive legal protection**

1. 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.
2. 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.
3. 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.

**Section II**  
**Registration Process**

**Article 86**  
**Grounds for denial**

1. Apart from the dispositions of Article 242, 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 82 and 83;
  - b)* The schematic of a semiconductor product does not abide by the requisites established in Article 84;
  - 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 19 and 20.
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 87**

##### **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 88**

##### **Indicação do registo**

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 89**

##### **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 90**

##### **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.

2. In the cases referred to in subparagraph e) of the preceding number, the person in question 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 91**

#### **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 Cape Verde.

### **Section IV**

#### **Invalidity of the Registration**

### **Article 92**

#### **Nullity**

In addition to the provisions of Article 255, 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 82, 83 and 84;
- 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 93**

#### **Expiration**

Aside from the provisions of Article 259, 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 94**

#### **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 95**

#### **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 96**

#### **Limitations regarding the registration**

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



## **Article 97**

### **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 97 and 98, 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.º 1 of Article 115, or declared null or annulled under the terms of subparagraph b) of N.º 1 of Article 126 and of Articles 127 and 128, 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 98**

#### **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 99**

#### **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 100**

#### **Disclosure**

1. For the purposes of the two preceding Articles, 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 reinvindicated priority.

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 101**

#### **Unopposable disclosures**

1. For the purposes of Articles 98 and 99, 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;

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

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

3. The requestor of a registration of a drawing or model that has exposed products that incorporate the drawing or model may, if solicited within six months from the date of the first exposition of those products, reinvindicates a right of priority.

4. The provisions of the preceding number are applicable to 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 of which CCape Verde is a part.

5. The requestor who intends to benefit from the provisions of numbers 1 and 2, or to reinvindicate 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.

### **Section II**

#### **Registration Procedure**

### **Article 102**

#### **Forma do pedido**

1. The request to register a drawing or model is done in writing in an application 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 reivindicate the right of priority;

e) Signature of the requestor or his agent.

2. For the purposes of the provisions of No. 1 of Article 226, 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 reivindicated, the number and date of the prior application and the agency where the application was filed.

3. The requests may be filed electronically under the terms to be regulated by the member of the government responsible for Industrial Propeerty.

### **Article 103**

#### **Documents to be filed**

1. The following elements should be added to the application:

a) Succinct description, in duplicate, of the elements contained in the representations 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;

c) A photolithograph or another medium that may be required by the competent service, 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 the competent service.

3. Should the object of the request be a bi-dimensional design and also include a request for postponement of publication, 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.

4. The applicant may of his own initiative, or from a notification from the Organ responsible for 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, as required, shows the reivindicated colors.

#### **Article 104**

##### **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 105**

##### **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. The graphic or photographic representations of the designs or models referred to in the preceding number must be numbered sequentially, in accordance with the total number of designs and models to be included in the same modelo..

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

4. If it is understood that some of the objects included in a multiple request do not constitute a design or model, 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 106** **Review as to form**

1. Once the request to register is filed, it will be reviewed within one month, to verify compliance with the established requisites.
2. Should the verification reveal that there are formal irregularities in the request, the requestor is notified to correct them within 30 days.
3. If the corrections are not made within the established deadline, the request is denied and the respective notice published with reproduction of the design or model and a transcript of the description referred to in subparagraph a) of No. 1, Article 102.

#### **Article 107** **Publication**

1. If the request is filed 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 description referred to in subparagraph a) of No. 1, Article 103.
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.

#### **Article 108** **Postponement of the publication**

1. On filing a request to register a design or model, 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 reinvoked.
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 competent service.
3. If publication is postponed, the design or model is entered in the register of the competent service, but the request shall not be published.
4. Whenever the requestor solicits the postponement of the publication, the competent service 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 109 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 110 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 111 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 the review referred to in the Article that follows.

## **Article 112**

### **Review**

1. The Organ responsible for Industrial Property promotes the review of the design 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 235 is published.
4. If it is concluded from the review that the registration can be granted, a notice to that effect is published.
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.
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 requester fails to respond to the notification, the registration is denied, and a notice of denial is published.

## **Article 113**

### **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 Organ responsible for 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 114** **Alterations of the request**

1. If the request suffers alterations during the review phase, the granting notice published 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 115** **Reasons for denial**

1. Aside from the provisions of Article 242, the registration is denied if:

- a)* O The design or model does not conform to Article 94;
- b)* The design or model violates the provisions of Article 96 or does not fulfill the conditions of Articles 97 to 101;
- c)* There is infraction to the provisions of Articles 19 or 20, with the necessary adaptations;
- d)* The design or model interferes with a prior design or model, disclosed to the public after the date of the request or the date of the reivindicated priority, and that is protected from a prior date by a request to register or a registration of a design or model;
- e)* A distinctive sign is utilized in a subsequent design or model 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 law;
- g)* The drawing or model constitutes an untoward utilization of any of distinctives, emblems and signs that have particular public interest in Cape Verde;
- h)* The drawing or model constitutes an untoward utilization of any of the elements enumerated in the International Conventions ape Verde may have adhered to.

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) e)* and *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)* shall be analyzed only if so invoked by the person or entity affected by the utilization in question.

### **Article 116**

#### **Notification of the definitive dispatch**

Notification of the definitive dispatch is made, with indication of the Industrial Property Bulletin in which the respective notification will be published.

### **Secção III**

#### **Effects of Registration**

### **Article 117**

#### **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 118**

#### **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 119**

#### **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 120**

#### **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 121**  
**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 122**  
**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 123**  
**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.

**Article 124**  
**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 125**  
**Alteration in the designs or models**

1. Any alterations in the essential specific characteristics of a design or model may be registered, provided it fulfills the requisites established for granting legal protection.
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 126**  
**Nullity**

1. Aside from the provisions of Article 255, the registrations are null when the design or model:
  - a)* ) Is not a design or model in conformity with the provisions of Article 94;
  - b)* Violates the provisions of Article 96;
  - c)* Does not fulfill the conditions of Articles 97 to 101;
  - d)* Interferes with a prior design or model, disclosed after the date of the request for registration or reivindicated priority, and which is protected from a prior date;
  - e)* Constitutes an untoward utilization of distintives, emblems and signs e sinetes que se revistam de particular interesse público em Cabo Verde;

*f)* Constitutes an untoward utilization of any of the elements referred to in by the international conventions Cape Verde may have adhered to and that have nullity as a consequence.

2. Only the registrations of drawings or models that have been object of a review can be declared null.

### **Article 127**

#### **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 prohibited by law or regulation;

*b)* The design model constitutes an unauthorized use of a work protected by copyrights law.

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 128**

#### **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**

#### **Sub-Section I**

#### **General Provisions**

### **Article 129**

#### **Object of the request**

The designs or models for textiles or clothing, or of other activities defined by the member of the government responsible for Industrial Property can be object of a request for prior.

### **Article 130**

#### **Prior protection request**

1. The prior protection request referred to in the preceding Article and the respective reproductions are entrusted to the Organ responsible for Industrial Property or to other entities defined by that Organ.
2. The prior protection request, entrusted to the credible entities referred to in the preceding number, is forwarded to the Organ responsible for Industrial Property within 15 days from the date of receipt, accompanied by a certificate issued by that Organ and the amount of the corresponding fees.
3. Prior protection is granted to the requestor who, abiding by the required requisites, 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 the responsible Organ, under proposal of the entities referred to in No. 1.

### **Article 131**

#### **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 132**

#### **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.

### **Sub-Section III**

#### **Effects of the Prior Protection Request**

##### **Article 133**

##### **Duration**

The duration of the prior protection is six months, counting from the filing date of the respective request in the national Organ responsible for Industrial Property or of the entities referred to in Article 130.

##### **Article 134**

##### **Correcting the request**

If the prior protection request, remitted by the credible technologic entities, does not abide by the requisites foreseen in Article 132, the Organ responsible for Industrial Property shall notify the requestor to correct it within one month. The prior protection counts from the date of the correction.

##### **Article 135**

##### **Rights conferred by the prior protection**

Prior protection confers the right of priority for the purpose of an eventual registration request.

##### **Article 136**

##### **Expiration**

The prior protection expires when the respective deadline runs out or, when the registration request is filed for any of the drawings or models the same pertains to.

##### **Article 137**

##### **Conversion of the request**

During the period of validity period of the prior protection, only its beneficiaries may request the respective registrations for the same designs or models.

##### **Article 138**

##### **Request to register for administrative acts or in Court proceedings**

If the beneficiary of the prior protection proposes to intervene in administrative processes against granting another registration or interposes judicial action based on the design or model, he must attach the corresponding registration accompanied by the necessary review.

## **CHAPTER IV**

### **Marks**

#### **Section I**

#### **General Provisions**

##### **Subsection I**

##### **Marks of products or services**

#### **Article 139**

#### **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 140**

#### **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.

#### **Article 141** **Non exclusiveness**

At the request of the requestor or claimant, the Organ responsible for 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 142** **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.
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 143** **The right to register**

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

- 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 144** **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 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 145**

### **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 146**

### **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 147**

### **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 148**

### **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 149**

### **Right of registration**

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.

### **Article 150**

#### **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**

### **Article 151**

#### **Request**

1. The request to register a mark is done in writing, and indicate or contain:

a) The name, firm or commercial denomination of the requestor, 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 reivindicate the right of priority;

h) Indication of the date from which it uses the mark, in the case foreseen in Article 145;

i) The signature of the requestor or the respective representative.

2. For the purposes of the provisions of No. 1 of Article 226, 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.

3. The requests may be filed electronically under the terms to be regulated by the member of the government responsible for Industrial Property.

## **Article 152**

### **Documenting the request**

1. The following documents that will abide by the required formal requisites 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 competent service, 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 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 collective persons of public utility;

e) Diploma of decorations or other distinctions, referred to or reproduced in the mark, that should not be considered as rewards;

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 161.

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 153**

#### **Unicity of the registration**

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

### **Article 154**

#### **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 N.º 1 of Article 151.

3. It behooves the service responsible for Industrial Property to verify check the classification referred to in the preceding number, correcting it, if needed be.

### **Article 155**

#### **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 226.
9. If, upon the requestor's response there is no alteration of the evaluation, the provisional denial becomes object of definitive dispatch
10. A notification is made of the definitive dispatch, under the terms of No.1 of Article Article 234, with the indication of the Industrial Property Bulletin, in which the respective notification is to be published.

### **Article 156**

#### **Grounds for refusal of registration**

1. In addition to the provisions of Article 242, 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 140;
  - d) There is infraction to the provisions of Article 144.

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 140, if the mark has acquired a distinctive character.

### **Article 157**

#### **Other grounds for denial**

The registration of marks is also refused if the marks are contrary to the provisions of 139, 143 and 153 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, without the competent authorization, whether or not they have coverage under the International Conventions of which Cape Verde is a part;

*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 public utility institutions 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 confused 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, even if authorization is obtained, 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;
- k) 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;
- l) 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 158**

#### **Imitation of unregistered packages or labels**

1. Registration is also denied to marks that 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 their mark has been filed with the external aspect elements referred to in the preceding number.

### **Article 159**

#### **Notorious marks**

1. Registration is denied to mark that, in whole or in essential part, constitutes a reproduction, imitation or translation of another notoriously known in Cape Verde, 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.

### **Article 160**

#### **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 161** **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 162** **Partial denial**

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

### **Article 163** **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 mark has already been registered and 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 national classification of marks published in the *Official Bulletin* No. 15, I Series of 23 April, 2007, through Ordinance No. 9/2007, may be considered similar;
- b) Products or services that are not are inserted in the same class of the national classification of marks 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.

### **Section III**

#### **Effects of the Registration**

#### **Article 164**

##### **Duration**

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

#### **Article 165**

##### **Declaration of intention to use**

1. 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 Organ responsible for 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 responsible Organ by request of any interested party, or when harm to rights of third parties are verified, at the moment other registrations are granted.

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

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

6. 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 166**

##### **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 167**  
**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, in identical or similar products or services 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.

**Article 168**  
**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 cape verdian territory.
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 169**  
**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, quantity, 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 170**  
**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 affect only its proportions, the material in which it was minted, recorded or reproduced and the paint or the color, if the latter has not been expressly reivindicated as one of the mark's characteristics.

3. Likewise, the inclusion or removal of the express indication of the product or service the mark is destined for and of neither the production year, nor the alteration to the title-owner's domicile or place of establishment shall not detract from the identity of the mark.

4. The nominative mark is subject to the rules of inalterability, with regard to the expressions that constitute it, and may be used with any figurative aspect as long as it does not offend third party rights.

## **Section IV Transmission of Licenses**

### **Article 171 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 characters 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 172 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 173 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 Rights Pertaining Thereto**

**Article 174**  
**Nullity**

1. Aside from the provisions of Article 255, the mark registration is null when, in process of granting it, the provisions of the following subparagraphs are infringed:

*a)* Subparagraphs a) to c) of n° 1, Article 156;

*b)* Subparagraphs a) to e) and I) of Article 157.

2. The provision of No. 3, Article 156, with the necessary adaptations, is applicable, to the nullity actions.

**Article 175**  
**Annulability**

1. Aside from the provisions of Article 256, the mark registration is annulable:

*a)* When, in the process of granting it, the provisions of Article 144, paragraphs f) to h) and m) of Articles 157 and in Articles 158 to 160 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.

2. The party interested in the annulment of the registration of a mark, based on the provisions of Articles 159 or 160, 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.

3. 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 177.

4. The annulment actions should be proposed within 10 years, counting from the date of the registration granting dispatch.

5. The request for the annulment request of the mark registered in bad faith can be proposed at any time.

**Article 176**  
**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 title-owner of a subsequent mark cannot oppose to the prior right, even if that right can no longer be invoked against the subsequent mark.

**Article 177**  
**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, 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 178**

### **Expiration**

1. In addition to the provisions of Article 259, 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 and the preceding Article.

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.

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.

## **Article 179**

### **Request for declaration of expiration**

1. The requests for declaration of expiration are filed with the Organ responsible for 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 Organ responsible for 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.
10. The expiration is annotated and a notice thereof is published in the Industrial Property Bulletin.

## **CHAPTER V**

### **Awards**

#### **Section I**

#### **General Provisions**

#### **Article 180**

##### **Object**

The following are considered awards:

- a) The decorations for merit conferred by any state;
- b) The medals, diplomas and pecuniary prizes or prizes of any other nature, obtained in official or officially recognized expositions, realized in Cape Verde or in foreign countries;



c) The diplomas and certificates of analysis or commendation issued by entities qualified to do so;

d) The titles of supplier to High Public Entities or other official entities or establishments, national or foreign;

e) Any other prizes or demonstrations of preference of official character.

### **Article 181**

#### **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 182**

#### **Ownership**

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

## **Section II**

### **Registration Process**

### **Article 183**

#### **Request**

1. The request to register awards is filed in a writing, 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

2. The requests may be presented electronically under the terms to be regulated by the member of the government responsible for Industrial Property .

**Article 184**  
**Documenting the request**

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 Organ responsible for Industrial Property may require the 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 185**  
**Grounds for denial**

In addition to the provisions of Article 242, 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 186**  
**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 187**

##### **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 188**

##### **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 189**

##### **Annulment**

In addition to the provisions of Article 256, the registration is annulable when the award tile is cancelled.

#### **Article 190**

##### **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 191**

##### **Right to register**

1. Whosoever has a legitimate interest and, specifically, farmers, breeders, industrialists, dealers and other entrepreneurs, residing or established in the national 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 192**  
**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 193**  
**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 194**  
**Grounds for denial**

- 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 156 e nas alíneas a) a e) e h) a j) do Article 157;

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», «capeverdian» or others with similar sense, when the establishment does not belong to single or collective person of capeverdian nationality.

2. The authorization to use names or distinctives and other elements of the same nature, are considered transmissible by legal succession, unless expressly restricted.

3. The provision of subparagraph h) of nº 1, does not prevent two or more persons with equal patronymic names from including them in the name or insignia of their respective establishments, as long as they are perfectly distinguishable.

## **Section II Registration Process**

### **Article 195 Request**

1. The request to register a name or insignia of establishment is filed in a written document 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.

2. The requests may be filed electronically under the terms to be regulated by the member of the government responsible for Industrial Property.

**Article 196**  
**Instruction of the application**

1. The following documents should be attached to the request:

*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 required medium showing a reproduction of the sign of the insignia intended to be registered;

*c)* A real estate registration certificate or other documents of proof in the case of paragraph c) of Article 192;

*d)* Documents of proof of the necessary authorizations and justifications;

*e)* 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.

2. Non-fulfillment of the requisites referred to in subparagraphs *c)*, *d)* and *e)* of the 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.

**Article 197**  
**Declaration of consent**

The provisions of Article 161, with the necessary adaptations, are applicable to the registration of names and insignias of the establishment.

**Article 198**  
**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 exist, the requestor or the respective owner is notified to choose just one of them and desist from the others.

3. If the notifications referred to in No. 2 is not complied with, only the first registration request is processed. The remaining one are denied or declared expired, according to the case.

**Article 199**  
**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 200**  
**Subsequent formalities**

The processing formalities of Article 155, pertaining to marks, with the necessary adaptations, are applicable to the request to register the names and the insignias of an establishment.

**Article 201**  
**Denial**

In addition to the provisions of Article 242, registration of the name or the insignia of establishment is denied whenever provisions of Articles 192 to 194, 197 and 198 are infringed.

**Section III**  
**Effects of the Registration**

**Article 202**  
**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 203**  
**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 204**  
**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 205**  
**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 provisions pertaining to marks also apply to insignias, with the necessary adaptations.

**Secção IV**  
**Transmission, Nullability, Annulment and Expiration of the Registration**

**Article 206**  
**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 207**  
**Nullity**

1. In addition to the provision of Article 156, the registration of name or of insignia of establishment is null when it is granted in violation to the provisions of Articles 192 to 194.
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 156;
  - b) In subparagraphs a) to e) and i) to l) of Article 157.
3. Article 156, No. 3, with the necessary adaptations, is applicable to the nullity proceedings.

**Article 208**  
**Annulment**

1. In addition to the provisions in Article 256, o registo é anulável:
  - a) Quando When granting it infringes the provisions of Article 194;
  - 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 209** **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 N° 3 of Article 198.

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** **Logotypes**

### **Article 210** **Constitution of the logotypes**

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 211** **Right to the logotype**

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

### **Article 212** **Indication of logotype**

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

**Article 213**  
**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 Geographic Indications**

**Section I**  
**General Provisions**

**Article 214**  
**Definition of ownership**

1. Denomination of origin is understood to be the name of an island, or a region or specific locality or, in exceptional cases, of a country, used to designate or identify a product:

*a)* Originating in that island, 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 an island, or a region of a specific locality used to designate or identify a product:

*a)* Originating in that island, 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.

## **Article 215**

### **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**

#### **Article 216**

##### **Request**

1. The requests to register the denominations of origin or the geographic indications is filed on a written document, indicating:

- 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.

3. The requests may be filed electronically under the terms to be regulated by the memebre of the government responsible for Industrial property.

#### **Article 217**

##### **Grounds for denial**

In addition to the dispositions of 242, the registration of the denominations of origin or the geographical indication are denied 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 214;

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.

### **Section III**

#### **Effects, Nullity, Annulment, and Expiration of the Registration**

#### **Article 218**

##### **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 decreed against false indications of origin, independently of registration, and whether or not they are part of a registered mark..

#### **Article 219**

##### **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 220**

##### **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;

*b)* The utilization that constitutes an act of unfair competition, under the terms stipulated in the Conventions of which Cape Verde is a part.

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

2. The words that constitute a denomination of origin or a legally defined geographical indication, protected and monitored, cannot figure, in any form, in designations, tags, labels, advertisements or any other documents pertaining to products that do not originate from the respective delimited regions.

3. This prohibition subsists even when the true origin of the product is mentioned 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 221**

#### **Nullity**

In addition to the provisions of Article 155, the registration of a denominations of origin or of a geographical indications may be refused or declared null when it infringes the provisions of subparagraphs *b)*, *d)*, and *f)* of Article 217.

### **Article 222**

#### **Annulment**

1. In addition to the provisions of Article 256, 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 217.

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 223** **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.

## **CHAPTER IX** **Administrative Proceedings**

### **Article 224** **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 225** **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, or by duly constituted attorneys;

b) Official agent of the of the Industrial Property.

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

3. 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 226**

### **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.

## **Article 227**

### **Interested party residing overseas**

1. 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.
2. Not constituting a representative leads to archiving the request.

## **Article 228**

### **Priority dates**

1. If, from the outset, the request is not accompanied by all the elements required, the priority shall be begin to count from the day and time, in which the last pending document is presented.
2. 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.

## **Article 229**

### **Updating the modality request presentation**

1. Without prejudice for the provisions of No. 1 of Article 18 and of No. 3 of Article 68 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.
2. Before a dispatch is issued, the requestor may, on his/her own initiative, resubmit the request in a modality different from that initially presented.

3. 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.
4. 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.
5. In the cases foreseen in Nos. 1 and 2, 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.
6. Up to the moment of the decision other formal rectifications may be authorized, as long as they are requested, fundamentally.
7. The rectifications are object of publication in the Industrial Property Bulletin .

### **Article 230**

#### **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 international Conventions to which Cape Verde is a part, 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 the international Conventions of which Cape Verde is a part, for 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 that ractified the Conventions of which Cape Verde is a part or of bilateral or multilateral treaties celebrated between member countries, 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, 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 property right.

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 231**

#### **Proof of the right to priority**

1. The Organ responsible for 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.

2. The deadline foreseen in the preceding number may, for acceptable reasons, be prorogued for an identical period.
3. Non-compliance with the provisions of this Article will result into the loss of the claimed right of priority.

#### **Article 232**

#### **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 corrections.

#### **Article 233**

#### **Notarization of signature**

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 234**

#### **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 Organ responsible for 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 235**

#### **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 prorogued 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 236** **Copies of briefs filed**

1. The complaints and other processual pieces are filed with a duplicate.

2. The duplicate referred to in the preceding number is forwarded to the opposing party by the Organ responsible for Industrial Property.

#### **Article 237** **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 paragraph are sent to all the part that fgiled them with notification to the other par.

#### **Article 238** **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 239** **Inspections**

1. To support or clarify the allegations produced in the process, the interested party may, with justification, request that the Organ responsible for Industrial Property inspect any

establishment or other local. The request shall not be approved without first hearing the targeted party.

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

3. The inspection may also be carried out by initiative of the Organ responsible for Industrial Property, if it is deemed indispensable for a perfect clarification of the process.

#### **Article 240**

##### **Subsequent formalities**

Upon expiration of the deadlines foreseen in Article 235, 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 241**

##### **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 modification 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 242**

##### **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 243**  
**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 261 and following of this Code, and annotated in the respective titles.

**Article 244**  
**Documents attached to other processes**

1. Except for powers-of-attorney, each process, the documents instruct the requests may be attached to one of them and referred to in the remaining documents.
2. In case of an appeal, foreseen in Articles 261 and following, the appellant is obligated to present certificates to the processes in which such documents are referred to.

**Article 245**  
**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 be an appeal, after the judicial decision or the final arbitral decision is known.
2. Delivery of the title is made to the title owner, or to his representative, upon signature of a receipt.

**Article 246**  
**Counting of deadlines**

1. The deadlines established in this Code are continuous.

**Article 247**  
**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.

5. The request referred to in the preceding number is attended to only if if the respective processes have reached the publicity phase, no harm is caused to third parties, and classified documents or documents that reveal commercial or industrial secrets are not in question.

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.

7. In any process, the publicity phase is considered to have been reached when the request has been published in the Industrial Property Bulletin.

#### **Article 248** **Annotations**

1. The following are subject to annotation at the Organ responsible for 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, in their interrelations.

#### **Article 249**

##### **How to annotate**

1. 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.
2. After the annotation, the title is returned to the requestor and the request, as well as the documents are attached to the respective process.
3. A notice on the annotation is published in the Industrial Property Bulletin.

### **CHAPTER X**

#### **Transmission and Licenses of the Industrial Property Rights**

#### **Article 250**

##### **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. The transmission by an inter living act must be proven by written document, even if signed only by the transmitant.
4. 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 251**

##### **Limitations to transmissions**

1. 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..
2. 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.

3. 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 specific clause will be necessary to effect its transmission.

### **Article 252**

#### **Contractual licenses**

1. The rights referred to in No. 1 of Article 250 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 specified 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.

### **Article 253**

#### **Nature of the license**

1. Save for stipulation to the contrary, the owner of the right object of the license, except for the provisions of the numbers that follow.
2. The license is presumed to be non-exclusive.
3. 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.

### **Article 254**

#### **Granting an exploration license**

Unless otherwise stipulated or written authorization by the owner of the respective right:

- a)* Granting an exclusive exploration license does not prevent the owner to also explore the right object of the license directly;
- b)* The right object of the license cannot be alienated;
- c)* The exploration license cannot be sub-granted.



**CHAPTER XI**  
**Termination of the Industrial Property Rights**

**Article 255**  
**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 256**  
**Annulability**

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 this Code.
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 257**  
**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 248, may have requested annotation of derived rights.
3. When the final judicial decision is emitted, the Court shall remit the decision to the Organ responsible for Industrial Property, for annotation and publication in the Industrial Property Bulletin.

**Article 258**  
**Effects of the nullity and annulment declarations**

The retroactive applicability of the nullity have the effects foreseen in the law.

**Article 259**  
**Expiration**

1. Industrial property rights expire independently of their invocation, and their expiration can be declared ex-officio by the competent service:

a) When its validity period expires;

b) For non payment of fees.

2. Expiration for any other reason produces effect if invoked by any interested party and so declared by the competent service.

3. Any interested party, may likewise, request annotation of the expiration foreseen in No. 1, if it has not done so.

**Article 260**  
**Renunciation**

1. The title owner may renounce its rights of industrial property as long as he declares so expressly to the to the Organ responsible for 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 Declaration that is attached to the respective process.

4. 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 XII**  
**Appeal**

**Article 261**  
**Decisions that can be appealed**

The following decisions from the Organ responsible for Industrial Property can be appealed litigiously :

- a) Decisions that grant or deny industrial property rights;
- b) Decisions pertaining to transmissions, licenses, declarations of expiration or of any other act that affect, modify or extinguish industrial property rights.

### **Article 262**

#### **Legitimacy**

1. The requestors and the claimants and yet those who are directly and effectively harmed by the decisions of the Organ responsible for Industrial Property, have legitimacy to appeal such decisions.
2. Should the decision be impugned, those who demonstrate an interest in maintaining the decision may also intervene in the appeal.

### **Article 263**

#### **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, when requested by the appellant, and it precedes publication of the dispatch.

### **Article 264**

#### **Arbitration**

The interested parties may resort to arbitration to resolve Industrial Property conflicts, under the terms of the respective laws.

## **CHAPTER XIII**

### **Cautionary Measures**

### **Article 265**

#### **Cautionary procedures**

1. The Industrial Property owner may request from the Court the confiscation of products or any other objects that manifest the violation of a private right of design, model, mark, names or insignias of establishment or of logotypes, or the apprehension of the instruments that only serve to commit these illegal acts.
2. In addition to the providence referred to in the preceding Article, and without prejudice to applicable civil or penal action, the Industrial Property owner may request that the judicial, administrative or police authorities, take action to prevent the violation or the concretization of the threat of violation of his rights, in accordance with the law.

**Article 266**  
**Apprehensions by customs**

1. All products or merchandise that contain 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.
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, without prejudice 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.

**TITLE IV**  
**Infractions**

**Article 267**  
**Crime against industrial property**

The following constitutes crime against Industrial Property , punishable under the terms of this Code:

- a)* Violation of the exclusive rights of the patent , utility model or semiconductors schematics;
- b)* Violation of the exclusive rights relative to designs or models;
- c)* Counterfitting, immitation or illegal use of a mark:
- d)* Violation or illegal use of a denomination of origin or of geographic indication;
- e)* The registration of an act juridically inexistent or with manifest occultation of the truth, independently of the violation of thisrd party rights;
- f)* The sale, circulation or occultation of products or articles;

g) The acquisition of a patent or utility model and the registration of a design or model by someone who does not own any of these rights.

### **Article 268** **Penalidades**

1. Whosoever commits any of the crimes foreseen in subparagraphs *a)*, *b)*, *c)*, *d)* and *e)*, of Article 267 is punished with imprisonment up to 3 years or fine up to 360 days.

2. Whosoever commits any of the crimes foreseen in subparagraphs *f)* and *g)*, of Article 267 is punished with imprisonment up to 1 year or fine up to 120 days.

### **Article 269** **Complaint**

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

### **Article 270** **Unfair competition**

1. Unfair competition constitutes a contraordination punishable under the terms of this Code.

2. Any competition that is contrary to the norms and honest uses of any branch of economic activity constitutes unfair competition, namely:

*a)* Regardless of the means they use, the acts susceptible of creating confusion with the enterprise, the establishment, or products or services of the competitors;

*b)* The false affirmations made in the exercise of an economic activity, for the purpose of discrediting a competitor;

*c)* The unauthorized references or invocations made for the purpose of benefitting from the credit or the reputation of a name, establishment or marks belonging to others;

*d)* The false indications of one's own credit or reputation regarding the capital or financial situation of an enterprise or establishment, the nature or ambit of its activities and business, and to the quality and quantity of the clientele;

*e)* The false descriptions or indications regarding the nature, quality or utility of the products or services, as well as the false indications of provenance, of locality, region or territory, of factory, shop, property or establishment, regardless of the mode adopted;

*f)* The suppression, occultation or alteration by the vendor or of any intermediary, of the denomination of origin or geographic indication of the producer or manufacturer,

in products destined for sale and that may not have suffered modification in conditioning them.

### **Article 271**

#### **Illicit use of information**

The dissemination, acquisition or utilization of a competitor's business secrets, without his/her consent, constitutes contraordination punishable under the terms of this Code as long as the information:

*a)* Are secret in the sense that they are not generally known or easily accessible in whole or in the exact configuration and connection with the type of information in question;

*b)* Have commercial value for the simple fact that they are secret;

*c)* Attending to the circumstances, have been the object of considerable diligence on the part of the person who legally detains the control of the information to keep it secret.

### **Article 272**

#### **Other contraordinations**

The following constitutes further contraordination, punishable under the terms of this Code:

*a)* The invocation or mention of an award registered in someone else's name;

*b)* The use or declaration of possession of a reward that never existed or that was never awarded to who uses it or claims to possess it;

*c)* The use of designs or any indications that constitute imitation of awards, by someone who is not entitled to them;

*d)* The use of the reproduction or imitation of a name of insignia already registered by someone else, in the establishments, in announcements and correspondence of products or services or in any other form;

*e)* The invocation of false quality to obtain the registration of a logotype;

*f)* The use of the reproduction or imitation of a sign or logotype already registered by someone else, in forms, in the establishment, in products or in any other form;

g) The fabrication, importation, acquisition or safeguard of registered signs that constitute marks, names, insignias, logotypes, denomination of origin or geographic indication;

h) The use as logotype or as unregistered signs, any of the prohibited signs or signs considered to be imitation or usurpation under the terms of this Code;

i) The illegitimate use, whether or not registered, of expressions, names or figures forbidden by this Code in the name or in the insignia or logotype of the establishment;

j) The false invocation of quality by the owner of an Industrial Property right, or when the same has existed, it has been declared null or annulled, or has expired;

k) The untoward use of the indications of patents, models of utility or of registration authorized only to the respective owners;

l) The use of an Industrial Property right for products or services different from those the registration protects.

### **Article 273**

#### **Fines**

The contraventions are punishable with fines from ECV 50,000\$00 to 500,000\$00 or from ECV 250,000\$00 to 3.000,000\$00, depending on whether the infractor is a singular or collective person.

### **Article 274**

#### **Accessory sanctions**

1. Cumulatively with the sanctions foreseen in the preceding Articles, the objects in which the crimes foreseen in this Code, as well as the materials or instruments that have been predominantly utilized for the practice of said crime, are manifest are declared lost to the State, unless the owner of the offended right gave his/her express consent for such objects to be introduced in the commercial circuits or be otherwise disposed of.

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

### **Article 275**

#### **Criminal process documentation and judgement**

The Penal Code is applicable in the documentation and judgment of processes resulting from the crimes foreseen in this Code.

**Article 276**  
**Assistants**

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

**Article 277**  
**Documenting and deciding on the contra-ordination processes**

Documenting and applying the corresponding fines and accessory sanctions is within the competences of the General Inspector of the Economic Activities

**Article 278**  
**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 Organ responsible for Industrial Property.

**Article 279**  
**Subsidiary law**

Subsidiarily, the Penal Code and the general norms applicable to contraordinations, specifically with regard to criminal and contra-ordination responsibility of collective persons and responsibility for acting in someone else's behalf, are applicable.

**TITLE IV**  
**Final Dispositions**

**Article 280**  
**Fees**

The fees due for the acts foreseen in this Code are the object of subsequent regulation.

**Article 281**  
**Organ responsible for industrial property**

The Government promotes the creation of an autonomous Organ, superintended by the government, charged with the handling of issues pertaining to Industrial Property.



**Article 282**  
**Industrial Property Bulletin**

The Industrial Property Bulletin is edited and disseminated periodically under the coordination and responsibility of the Organ referred to in the preceding Article.

**Article 283**  
**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 284**  
**Distribution**

In addition to the services and institutions foreseen in the law as mandatory, the Industrial Property Bulletin is distributed to the World Intellectual and to whoever shows interest in its subscription under the terms to be defined.

The Prime Minister, *José Maria Pereira Neves*