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SUMMARY

COUNCIL OF MINISTERS:
Legislative Decree No. 4/2007:
Approving the Industrial Property Code.

COUNCIL OF MINISTERS

**Legislative Decree No. 4/2007
of August 20**

1. In Cape Verde, industrial property matters are regulated, essentially, by the Industrial Property Code approved by Decree No. 30.679 of August 24, 1940, extended, mutatis mutandis, to Cape Verde by Decree No. 17.043 of the Minister for Overseas Territories, of February 20, 1959, published in the Official Journal of Cape Verde of May 14 of that same year.

2. Subsequently, and in this century, that is to say, in the Official Journal No. 14 I Series, of May 5, 2003, Decree-Law No. 7/2003 of April 7 was published, referring only to the updating of the fees shown in the table in annex to that Code.

3. Over time the combination of ever-increasing globalization of the economy and its consequent integration, at the global level, as well as the emergence of new technologies and the rise in new concepts and instruments in activities linked to trade, industry and services have made clear the need for adaptation of basic legislation relating to industrial property i.e. the Industrial Property Code to meet the new demands of modern life.

4. Economic development is increasingly based on and is sustained by technological and scientific development.

5. Creative and inventive activities are fundamental drivers of scientific and technological development, which in turn, is one of the most reliable pillars for economic growth. This is due to the fact that they open up new paths and lead to new solutions for obtaining more and better results, in less time

and at lower cost, thereby guaranteeing the efficiency of the means and instruments in the production of goods and the provision of services.

6. On the other hand, in an economy which on a worldwide level is becoming increasingly open, globalized and integrated, competition takes on an unprecedented dimension, even in a small area like Cape Verde. The role and function on industrial property, as a regulator of that conflict, is highlighted, by ensuring the necessary fair competition and promoting the necessary protection of the various technical production processes and the development of wealth.

7. In addition, in order to enable the free circulation of new technologies, knowledge, goods and services, the forthcoming and inevitable accession by Cape Verde to the World Trade Organization (WTO), requires the elimination of some incompatibilities and restrictions established by current legislation (or which result from the absence of law), and the adaptation of existing legislation regulating industrial property to that new reality. This requires the adoption of principles, concepts and the creation of institutions, today enshrined worldwide, and in particular the taking on of some rules derived from the existing agreements at the level of that International Organization.

8. On the other hand, there has been an attempt to harmonize current legislation with international rules on industrial property, namely the trade-related aspects of industrial property, commonly known as the "TRIPS Agreement", as well as the provision of international conventions which regulate the matter, adapting it

explicitly and directly to the most relevant principles in order to provide the country with a modern, up-to-date, effective and internationally adapted legal instrument.

9. The new international stage has made competitiveness an unquestionable element for survival of companies. The change in worldwide behavior has prompted measures to facilitate the accelerated changes experienced by some countries, including Cape Verde. In this context, industrial property represents a strategic competitive instrument, working decisively alongside the industrial and scientific community.

10. In this way, industrial property (IP) may constitute one of the basic mechanisms for driving the growth and development of micro and small companies.

11. Countless business opportunities are missed because few businessmen, and in particular those of Cape Verde, are familiar with the industrial property system. These could be seized through the correct use of a good internal and external policy linked to industrial property. A businessman who understands industrial property remains more vigilant to events in the market, observing in particular innovative products which could improve his competitiveness.

12. The IP system is the means capable of granting title to trademarks and patents, preventing other competitors from using them wrongly. If these processes are well planned and administered, they add value and create additional business for micro and small businesses.

13. "Industrial property" encompasses a set of rights, which includes patents

for inventions, utility models, factory, trade and services marks, industrial designs, names and emblems of establishment, logotypes, appellations of origin and geographical indications, awards, etc..

14. The world economy is experiencing a time of deep crisis and major challenges. An economy which wishes to be modern, competitive and market oriented, must be provided with legal mechanisms which protect and guarantee its citizens private rights over creations of the mind (intellectual property), which without any doubt, make up the cultural and scientific heritage on which is based the process of economic, social, cultural and technological development of a country.

15. Therefore, the recognition of the intellectual and financial efforts of others and the protection of their creations is an obligation of any State, if only to provide an incentive for creative activity, and more than that, to guarantee its permanence and self-sustainability.

16. However, recognition is not enough, it is also necessary to guarantee material stimuli, that is to say the right to receive monetary compensation for the use, by third parties, of the subject of the creation, be it a literary work, musical composition, or even an invention or a trademark - in fact all subjects of intellectual property. That is why the Government intends to proceed with the modernization and adaptation of the basic law which regulates aspects of industrial property to the new demands of development.

17. Notwithstanding the existing constraints, we believe that creators of the mind, that is the owners of

elements of intellectual property, for the reasons already mentioned, do not find themselves totally unprotected, since the Civil Code grants them some protection in the defense of their rights. Indeed, the very fundamental law, the Constitution of the Republic of Cape Verde, in Article 68 states clearly that “all private property rights, their assignment in life or in death, shall be guaranteed under the terms of the Constitution and the law”.

18. It is, however, our understanding that it should be the creators themselves, who, through corporations formed for that effect, ought to promote the “struggle” for the recognition of the private rights of intellectual property. No one is better placed than they are, to assert their rights.

19. If we pay heed to recent news in our press of appeals lodged at the courts for alleged counterfeiting or infringement of rights related to intellectual property, we could say that this struggle has already started. In this, the full support of the Government can be counted on, in particular as far as guarantees of fair competition are concerned.

20. Today, it is universally recognized that IP plays a decisive role in the development of national and regional economies. Countries, mainly developed economies, recognize fully the competitive advantages which arise from the use of the patent system to protect new technological processes and new products from illicit use by competitors, which is why technical information is given one of the highest priorities.

21. For developing countries, industrial property will be able to play an extremely important role in the

facilitation of technology transfer, if the owners of technologies conclude that developing countries have systems of protection for IP which will protect them from the illicit use of their technology. The technical and scientific information contained in patents will also be able to play an extremely important role as a source for research which is not negligible within the framework of any research and development program.

22. Additionally, industrial property performs a disciplinary role in trade. Products are marketed in national and overseas markets, not by their technical or scientific name but mainly by their trademark, which the consumer relates to certain qualities and characteristics of the products.

23. The trademark is moreover a strategic factor for companies, since the choice of countries where registration applications are filed should correspond to the choice of markets for the launching of said products. A registered trademark is therefore not just a decorative element of products; it plays a key economic role.

24. Additionally, adherence to the main international conventions relating to IP is a valuable contribution to the international integration of States, which beyond ensuring a privileged relationship between Member States, allows them to benefit, by right, from individual international cooperation programs.

25. It is important to state that in today's world, the issue of intellectual property and its protection is one which affects us all – in fact, we deal with it at every moment. That is why we hope that this legislative initiative will provide the impetus to make

intellectual property truly valued, defended and properly used in our country.

Property Code approved by this legislation.

Article 3

Transitional provision

26. Thus, in this context the new Industrial Property Code is approved. The Code, hereby approved, consists of 284 articles, contained in various titles and chapters, drawing inspiration from teachings of comparative law and in particular in the guidelines derived from agreements and conventions inherent in accession to WTO. The Code tries to develop widely all the subjects related to industrial property, compiling and including within it some matters which are of typically regulatory nature, in simple language, often descriptive with the aim of facilitating its use and consultation by all those who in their scientific, creative and economic activities have need thereof.

1. As long as there is no Industrial Property Journal, by decision of the member of Government responsible for Industrial Property, the publications referred to by the Code approved by this legislation, shall be published in Series III of the *Official Journal*.

2. As long as there is no specific body responsible for the management of industrial property matters, all the Acts relating to this subject shall be under the remit of the General Directorate for Industry and Energy.

3. All requests presented before the entry into force of this legislation must follow the normal procedures in accordance with the rules laid down by the legislation which enabled its presentation.

Thus,

Under the legislative authorization granted by Law No. 8/VII/2007 of March 26; and,

by use of the powers conferred by subparagraph (b) of paragraph 2 of Article 203 of the Constitution, the Government decrees the following:

Article 4

Revocation

Article 1

Approval

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

1. The Industrial Property Code, approved by Decree No. 30.679 of August 24, 1940, and extended to Cape Verde by Ordinance No. 14.043 of February 20, 1959, is revoked.

2. Decree-Law No. 7/2003 of April 7 is revoked from the date of entry into force of the new legislation which approves the fees for the acts stipulated in the Industrial Property Code, hereby adopted.

Article 2

References

References to the previous Code shall be deemed executed by the Industrial

Article 5

Entry into force

This legislation and the Industrial Property Code approved by it shall come into force on the day following its publication.

Seen and approved by the Council of Ministers.

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

Promulgated on August 20, 2007.

Publish.

President of the Republic, PEDRO VERONA RODRIGUES PIRES.

Ratified on August 20, 2007.

Prime Minister, *José Maria Pereira Neves*.

INDUSTRIAL PROPERTY CODE

TITLE I

GENERAL PROVISIONS

Article 1

Purpose of the legislation

This Code establishes the industrial property regime and the principles and rules to which the same is subject.

Article 2

Scope of industrial property

The industrial property system shall cover industry, trade and services, as well as natural or manufactured products.

Article 3

Personal scope of application

1. This Code shall be applicable to individual persons or corporate bodies, Cape Verdean or foreign, nationals of Member States of international organizations for industrial property to which Cape Verde belongs, irrespective of official domicile or establishment with the exception of special provisions as to competence and procedure.

2. Nationals of Member States of international organizations of which Cape Verde is a member and nationals of any other States who have a domicile, in fact and not as a matter of form, in the territory of one of the Member States of these international organizations, shall be assimilated for the purposes of this legislation.

3. The system of reciprocity shall apply to cases not covered by the previous paragraphs.

Article 4

Function of industrial property

Industrial property shall have the social function of guaranteeing fair competition, by conferring private rights in the various technical processes for production and development of wealth.

Article 5

Guarantee of industrial property rights

1. Industrial property shall enjoy the guarantees established in the law on property in general, and in those provided for in the international conventions to which Cape Verde is a party, in this Code and other legislation

in particular.

2. The rights arising from patents and utility models, as well as registrations of semiconductor topographies, industrial designs and of trademarks and other distinctive commercial signs shall be subject to attachment and seizure and may be given as security.

Article 6

Effects

1. The rights conferred by industrial property shall cover the whole national territory.

2. Notwithstanding the provisions of the following paragraph, the grant of industrial property rights shall imply only legal presumption of the satisfaction of the requirements of the grant.

3. An award registration shall guarantee the veracity and authenticity of the titles by which they were conferred and shall assure the owners of their indefinite ownership and exclusive use thereof.

4. The registration of trademarks, names and emblems of establishment, logotypes, appellations of origin and geographical indications shall constitute a right to the exclusive use thereof by the respective owner, and, if it is prior it shall be sufficient grounds for refusal by the competent services to register others which may be confused with it.

5. Prior registration shall be sufficient grounds for the refusal, by the competent services, to register others which may be confused with it.

6. The right to request the annulment referred to in the preceding paragraph shall expire in a maximum period of 10 years starting from the date of application of the annulable act or from the publication in the Official Journal, of the constitution or alteration of the trade name or business name of the legal person.

Article 7

Unfair competition

1. Nationals of Cape Verde and of Member States of international organizations for industrial property, of which Cape Verde is a member, shall be guaranteed the right to oppose unfair competition.

2. Any competitive act which is contrary to the honest use of industrial and trade subject matter shall be an act of unfair competition, in particular:

(a) all acts likely, by any means, to establish confusion with the establishment, the products or the industrial or trade activity of a competitor;

(b) false declarations in the exercise of trade likely to discredit the firm, the products or the industrial or trade activity of a competitor; and

(c) indications or declarations whose use in the exercise of trade may be likely to mislead the public about the nature, method of manufacture, characteristics, opportunities for use or quantity of the merchandise.

Article 8

Provisional protection

1. The application for a patent, utility model or of registration shall provisionally grant the applicant, from the respective publication, protection which is identical to that afforded by the granting of the right.

2. The provisional protection referred to in the preceding paragraph shall be binding, even before publication, on anyone who has been notified of the submission of the application and received details of the case.

3. Court rulings relating to the protection must be stayed until the final grant or refusal of the patent, utility model or registration.

Article 9

Proof of the rights

1. Proof of the industrial property rights referred to in this Code shall be by means of titles.

2. The titles must contain the details necessary for perfect identification of the right to which they refer.

3. Industrial property rights certificates issued by international organizations for use in Cape Verde, shall have the same value as the titles referred to in the preceding paragraphs.

4. Owners of industrial property rights may be issued certificates with similar content to that of the respective title.

5. The following may also be issued at the request of an applicant or owner:

(a) application certificates;

(b) protection certificates for industrial property rights granted by international

organizations for use in Cape Verde.

Article 10

Restoration of rights

1. The applicant for or the owner of an industrial property right who, for reasons which cannot be directly attributed to him, has not met the time limit for performing an act whose breach implies it not being granted or affects the respective validity may, at their request, have their rights restored.

2. The request, duly substantiated, must be submitted in writing, within a period of two months starting from the cessation of the event which prevented the meeting of the time limit, only being permitted, in any case, within one year of the end of the time limit missed.

3. The omitted act must be performed during the course of the two-month period, referred to in the preceding paragraph, along with the payment of a fee for the restoration of rights.

4. The provisions of this Article shall not apply to the time limits referred to in paragraphs 2 and 3 of Articles 231 and 235, if there is a pending process of declaration of lapse in relation to the same industrial property right.

5. Applicants for or owners of rights that are restored may not invoke them through a third party who, in good faith, during the period between the loss of rights granted and the publication of the notice of the restoration of these rights, began the exploitation or commercialization of the subject of the right or carried out effective and serious preparations for its exploitation or commercialization.

6. Third parties who may avail themselves of the provision in the previous paragraph may oppose the decision to restore rights of a registration applicant or owner within two months of the date of publication of the notice of restoration of the rights.

TITLE II

INDUSTRIAL PROPERTY LEGAL SYSTEMS

CHAPTER I

Inventions

Section I

Patents

Sub-Section I

General Provisions

Article 11

Subject matter of the patent

1. New inventions shall be patentable if they involve an inventive step and are industrially applicable, regardless of the nature of the products and the processes used and whatever the technological field they apply to.

2. New inventions shall be patentable even if they involve a product composed of biological material, or which contains biological material, or a process which allows for the production, treatment or use of biological material.

Article 12

Patentability requirements

1. An invention shall be considered new if it does not form part of the state of the art.

2. It shall be considered that an invention involves an inventive step if, for a person skilled in the art, that invention would not have been obvious from the state of the art.

3. An invention shall be considered industrially applicable if it can be made or used in any kind of industry.

Article 13

State of the art

1. The state of the art shall be held to comprise everything which, within or outside the country, is available to the public, before the date of the patent application, by description, use or any other means.

2. The content of any other patent or utility model application, established prior to the new patent application, with effect in Cape Verde and as yet unpublished, shall equally be considered to form part of the state of the art.

Article 14

Non-opposable disclosures

1. The following shall not prejudice the novelty of an invention:

(a) disclosures to scientific societies, professional technical associations, or for the purpose of competitions, exhibitions and trade fairs in Cape Verde or abroad, which are official or officially recognized in any Member State of international industrial property organizations, of which Cape Verde is a member, if the application for the respective patent is filed in

Cape Verde within 12 months;

(b) disclosures resulting from evident abuse of the inventor or his successor, or if unduly published by the organization responsible for industrial property.

2. The disclosures to which subparagraph (a) of the preceding paragraph refers shall not prejudice the novelty of the invention only if the applicant proves, in three months starting from the date of the patent application, that the application was effectively disclosed pursuant to the terms stipulated therein.

Article 15

Special cases of patentability

1. The following may be patented:

(a) a substance or composition included in the state of art for the execution of one of the methods mentioned in paragraph 2 of Article 16, on condition that its use, for whichever method listed there, is not included in the state of the art;

(b) a new invention, which involves an inventive step and is industrially applicable which impacts on any isolated part of the human body or produced by another technical process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element, from the moment that it is expressly observed and specifically exhibited in the patent application, the industrial application of a sequence or partial sequence of a gene;

(c) an invention which concerns plants or animals, if the technical feasibility of the invention is not confined to a

particular plant or animal variety;

(d) biological material, which is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature;

(e) an invention which concerns a microbiological process or other technical processes, or products obtained by these processes.

2. Essentially biological process for the production of plants or animals means any process which consists entirely of natural phenomena such as crossing or selection.

3. Microbiological process means any process involving or performed upon or resulting in microbiological material.

4. Biological material means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system.

Article 16

Limitations of the subject matter

1. The following are not patentable:

(a) scientific theories and mathematical methods;

(b) materials or substances which already exist in nature and nuclear materials;

(c) aesthetic creations;

(d) schemes, rules and methods of performing mental acts, playing games or doing business;

(e) presentations of information.

2. Surgical or therapeutic methods for the treatment of humans or animals and the diagnostic methods applied to humans or animals, may not be patented. However, products, substances or compositions used in any of these methods may be patented.

3. The provision of paragraph 1 shall only exclude patentability if the subject for which a patent is applied for is confined to the elements mentioned therein.

Article 17

Exclusion from patentability

1. Inventions, the commercial exploitation of which would be contrary to law, public order, national security, public health and morality, shall be excluded from patentability, namely:

(a) the processes of cloning of human beings;

(b) the processes for modifying the germ line genetic identity of human beings;

(c) the process of use of human embryos for industrial or commercial purposes;

(d) the processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit for man or animal, and also animals resulting from such processes.

2. the following shall also not be patentable:

(a) the human body, at various stages of its formation or development, as well as the simple discovery of one of

its elements, including the sequence or partial sequence of a gene, without prejudice to that laid down in subparagraph (b) of paragraph 1 of the following Article;

(b) plant or animal varieties, as well as the essentially biological processes for the production of plants or animals, without prejudice to that set out in the international agreements to which Cape Verde has acceded.

Article 18

Patent protection

1. The protection of an invention which meets the conditions set out in Article 12 may be applied, at the choice of the applicant, to a patent or utility model.

2. The same invention may be the subject matter, simultaneously or successively, of a patent application and a utility model application.

Article 19

General rule on the right to the patent

1. The right to the patent shall belong to the inventor or his successors.

2. If there are two, or more, authors of the invention, any one of them shall be entitled to apply for the patent in the name of them all.

Article 20

Special rules on patent ownership

1. If an invention is discovered during the fulfillment of an employment contract which provides for inventive activity, the right to the patent shall belong to the respective employer

company.

2. In the case referred to in the preceding paragraph, if the inventive activity were not especially remunerated, the inventor shall be entitled to remuneration, in keeping with the relevance of the invention.

3. Independently of the conditions stipulated in paragraph 1:

(a) if the invention forms part of its area of activity, the employer shall hold the right of option to patent by means of remuneration in keeping with the importance of the invention and may take up said ownership, or reserve the right to exclusive working, the acquisition of the patent or the option to apply for or acquire a foreign patent;

(b) the inventor must inform his employer company about the invention he has made, within three months starting from the date of completion thereof;

(c) if, during that period, the inventor should file a patent application for that invention, the deadline for informing the employer company shall be one month from the filing of the respective application with the organization responsible for industrial property;

(d) non-compliance with the obligations referred to in subparagraphs (b) and (c), by the inventor, shall imply civil and employment liability, in general terms;

(e) the employer company may exercise its right of option, within a period of three months starting from the receipt of notification from the inventor.

4. If, in the terms laid down in subparagraph (e) of the preceding

paragraph, the remuneration due to the inventor is not fully paid within the deadline established, the employer company shall lose the right to patent referred to in the preceding paragraphs, in favor of the inventor.

5. Inventions for which the patent is filed during the year following the date on which the inventor left the company shall be considered to have been made during the performance of the employment contract.

Article 21

Service provision or commission

1. Unless otherwise agreed, the provision of the preceding Article, shall apply to inventions made to order, or to work carried out during service provision with the necessary adaptations.

2. Unless otherwise specified, the provision of the preceding Article, shall apply to the State and other public bodies.

Article 22

Prohibition of anticipated waiver

The rights recognized for the inventor may not be waived in advance.

Article 23

Availability of the patents

The patents must be made available and the rights inherent in them enjoyed without any discrimination with regard to the place of invention, type of technology and the fact that the products are imported or locally produced.

Article 24

Compulsory indication

1. If the patent was not filed by the inventor or in his name, he shall have the right to be mentioned, as such, in the application and the patent title.

2. The inventor may be not mentioned, as such, in the publications which arise from the patent application, if he so requests in writing.

Article 25

Redemption

The provisions of this Code relating to patents, with the necessary adaptations, shall be applicable in all matters which are not expressly laid down for the other private industrial property rights, and which are not contrary to the character of each one.

Sub-Section II

Patent process

Article 26

Form of application

1. The patent application shall be filed with the requirement that it shall indicate or contain:

(a) the applicant's name, trade name or company name, nationality and/or his domicile or the place where he is based;

(b) the heading or title which summarizes the subject of the invention;

(c) the name and country of residence of the inventor;

(d) the country where the first application was filed, the date and number of said application, if the applicant intends to claim right of priority;

(e) the mention of the application for a utility model for the same invention, if that were the case;

(f) signature of the applicant or his representative.

2. Any imaginary expressions used to designate the invention shall form no part of the claim.

3. Applications may be filed electronically in the terms to be regulated by the member of Government responsible for the industrial property sector.

Article 27

Documents to be submitted

Applications shall be accompanied by the following elements, in duplicate:

(a) description of the subject matter of the invention;

(b) claims of what is considered novel and characterizes the invention;

(c) the drawings necessary for the perfect understanding of the description;

(d) a summary of the invention.

Article 28

Content

1. The claims shall define the subject matter of the requested protection, and shall be clear, concise and written correctly, and provide the necessary

definition of the subject matter of the invention.

2. The description shall indicate, without reservations or omissions, everything that constitutes the subject matter of the invention, containing a detailed explanation of, at least, one way of carrying out the invention, in such a way that a person skilled in the art could carry it out.

3. The drawings shall be made up of figures in the amount strictly necessary amount for the understanding of the invention.

4. The summary of the invention shall consist of a brief statement of what is referred to in the description, claims and drawings, for the purpose of providing technical information.

Article 29

Biotechnology inventions

In the case of an invention relating to biological subject matter that is not accessible to the public and that cannot be described in the patent application in such a manner as to permit its realization by a person skilled in the art, or to involve the use of subject matter of that type, the description alone shall be considered enough for the purpose of obtaining the patent, if:

(a) the biological subject matter has, by the date of the filing of the patent application, been deposited in an international and duly recognized depositary institution;

(b) the patent application includes the relevant information available to the applicant concerning the characteristics of the deposited

biological subject matter;

(c) the patent application mentions the depositary institution and the deposit number.

Article 30

Deadline for the delivery of the description and drawings

The description of the invention and the drawings may be delivered to the organization responsible for Industrial Property, within one month starting from the date the application was filed in Cape Verde.

Article 31

Examination of form

1. Once the patent application has been filed, an examination is carried out within one month, as to form, to verify if it meets the requirements stipulated.

2. In the event that formal irregularities are found to exist in the application, the applicant shall be notified so that they may be corrected within one month.

3. If he does not do this within the set period, the application shall be refused and the respective notice published in the Industrial Property Gazette.

Article 32

Publication of the application

1. Being presented in the regular form, or regularized under the terms of paragraph 2 of the preceding Article, the patent application shall be published in the Industrial Property Gazette with a transcript of the summary and the classification tables

of the international organizations for industrial property of which Cape Verde is a member.

2. The publication to which the preceding paragraph refers shall not be made before 18 months have passed starting from the date of filing of the patent application or the claimed priority.

3. Publication may be brought forward at the express request of the applicant.

4. After publication, anyone so wishing may request a copy of the elements of the case file.

5. Without prejudice to the provisions of the preceding articles, claims or expressions which infringe the provisions of paragraph 2 of Article 26 shall officially be deleted, both from the patent certificate and from the publications which arise from the application.

Article 33

Opposition

The publication of the application shall mark the beginning of the period referred to in Article 235 for the submission of complaints by those who feel prejudiced by the grant of the patent.

Article 34

Examination of the invention

1. The organization responsible for industrial property shall promote the examination of the invention, taking into account all the elements contained in the file.

2. If there is no opposition, the competent examination report shall be

drafted within three months of the publication of the application.

3. If there is opposition, the report shall be drafted within three months starting from the submission of the last procedural document referred to in the article.

4. If, on examination, it is decided that the patent may be granted, the respective notice shall be published.

5. If, on examination, it is decided that the patent may not be granted, the report, with a copy of all the elements quoted therein, shall be sent to the applicant with the notification to respond to the observations made within two months.

6. If, following the applicant's response, it should be verified that the objections to the grant of the patent remain, a new notification shall be drawn up to seek clarification on the points that are still in doubt, within a period of one month.

7. If, from the applicant's response, it is decided that the patent may be granted, the respective notice shall be published.

8. If the response to the notifications should not be considered sufficient, a notice of refusal or partial grant shall be published, in accordance with the examination report.

9. If the applicant does not respond to the notification, the patent shall be refused, and the respective notice published.

Article 35

Partial grant

1. If it is merely a question of delimiting the protected material, removing claims, drawings, sentences from the summary or the description or altering the title or heading of the invention, in accordance with the notification and if the applicant does not proceed voluntarily with these modifications, the organization responsible for industrial property may carry them out and thus publish, the notice of partial grant of the respective patent.

2. The publication of the notice referred to in the preceding paragraph must contain an indication of any changes made to the heading, claims, description or summary.

3. The partial grant must be issued in such a way that the part refused does not exceed the limits in the examination report.

Article 36

Amendments to the application

1. If the application is subject to amendments during the examination phase, this must be indicated in the notice of grant.

2. Amendments introduced into the application during the examination phase shall be communicated to the claimants, should there be any, for the purposes of appeal proceedings.

Article 37

Unity of the invention

1. Applications may only be filed for a single patent and each patent shall relate to a single invention.

2. A group of inventions so linked as to form a single general inventive

concept shall be considered a single invention for the purposes of the patent grant.

Article 38

Publication of the patent specification

Once the deadline set in paragraph 1 of Article 245 has elapsed, the patent specification may be published.

Article 39

Grounds for refusal

1. In addition to the provisions of Article 242, a patent may be refused if:

(a) an invention lacks novelty, inventive step or were not industrially applicable;

(b) its subject matter is included in the provisions of Articles 16 and 17;

(c) the heading or title given to the invention covers a different subject matter, or there is a difference between the description and drawings and the respective duplicate copies;

(d) its subject matter was not described in such a way as to allow the invention to be carried out by a person skilled in the art;

(e) it was considered to be a design by its description or claims;

(f) there was infringement of the provisions of Articles 236 and 237

2. In the case specified in subparagraph (f) of the previous paragraph, instead of refusing the patent, full or partial assignment may be granted to the interested party, if he

had requested it.

Article 40

Notification of final decision

In accordance with Article 234(1), notification must be made of the final decision indicating the Industrial Property Gazette issue in which the notice thereof is published.

Sub-Section III

Effects of the patent

Article 41

Scope of protection

1. The scope of protection conferred by the patent shall be determined by the content of the claims, and the description and the drawings shall be used for interpretation purposes.
2. If the subject matter of the patent concerns a process, the rights conferred by that patent shall include the products directly obtained by the patented process.
3. The protection conferred by a patent relating to a biological material endowed by the invention with certain properties shall extend to any biological material obtained from said biological material by reproduction or multiplication, in identical or different form, and endowed with those same properties.
4. The protection conferred by a patent relating to a process for producing a biological material endowed by the invention with certain properties, shall extend to biological material directly obtained by that process and any other material obtained from that, by reproduction or

multiplication, in identical or differentiated form and endowed with those same properties.

5. The protection conferred by a patent relating to a product that contains genetic information or that consists of genetic information, shall extend to any material, subject to the provision of subparagraph (a) of paragraph 3 of Article 16, in which the product is incorporated and in which its function is contained and exercised.

Article 42

Authorization for third parties

1. The transfer, in any form, by the holder of the patent, or with his consent, of reproductive plant material, for the purposes of agricultural exploitation, shall imply authorization for the acquirer to use the product of his harvest, himself, for reproduction or multiplication on his holding.
2. The assignment, in any form, by the holder of the patent, or with his consent, of livestock or other reproductive animal material, shall imply authorization for the acquirer to use the protected animals for agricultural purposes, said authorization including the making available of the animal, or other reproductive animal material, for the performance of his agricultural activity.
3. The authorization referred to in paragraph 2 above shall not cover any sale, which is intended for reproductive activity for commercial purposes within the scope thereof.

Article 43

Burden of proof

If the subject matter of a patent is a process for the manufacture of a new product, the manufacture thereof by a third party shall be considered to have been made by the patented process, unless proven otherwise.

Article 44

Duration

The patent shall be granted for 20 years from the date of the respective application.

Article 45

Indication of the patent

During the term of the patent, the owner may use on the products the words "patenteado" ("patented"), "patente no " ("patent No.") or "Pat No ..".

Article 46

Rights conferred by the patent

1. The patent shall confer the exclusive right to work the invention anywhere in the national territory.
2. The patent shall also confer on its owner the right to prevent third parties from manufacturing, offering, stocking, trading or using the product which is subject of the patent without his consent, and from importing or holding it for any of these purposes.
3. In cases where the subject of the patent is a process, the patent shall also confer on its owner the right to prevent third parties from manufacturing, using, selling or offering for sale or importation of the product obtained directly by the process without his consent, for any of

these purposes.

4. The patent owner may oppose any acts which constitute an infringement of his patent, even if they are based on another patent with a later priority date, without the need to challenge the titles, or to request a cancellation of the patent titles in question.

5. The rights conferred by the patent may not exceed the scope defined by the claims.

6. The patentee may request from the organization responsible for industrial property, a limitation of the scope of protection of the invention through the amendment of the claims.

7. If, on examination, it is decided that the limitation request meets the conditions to be granted, the organization responsible for industrial property shall promote the publication of the notice referring to the amendment of the claims. Otherwise, the request shall not be granted and the decision shall be communicated to the applicant.

Article 47

Limitation on the rights conferred by the patent

The rights conferred by the patent shall not include:

- (a) acts which take place within a private sphere and without commercial purposes;
- (b) the preparation of medicines made up for individual cases by dispensing chemists on a medical prescription, or acts relative to medicines so prepared;
- (c) acts performed exclusively for test or experimental purposes, including

experiments in preparation for the administrative processes necessary for the approval of products by the competent official bodies, because industrial or commercial working of those products cannot begin before checking whether the patent protecting them has lapsed;

(d) the use on board ships of other Member States of organizations of which Cape Verde is a member, of the subject matter of the patented invention in the body of the ship, in the machinery, in the masting, equipment and other accessories, when they temporarily or accidentally enter the waters of the country, provided that said invention is used exclusively for the purposes of the ship;

(e) the use of the subject matter of the patented invention in the construction or operation of air or land transport vehicles of other Member States of organizations of which Cape Verde is a member, or of accessories of those vehicles, when they temporarily or accidentally enter the national territory;

(f) acts specified in Article 27 of the Convention of December 7, 1944 on International Civil Aviation, if these acts concern aircraft of another State, to which however, the provisions of said article apply.

Article 48

Non-opposability

1. The rights conferred by the patent shall not be binding on any person who in good faith, in national territory and before the date of application, or the date of priority if this is claimed, became aware of the invention through his own means and used it or made effective and serious preparations for

such use.

2. The provisions of the preceding paragraph shall not be applicable if the knowledge results from illicit acts or acts contrary to morality, used against the patentee.

3. The burden of proof shall lie with anyone who invokes the situations specified in paragraph 1.

4. Earlier use, or preparations for this, based on the information referred to in subparagraph (a) of paragraph 1 of Article 14, shall not prejudice good faith.

5. In the cases provided for in paragraph 1, the beneficiary shall be entitled to continue or initiate use of the invention, to the extent of his prior knowledge, for the purposes of his own enterprise, but may only assign it in conjunction with the commercial establishment where the invention is used.

Sub-Section IV

Conditions of use

Article 49

Loss of the patent

A person may be legally deprived of a patent on account of commitments made with other persons.

Article 50

Compulsory working

1. The patentee shall be required to work the patented invention, directly or through third parties and to commercialize the results obtained in order to satisfy the needs of the

national market.

2. The working must commence within four years of the patent application, or within three years from the date of grant.

Article 51

Non-discrimination

The enjoyment of patent rights shall not be subject to any form of discrimination, based on the place of the invention, technological field and the fact that the products are produced locally or imported from any Member State of international organizations of which Cape Verde is a member.

Article 52

Expropriation for public interest

Any patent may be legally expropriated for public good, through payment of fair compensation, if the need to disclose the invention, or to make it available for use by public bodies, so demands.

Article 53

Compulsory licensing

1. Compulsory licenses relating to a specific patent shall be granted in any of the following cases:

- (a) non-working or insufficient working of the patented invention;
- (b) interdependence of patents;
- (c) existence of public interest grounds.

2. The scope and duration of such licenses shall be limited to the

purposes for which they are granted and they shall be predominantly used to supply the domestic market.

3. Compulsory licenses shall not be exclusive and may only be transmitted with the part of the company or establishment that works them.

4. Compulsory licenses may only be granted if the interested claimant has made efforts to obtain a contractual license from the patent holder on acceptable commercial terms within a reasonable period.

5. Compulsory licenses may be revoked, without prejudice to the adequate protection of the legitimate interests of the respective owners, if and when the circumstances, which gave rise to them, cease to exist or are unlikely to be repeated.

6. If a patent has as its subject matter semiconductor technology, compulsory licenses may only be granted for non-commercial public interest purposes.

7. The owner of the licensed patent shall be entitled to fair and adequate compensation, taking into account the economic value of the license, with the right to appeal the decision which grants or refuses it, in accordance with the law.

Article 54

License issued for non-working of the invention

1. When the deadlines referred to in paragraph 2 of Article 50 have elapsed, the patentee who, without due cause or legal basis, does not work an invention, directly or through a license, or does not do so in such a way as to meet domestic needs, may be obliged to grant the license to work

the invention.

2. In addition, a patentee who ceases to work it for three consecutive years, without just cause or legal grounds, may be obliged to grant the working license for the invention.

3. Due cause shall be deemed to be objective difficulties of a technical or legal nature, independent of the will and situation of the patentee, that make it impossible to work or sufficiently work the invention.

Article 55

Non-obligation to grant a license

While a compulsory license remains in force, the patentee may not be compelled to grant another.

Article 56

Cancellation of the license

A compulsory license may be cancelled if the licensee does not work the license in such a way as to meet domestic needs.

Article 57

Dependent licenses

1. If it is not possible to work an invention protected by a patent without infringing the rights conferred by an earlier patent, and both the inventions are used for different industrial purposes, a license may be granted only if the essential nature of the first invention for the working of the second is proven and to the extent necessary therefor; the first patent owner shall have the right to fair compensation.

2. If inventions protected by dependent patents are used for the same industrial purposes and a compulsory license is granted in favor of the owner of the dependent patents, the owner of the earlier patent may also request the grant of a compulsory license against the later patent.

3. If the subject matter of an invention is a process for the preparation of a chemical, pharmaceutical or food product protected by a patent that is in force and if this process patent represents a considerable technical advance in relation to the earlier patent, both the owner of the process patent and the owner of the product patent shall have the right to request a compulsory license against the patent of the other owner.

4. If the person obtaining a plant variety is unable to obtain or exploit a plant variety right without violating a previous patent, he may request a compulsory license for the non-exclusive exploitation of the invention protected by the patent, in so far as that license is necessary for the exploitation of the same plant variety, in exchange for the payment of adequate remuneration.

5. As long as a license of the type set out in the previous paragraph is granted, the patent owner shall have the right to a reciprocal license, under reasonable conditions, to use that protected variety.

6. If the owner of a patent, related to a biotechnology invention, is unable to exploit it without violating a previous plant variety right in a variety, he may request a compulsory license for the non-exclusive exploitation of the protected variety through that variety right, in exchange for the payment of

adequate compensation.

7. As long as a license of the type set out in the previous paragraph is granted, the patentee shall have the right to a reciprocal license, under reasonable conditions, to use that protected variety.

8. The applicants for the licenses referred to in paragraphs 4 and 6 must prove that:

(a) they tried, in vain, to obtain a contractual license from the owner of the patent or the plant variety right;

(b) the plant variety, or invention, represents significant technical progress, of considerable economic interest, in relation to the invention claimed in the patent or the plant variety to be protected.

9. The provisions of this Article shall apply, equally, as long as one of the inventions is protected by a patent and the other by a utility model.

Article 58

Public interest

1. The patentee may be compelled to grant a license for the working of the respective invention for reasons of public interest.

2. Grounds for public interest shall be deemed to exist if at the start, the increase or the spread of working of the invention, or the improvement of the conditions in which such working takes place, are of paramount importance to public health or for national defense.

3. It shall be considered equally that there are public interest reasons when there is non-working and insufficient

quality or quantity of working which may cause serious harm to national economic or technological development.

4. The grant of the license on the grounds of public interest shall fall within the remit of the Government, through the Ministry responsible for that area of Industry.

Article 59

Applications for compulsory licenses

1. Compulsory licenses must be requested from the organization responsible for industrial property, and the applicant must submit the forms of proof which substantiate his application.

2. Requests for compulsory licenses shall be examined in the order in which they are received by the services.

3. On receipt of the request for a compulsory license, the organization responsible for industrial property shall notify the patentee that, within two months, he should state what he sees fit and submit the respective proof.

4. The organization responsible for industrial property shall evaluate the statements of the parties and the exploitation guarantees of the invention offered by the applicant for the compulsory license and shall decide, within two months, if this should be granted or not.

5. If the decision is positive, it shall notify both parties so that, within one month, both designated experts who, in conjunction with the expert designated by the organization responsible for industrial property, agree, within two months, the

conditions of the compulsory license and the compensation to be paid to the patentee.

Article 60

Notification of and appeal against grant or refusal of the license

1. The grant or refusal of the license and the respective conditions of the working shall be notified to both parties.
2. The decision shall be subject to appeal to be lodged with the competent court, in accordance with the law.
3. A decision in favor of the grant must be recorded with the organization responsible for industrial property.
4. An extract from the register referred to in the preceding paragraph shall be published in the Industrial Property Gazette.

Sub-Section IV

Invalidity of the patent

Article 61

Nullity and annulment

1. In addition to the provisions of Article 255, patents shall be null and void in the following cases:
 - (a) if its subject matter does not meet the requirements of novelty, inventive step and industrial applicability;
 - (b) if its subject matter is not eligible for protection under the provisions of Articles 12, 16 and 17;

(c) if it shall be recognized that the title or heading of the invention covers a different subject;

(d) if its subject matter was not described in such a way as to allow the invention to be carried out by a person skilled in the art;

2. One or more claims may be declared null and void, or annulled, but a claim may not be partially declared null and void or annulled.

3. If there is declaration of nullity or annulment of one or more claims, the patent shall continue in force for the remainder, as long this may constitute an independent patent.

Sub-Section VI

Supplementary protection certificate for medicines and phytopharmaceutical products

Article 62

Application for certificate

1. The application for a supplementary protection certificate for medicines and phytopharmaceutical products shall include an application form which indicates:

(a) the applicant's name, trade name or company name, nationality and/or his domicile or the place where he is based;

(b) the patent number, as well as the title of the invention protected by that patent;

(c) the number and the date of the first authorization of the placement of the product on the market in Cape Verde, and the number and date of that

authorization.

2. Attached to the request must be a copy of the first authorization of placement on the market in Cape Verde which allows for the identification of the product, including, namely, the number and the date of authorization, and a summary of the product characteristics.

3. The denomination of the authorized product must be indicated and the legal provision under which the authorization process ran, the copy of the publication of that authorization in the Official Journal must also be attached, if the authorization referred to in the preceding paragraph is not the first, as a medicine or phytopharmaceutical product.

Article 63

Examination and publication of the application

1. If the certificate application and the product which is the subject of the application meet the conditions stipulated by this Code, the organization responsible for industrial property shall grant the certificate and promote the publication of the application and the notice of grant.

2. If the application for a certificate does not meet the conditions referred to in the previous paragraph, the applicant shall be notified, within two months, to correct the irregularities found.

3. If, from the applicant's response, it is found that the certificate application meets the required conditions, the certificate application and notice of its grant shall be published.

4. The application shall be refused if the applicant does not correct the irregularities, and the application and the notice of refusal are then published.

5. Without prejudice to the provisions of paragraph 2, the certificate shall be refused if the application or the product to which it refers do not meet the conditions stipulated in the respective Regulation, or if they do not meet the conditions established in this Code, and the application and notice of refusal shall be published.

6. The publication must include, at least, the following:

(a) name and address of the applicant;

(b) patent number;

(c) title of the invention;

(d) the number and the date of the authorization to place the product on the market in Cape Verde, as well as the identification of the product which is the subject of the authorization;

(e) the notice of grant and the validity period of the certificate or notice of refusal, accordingly.

Section II

Utility Models

Sub-Section I

General Provisions

Article 64

Nature

New inventions, which involve an inventive step, may be protected as

utility models, if they are industrially applicable.

Article 68

Form of application

Article 65

Purpose

Utility models aim to provide protection for inventions through a more simplified and accelerated administrative procedure than that for patents.

1. An application for a utility model shall be made in a request which indicates or contains:

(a) the applicant's name, trade name or company name, nationality and/or his domicile or the place where he is based;

(b) the heading or title which summarizes the subject of the invention;

(c) the name and the country of residence of the inventor;

(d) the country where the first application was filed, the date and number of said application, if the applicant intends to claim right of priority;

(e) mention that a patent was requested for the same invention, if that were the case, in accordance with paragraph 5 of Article 20;

(f) signature of the applicant or his representative.

Article 66

Option

1. The protection of an invention which meets the conditions set out in Article 64 may be provided, at the choice of the applicant, by a utility model or patent.

2. The utility model shall cease to have effect after the grant of a patent relating to the same invention.

Article 67

Limitations of the utility model

The following cannot be the subject of the utility model:

(a) inventions whose commercial exploitation is against the law, public order, public health or morality;

(b) inventions which relate to biological material;

(c) inventions which relate to chemical or pharmaceutical substances or processes;

2. Any imaginary expressions used to designate the invention shall not form part of the claim.

3. In accordance with the provisions of paragraph 2 of Article 226, priority shall be granted to the utility model application which is filed first, in addition to the elements regulated in subparagraph (a) of paragraph 1, a summary of the description of the invention or, instead of that, if priority of a prior application is claimed, an indication of the number and date of the prior application and the body

Sub-Section II

Process for utility models

where this application was filed.

4. Applications may be submitted in electronic format under the conditions regulated by the member of Government responsible for the industrial property sector.

Article 69

Examination of form

1. Once the utility model application has been filed, an examination of form shall be carried out, within one month to verify if it meets the stipulated requirements.

2. In the event that irregularities of form are found in the application, the applicant shall be notified so that they may be corrected within one month.

3. If he does not do this within the deadline set, the application shall be refused and the respective notice published in the Industrial Property Gazette.

Article 70

Publication of the application

1. Having been presented in the correct manner, or corrected under the provisions of paragraph 2 of the preceding article, the application for the utility model shall be published, with a transcript of the summary or the classification tables of international organizations for industrial property, of which Cape Verde is a member.

2. The publication to which the preceding paragraph refers shall take place up to six months from the date of the application; however, it may be earlier at the express request of the applicant.

3. The publication may also be deferred, at the request of the applicant, for a period no longer than 18 months starting from the date of the utility model application or the claimed priority.

4. The deferment shall cease from the time at which examination is requested, by third parties or by the applicant himself.

5. After publication, anyone so wishing may request a copy of the elements of the case file.

Article 71

Provisional grant

1. If no examination has been requested and there is no opposition, the utility model shall be provisionally granted and the applicant notified to proceed with the payment of the related fee for temporary grant.

2. The certificate of temporary grant shall be issued to the applicant within one month starting from the date on which the payment, referred to in the preceding paragraph, is made.

3. The validity of the certificate of temporary grant shall cease once an examination of the invention has been requested.

Article 72

Examination request

1. The examination may be requested during the application phase, or during the validity of the provisional utility model.

2. If the holder of the utility model, which is provisionally granted, intends to bring judicial proceedings in defense

of the rights conferred thereby, he must compulsorily request examination by the industrial property organization.

Article 73

Examination of the invention

1. The body shall promote the examination of the invention at the request of the applicant or any interested party.
2. A report of that examination shall always be drafted, if there is no opposition, within three months:
 - (a) starting from the date on which the examination was requested;
 - (b) or following the publication of the application, if the examination has been requested during the application phase.
3. If there is opposition, the examination shall be carried out within three months starting from the submission of the last procedural document referred to in Article 235.
4. If, on examination, it is decided that the utility model may be granted, the notice of grant shall be published.
5. If, by contrast, it is decided that the same may not be granted, the report, with a copy of all the documents quoted therein, shall be sent to the applicant with the notification to respond to the observations made within two months.
6. If, following the applicant's response, objections to the grant of the utility model remain, a new notification shall be drawn up to seek clarification on the points that are still in doubt, within a period of one month.

7. If, from the response it is concluded that the utility model may be granted, the notice of grant shall be published.

8. If the response to the notification should not be considered sufficient, a notice of refusal or partial grant shall be published, in accordance with the examination report.

9. If the applicant does not respond to the notification, the utility model shall be refused, and the notice of refusal shall be published.

Article 74

Grounds for refusal

1. In addition to the provisions of Article 242, a utility model may be refused if:
 - (a) an invention lacks novelty, inventive step or were not industrially applicable;
 - (b) the heading or title given to the invention covers different subject matter, or there is a discrepancy between the description and drawings and the respective duplicate copies;
 - (c) its subject matter was not described in such a way as to allow the invention to be carried out by a person skilled in the art;
 - (d) it was considered a design through its description or claims;
 - (e) if the subject were not permitted under the provisions of this Code;
 - (f) if the application, as it is drafted, infringes any rules established in this Code.
2. In the case specified in subparagraph (f) of the previous

paragraph, instead of refusing the utility model, full or partial assignment may be granted to the interested party, if he had requested it.

Sub-Section III

Effects of the utility model

Article 75

Scope of protection

1. The scope of protection conferred by the utility model shall be determined by the content of the claims, and the description and the drawings shall be used for interpretation purposes.
2. If the subject matter of the utility model concerns a process, the rights conferred by that patent shall include the products directly obtained by the patented process.

Article 76

Duration

1. The utility model shall be granted for six years from the date of filing of the application.
2. During the last six months of validity of the utility model, the holder may request its extension for a period of two years.
3. During the last six months of the new period referred to in the previous paragraph, the holder may request a new extension for a further period of two years.
4. In no case, may the duration of the utility model extend more than 10 years in total, beginning from the date of filing of the respective application.

Article 77

Indication of utility models

During the validity of the utility model, the holder may use the use on the products the words "Modelo de Utilidade n.º" ("Utility Model No.") or "M.U. No.".

Article 78

Rights conferred by the utility model

1. The utility model shall confer on the respective owner the exclusive right to exploit the invention or model anywhere in national territory.
2. If the subject of the utility model is a product, the respective owner shall have the right to prohibit third parties from its manufacture, use, offer for sale, sale or import for such purposes.
3. If the subject of the utility model is a process, the respective owner shall have the right to prohibit third parties from the use, as well as the use or offer for sale, sale or import of the product obtained directly by this process for such purposes.
4. The owner of the utility model may oppose any acts which constitute a violation of his invention, even if they are based on another utility model with a later priority date, without the need to challenge the titles, or to request a cancellation of the utility models on which that right is based.
5. The rights conferred by the utility model may not exceed the scope defined by the claims.

Article 79

Limitation of rights conferred by the utility model

The rights conferred by the utility model shall not cover:

- (a) acts which take place within a private sphere and without commercial purposes;
- (b) acts which take place for experimental purposes, which affect the protected subject matter.

Article 80

Exhaustion of the right

The rights conferred by the utility model shall not allow the owner to prohibit acts related to products protected by it after they have been commercialized, by himself or with his consent.

Sub-Section IV

Invalidity of the utility model

Article 81

Nullity

1. In addition to the provisions of Article 255, utility models shall be null and void in the following cases:

- (a) if their subject matter does not meet the requirements of novelty, inventive step and industrial applicability;
- (b) if their subject matter is not eligible for protection;
- (c) if it shall be recognized that the title or heading of the invention covers a different subject;

(d) if their subject matter was not described in such a way as to allow the invention to be carried out by a person skilled in the art.

2. Only utility models whose invention has been examined may be declared null and void.

CHAPTER II

Topographies of semiconductor products

Section I

General Provisions

Article 82

Definition of a semiconductor product

A semiconductor product shall be understood as being the final or intermediate form of any product meeting all the following criteria:

- (a) consists of a body of material that includes a layer of semiconductor material;
- (b) possesses one or more layers composed of conducting, insulating or semiconducting material, arranged in accordance with a predetermined three-dimensional model;
- (c) is intended to carry out an electronic function either alone or together with other functions.

Article 83

Definition of semiconductor product topography

The topography of a semiconductor product shall be a set of related images, either fixed or encoded, which

represent the three-dimensional layout of the layers of which the product is composed, and in which each image has the layout or part of the layout of a surface of the same product, in any phase of its manufacture.

Article 84

Subject of legal protection

1. Only semiconductor product topographies which result from the intellectual effort of their creator himself and which are not known to the semiconductor industry shall enjoy legal protection.
2. Equally, topographies which consist of elements known to the semiconductor industry, if the combination of these elements jointly meets the conditions stipulated in the preceding paragraph, shall enjoy legal protection.

Article 85

Exclusivity of legal protection

1. The protection granted to semiconductor product topographies shall only apply to the topographies themselves, excluding any idea, process, system, technique or encoded information incorporated in them.
2. All creators of final or intermediate topographies, of a semiconductor product, shall enjoy the exclusive right to dispose of the topography, as long as it meets legal provisions, in particular those related to registration.
3. Registration may not, however, be carried out either after two years have elapsed starting from the first commercial exploitation of the topography anywhere, nor after a

period of 15 years starting from the date in which it was fixed, or encoded, for the first time, if it were never exploited.

Section II

Registration process

Article 86

Reasons for refusal of registration

1. In addition to the provisions of Article 242, the registration of a topography of a semiconductor product may be refused if:
 - (a) the topography of the semiconductor product were not a topography as defined and characterized in Articles 82 and 83;
 - (b) the topography of a semiconductor product may not be part of the legal protection under the terms of Article 84;
 - (c) the heading or title given to the topography of a semiconductor product covers a different subject, or there is a discrepancy between the description and drawings and the respective duplicate copies;
 - (d) its subject matter was not described in such a way as to allow the topography of the semiconductor product to be produced by a person skilled in the art;
 - (e) if the application infringes the rules established in Articles 19 and 20.
2. In the case specified in subparagraph (e) of the preceding paragraph, instead of refusing the registration, full or partial assignment may be granted to the interested party,

if he had requested it.

Section III

Effects of registration

Article 87

Duration

Registration shall last for 10 years, starting from the date of the respective application, or the date on which the topography was exploited for the first time in any place, if this occurred first.

Article 88

Indication of registration

During the validity of the registration, its holder may use, in semiconductor products manufactured through the use of protected topographies, a 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 topography shall confer on the holder the exclusive right to its use throughout the whole territory of Cape Verde, to produce, manufacture, sell or exploit that topography, in its entirety or in part or the objects in which it is used, with the obligation to do so effectively and in accordance with the market demands.

2. The registration of the topography shall also confer on its holder the right to authorize or prohibit any of the following acts:

(a) reproduction of the protected topography in its entirety or in part;

(b) importation, sale or distribution in any other form, for commercial purposes, of a protected topography, of a semiconductor product in which a protected topography is incorporated, or of an article in which a semiconductor product of that type is incorporated, only in so far as it includes an illegally reproduced topography.

Article 90

Limitation on the rights conferred by registration

1. The rights conferred by the registration of the topography shall not cover:

(a) the reproduction, in the private sphere, of a topography for non-commercial purposes;

(b) the reproduction for the purposes of analysis, evaluation or teaching;

(c) the creation of a different topography, based on the analysis or evaluation referred to in the previous subparagraph, which may benefit from the protection set out in this Code;

(d) the performance of any of the acts referred to in paragraph 2 of the preceding paragraph in relation to a semiconductor product which incorporates an illegally reproduced topography, or any article which incorporates a semiconductor product of that type, if the person who performed or commissioned the performance of those acts, did not know, nor could not know at the time of acquiring it that the product incorporated an illegally reproduced topography;

(e) the performance, once the person referred to in the preceding subparagraph has received sufficient information for the topography to be illegally reproduced, of any of the acts in question relating to the products in his possession, or commissioned before this time.

2. In the cases referred to in subparagraph (e) of the preceding paragraph, the person in question must pay the title holder a sum equivalent to the royalties which would be payable under the protection of a freely negotiated license in relation to a topography of this type.

Article 91

Exhaustion of the right

The rights conferred by the topography registration shall not allow the holder to prohibit acts related to the topographies, or to the semiconductor products, protected by it after their commercialization, by himself or with his consent, in Cape Verde.

Section IV

Invalidity of registration

Article 92

Nullity

In addition to the provisions of Article 255, the registration of the topography of a semiconductor product shall be null and void in the following cases:

(a) if its subject matter does not meet the requirements of Articles 82, 83 and 84;

(b) if it shall be recognized that the title or heading of the topography

covers a different subject;

(c) if its subject matter was not described in such a way as to allow the invention to be carried out by a person skilled in the art;

Article 93

Lapse

In addition to the provisions of Article 259, the registration of a topography of a semiconductor product shall lapse if:

(a) 10 years have elapsed from the last day of the calendar year in which the registration application was formally filed, or an illegally reproduced topography is incorporated, or from the last day of the calendar year in which the topography was commercially exploited, anywhere, if that took place before such filing;

(b) if the topography were not commercially exploited, 15 years after the date on which this was fixed, or encoded for the first time.

CHAPTER III

Industrial designs

Section I

General Provisions

Article 94

Definition of an industrial design

A design shall mean the ornament or aesthetic aspect of an article, including the appearance of the whole, or part, of a product resulting from the features of, in particular, lines, contours, colors, shape, texture or materials, of the

product itself and its ornamentation.

Article 95

Definition of product

1. Product shall mean any industrial or handicraft article, including inter alia, the components for the assembly of a complex product, packaging, presentation elements, graphic symbols and typographic characters, but excluding computer software.

2. Complex product shall mean any product made up of multiple components that can be removed from it for the purpose of stripping it and of being put back in for the purpose of reassembly.

Article 96

Limitations of registration

Designs which are contrary to public order, public health or morality may not be registered.

Article 97

Requirements for grant

1. Original and new designs of distinctive character shall enjoy legal protection.

2. Designs which, whilst not being entirely new, involve novel combinations of known elements or a different layout of elements already used, in such a way as to endow the respective subject matter with a distinctive character shall also enjoy legal protection.

3. Without prejudice to the preceding paragraphs, the same applicant may, before the disclosure of the design, request the registration of other

designs which differ from that originally submitted only in terms of insignificant details.

4. An industrial design applied to or incorporated in a product constituting a component of a complex product shall be considered novel and distinctive in character if cumulatively:

(a) if it can reasonably be expected that even after being incorporated in the complex product, it will continue to be visible during the normal use of the product;

(b) the visible characteristics of that component meet the requirements of novelty and distinctiveness of character.

5. For the purposes of the provisions of subparagraph (a) of the preceding paragraph, normal use shall be understood as use by the end user, to the exclusion of acts of conservation, maintenance or repair.

6. The following shall not be protected by registration:

(a) the visible characteristics of a product which are determined, exclusively, by its technical function;

(b) the visible characteristics of a product that must necessarily be reproduced in their exact form and dimensions, so that the product in which the design is incorporated, or to which it is applied, be it mechanically linked to the other product, or be it inserted within, around or against that other product, in such a way that both may perform their function.

7. Registration of the design shall be possible under the conditions set out in Articles 97 and 98, provided that its purpose is to permit a multiple

assembly of interchangeable products, or their connection to form a modular system, without prejudice to subparagraph (b) of the previous paragraph.

8. If registration has been refused under subparagraphs (b), (e) and (g) of paragraph 1 of Article 115, or declared null and void or annulled under subparagraph (b) of paragraph 1 of Article 126 and of Articles 127 and 128, the design may be registered or its respective right maintained in an altered form, provided that the following criteria are met:

(a) its identity is maintained;

(b) the necessary alterations are made in order to meet the protection requirements.

9. The registration or its maintenance in an altered form referred to in the preceding paragraph may be accompanied by a declaration whereby the holder partially renounces his right or the court decision by which the registration was declared partially null and void or partially annulled.

Article 98

Novelty

1. A design shall be new if, before the respective application for registration or priority claim, no identical design has been disclosed to the public in the country or abroad.

2. Designs shall be considered identical if their specific characteristics differ only in terms of insignificant details.

Article 99

Distinctive character

1. A design shall be considered to be distinctive if the overall impression that it gives to an informed user differs from the overall impression caused to that user by any design made public prior to the date of the registration application or priority claim.

2. Assessment of distinctive character shall take into account the degree of freedom afforded to the creator to create the design.

Article 100

Disclosure

1. For the purpose of the two preceding articles, a design shall be considered to have been disclosed to the public if it has been published following registration, or in any other circumstance, presented at an exhibition, used in trade or made known in any other way, except if these facts could not reasonably have come to the knowledge of persons operating in Cape Verde and skilled in the art in question in the course of their normal activity, before the date of the registration application or priority claim.

2. An industrial design shall, however, not be considered disclosed to the public by the simple fact of being made known to a third party in explicit or implicit confidence.

Article 101

Non-prejudicial disclosures

1. For the purpose of Articles 98 and 99, a design to be registered shall not be considered to have been disclosed if it has been disclosed to the public:

(a) by the creator or his successor or by a third party following information provided or measures taken by the creator or his successor;

(b) in the 12 months preceding the date of filing of a registration application or, if priority is claimed, the date of priority.

2. Paragraph 1 shall also apply if a design has been disclosed to the public as a result of an abuse regarding the creator or his successor.

3. An applicant for registration of a design who has exhibited products in which the design was incorporated, may, if he files the application within six months of the date of the first exhibition of these products, claim a priority right.

4. The provisions of the preceding paragraph shall apply to a design to which it was applied, was exhibited at an official or officially recognized international exhibition falling within the scope of the Conventions relating to International Exhibitions to which Cape Verde is party.

5. An applicant wishing to benefit from the provisions of paragraphs 1 and 2, or to claim priority under the provisions of the preceding paragraph, shall submit, within three months of the date of the registration application, a document of proof showing said disclosure, or proof of the exhibition of the products in which the design was incorporated or to which it was applied.

Section II

Registration process

Article 102

Form of application

1. An application to register a design shall be made on a form indicating or containing:

(a) the applicant's name, trade name or company name, nationality and his domicile or the place where he is based;

(b) an indication of the products in which the design is intended to be applied or incorporated;

(c) the name and country of residence of the creator;

(d) the country where the first application was filed, and the date and number of said application, if the applicant intends to claim right of priority;

(e) signature of the applicant or his representative.

2. For the purpose of paragraph 1 of Article 226, priority shall be granted to the registration application for a design that, in addition to the particulars required in subparagraph (a) of Article 1, first submits a representation of the design instead, if priority of a previous application is requested, an indication of the number and date of the previous application and the body to which it was submitted.

3. Applications may be filed in electronic format under the conditions to be regulated by the member of Government responsible for the industrial property sector.

Article 103

Documents to be submitted

1. Applications shall be accompanied by the following elements:

(a) a brief description, in duplicate, of the elements which appear in the representations of the design or the sample submitted, excluding references to the possible novelty, the distinct character or the technical value of the design,

(b) drawings or photographs, in duplicate, of the design;

(c) a drawing or photograph, or any other medium, defined by the competent service, with a reproduction of the product whose design is intended to be registered, in the event of a request to postpone publication, the provisions of the final part of the preceding subparagraph shall apply;

(d) documents proving authorization by the holder of copyright, if the design is a reproduction of a work of art which is not in the public domain or, generally, from the respective author, if he is not the applicant.

2. The elements referred to in the preceding paragraph must respect the formal requirements set by the competent service.

3. In the event that the subject matter of the application is a two-dimensional design and the application includes a request to postpone the publication, the respective representations may be replaced by a copy or a sample of the product, in which the design is incorporated or applied, without prejudice to its submission after the postponement period.

4. On his own initiative, or by notice from the organization responsible for industrial property, the applicant shall submit the product itself or other

photographs taken from angles that make it possible to form a more precise idea of the design.

5. If a design registration application, claims a color combination:

(a) the drawings or photographs shall show the colors claimed and the description of novelty must refer thereto;

(b) the applicant may request that the publication be in color, from the medium, so that the colors claimed are shown.

Article 104

Unity of application

1. The same application may not be used to request more than one registration and a different registration shall correspond to each design
2. Designs comprising several essential parts to form a whole shall be included in a single registration.

Article 105

Multiple applications

1. Without prejudice to the provisions of the preceding article, a single registration may include designs which share the same preponderant distinctive characteristics, up to a limit of 10, in order to constitute a set of interrelated objects, in terms of their purpose or application.
2. Drawings or photographs of the designs referred to in the preceding paragraph, shall be sequentially numbered, in accordance with the total number of designs which are intended to be included in the same design.

3. Each of the designs included in the application or multiple registration may be transmitted separately or independently of the remainder.

4. If it is decided that some of the products included in a multiple application are not designs, the applicant shall be instructed to reformulate them as a patent or utility model, though the date of the original application shall remain as the date of application.

Article 106

Examination of form

1. After the registration application has been filed, the examination to verify the fulfillment of the established requirements shall take place within a period of one month.

2. In the event that formal irregularities are found in the application, the applicant shall be notified so that they may be corrected within one month.

3. If this is not done within the deadline established, the application is refused and the respective notice is published, with a reproduction of the design or model and the transcript of the description referred to in subparagraph (a) of paragraph 1 of Article 102.

Article 107

Publication

1. If a registration application is in order or any irregularities have been corrected pursuant to paragraph 2 of the previous Article, it shall be published in the Industrial Property Gazette with a reproduction of the design and the transcript of the

description referred to in subparagraph (a) of paragraph 1 of Article 103.

2. The publication to which the preceding paragraph refers shall take place up to six months from the date of the registration application; however, it may be postponed at the express request of the applicant.

3. After publication, anyone so wishing may request a copy of the elements of the case file.

Article 108

Postponement of publication

1. On filing an application to register a design, the applicant may request that its publication be postponed for no more than 30 months as of the date of filing of the application or priority claimed.

2. Requests to postpone publication submitted after the date of the registration application shall be considered and a decision taken thereon by the competent service.

3. If publication is postponed, the design shall be entered in the registers of the competent service, but the application process shall not be disclosed.

4. Whenever the claimant requests the deferment of publication, the competent public service shall publish, four months after the date of filing of the application, a notice of this postponement, which shall include an indication that at least identifies the claimant, the date of filing of the application and the period of postponement requested.

5. At the applicant's request, the application may be published before

the end of the postponement period, if all the necessary legal formalities have been completed.

6. The postponement shall cease from the time at which examination is requested, by third parties or by the applicant himself.

Article 109

Opposition

The publication of the application in the Industrial Property Gazette shall make way for the presentation of claims by those who consider themselves prejudiced by the grant of the registration.

Article 110

Provisional registration

1. If no examination has been requested and there has been no opposition, the registration shall provisionally be granted and the applicant notified to proceed with the payment of the related fee for provisional grant.

2. The certificate of provisional registration shall be issued to the applicant within one month starting from the date on which the payment, referred to in the preceding paragraph, is made.

3. The validity of the certificate of provisional registration shall cease once an examination has been requested.

Article 111

Examination request

1. The examination may be requested during the application phase, or during

the validity of the provisional registration.

2. The fee related to the examination must be paid by the person requesting it, within one month from the date of request.

3. If the holder of the provisional registration intends to bring judicial proceedings in defense of the rights conferred thereby, he must compulsorily request the examination referred to in the following article.

Article 112

Examination

1. The organization responsible for industrial property shall carry out the examination of the design, at the request of the applicant or any interested party.

2. Following that examination, if there has been no opposition, a report shall always be drafted, within three months from the date on which it was requested, or after the publication of the application in the Industrial Property Gazette, if the examination were requested during the application phase.

3. If there is opposition, the report shall be produced within three months starting from the submission of the last procedural document referred to in Article 235.

4. If, on examination, it is decided that the registration may be granted, the respective notice shall be published.

5. If, on the contrary, it is decided that the registration may not be granted, the report, with a copy of all the documents quoted therein, shall be sent to the applicant with instructions

to respond within two months.

6. If, following the applicant's response, objections to the grant of the registration remain, a new notification shall be drawn up to seek clarification on the points that are still in doubt, within a period of one month.

7. If, from the response, it is decided that the registration may be granted, the notice of grant shall be published.

8. If the response to the notification should not be considered sufficient, a notice of refusal or partial grant shall be published, in accordance with the examination report.

9. If the applicant does not respond to the notification, the registration shall be refused, and the refusal notice published.

Article 113

Partial grant

1. If it is just a case of delimiting the protected material, removing descriptive phrases, altering the title or heading, or deleting certain objects included in the same multiple application in line with the notification and if the applicant does not proceed voluntarily with these modifications, the organization responsible for industrial property may carry them out and thus publish the notice of partial grant of the respective registration application.

2. The publication of the notice referred to in the preceding paragraph must contain an indication of any changes introduced.

3. The partial grant must be issued in such a way that the part refused does not exceed the limits contained in the

examination report.

Article 114

Amendments to the application

1. If the application undergoes amendments during the examination phase, the notice of grant must include this indication.

2. Amendments introduced into the application during the examination phase shall be communicated to the claimants, should there be any, for the purposes of appeal proceedings.

Article 115

Grounds for refusal

1. In addition to the provisions of Article 242, a registration may be refused if:

(a) the design does not meet the terms of the provisions of Article 94;

(b) the design infringes the provisions of Article 96 or does not meet the conditions of Articles 97 to 101;

(d) there was infringement of the provisions of Articles 19 or Article 20, with the necessary adaptations;

(d) the design interferes with a previous design, disclosed to the public after the date of the application or priority claim and protected from a prior date by a design application or registration;

(e) a distinctive sign is used in a later design or the provisions regulating this sign confer the right to prohibit its use;

(f) the design constitutes unauthorized use of a work protected by copyright;

(g) the design constitutes an illegal use of badges, emblems and escutcheons which are of particular public interest in Cape Verde;

(h) the design constitutes an illegal use of elements referred to in the international conventions to which Cape Verde has acceded.

2. The basis provided for in subparagraph (c) of the preceding paragraph shall only be analyzed if it is invoked by the holder of the right in the design.

3. The grounds provided for in subparagraphs (d), (e), and (f) of paragraph 1 shall only be analyzed if they are invoked by the applicant or the holder of the contested right.

4. The grounds provided for in subparagraph (g) shall only be analyzed if invoked by the person or body affected by the use in question.

Article 116

Notification of final ruling

Notification shall be made of the final ruling, with an indication of the Industrial Property Gazette in which the respective notice shall be published.

Section III

Effects of the registration

Article 117

Scope of protection

1. The scope of the protection conferred by the registration shall

cover all designs that do not give a different overall impression to an informed user.

2. In the assessment of scope of protection, the degree of freedom that the creator had to carry out his design should be taken into account.

Article 118

Relationship with copyright

Any registered design shall also enjoy the protection conferred by legislation on copyright, as of the date on which the design was created or defined in any form.

Article 119

Duration

1. The duration of registration shall be five years as of the date of application and it may be renewed for equal and successive periods up to a limit of 25 years.

2. The renewals referred to in the preceding paragraph shall be requested in the last six months of the validity of the respective registration.

Article 120

Indication of the design

While the registration is in effect, its holder may use on the products the expression "desenho ou modelo n^o" ("Design No.") or the abbreviation "DM No.".

Article 121

Rights conferred by the registration

1. Registration of a design shall confer on its holder the exclusive right to use

it and prohibit its use by third parties without his consent, if such acts are carried out for commercial purposes.

2. The use referred to in the preceding paragraph shall cover in particular the manufacture, offer, commercializing, import, export or use of a product in which this design has been incorporated, or substantially copied or to which it has been applied as well as the storage of said product for the same purposes.

Article 122

Limitation on the rights conferred by the registration

The rights conferred by the registration shall not cover:

- (a) acts performed in private and not for commercial purposes;
- (b) acts for experimental purposes;
- (c) acts of reproduction for the purpose of reference or for didactic purposes, provided that they are compatible with fair commercial practices, do not unduly prejudice the normal exploitation of the design, and that the source is mentioned;
- (d) equipment on board ships and aircraft registered in another country when temporarily passing through Portuguese territory;
- (e) the import of spare parts and accessories for these ships and aircraft to be repaired;
- (f) repairs to these ships and aircraft.

Article 123

Exhaustion of the right

The rights conferred by registration shall not allow their holder to prohibit acts relating to products in which a design has been incorporated or to which it has been applied, if the design is the subject of prior protection by registration, and if the product has been marketed by the holder or with his consent.

Article 124

Inalterability of designs

1. Designs shall remain unaltered for as long as registration is in effect.
2. Enlargement or reduction to scale shall not affect the inalterability of designs.

Article 125

Alterations to designs

1. Any alteration to the essential specific characteristics of designs may be registered provided that it satisfies the requirements established by the grant of legal protection.
2. Modifications made to designs by the registration holder that only change insignificant details may be the subject of a new registration or registrations.
3. The registration or registrations referred to in the previous paragraph shall be recorded in the original title document and in all registrations made under the same provision.
4. The modified registrations of designs referred to in the preceding subparagraph shall revert to the public domain at the end of their validity.

Section IV

Invalidity of registration

Article 126

Nullity

1. In addition to the provisions of Article 255, registration shall be null and void in the following cases:

- (a) the design does not meet the terms of the provisions of Article 94;
- (b) it infringes the provisions of Article 96;
- (c) it does not fulfill the conditions of Articles 97 to 101;
- (d) it interferes with a previous design, disclosed after the date of application for registration or the priority claimed, and which is protected from the previous date;
- (e) the design constitutes an illegal use of badges, emblems and escutcheons which are of particular public interest in Cape Verde;
- (f) it constitutes illegal use of any of the elements referred to by international conventions to which Cape Verde has acceded and which leads to it being null and void.

2. Only registrations of designs which have been examined may be declared null and void.

Article 127

Annulability

1. In addition to the provisions of Article 256 registrations shall be annulable only:

- (a) if a later design uses a distinctive sign which is prohibited by law or

regulation;

- (b) the design or model constitutes unauthorized use of a work protected by copyright;

2. In the cases provided for in the preceding paragraph, only registrations of designs which have been examined may be annulled.

Article 128

Declaration of nullity or partial annulment

1. The registration of one or more objects contained in one and the same registration may be declared null and void or annulled, but the nullity of a registration may not be partially declared or the registration for an object be partially annulled.

2. In the event of declaration of nullity or annulment of one or more objects, the respective registration shall remain valid for the remaining part of the registration.

Section V

Prior Protection

Sub-Section I

General Provisions

Article 129

Subject matter of application

Designs of textiles or clothing may be the subject of an application for prior protection, as well as other activities defined by the member of Government responsible for the industrial property sector.

Article 130

Application for prior protection

1. The application for prior protection referred to in the preceding Article and the respective reproductions shall be deposited with the organization responsible for industrial property or other bodies defined thereby.
2. The application for prior protection, filed with the appropriate bodies referred to in the previous paragraph shall be forwarded to the organization responsible for industrial property, within 15 days of its receipt, accompanied by the certificate issued for them and the value of the corresponding fees.
3. Prior protection shall be granted to the application which, meeting the requirements, is filed first, and precedence of applications shall apply in relation to the date of receipt by those bodies.
4. The characteristics of the reproductions shall be fixed by the organization responsible, under the proposals of the bodies referred to in paragraph 1.

Article 131

Secrecy and filing

The reproductions referred to in the previous Article must be kept secret, for the period of validity of the prior protection and archived beyond that validity.

Sub-Section II

Protection application process

Article 132

Form of application

1. A prior protection application for a design shall be filed with the requirement that it shall indicate:
 - (a) the applicant's name, trade name or company name, nationality and his domicile or the place where he is based;
 - (b) the number of reproductions to be registered, up to a maximum of 100;
 - (c) the heading or title which summarizes the object, or objects, which it is intended to protect, or the purpose for which they are intended;
 - (d) the name and the country of residence of the creator;
2. The application must be signed by the applicant or his representative.
3. Any imaginary expressions used to designate the design shall not be subject to protection.

Sub-Section III

Effects of application for prior protection

Article 133

Duration

The duration of prior protection shall be six months, starting from the date of receipt of the respective application by the national organization for industrial property or the bodies referred to in Article 130.

Article 134

Regularization of application

If an application for prior protection, forwarded by the bodies referred to in Article 130, does not meet the requirements of Article 132, the organization responsible for industrial property shall instruct the applicant to regularize them, within one month, with the prior protection date starting from the date of regularization.

Article 135

Rights conferred by prior protection

Prior protection shall confer a right of priority for the purposes of a possible registration application.

Article 136

Expiry

Prior protection shall expire at the end of the respective duration period or, if registration of any of the designs to which the registration refers were requested.

Article 137

Conversion of application

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

Article 138

Registration application for administrative acts or lawsuits

A beneficiary of prior protection who intends to take part in administrative proceedings against the grant of another registration, or bring a lawsuit on the basis of the design, must attach the corresponding registration accompanied by the necessary

examination.

CHAPTER IV

Trademarks

Section I

General Provisions

Subsection I

Trademarks for goods and services

Article 139

Composition of trademark

1. A trademark may consist of a sign or set of signs capable of being represented graphically, namely words - including personal names, drawings, letters, numerals and sounds, the shape of the product or its packaging, provided that they adequately distinguish the goods and services of one company from those of others.

2. A trademark may also consist of advertising slogans for goods or services to which they refer, irrespective of copyright protection afforded to them, provided they are of distinctive character.

Article 140

Absence of requirements

1. It is deemed that the following do not meet the requirements provided for in the preceding article:

- (a) trademarks that are devoid of any distinctive character;
- (b) signs that exclusively consist of the shape imposed by the nature of the product itself, the shape of the product necessary for obtaining a

technical result or the shape that confers a substantial value on the product;

(c) signs that are exclusively made up of indications that may be used in trade to designate the type, quality, quantity, purpose, value, geographic origin, period or means of production of the product or provision of the service, or other characteristics thereof;

(d) trademarks that exclusively consist of signs or indications that have become customary in current language or in bona fide and established commercial practices;

(e) colors, except if they are combined together or with graphics, wording or other elements in a particular and distinctive form.

2. The generic elements referred to in subparagraphs (a), (c) and (d) of the preceding paragraph, that are part of the composition of a trademark, shall not be for the exclusive use of the applicant, unless the signs have acquired distinctive character in commercial practice.

Article 141

Non-exclusivity

At the request of the applicant or the claimant, the organization responsible for industrial property shall identify, in the respective grant decision, the elements that make up the trademark for which the applicant does not have exclusive rights of use.

Article 142

Ownership and exclusive rights

1. Registration shall confer upon the holder the right of ownership and exclusivity of the trademark for the respective goods and services for which it is designed.

2. The State may likewise enjoy the right of ownership and exclusivity of the trademarks it uses, provided that it satisfies the legal requirements..

Article 143

Right to registration

The right to register the trademark shall fall to the person who has a legitimate interest therein and in particular:

(a) industrialists or manufacturers, for the purpose of distinguishing the products they manufacture;

(b) traders, for the purpose of distinguishing the products they sell;

(c) farmers and producers, for the purpose of distinguishing the products of their activities;

(d) artists and craftsmen, for the purpose of distinguishing the products of their art, craft or profession;

(e) service providers, for the purpose of distinguishing their respective activities.

Article 144

Registration by an agent or representative of the rights holder

If the agent or representative of the holder of a trademark registered in one of the WTO Member States but not in Cape Verde applies for registration of that trademark in his own name, without authorization from the

aforementioned holder, the holder shall have the right to oppose the application, unless the applicant can justify the proceedings.

Article 145

Unregistered trademarks

1. Any person using an unregistered trademark for a period of no more than six months shall have the right of priority, during that period, to register the trademark and may oppose any registration applications made by others.
2. The authenticity of the documents provided as proof of that right of priority shall be examined freely, with the exception of authentic documents.

Subsection II

Collective Marks

Article 146

Definition

1. A collective mark shall be defined as an association mark or certification mark.
2. The signs or indications used commercially to designate the geographical origin of the products or services may constitute a collective mark.
3. Registration of a collective mark shall also confer upon the holder the right to control the commercialization of the respective products, pursuant to the terms established in the law, statutes or internal regulations.

Article 147

Association Marks

An association mark shall be a specific sign belonging to an association of natural or legal persons, the members of which use it, or intend to use it, for goods or services related to the association's purpose.

Article 148

Certification marks

1. A certification mark shall be a specific sign belonging to a legal person that controls the goods or services or establishes standards to which said products or services must adhere.
2. This sign shall be used on goods or services subjected to that control or for which the standards were established.

Article 149

Right to registration

1. The following shall have the right to register collective marks:
 - (a) legal entities to/for which a guarantee mark or certification mark has been assigned or recognized and which may apply said mark to certain qualities of goods or services;
 - (b) legal entities that supervise, control or certify economic activities, in order to distinguish the products of these activities, or that come from certain regions, depending on their purposes and pursuant to the respective statutes or organic laws.
2. The legal entities referred to in subparagraph (b) of the preceding paragraph must promote the inclusion, in the respective organic laws, statutes or internal regulations, of provisions

that define the persons that have the right to use the trademark, the conditions in which such use must take place and the rights and obligations of interested parties in the case of usurpation or counterfeiting.

Article 150

Applicable provisions

The provisions of this Code on product and service marks shall apply to collective marks, with the relevant adjustments.

Section II

Registration process

Article 151

Application

1. An application to register a trademark shall be made on a form indicating or containing:

(a) the applicant's name, trade name or company name, nationality and his domicile or the place where he is based;

(b) the goods or services the trademark is designed for, grouped in accordance with the categories in the International Classification of Goods and Services, and defined in precise terms, preferably using the alphabetical terms in the list of the aforementioned classification;

(c) express indication that the mark is an association or certification mark, should the applicant wish to register a collective mark;

(d) express indication that the mark is a three-dimensional or sound mark;

(e) the registration number of any award featured or referred to in the trademark;

(f) the colors in which the trademark is used, if these are claimed as a distinctive element;

(g) the country of first application for registration of the trademark, and the date and the number of that application, in the event that the applicant wishes to claim the right of priority;

(h) indication of the date from which the applicant has been using the trademark, in the case provided for in Article 145;

(f) signature of the applicant or his representative.

2. For the purposes of paragraph 1 of Article 226, priority shall be given to the registration application that first submits a representation of the intended trademark, in addition to the information required under the preceding paragraph.

3. Applications may be filed in electronic format under the conditions to be regulated by the member of Government responsible for the industrial property sector.

Article 152

Preparing an application

1. The following documents, which meet the formal requirements, must be attached to the application:

(a) two graphic representations of the trademark, as long as they are photocopies or drawings, printed or pasted in the space intended for them

on the form;

(b) a photoprint, or other format required by the competent service, with a reproduction of the sign it is intended to register;

(c) graphic representation, for musical phrases, of the sounds that constitute the trademark.

2. The following must also accompany the application:

(a) authorization from the holder of the foreign trademark registration for which the applicant is an agent or representative in Cape Verde;

(b) authorization of any person other than the applicant whose name, trade name, company name, logotype, emblem or picture appears in the trademark;

(c) indication of the legal and statutory provision or internal regulations that govern the use of the mark in the case of collective marks;

(d) authorization to include in the trademark, or as an element of the trademark, any flags, coats of arms, shields, escutcheons, crests, emblems or distinctions of State, municipalities or other national or foreign public or private bodies, distinguishing signs, seals and official stamps, fiscal and guarantee stamps, private emblems or denominations of legal persons of public interest;

(e) certificate of honor, or other distinction, referred to or reproduced in the trademark, which must not be considered awards;

(f) registration certificate, proving the right to include in the trademark, the name or any reference to a particular

rural or urban property and authorization from the owner for this purpose, if the applicant is not the owner;

(g) authorization from the holder of the earlier registration and holder of the exclusive license, if applicable, unless the contract stipulates otherwise, for the purposes of the provisions of Article 161.

3. Failure to meet the requirements referred to in paragraph (2) shall not affect the relevance of the application for the purposes of priority.

4. If a trademark features inscriptions in little-known characters, the applicant shall submit a transliteration and, if possible, a translation of said inscriptions.

Article 153

Single registration

There may only be one registration for the same trademark for one and the same good or service.

Article 154

Publication of the application

1. Notification of filing of an application shall be published in the Industrial Property Gazette so that it may be opposed by any person who considers himself prejudiced if the registration in question is granted.

2. The notification referred to in the previous paragraph, must include a reproduction of the trademark, classification of the goods and services in their respective categories, and mention the indications to which paragraph 1 of Article 151 refers.

3. The service responsible for industrial property shall be responsible for checking the classification referred to in the preceding paragraph, and correcting it where necessary.

Article 155

Subsequent formalities

1. On the expiry of the opposition time limit or once the opposition proceedings have ended, the service responsible for industrial property shall examine the application, comparing it with other trademarks and distinctive signs.

2. The decision shall be given within 12 months from the date of publication in the Industrial Property Gazette which contains the application notice.

3. Registration shall be granted if the examination does not reveal any grounds for refusal and any oppositions filed are considered to be groundless.

4. Registration shall be refused if it is considered that the opposition is well-founded.

5. Registration shall be provisionally refused if the examination reveals grounds for refusal and any oppositions filed are not considered to be groundless.

6. The applicant shall be notified accordingly of the provisional refusal and shall respond within a period of two months, otherwise the refusal shall automatically become final. This period may be extended once for the same period of time at the request of the interested party.

7. New extensions may only be granted by the amount of time referred

to in the previous paragraph, if there is no prejudice to the rights of third parties and they were justified by substantiated grounds.

8. If, following the applicant's response, it is concluded that the refusal is unfounded, or that the defects or irregularities raised have been resolved, the decision shall be issued within a period of two months beginning on the date of submission of the response, without prejudice to the provisions of paragraph 7 of Article 226.

9. If, following the applicant's response, the original assessment is not altered, the provisional refusal shall be confirmed by a final decision.

10. Notification of the final decision shall be made immediately in accordance with paragraph 1 of Article 234, indicating the Industrial Property Gazette in which the respective notification is published.

Article 156

Grounds for refusal of registration

1. In addition to the provisions of Article 242, registration of a trademark shall be refused if:

(a) it consists of signs that cannot be represented graphically;

(b) it consists of signs devoid of any distinctive character;

(c) it consists exclusively of signs or indications referred to in subparagraphs (b) to (e) of paragraph 1 of Article 140;

(d) there was infringement of the provisions of Article 144.

2. In the case specified in subparagraph (d) of the previous paragraph, instead of refusing the registration, full or partial transmission may be granted in the interests of the holder, if he had requested it.

3. Registration of a trademark consisting exclusively of signs or indications referred to in subparagraphs (a), (c) and (d) of paragraph 1 of Article 140, shall not be refused if it has acquired distinctive character.

Article 157

Other grounds for refusal

Registration shall also be refused for trademarks that are contrary to the provisions of Articles 139, 143 and 153 or which contain, in all or some of their elements:

(a) flags, coats of arms, shields and emblems or other distinctions of State, municipalities or other public bodies, national or foreign, without the competent authorization and covered by International Conventions to which Cape Verde is a party;

(b) distinctive signs, seals and official stamps, fiscal and guarantee stamps, with regard to trademarks intended for goods and services, identical or similar, to those in which the same are applied, save with authorization;

(c) coats of arms or heraldic emblems, medals, decorations, surnames, titles and honors to which the applicant does not have the right or, if he should have, if it should give rise to disrespect and discredit for a similar sign;

(d) the emblem or sign of public interest institutions or of bodies to which the Government has granted

exclusive rights to their use, except with special authorization;

(e) imaginary medals or designs which may be confused with official decorations or with medals and awards granted in competitions and official exhibitions;

(f) a business or corporate name, logotype, establishment name and insignia, or merely a characteristic part thereof, that do not belong to the applicant or where the applicant is not authorized to use them, if it is likely to mislead or confuse the consumer;

(g) the use of names, portraits or any expressions or figurations without the authorization being obtained from the persons they relate to or, if these are deceased, of the heirs or relatives to the fourth degree or, if authorization is obtained, if it generates disrespect or diminution of prestige for those persons;

(h) signs which are a violation of copyright or industrial property rights;

(i) signs of a high symbolic value, such as religious symbols, unless these are authorized;

(j) expressions or figures that are contrary to national or community law, public order and morality;

(k) signs that may mislead the public, namely as to the nature, properties, utility or geographical origin of the good or service for which the trademark is designed.

(l) reproduction or imitation of all or part of a trademark previously registered by another person for identical or similar goods or services that may mislead or confuse the consumer or comprise the risk of

association with the registered trademark;

Article 158

Imitation of unregistered packaging or labels

1. Registration shall also be refused for trademarks which are a reproduction or imitation of a certain external feature namely packaging or a label, including the respective form, coloring and layout of wording, medals, awards and other elements that are proven to be used by others in their registered trademarks.
2. The parties interested in the refusal of trademarks under this Article may only take part in the respective proceedings after they have made the application for registration of their trademark with the external features referred to in the preceding paragraph.

Article 159

Well-known trademarks

1. Registration shall be refused for a trademark which constitutes, as a whole or essentially, the reproduction, imitation or translation of another well-known trademark in Cape Verde, if it is applied to identical or similar goods or services and is confusingly similar to such a trademark, or if, through this application, it is possible to establish an association with the holder of the well-known trademark.
2. Parties interested in the refusal of the registrations mentioned in the preceding paragraph may only take part in the respective proceedings after they have filed an application for registration of the trademark giving rise

to and grounds for such interest.

Article 160

Trademarks of high renown

1. Without prejudice to the provisions of the preceding article, registration shall also be refused if a trademark, even if it designates goods or services which are not similar, is an interpretation of, or is identical or similar to, an already existing trademark that enjoys prestige in Cape Verde, and whenever use of the subsequent trademark unjustly seeks to derive undue benefit from the distinctive character or prestige of the trademark or may prejudice it.
2. The provisions of paragraph 2 of the preceding article shall apply to the above paragraph 1, whereby it is understood that, in this case, registration of the trademark for the goods or services that gave it the prestige must be applied for.

Article 161

Declaration of consent

Registration of a trademark that may be confused with already registered trademarks or other industrial property rights shall require a declaration of consent from the holders of said rights and the holders of exclusive licenses, where these exist and the contracts do not establish otherwise.

Article 162

Partial refusal

Whenever there are grounds for refusing registration of a trademark only with respect to some of the goods or services for which it was applied for, the refusal shall apply only to those

specific goods or services.

trademark.

Article 163

Section III

Concept of imitation or usurpation

Effects of registration

1. A registered trademark shall be considered to be imitated or usurped by another trademark, as a whole or in part, if the following circumstances occur simultaneously:

Article 164

Duration

The duration of registration shall be 10 years, starting from the date of the respective grant, and it may be indefinitely renewed for equal periods.

(a) if a previously registered trademark has priority;

(b) if both trademarks are intended to designate identical or similar goods or services;

Article 165

Declaration of intention to use

(c) if they display graphic, figurative, phonetic or other similarity that is liable easily to mislead or confuse consumers or cause a risk of association with a previously registered trademark, so that consumers would only be able to distinguish the two trademarks by means of a careful examination or comparison thereof.

1. Every five years, from the date of registration, except if the fees related to renewal are outstanding, a declaration of intention to use the trademark must be submitted to the organization responsible.

2. For the purposes of subparagraph (b) of paragraph 1;

2. The declaration referred to in the preceding paragraph shall be submitted within one year, which commences six months before and ends six months after the term of five years to which it relates.

(a) goods and services in the same national trademarks classification category published in Official Journal No.15, I Series, of April 23, 2007 through Ordinance No.9/2007, may be considered not to be similar;

3. The trademarks for which no declaration is submitted shall not be binding on third parties, and the expiry of the respective registration shall be declared by the organization responsible at the request of any interested party, or when prejudice to the rights of third parties at the time of granting other registrations is found.

(b) goods and services that are not in the same national trademarks classification category may be considered to be similar.

3. Partial imitation or usurpation of a trademark shall be defined as the use of a certain imaginary name that is part of another already registered

4. If expiry of a registration were not requested or declared, this shall once again be considered in full force as long as the rights holder provides proof of use of the trademark.

5. In the case provided for in paragraph 3, notification of the registration holder shall always take place.

6. If there is a later extension to the registration, that declaration may not be requested until five years have passed since the date of the extension.

Article 166

Indication of the registration

During the registration's period of validity, the holder may use the words "Marca registada" ("registered trademark"), the initials "M.R.", or simply R on the goods.

Article 167

Rights conferred by the registration

Registration of a trademark shall confer on the owner the right to prevent third parties from using an identical or similar sign without its consent in economic activities for goods or services that are identical or similar to those for which the trademark was registered and which, as a result of the similarity between the signs and the relation between the goods or services, may give rise to a risk of confusion or association in the mind of the consumer.

Article 168

Exhaustion of the right

1. The rights conferred by the registration shall not allow the owner to prohibit the use of the trademark on products commercialized by itself or with its consent in Cape Verde.

2. The preceding paragraph shall not apply whenever there are legitimate grounds for the prohibition, such as if the goods are modified or altered after they are placed on the market.

Article 169

Limits to rights conferred by the registration

The rights conferred by registration of a trademark shall not entitle the owner to prevent third parties from using, in their economic activities, provided that such use is carried out in conformity with the regulations and honest practices in industrial and commercial matters:

(a) their own name and address;

(b) indications relating to the type, quality, quantity, purpose, value, geographical origin and period and means of production of the good or service or other features of the goods or services;

(c) the trademark, whenever this is required to indicate the purpose of a good or service, such as in the form of accessories or spare parts.

Article 170

Non-alterability of a trademark

1. A trademark must be kept unaltered. Any change to its constitutive elements shall be the subject of a new registration.

2. Excepted from the preceding paragraph shall be simple modifications that do not prejudice the identity of the trademark and only affect its dimensions, the material on which it has been stamped, printed or reproduced and the ink or color, if

these have not been expressly claimed as one of the specific features of the trademark.

3. The identity of a trademark shall also not be affected by the inclusion or deletion of an express indication of the good or service for which the trademark is designed, nor by any alteration of the owner's domicile or place of business.

4. A nominative trademark shall only be subject to the rules of non-alterability in relation to the expressions that make up the trademark. It may be used with any figurative aspect provided it does not violate the rights of third parties.

Section IV

Assignment and licenses

Article 171

Assignment

1. Trademark registrations shall be transferable where assignment would not mislead the public as to the origin of the good or service or as to the essential characteristics for its assessment.

2. Whenever an assignment is partial, in terms of the goods or services, a copy of the document should be requested, which will serve as the basis for an autonomous registration, including the title rights.

3. The provisions of the preceding paragraphs shall apply to registration applications and, in the event of partial transfer, new applications retain the rights of priority already held.

4. The holder of a registered trademark shall have the right to give

up the trademark with or without the transfer of the business to which the trademark belongs.

Article 172

Assignment restrictions

Trademarks registered to organizations that monitor or control economic activities shall not be assignable, save where allowed by a special provision in the law, statutes or regulations.

Article 173

Licenses

The owner of a trademark registration may invoke the rights conferred by the registration against a licensee that violates any clause or provision of the licensing contract, particularly relating to the contract's term of validity, the identity of the trademark, the nature of the goods or services for which the license was granted, the demarcation of the license zone or territory or the quality of the goods manufactured or services provided by the licensee.

Section V

Lapse of a trademark registration or rights derived therefrom

Article 174

Nullity

1. In addition to the provisions of Article 255, a trademark registration shall be null and void if, in the process of granting it, the following provisions are infringed:

(a) in subparagraphs (a) to (c) of paragraph 1 of Article 156;

(b) in subparagraphs (a) to (e) and (i) to (l) of Article 157.

2. The provisions of paragraph 3 of Article 156, with the necessary adaptations, shall apply to invalidity proceedings.

Article 175

Annullability

1. In addition to the provisions of Article 256, a trademark registration may be annulled:

(a) if, in the process of granting it, the provisions of Article 144, in subparagraphs (f) to (h) and (m) of Article 157 and in Articles 158 to 160 have been infringed;

(b) if it is recognized that the registration holder intends to practice unfair competition, or that this would be possible regardless of his intentions.

2. Pursuant to Articles 159 or 160, the party interested in the annulment of a trademark registration must apply for registration of the trademark that gives rise to the request for annulment for the goods or services that gave the mark renown or prestige, respectively.

3. A registration may not be annulled if the already existing trademark invoked in an opposition does not satisfy the condition of serious use, in accordance with Article 177.

4. Annulment actions must be proposed within the 10-year period beginning on the date of issue of the registration grant order.

5. Annulment actions for trademarks registered in bad faith may be

proposed at any time.

Article 176

Preclusion by tolerance

1. The owner of a registered trademark that has factual knowledge of and tolerates the use of a subsequent registered trademark for a period of five consecutive years shall forfeit the right, based on ownership of a prior trademark, to apply for annulment of the registration of the later trademark or to oppose its use in relation to the goods or services the later trademark has been used for, unless the later trademark has been registered in bad faith.

2. The five-year period provided for in the preceding paragraph shall begin on the date on which the owner becomes aware of the fact.

3. The owner of a subsequently registered trademark may not oppose the pre-existing right, even if that right cannot be invoked against the later trademark.

Article 177

Use of a trademark

1. The following shall be considered serious uses of a trademark:

(a) use of the trademark in its registered form or in a form that only differs in elements that do not alter its distinctive character, by the trademark owner or a licensee with a duly registered license;

(b) use of the trademark, as defined in the preceding subparagraph, for goods or services destined for export only;

(c) use of the trademark by a third party, provided this is controlled by the owner and is for the purpose of retaining the registration.

2. Use of a collective trademark shall be defined as that carried out with the consent of the owner.

3. Use of a guarantee or certification trademark shall be that carried out by a qualified person.

4. The commencement or resumption of serious use in the three-month period immediately prior to filing of an application for declaration of expiry, beginning from the end of an uninterrupted period of five years of non-use, shall not be taken into consideration if the diligences for the commencement or resumption of use only take place after the owner becomes aware of the fact that such an application for declaration of expiry may be filed.

Article 178

Expiry

1. In addition to the provisions of Article 259, expiry of a registration shall be declared if the trademark has not been the subject of serious use for a period of five consecutive years, unless there are just grounds for the non-use and without prejudice to the provisions of paragraph 4 and the preceding article.

2. Expiry of a registration shall also be declared if, after the date on which the registration was made:

(a) the trademark itself becomes the usual designation in trade for the good or service for which it was registered, as a consequence of the activity or

inactivity of the owner;

(b) the trademark becomes likely to mislead the public, namely as to the nature, quality and geographical origin of the goods or services, as a result of the use of the trademark by the owner or by a third party with the owner's consent for the goods or services for which it was registered.

3. Expiry of a collective trademark registration shall be declared if:

(a) the legal person in whose name it was registered ceases to exist;

(b) that legal person consents to the trademark being used in a fashion contrary to its general purposes or to statutory provisions.

4. Registration shall not expire if serious use of the trademark commences or is resumed before application for a declaration of expiry, without prejudice to paragraph 4 of the preceding Article.

5. The period referred to in paragraph 1 shall begin on the date of registration of the trademark.

6. Whenever there are grounds for expiry of a trademark registration only in relation to some of the goods or services it was designed for, the expiry shall affect only those goods or services.

Article 179

Declaration of expiry applications

1. Applications for declaration of expiry shall be filed with the organization responsible for industrial property.

2. The aforementioned applications may be based on any of the grounds set out in paragraphs 1 to 3 of the preceding Article, or which show a failure to use the trademark and its non-binding nature on third parties.

3. Without prejudice to the provisions of paragraph 5 the owner of a registration shall always be notified of an application for declaration of expiry so that he may respond within a period of two months.

4. At the request of the interested party, submitted in due time, the period referred to in the preceding paragraph can be extended by one more month.

5. New extensions may only be granted, for equal periods, if there were justified grounds and there were no opposition from the opposing party.

6. It is the responsibility of the registration owner or licensee, if applicable, to provide proof of use of the trademark, without which it is presumed that the trademark is not used.

7. At the end of the response period, the organization responsible for industrial property shall decide, within a period of two months, whether to declare that the registration has expired.

8. The declaration of expiry procedure shall be terminated before a decision is reached if the respective application is withdrawn.

9. Expiry shall only enter into force after it has been declared following conclusion of the full procedure.

10. The expiry shall be registered and notice thereof published in the

Industrial Property Gazette.

CHAPTER V

Awards

Section I

General Provisions

Article 180

Subject

Awards shall be defined as:

(a) accolades of merit awarded by any State;

(b) medals, diplomas and monetary or any other prizes obtained at official or officially recognized exhibitions, fairs and competitions held in Cape Verde or in foreign countries;

(c) diplomas and certificates of analysis or praise, issued by services or bodies authorized for that purpose;

(d) warrants of purveyor to high level public bodies and other official bodies or establishments, both national and foreign;

(e) any other accolades or demonstrations of preference of an official nature.

Article 181

Conditions for mentioning awards

Awards may not be applied to goods or services other than those for which they were conferred.

Article 182

Ownership

Awards of any type conferred on manufacturers, traders, farmers and other entrepreneurs shall be their property.

Section II

Registration process

Article 183

Application

1. An application to register an award shall be made on a form indicating:

- (a) the applicant's name, trade name or company name, nationality and his domicile or the place where he is based;
- (b) the awards for which registration is being applied and the organization that granted them and respective dates;
- (c) the goods or services distinguished with the awards;
- (d) the name of the establishment to which the award relates, as a whole or in part, where appropriate.

2. Applications may be filed in electronic format under the conditions regulated by the member of Government responsible for the industrial property sector.

Article 184

Preparing the application

1. The award application shall be accompanied by originals or certified photocopies of the diplomas or other documents attesting to the grant thereof.

2. Proof of the grant of the award may also be provided by means of a duly

legalized copy of the official publication in which the award was conferred or published, or merely the part necessary and sufficient for identification thereof.

3. The organization responsible for industrial property may request translations of diplomas or other documentation drawn up in foreign languages.

4. Award registrations shall imply the prior registration of the names or emblems of the establishment mentioned therein.

Article 185

Grounds for refusal

In addition to the provisions of Article 242, registration of an award shall be refused if:

- (a) by their very nature, they do not come under any of the categories stipulated in the present Code;
- (b) it is proven that they have been applied to goods or services other than those for which they were conferred;
- (c) there has been assignment of ownership of the award, without transfer of establishment or of the relevant part thereof, where appropriate;
- (d) it is demonstrated that the award was revoked or does not belong to the applicant.

Article 186

Return of documents

1. At the end of the period for lodging appeals, the diplomas or other

documents submitted in the procedure shall be returned to the applicants upon request and are replaced on file by certified photocopies.

2. Documents shall be returned against a receipt, which is attached to the file.

Section III

Use and assignment

Article 187

Indication of awards

The use of legitimately obtained awards shall be permitted without registration, but the term "Recompensa registada" ("Registered award") or the abbreviations "R.R.", "RR" or RR may only be used with references thereto or copies thereof after such registration has been made.

Article 188

Assignment

The ownership of awards shall be assigned in accordance with the legal formalities required for the assignment of the property to which they relate.

Section IV

Termination of registration

Article 189

Annulability

In addition to the provisions of Article 256, registration shall be annulable if the award is annulled.

Article 190

Expiry

1. A registration shall expire if the award is revoked or cancelled.

2. Expiry of a registration shall result in termination of the use of the award.

CHAPTER VI

Names and Emblems of Establishments

Section I

General Provisions

Article 191

Right to registration

Any person having a legitimate interest, namely farmers, breeders, industrialists, traders and other businessmen resident or established in the national territory, shall have the right to adopt a name or emblem to designate or make known their establishment, in accordance with the following provisions.

Article 192

Composition of names of establishment

Names of establishment may consist of:

(a) imaginary or specific denominations;

(b) historical names, with the exception of those the use of which would be offensive to the esteem in which such names are generally held;

(c) the name of the property or premises of the establishment, when this is admissible or accompanied by a

distinctive element;

(d) the name, the distinctive elements of the company or trade name and pseudonym, or coined name of the owner;

(e) the business sector of the establishment, when it is accompanied by distinctive elements.

Article 193

Composition of emblems of establishment

1. Emblem of establishment shall be defined as any external sign composed of figures or designs, alone or combined with the names or designations referred to in the preceding article, or with other words or slogans, as long as the whole is sufficient for distinguishing the establishment.

2. The ornamentation of the façades and the parts of shops, warehouses or factories exposed to the public, as well as the colors of a flag, may constitute emblems as long as they individualize perfectly the respective establishment.

Article 194

Grounds for refusal

1. The following may not be part of a name or emblem of establishment:

(a) any personal name that does not belong to the applicant, unless consent or the legitimate use thereof is proven;

(b) any trade or company name which does not belong to the applicant, or only the characteristic part thereof, if it could mislead or confuse the consumer, unless consent or the

legitimate use thereof is proven;

(c) expressions such as “former warehouse,” “former company,” “former factory” and other similar terms referring to establishments whose names or emblems are registered in the name of another person, unless the consent of the respective owner is proven;

(d) expressions such as “former employee,” “former owner,” “former manager” and other similar terms referring to another individual person or corporate body, unless the consent of that person or body is proven;

(e) indications of relationship and the terms “heir,” “successor,” “representative” or “agent” and other similar terms, unless the legitimate use thereof is proven;

(f) anything in paragraph 1 of Article 156 and in subparagraphs (a) to (e) and (h) to (j) of Article 157 that refers to trademarks;

(g) the constituent elements of the trademark or design, protected by another person for identical or similar products which are manufactured or sold in the establishment to which it is intended to give the name or emblem, or for services which are identical or similar to those which are provided there;

(h) names, designations, figures or designs which are a reproduction, or imitation, of a logotype or name or emblem of establishment, previously registered by another person;

(i) the designations “national”, “Cape Verdean” and others with similar meaning, if the establishment does not belong to a natural or legal person of

Cape Verdean nationality.

2. Authorizations for use of the name or distinctive signs and others of a similar nature shall be considered assignable by legal succession, except by express restriction.

3. The provision of subparagraph (h) of paragraph 1 shall not prevent two or more people with the same surnames from including them in names or emblems of respective establishments, as long as they are perfectly distinguishable.

Section II

Registration process

Article 195

Application

1. An application to register a name or emblem of establishment shall be made using a form which indicates:

(a) the applicant's name, trade name or company name, nationality and his domicile;

(b) the name or emblem it is intended to register.

2. Applications may be filed in electronic format under the conditions regulated by the member of Government responsible for the industrial property sector.

Article 196

Preparing the application

1. The application must be accompanied by the following documents:

(a) two graphic representations of the emblem, whenever possible as a photocopy or drawing, printed or pasted in the space on the form provided for them;

(b) a photoprint or any other format requested with a reproduction of the sign of the emblem which it is intended to register;

(c) land registry certificate, or another comparable title in the case of subparagraph (c) of Article 192;

(d) documents proving the necessary authorizations or justifications;

(e) declaration that there is no previous company registration for the same establishment or identical denomination or which is similar in such a way as to mislead or confuse.

2. The lack of any of the documents referred to in subparagraphs (c), (d) and (e) of the previous paragraph shall not impede the relevance of the requirement for the effects of priority, although the registration may not be conferred without all the documents being submitted.

Article 197

Declaration of consent

The provisions of Article 161, with the necessary amendments, shall apply to the registration of names and emblems of establishment.

Article 198

Single registration

1. The same establishment may only have one registered name or emblem of establishment registered.

2. In the event that more than one registration of a name or emblem of establishment were requested or already existed for the same establishment, the applicant or the respective title holder shall be instructed to select just one of them and to renounce the others.

3. If the instruction referred to in paragraph 2 is not fulfilled, only the first application or registration shall be considered, with a refusal or declaration of expiry for the others, as the case may be.

Article 199

Publication of the application

Notice of the filing of the application shall be published in the Industrial Property Gazette so that anyone who considers himself prejudiced by the possible grant of the registration may lodge opposition.

Article 200

Subsequent formalities

The procedural formalities, with the necessary amendments, referred to in Article 155 relating to trademarks, shall apply to the registration of names and emblems of establishment.

Article 201

Refusal

In addition to the provisions of Article 242, the registration of name or emblem shall be refused if it has infringed the provisions of Articles 192 to 194, 197 and 198.

Section III

Effects of registration

Article 202

Duration

The duration of the registration shall be 10 years, starting from the date of the respective grant, and may also be indefinitely renewed for equal periods.

Article 203

Indication of name or emblem of establishment

During the term of the registration, the owner may use on the name or emblem the designation "Nome registado" ("Registered name") or "Insignia registada" ("Registered emblem"), or simply the initials "NR", or "IR" respectively.

Article 204

Rights conferred by registration

1. The registration of the name or emblem of establishment shall confer on its owner the right to prevent third parties from using, without his consent, any sign which is identical or may be confused in his establishments.

2. The registration shall also confer on the respective owner the right to prevent the use of any sign which contains the registered name or emblem.

Article 205

Non-alterability of name or emblem of establishment

1. A name or emblem must be kept unaltered. Any change to its constituent elements shall be the subject of a new registration.

2. The provisions relating to trademarks shall apply, with the necessary adaptations, to emblems.

Section IV

Assignment, nullity, annullability and expiry of registration

Article 206

Assignment

The ownership of names or emblems shall be assigned in accordance with the legal formalities necessary for the assignment of the establishment to which they relate.

Article 207

Nullity

1. In addition to the provisions of Article 156, the registration of a name or emblem of establishment shall be null and void if its grant is contrary to the provisions of Articles 192 to 194.

2. The registration may also be annulled if in the grant thereof the provisions relating to trademarks have been infringed:

(a) in sub-paragraphs (a) to (c) of Article 156;

(b) in sub-paragraphs (a) to (e) and (i) to (l) of Article 157.

3. The provisions of paragraph 3 of Article 156, with the necessary adaptations, shall apply to nullity actions.

Article 208

Annullability

1. In addition to the provisions of Article 256, a registration may be annulled:

(a) if, in the grant, the provisions of Article 194 have been infringed;

(b) if it is recognized that the registration owner intends to practice unfair competition, or that this would be possible regardless of his intentions.

2. Annulment actions must be proposed within the 10-year period beginning on the date of issue of the registration grant order, without prejudice to the following paragraph.

3. Annulment actions for names of establishment registered in bad faith may be proposed at any time.

Article 209

Expiry

1. In addition to the provisions of Article 159, registration shall expire:

(a) if the respective establishment is closed down or goes into liquidation;

(b) if the name or emblem is not used over a period of five consecutive years, without good reason;

(c) if the situation stipulated in paragraph 3 of Article 198 arises.

2. In the case referred to in subparagraph (c) of the preceding paragraph, the expiry shall not be declared without prior notification of the owner of the registrations, who may, within two months, choose one name, or one emblem, and the remainder shall be declared lapsed.

CHAPTER VII

Logotypes

Article 210

Composition of logotypes

A logotype may consist of a sign or set of signs that can be graphically represented, which may be used to refer to any entity which provides services or commercializes products.

Article 211

Right to logotype

Any natural or legal person, public or private, may legitimately apply for registration of a logotype, provided they have legitimate interest therein.

Article 212

Indication of logotype

During the period of validity of the registration, the owner may use the designation "Registered Logotype", "Registered Logo", or "RL" on the logotype.

Article 213

Applicable rules

The provisions relating to names and emblems of establishment shall apply, with the necessary adaptations, to logotypes.

CHAPTER VII

Appellations of Origin and Geographical Indications

Section I

General provisions

Article 214

Definition and ownership

1. An appellation of origin shall be considered to be the name of an island, a region, a specific locality or in exceptional cases a country used to designate or identify a product:

(a) originating from that region, specific locality or country;

(b) whose quality or characteristics are derived, essentially or exclusively, from the geographical environment, including natural and human factors, and the production, processing and creation of which are carried out within the demarcated geographical area.

2. Certain traditional appellations, whether geographical or not, which designate a product originating from a specific region or locality and which satisfy the conditions stipulated in (b) of the preceding paragraph shall also be considered appellations of origin.

3. A geographical indication shall be considered to mean the name of an island, a region or a specific locality that is used to designate or identify a product:

(a) originating from that island, region, specific locality or country;

(b) whose reputation, specific quality or other characteristic may essentially be attributed to that geographical origin and whose production, processing or creation are carried out within the demarcated geographical area.

4. Appellations of origin and geographical indications, when registered, shall be the common

property of the residents or those actually and seriously established in the locality, region or territory, and may be used indiscriminately by those, within the respective area, who work any field of typical production, if authorized by the holder of the registration.

5. The exercise of this right shall not depend on the scale of the working, nor on the nature of the products, and the appellation of origin or geographical indication may therefore apply to any products characteristic of or originating from the locality, region or territory, in the traditional and usual, or duly regulated, conditions.

Article 215

Regional demarcation

If the boundaries of the locality, region or territory to which a particular appellation or indication belongs have not been demarcated by law, the boundaries shall be declared by the officially recognized bodies responsible for the respective area, or field of production, which shall take into consideration bona fide and established practices, in conjunction with the higher interests of the national economy.

Section II

Registration process

Article 216

Application

1. Applications for registration of appellations of origin or geographical indications shall be made by a request, indicating:

- (a) the name of the natural or legal persons, public or private, with capacity to acquire the registration;
- (b) the name of the product or products, including the appellation of origin or the geographical indication;
- (c) the traditional conditions or regulations for use of the appellation of origin, or the geographical indication, and the boundaries of the respective locality, region or territory;

2. The conditions for the registration of a name of establishment, with the necessary adaptations, shall apply to the grant of registration.

3. Applications may be submitted in electronic format under the conditions regulated by the member of Government responsible for the area of industrial property.

Article 217

Grounds for refusal

In addition to the provisions of Article 242, registration of appellations of origin or geographical indications shall be refused if:

- (a) the application is made by a person without the capacity to acquire it;
- (b) the appellation of origin or geographical indication in question is not considered to meet the conditions of Article 214;
- (c) it constitutes a reproduction or imitation of a previously registered appellation of origin or geographical indication;
- (d) it is liable to mislead the public, in particular as to the nature, quality and

geographical origin of the respective product;

(e) it violates industrial property rights or copyright;

(f) it violates the law, public order or morality;

(g) it may favor acts of unfair competition.

Section III

Effects, nullity, annullability and expiry of registration

Article 218

Duration

An appellation of origin and a geographical indication shall be of unlimited duration and their ownership shall be protected by the rules set out in this Code, in special legislation and in any rules or legislation established against false indications of source, even if they are registered and regardless of whether they are part of a registered trademark.

Article 219

Indication of registration

During the period of validity of a registration, the products for which the respective uses are authorized may bear the following references:

(a) "Denominação de origem registada" (Registered Appellation of Origin) or "DO";

(b) "Indicação geográfica registada" (Registered Geographical Indication) or "IG".

Article 220

Rights conferred by registration

1. Registration of appellations of origin or geographical indications shall confer upon the owner the right to prevent:

(a) the use by third parties, in the designation or presentation of a product, of any sort of indication or suggestion that the product in question originates from a geographical region other than the true place of origin;

(b) use that constitutes an act of unfair competition as defined in Conventions to which Cape Verde is a signatory.

(c) use by persons not authorized by the registration owner.

2. Words constituting a legally defined, protected and monitored appellation of origin or geographical indication may not include, in any form, designations, tags, labels, advertisements or any other documents concerning products that do not originate from the respective demarcated regions.

3. This prohibition shall be applicable even if the true origin of the products is mentioned or the wording constituting the appellations or indications in question are accompanied by qualifiers such as "kind", "type", "quality" or similar expressions and also extends to the use of any expression, presentation or graphic combination that may mislead or confuse the consumer.

4. Also prohibited shall be the use of an appellation of origin or geographical indication of prestige in Cape Verde for products without identity or similarly, whenever the use thereof seeks to

derive unfair benefit from the distinctive or prestigious character of the previously registered appellation of origin or geographical indication or may prejudice them.

5. The provisions of the preceding paragraphs shall not prohibit a seller, in the course of commercial operations, from putting his name, address or trademark on products coming from a region or country different from that in which the same products are sold except where such a name is used to mislead the public, and in any case, the seller may not remove the trademark of the producer or manufacturer.

Article 221

Nullity

In addition to the provisions of Article 155, the registration of an appellation of origin or geographical indication may be declared null and void if, in its grant, the provisions of Article 217(b), (d) and (f) have been violated.

Article 222

Annullability

1. In addition to the provisions of Article 256, the registration of an appellation of origin or geographical indication shall be annulable when, in its grant, the provisions of Article 217(a), (c), (e) and (g) have been violated.

2. Annulment actions must be proposed within the 10-year period beginning on the date of issue of the registration grant order, without prejudice to the following paragraph.

3. Annulment actions for registrations obtained in bad faith may be proposed

at any time.

Article 223

Expiry

1. Registration shall expire, at the request of any interested party if, by virtue of bona fide, traditional and established commercial practices, the appellation of origin or geographical indication becomes a simple generic designation for a manufacturing system or a particular type of product.

2. Wine products, medicinal mineral waters and other products whose geographical appellation of origin is the subject of special protection and supervisory legislation in the respective country shall be exempt from the provisions of the preceding paragraph.

CHAPTER IX

Administrative procedure

Article 224

Legitimacy to perform acts

Those who have an interest in legal acts shall have the legal capacity to perform them before the organization responsible for industrial property.

Article 225

Legitimacy to promote acts

1. The acts and terms of the procedure may only be promoted:

(a) by the interested party or owner of the right, if established or domiciled in Cape Verde or by a representing lawyer;

(b) by an official industrial property service agent;

2. The entities mentioned in the previous paragraph may always have access to the case files and obtain certified photocopies of documents of interest to them.

3. If there are irregularities or omissions in the promotion of a certain act, the party shall be ordered to comply with the applicable legal provisions within no more than one month, on pain of ineffectiveness of the act, though without forfeiting any priorities to which he is entitled.

Article 226

Priority

1. Save for the exceptions set out in this legislation, a patent, utility model or registration shall be granted to whomsoever first lawfully files an application with all the required elements.

2. If applications are filed by mail, precedence shall be assessed by the date of registration or postmark.

3. In the event of two applications for the same right being simultaneous or having identical priority, the cases shall not proceed until the interested parties have settled the issue of priority, by agreement or in a competent court.

Article 227

Interested party residing abroad

1. If the interested party who files the application is neither domiciled nor established in Cape Verde, he shall be

instructed to appoint a representative, within one month, if he has not already done so.

2. Failure to appoint a representative shall result in the archiving of the application.

Article 228

Priority dates

1. If an application is not initially accompanied by all the required elements, priority shall begin from the date at which the last missing document is submitted.

2. If an invention, design, trademark, name or emblem of establishment, logotype, award, appellation of origin or geographical indication is altered in relation to the initial publication, a new notice shall be published in the Industrial Property Gazette and the priority of the alteration shall count from the date on which it was requested.

Article 229

Modification of the form of presentation of an application

1. Without prejudice to the provisions of paragraph 1 of Article 18 and of paragraph 3 of Article 66, if, on examination, it is found that the application for the patent, utility model or registration was not correctly formulated, the applicant shall be notified by decision of the person responsible for the industrial property service, to file it in the form indicated.

2. In addition, the applicant may on his own initiative and before the decision is taken, reformulate the application in a different form to that which was initially filed.

3. When the decision has been made, the applicant, within the time limit for the lodging of appeals or, if one is lodged, until the final ruling of the respective decision, may assign the rights derived from the application, limit its subject matter or attach to the case file any documents or statements.

4. In the case set out in the preceding paragraph and with a view to a possible appeal, any other interested party may attach documents or statements to the case file.

5. In the cases set out in paragraphs 1 and 2, the application shall once more be published in the Industrial Property Gazette, and the priorities to which the applicant was entitled safeguarded.

6. Until the time of the decision other formal rectifications may be authorized as long as they are justified claims.

7. Rectifications must be published in the Industrial Property Gazette.

Article 230

Claiming the right to priority

1. Anyone who has filed a lawful application for a patent, utility model, certificate of utility, inventor's certificate, registration of a design or a trademark in any Member State of the International Conventions to which Cape Verde is a signatory, or to any intergovernmental body with the power to grant rights having effect in Cape Verde shall be entitled, as is his successor, for the purpose of filing the application in Cape Verde, to the right to priority established in international conventions for the protection of industrial property to which Cape

Verde is a signatory.

2. Any application made with the same value as a lawful, national application under the domestic law of each Member State signatory to the international conventions to which Cape Verde is a signatory, or bilateral or multilateral treaties between countries shall confer a priority right.

3. A lawful, national application shall mean any application for which it is possible to establish the date on which it was filed in the country in question, irrespective of anything that may in any way subsequently affect it.

4. As a result, an application filed later in Cape Verde before expiry of its priority period may not be invalidated by reason of events occurring in this period, for example another application or publication or exploitation of the invention or design.

5. An application with the same subject matter as a previous application shall be considered a first application, as long as at its date of filing, the prior application has been withdrawn, abandoned or refused without undergoing public examination, without leaving any rights outstanding and also without having served as a basis for a property right claim.

6. In the case set forth in the previous paragraph, the prior application may not serve as a basis for a priority right claim more than once.

7. Persons wishing to avail themselves of priority of a prior application must draft a statement indicating the country, date and number of this application, which may be submitted up to three months from the end of the priority period.

8. If several priorities are claimed in one application, the period shall begin from the oldest priority date.

9. Priority or an application for a patent, utility model or registration of a design may not be denied on the grounds that the applicant claims several priorities, even if they come from different countries, or on the grounds that an application claiming one or more priorities contains one or more elements that were not included in the applications for which priority is being claimed, on the condition that, in both cases, there is unity of invention or creation in the case of designs.

10. Priority may not be denied on the grounds that certain elements of the invention or, in the case of designs, of the creation for which priority is being claimed, are not included among the claims made or reproductions of the designs submitted in the application in the country of origin, provided that all the components of the application accurately show these elements.

11. If the examination reveals that a patent or utility model application contains more than one invention or, in the case of multiple applications for registration of designs, that the products do not possess the same main distinctive characteristics, applicants may, on their own initiative or in compliance with an order, divide the application into a number of divisional applications, with each maintaining the original date of application and, if applicable, the right to priority.

12. Applicants may also divide an application for a patent, utility model or registration of a design on their own initiative, and the date of each divisional application shall remain the same as that of the original application

and, if applicable, the priority right.

Article 231

Proof of priority right

1. The organization responsible for industrial property may require anyone invoking a priority right, within two months of the respective order, to submit a certified copy of the first application and a certificate of the date of its filing.

2. The time limit indicated in the previous paragraph may, for justified reasons, be extended by the same period.

3. Failure to comply with this Article shall result in loss of the priority right claimed.

Article 232

Regularization

If any irregularities are detected before the publication of the notice in the Industrial Property Gazette, the applicant shall be ordered to make the necessary corrections.

Article 233

Notarization of signatures

The signatures on documents which have not been submitted by an official industrial property agent or a representing lawyer must always be notarized.

Article 234

Notifications

1. The parties involved in administrative proceedings shall be notified of the final decisions of the

organization responsible for industrial property.

2. If there are objections in any case, the organization mentioned in the preceding paragraph shall inform the applicant immediately.

3. Similar notifications shall also be made of challenges, oppositions, applications for expiry and other procedural documents attached to case files.

Article 235

Time limits for opposition

1. The time limit for submitting oppositions shall be two months as of publication of the application in the Industrial Property Gazette.

2. Applicants may reply to oppositions within two months of notification thereof.

3. If it proves necessary to clarify the procedure further, additional statements may be accepted.

4. At the request of the interested party, submitted during the time limits established in paragraphs 1 and 2, these may be extended by another month, in which case the opposing party shall be notified thereof.

5. A new extension may be granted for an equal period when it is justified.

6. At the request of the interested party and with the agreement of the opposing party, the study of the case may be suspended for a maximum period of four months.

7. The assessment may also be suspended *ex officio* or at the request of the interested party, for the duration

of a prejudicial cause investigation likely to affect the decision thereon.

Article 236

Duplicate of arguments

1. Complaints and other procedural documents shall be submitted in duplicate.

2. The duplicate referred to in the preceding paragraph shall be sent to the opposing party by the organization responsible for industrial property.

Article 237

Attachment to the file and return of documents

1. Documents shall be attached to the statement in which the facts to which they refer are alleged.

2. If it is demonstrated that it is impossible to obtain them in due time, they may also be attached to the case file under the provisions of the following article.

3. The attachment of irrelevant or unnecessary documents shall be refused even if attached in due time, as shall any texts written in disrespectful or improper terms or found to contain superfluous repetition of allegations already made.

4. The documents referred to in the previous paragraph shall be returned to the party which delivered them and the other party shall be informed.

Article 238

Reply to late oppositions

Claims and similar documents submitted after the respective time

limit as well as the documents referred to in paragraph 2 of the preceding article, may only be attached to the case file, by administrative decision, and in that event, the other party shall be informed.

Article 239

Inspections

1. In order to substantiate or clarify allegations produced in the case, an interested party may submit a justified request to the organization responsible for industrial property for an inspection of any establishment or other site, though the request may not be granted without the subject of the inspection being heard.

2. The party that requested the inspection shall be free to withdraw the request before the inspection is conducted.

3. An inspection may also be conducted on the initiative of the organization responsible for industrial property, if it is found to be essential for a clear understanding of the case.

Article 240

Subsequent formalities

After the time limits set out in the Article have expired, findings concerning the allegations made by the parties shall be added to the case file for a decision to be made.

Article 241

Modification of the decision ex officio

1. If, before the publication of a decision, it is decided that the decision should be modified, the case shall be

submitted to a higher authority along with all the known facts that justify reversal of the decision made previously.

2. Higher authority shall mean the immediate superior of the person who actually signed the decision to be modified.

Article 242

General grounds for refusal

1. The following shall be general grounds for refusal:

(a) failure to pay fees;

(b) failure to submit the necessary elements for full documentation of the case;

(c) non-fulfillment of essential formalities or procedures for granting of the right;

(d) recognition that the applicant intends to practice unfair competition, or that this would be possible regardless of his intentions;

(e) violation of public order rules.

2. In the cases provided for in (a) to (c) of paragraph 1 the file cannot be submitted for a decision without the applicant being ordered in advance to regularize it by a certain deadline.

Article 243

Alteration or correction of non-essential elements

1. Any alteration or correction that does not affect the essential elements or characteristics of the patent, utility model or registration may be

authorized in the same case.

2. No application for an alteration or correction provided for in this Article may be accepted if a declaration of expiry is pending for the same industrial property right.

3. The alterations or corrections referred to in paragraph 1 shall be published for the purpose of appeal as set forth in articles *et seq.* of this Code and noted in the files in question.

Article 244

Documents attached to other files

1. With the exception of the power of attorney for each file, the documents relating to applications may be attached to one file and mentioned in the others.

2. In the event of an appeal, as provided for in the articles *et seq.* the appellant shall always attach certificates to case files in which said documents have been mentioned.

Article 245

Handing over of grant documents

1. Grant documents for industrial property rights shall only be handed over to holders, on application, one month after the end of the appeal period or, if an appeal has been lodged, after the final court or arbitration ruling has been made.

2. The title shall be handed over to the holder, or his representative, in return for a receipt.

Article 246

Time limits

The time limits stipulated in this Code shall be continuous.

Article 247

Publication

1. Acts to be published shall be communicated to the parties and the general public through publication in the Industrial Property Gazette.

2. Publication in the Industrial Property Gazette shall serve as direct notification to the parties and, unless otherwise indicated, mark the beginning of the time limits set forth in this Code.

3. The parties in the case or any other interested parties may request the organization responsible for industrial property to issue them with a certificate attesting to the final decision on the application and its grounds, even before the relevant notice is published in the Industrial Property Gazette.

4. Any interested party may also request a certificate of entries made, documents and files archived and photographic or ordinary copies of drawings, photographs, plans and models submitted with applications for a patent, utility model or registration.

5. The requirement referred to in the preceding paragraph shall only be expected if the respective cases have reached the advertising phase, the rights of third parties are not infringed and none of the documents is classified or discloses trade or industrial secrets.

6. Without prejudice to the provisions of the preceding paragraphs, the organization responsible for industrial property may provide information on

applications to register trademarks, standards and establishment emblems, logotypes, awards, appellations of origin and geographical indications, even before the advertising phase has been reached.

7. In any case the advertising phase shall be deemed to have been reached when the application is published in the Industrial Property Gazette.

Article 248

Annotation

1. The following shall be annotated by the organization responsible for industrial property:

(a) assignment and waiver of private rights;

(b) grant of contractual or compulsory working licenses;

(c) the constitution of rights of guarantee or use as well as seizure and confiscation;

(d) lawsuits to annul or declare the nullity of private rights;

(e) any other events or decisions that change or eliminate private rights.

2. The events referred to in the preceding paragraph shall only be effective with regard to third parties after the date of their annotation.

3. Events requiring annotation, even if not yet annotated, may be invoked by the parties or their successors, in their interactions.

Article 249

How annotation takes place

1. Annotation shall be carried out on the title at the request of any interested party accompanied by documents proving the events to which they refer.

2. Following annotation, the title shall be returned to the applicant and application together with the documents, shall be attached to the relevant file.

3. A notice of annotation shall be published in the Industrial Property Gazette.

CHAPTER X

Assignment and Licenses of Industrial Property Rights

Article 250

Assignment

1. The rights derived from patents, utility models, registrations of topographies of semiconductor products, designs and trademarks may be wholly or partially assigned free of charge or for payment.

2. The preceding paragraph shall apply to rights derived from the applications in question.

3. Assignment by inter vivos shall be proven by a written document even if it is only signed by the transferor.

4. If the annotation of the assignment is requested by the assigning party, the assignee must also sign the document proving or making the declaration accepting the assignment.

Article 251

Assignment restrictions

1. The rights derived from the application for the registration or the registration of names and emblems of establishment may only be assigned free of charge or for payment, with the business, or part of the business, to which they are related.

2. Without prejudice to the provisions of the following paragraph, the business transfer shall involve the respective name and emblem of establishment, which may continue to be registered as they are registered, except if the assignor reserves them for another business, either present or future.

3. If a name, emblem of establishment or trademark contains the individual, business or company name of the holder or of an applicant for registration, or of his representative, a specific clause shall be necessary for its assignment.

Article 252

Contractual licenses

1. The rights referred to in paragraph 1 of Article 250 may be subject to a total or partial exploitation license, free of charge or in return for payment, in part or all of the country for the whole of their duration or for a set period.

2. The previous paragraph shall apply to the rights derived from the applications in question, though refusal thereof shall result in expiry of the license.

3. License contracts must be drawn up in writing.

Article 253

Nature of the license

1. Unless otherwise stipulated, the holder of a license shall enjoy, for all legal purposes, the faculties granted to the rights holder of the subject of the license.

2. A license shall be considered non-exclusive.

3. An exclusive license shall mean that in which the rights holder renounces the power to grant other licenses for the rights which are the subject of the license, for as long as it is in force.

Article 254

Grant of working licenses

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

(a) the grant of an exclusive working license shall not prevent the holder from also directly working the right which is the subject of the license;

(b) the right derived from the working license may not be transferred;

(c) sub-licensing of the working license shall not be permitted.

CHAPTER XI

Lapse of industrial property rights

Article 255

Nullity

1. Industrial property titles shall be totally or partially null and void if:

(a) if their subject matter may not be protected;

(b) if, when granted, procedures or formalities essential to the grant of the right have been omitted;

(c) if public order rules have been violated.

2. Nullity may be invoked at any time by any interested party.

Article 256

Annullability

1. Industrial property titles shall be totally or partially annulable if the holders are not entitled to them, in particular:

(a) if the right does not belong to them;

(b) if they were granted with disregard for the rights provided for in this Code.

2. In the cases provided for in subparagraph (b) of the preceding paragraph, the interested party may, if legally able to do so, request the total or partial reversion of a right in their favor instead of annulment.

Article 257

Procedure for declaration of nullity and annulment

1. A declaration of nullity or annulment may only result from a court decision.

2. The Public Prosecutor's Office or any interested party shall be entitled to bring nullity or annulment actions and, in addition to the holder of the right registered against whom the suit is brought, all those who on the date of publication of the annotation set forth in subparagraph (d) of paragraph 1 of Article 248 have requested annotation of derived rights must also be

summoned.

3. If the court verdict has become final, the court shall notify the organization responsible for industrial property, for the purposes of annotation and publication in the corresponding notice in the Industrial Property Gazette.

Article 258

Effects of declaration of nullity or annulment

The declaration of nullity and annulment shall have the effects provided for in the law.

Article 259

Expiry

1. Industrial property rights shall expire irrespective of whether they are invoked, and the declaration of expiry may be declared ex officio by the competent service:

(a) if their duration expires;

(b) in default of payment of fees;

2. Expiry for any other reason shall only take effect if invoked by any interested party and declared by the competent service.

3. Any interested person may also request the annotation of the expiry provided for in paragraph 1, where this has not been done.

Article 260

Waiver

1. Any holder may waive his industrial property rights, as long as this is

expressly declared to the organization responsible for industrial property.

2. Waiver may be partial, if the nature of the right so allows.

3. The express declaration to waive shall be made through a written declaration, which shall be attached to the respective case file.

4. Waiver shall not prejudice derived rights that have been annotated, provided their holders are duly notified if they replace the holder of the main right for the purposes of presenting the titles to the extent necessary to safeguard these rights.

CHAPTER XII

Appeals

Article 261

Decisions permitting appeals

The following decisions by the organization responsible for industrial property may be appealed under the terms of the law:

(a) those granting or refusing industrial property rights;

(b) those regarding assignments, licenses, declarations of expiry or any other acts that affect, alter or cause lapse of industrial property rights.

Article 262

Legitimacy

1. The applicant and claimants and anyone directly and actually prejudiced by the decision shall be legitimate parties to appeal.

2. Anyone who demonstrates that he has an interest in its maintenance may, in the event of a challenge to the decision, also participate in appeal proceedings.

Article 263

Time limit

The appeal must be lodged within two months from the publication of the competent decision in the Industrial Property Gazette, or from the date of the respective certification, if this was requested by the claimant, and it took place before that publication.

Article 264

Arbitration

Interested parties may have recourse to arbitration for the resolution of disputes arising from industrial property, under the terms of the respective law.

CHAPTER XIII

Precautionary measures

Article 265

Protective measures

1. The holder of the industrial property right may request from the court the seizure of products or of any other objects, which show the violation of a private right for a design or trademark or names or emblems of establishment or of logotypes, or the confiscation of the instruments which may be used only for the practice of these illicit acts.

2. In addition to the measure referred to in the preceding paragraph, and

without prejudice to civil or criminal action which may occur, the holder of the industrial property right may request from the judicial, administrative or police authorities measures intended to avoid violation or the implementation of the threat to violate his right, under the terms provided in the law.

Article 266

Intervention by customs authorities

1. Customs services shall seize products or merchandise which contain, in any form, directly or indirectly, false indications of source or appellations of origin, trademarks or names illegally used or applied, or which show signs of a violation provided for in this Code.

2. If the violation is manifest, the seizure shall be carried out on the initiative of the customs authorities themselves, and they shall immediately notify the interested parties, allow them to regularize the object seized, without prejudice to the responsibilities under which it took place.

3. The seizure can also be carried out at the request of an interested party.

4. The seizure shall expire if, within a period of 10 working days beginning from date of the respective notification to the rights holder, the competent legal proceedings are not requested by the Public Prosecutor's Office or the injured party.

5. The period provided for in the preceding paragraph may be extended by an identical period in duly justified cases.

SECTION IV

INFRINGEMENTS

Article 267

Crimes against industrial property

The following shall be crimes against industrial property, punishable under the terms of this Code:

(a) infringement of the exclusivity of a patent, utility model or semi-conductor product topography;

(b) infringement of the exclusive rights related to designs;

(c) counterfeiting, imitation or illegal use of a trademark;

(d) Infringement and illegal use of an appellation of origin or geographical indication;

(e) the registration of a legally non-existent act or with clear concealment of the truth, irrespective of the infringement of third party rights;

(f) the sale, distribution or concealment of products or articles;

(g) obtaining a patent or utility model and registration of a design by a person who does not hold those rights.

Article 268

Penalties

1. Criminal offenses provided for under subparagraphs (a), (b), (c), (d) and (e) of Article 267 shall be punishable by a prison sentence of up to three years or a fine of up to 360 days.

2. Criminal offenses provided for under subparagraphs (f) and (g) of

Article 267 shall be punishable by a prison sentence of up to one year or a fine of up to 120 days.

Article 269

Complaint

The criminal proceedings relating to the crimes provided for in this Code shall depend on the complaint or participation.

Article 270

Unfair competition

1. Unfair competition shall be defined as an infringement punishable under the terms of this Code.

2. Unfair competition shall be defined as all acts of competition that contradict the rules and honest practices in any branch of economic activity, in particular:

(a) acts liable to create confusion with the company, establishment, goods or services of competitors, regardless of the means employed;

(b) false statements made in the course of trade or industry, for the purpose of discrediting competitors;

(c) unauthorized statements or references made with the aim of deriving benefit from the credit or reputation of another person's name, establishment or trademark;

(d) false indications as to specific credit or reputation, relating to the capital or financial situation of the company or establishment, to the nature and scope of its activities and business or to the quality or quantity of its clientele;

(e) false descriptions or indications as to the nature, quality or utility of the goods or services, as well as false information on the origin, locality, region or territory of a factory, office, premises or establishment, whatever the means employed;

(f) suppression, concealment or modification, by the seller or any intermediary, of the appellation of origin or geographical indication of the goods or the registered trademark of the producer or manufacturer on goods for sale whose packaging has not been modified in any way.

Article 271

Misuse of information

In accordance with the terms of this Code, a breach shall be defined as the disclosure, acquisition or use of the business secrets of a competitor without his consent provided that this information:

(a) is secret in the sense that it is not common knowledge or easily accessible, in its totality or in the exact configuration and connection of its constituent elements, for persons in the circles that normally deal with the type of information in question;

(b) has commercial value based on the fact that it is secret;

(c) has been the subject of considerable diligences, in view of the circumstances, on the part of the person with legal control over it, with a view to keeping it secret.

Article 272

Other infringements

The following shall also be defined as infringements punishable under the terms of this Code.

(a) invoking or making reference to an award registered in another person's name;

(b) using, or falsely claiming possession of an award that was never granted to the person who uses it or claims to hold it or which never existed;

(c) using designs or any other indications that constitute imitation of awards to which the person is not entitled;

(d) in establishments, advertisements or correspondence, of goods or services or in any other fashion, of a name or emblem of establishment which is a reproduction, or which is an imitation of a name or emblem of establishment already registered by another person;

(e) invoking a false quality in order to obtain the registration of a logotype;

(f) using in printed material, in the establishment, on products or in any other fashion, a sign which constitutes reproduction or imitation of a logotype already registered by another person;

(g) manufacturing, importing, acquiring or keeping for itself or for another party, signs that are constituent elements of registered trademarks, names, emblems, logotypes, appellations of origin or geographical indications;

(h) using as a logotype or non-registered distinctive signs, any prohibited sign or those considered imitations or usurpation under the

terms of this Code;

(i) unlawfully using in the name or emblem of establishment or logotype, registered or not, expressions, names or figures prohibited under the terms of this Code;

(j) falsely presenting oneself as the holder of an industrial property right, or if the same has existed, has already been declared null, annulled or has expired;

(k) unduly using or applying the patents, utility models or registration authorized solely for the holders of the respective rights;

(l) using an industrial property right for goods and services which differ from the one protected by the registration.

Article 273

Fines

Infringements shall be punishable by fines of \$50,000.00 to \$500,000.00 or of \$250,000.00 to \$3,000,000.00, depending on whether the offender is a natural or legal person.

Article 274

Additional penalties

1. In addition to the sanctions provided for in the preceding articles, objects which show evidence of a crime as provided for in this Code shall be declared lost and given to the State, as well as the equipment or instruments which were mainly used for the commission of the crime, except if the holder of the right infringed gives his express consent for such objects to be returned to the market or for another use to be made

of them.

2. Objects declared lost to which the preceding paragraph refers, shall be totally or partially destroyed, as long as it shall not be possible to remove the part of them or the distinctive sign put on them which constitutes infringement of the right.

Article 275

Preparation and trial of criminal cases

The preparation of the cases arising from the commission of the crimes provided for in this Code and the respective judgment shall follow the rules of the Code of Criminal Procedure.

Article 276

Participants

In addition to the persons upon which the laws on criminal proceedings confer the right to participate in such proceedings, legally constituted entrepreneurial associations shall also be entitled to intervene in this capacity in the criminal proceedings provided for in this Code.

Article 277

Preparation and decision of criminal cases for infringement

Preparation and the application of the corresponding fines and additional penalties shall be within the remit of the General Inspectorate for Economic Activities.

Article 278

Appropriation of fines

Fines shall be distributed as follows:

- (a) 60 per cent to the State;
- (b) 20 per cent to the Directorate General for Economic Activities;
- (c) 20 per cent to the organization responsible for industrial property.

Article 279

Subsidiary right

The Criminal Code and the general regulations relating to infringements, namely with respect to the criminal liability and liability in terms of administrative offenses of legal entities and vicarious liability shall be applicable as an alternative.

SECTION IV

FINAL PROVISIONS

Article 280

Fees

The fees due for the acts provided for in this Code shall be the subject of subsequent regulation.

Article 281

Organization responsible for industrial property

The Government shall promote the creation, under its supervision, of an organization granted autonomy, and tasked with dealing with issues relating to industrial property.

Article 282

Industrial Property Gazette

Article 284

The Industrial Property Gazette shall be edited and published regularly under the coordination and responsibility of the organization referred to in the preceding article.

Distribution

The Industrial Property Gazette must be distributed to the services and institutions provided for compulsorily by law, and also to the World Intellectual Property Organization, and to whomever expresses an interest in subscription under such conditions as are defined.

Article 283

Content

1. The following shall be published in the Industrial Property Gazette:

Prime Minister, *José Maria Pereira Neves* .

- (a) notices of applications for patents, utility models and registration;
- (b) amendments to initial applications;
- (c) notices of declaration of expiry;
- (d) grants and refusals;
- (e) renewals and revalidations;
- (f) declarations of intention to use and proof of use;
- (g) declarations of waiver and withdrawals;
- (h) assignments and awards of working licenses and amendment of identity, headquarters or residence of the holders;
- (i) final decisions in judicial proceedings on industrial property;
- (j) other acts or matters which should be made known to the public.

2. In addition to the notices related to its subject matter, the Industrial Property Gazette must include the addresses of official practicing agents.

