

Industrial Property Code

Decree Nr. 47/2015 of 31 December 2015
(Came into force on 31 March 2016)

2016

INDUSTRIAL PROPERTY CODE

TITLE I

GENERAL PART

CHAPTER I

General Provisions

SECTION I

Definitions, object and scope

ARTICLE 1

Definitions

For the purposes of this Code, the following words shall have the following meaning:

- a) **Franchise agreement:** an agreement in terms of which the franchisor grants to another, the franchisee, in exchange for direct or indirect remuneration, in a specific area and in a stable manner, the right to produce or sell particular goods or services under its corporate image, according to its know-how and technical assistance and subject to its control;
- b) **Technology transfer agreement:** an agreement in terms of which a contracting party undertakes to transfer to another, for a specific period or permanently, its own technology, special manufacturing process, utility models, technical information or any other type of technological knowledge, which can be developed corporately and in respect of which it is the owner, registered or otherwise;
- c) **Designation of origin:** the name of a region, a specific place or, in exceptional cases, a country, used to distinguish or identify a product originating in that region, place or country, whose qualities or characteristics are due exclusively or essentially to a particular geographical environment, including natural and human factors, and the production or extraction, processing

or preparation of which take place in the defined geographical area;

- d) **Industrial design:** any combination of lines, colours or three dimensional form, which gives a new and original visual appearance to a product, or part thereof, and which can serve as a prototype for its industrial or artisanal manufacture;
- e) **Invention:** The idea that finds a practical solution to a particular technical problem and which may consist in a product or process, or it may simultaneously be a product and a process;
- f) **Geographical indication:** the name of a region, a specific place or, in exceptional cases, a country, which is used to distinguish or identify a product originating in that region, place or country, whose reputation, specific quality or certain characteristics may be attributed to that particular geographical origin, provided that the production, extraction and/or processing and/or creation thereof takes place in the defined geographical area;
- g) **Insignia of an establishment:** a sign or combination of signs made up of figures or drawings, alone or combined with names that make up the name of the establishment, or which make up other designations or slogans, provided that as a whole it presents a shape or specific configuration with sufficient distinctive character;
- h) **Logo*¹:** a sign or combination of signs composed of figures or drawings, alone or combined, capable of identifying any public or private entity.
- i) **Mark:** a distinctive, clearly visible, audible or olfactory sign, capable of being represented graphically and of distinguishing the goods or services of a particular entity from the goods and services of another entity, and consisting, in particular, of words, including personal names, designs, letters, numbers, the shape of the product or of its packaging;

*¹ **Translator's Note** - The Portuguese word “*Logotipo*” appears in the source text which is translated herein as *Logo* in English.

- j) **Collective mark:** a mark which is capable of distinguishing the origin or any other common characteristic, including the quality of goods or services, of companies, members of an association, group or entity;
- k) **Certification mark:** a mark that identifies goods and services which, although used by different entities under the supervision of the owner, guarantees the particular characteristics or qualities of the goods or services on which it is used;
- l) **Utility model:** an invention that gives an object or part thereof a configuration, structure, mechanism or layout resulting in a functional improvement in its utility or manufacture;
- m) **Trade Name:** the business designation, name or expression that identifies a particular legal or natural person, in the course of its trading activities;
- n) **Establishment name:** a designation consisting of proper names, fancy or specific names, or any other names, that identifies and individualizes the physical space where the trader carries on its business;
- o) **Patent of Invention:** the right granted by a competent administrative authority for the protection of an invention;
- p) **Industrial Property:** a set of intellectual property rights which includes patents of inventions, utility models and industrial designs, trademarks, geographical indications and designations of origin, trade names, names and insignia of establishments, logos and awards;
- q) **Intellectual Property:** a set of rights relating to literary, artistic and scientific works, the performances of performers and performing artists, phonograms and broadcasts, inventions in all fields of human endeavour, scientific discoveries, utility models and industrial designs, trademarks, designations of origin and geographical indications, trade names, names and

insignia of establishments, the protection against unlawful competition, and all other rights relating to intellectual activity in the industrial, scientific, literary and artistic arenas;

- r) **Award:** Merit award conferred by Governments, namely, medals, diplomas, monetary prize or of any other nature, obtained at official or officially recognized exhibitions, fairs and competitions held in the country or abroad; examination certificate or commendation certificates issued by State laboratories or services, or by national or international organizations duly qualified and, in general, any other prize or display of an official nature.

ARTICLE 2

Object

This Code establishes specific rules applicable to the protection of industrial property rights and defines the rights and obligations arising from the granting or registration of industrial property rights, including monitoring mechanisms and the sanctions arising from the infringement thereof, with the objective of promoting innovation, transferring and disseminating technology and protecting the consumer.

ARTICLE 3

Objective scope

Industrial property covers all commerce, the service industry and industry per se, namely, agro-industry, fishing industry, forestry, food, construction and mining, including all natural or manufactured goods.

ARTICLE 4

Subjective scope

1. This Code shall apply to all persons, natural or legal, nationals of Mozambique or of countries of the International Union for the Protection of Industrial Property, hereinafter referred to as the Paris Union, in the terms of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as amended, hereinafter referred to as the Paris Convention, and to the members of the World Trade Organization, hereinafter referred to as the WTO regardless of the domicile or place of business, save for special provisions of jurisdiction and procedure established in the internal legal system.

2. Nationals of any country, who are domiciled or have their effective principal place of business in the territory of one of the countries of the Paris Union or of the member states of the WTO, shall be treated as nationals of member countries.
3. With regard to any other foreigners, the provisions of conventions between Mozambique and respective countries shall be observed and, in the absence of such conventions, the system of reciprocity shall apply.

SECTION II

Administrative Procedures

ARTICLE 5

Administrative jurisdiction

The administration of the industrial property system shall fall under the responsibility of the Industrial Property Institute, hereinafter referred to as the IPI.

ARTICLE 6

Classifications and procedures

If not established by international treaties in force in Mozambique, the classifications and procedures governing the organization and procedural formalities of matters contained in this Code shall be established by the relevant Minister, under proposal of the IPI.

ARTICLE 7

Forms

1. Applications for registration of industrial property rights shall be made in the appropriate forms, duly completed, specimens of which are approved by the relevant Minister, under proposal of the IPI.
2. At the time of filing, an application for registration of industrial property rights shall be annotated in accordance with the applicable legal procedure and shall indicate the number, the date and time of receipt thereof, the name and residence of the applicant and his representative, if any, and the category of industrial property rights which is subject to registration.

ARTICLE 8

Registration

1. Industrial property rights are subject to registration, which grants them their legal validity and protection.
2. Contracts involving technology transfer, franchise, licence of exploitation, licence to use, transfer, cession and the like; change of domicile, change of owner, and in general, any changes concerning the information contained in the application in a manner which affects third parties, shall also be subject to registration.
3. The preceding clause shall also apply to any encumbrances on industrial property rights, regardless of its regime and scope, including attachment, pledge, security and writ of attachment.

ARTICLE 9

Effects of registration

1. Industrial property rights that are granted by virtue of registration shall cover the entire national territory.
2. Without prejudice to the provisions of the following paragraph, the grant of industrial property rights only gives a legal presumption of compliance with the requirements for its grant.
3. The registration of trademarks, logos and designations of origin and geographical indications shall constitute grounds to refuse or annul a company name that creates confusion therewith if the respective application for its constitution or change is made after the application for registration.
4. The registration of awards guarantees the veracity and authenticity of the titles granted and ensures its holders indefinite exclusive use.
5. Actions for the annulment of acts arising from paragraph 3 of this article shall only be admissible within five years after publication in the Government Gazette of the company name of the legal entity, unless they are launched by the Public Prosecutor's Office.

ARTICLE 10

Capacity to institute action

Legal action and proceedings in terms of this Code can only be instituted in the IPI by:

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- a) An individual person with an interest in or holder of the industrial property right, or his representative specifically authorized to do so, provided they are domiciled in Mozambique;
- b) A corporate entity with an interest in or holder of the industrial property right, with its registered office in Mozambique, through its legal representative or duly authorized employee;
- c) By the Official Industrial Property Agent authorized by the IPI and provided he has the necessary powers therefor.

ARTICLE 11

Verification of applications

1. When an application is filed, the staff in charge of receiving the documents shall check that:
 - a) it is properly drafted and duly signed;
 - b) the correct amount of fees has been paid;
 - c) all the documents referred to in the application are attached thereto.
2. Notification shall be given of any omissions that are later identified.
3. The applicant shall provide the missing or correct information within thirty days from date of notification.
4. If the provisions of the preceding paragraph are not complied, the applicant shall be deemed to have abandoned the application.
5. The IPI shall always notify the applicant of the abandonment referred to above.

ARTICLE 12

Language of the application

1. Applications for registration shall be submitted in Portuguese.
2. Regional and international applications shall be submitted in the official languages established by their respective implementing legal instruments or in the languages elected by Mozambique in the Act of Accession.
3. The forms of the regional and international patent and utility model applications shall be accompanied by the relevant official translation in Portuguese of the respective abstract.

ARTICLE 13

Inspections of establishments

1. The IPI, in coordination with the National Inspectorate of Economic Activities, may conduct an inspection of any commercial or industrial establishment or any other place where a commercial activity is carried out, in order to clarify any opposition proceedings and claims arising from applications for the registration of industrial property rights.
2. The inspection referred to in the preceding paragraph may also be conducted at the request of an interested party, in order to support or explain any allegation in the same process and the costs thereof shall be borne by the requesting party.
3. Every request for inspection shall be duly substantiated and all interested parties shall be notified of the order granted.

ARTICLE 14

Proof of rights

1. Proof of the industrial property rights shall be provided by:
 - a) Certificates of title for patents and utility models (*títulos*);
 - b) Registration certificates for industrial designs, trademarks, geographical indications and designations of origin, trade names, logos, establishment names and insignia and awards.
2. The certificates of title and registration certificates shall be delivered within 15 days from the date of filing of the request therefor.
3. Models of these certificates shall be approved by decision of the relevant Minister.

ARTICLE 15

Issue of certificates of title and registration certificates

1. The certificates of title and registration certificates referred to in the preceding article can only be requested by interested parties after the decision to grant or registration has been given or, if an appeal has been lodged, after notice of the final court decision.
2. The certificates shall be delivered to the owner or his authorized representative, on presentation of receipt of payment of the fee.
3. The certificates of title and registration certificates shall be signed by the Director General and shall bear the embossing seal of the IPI.

ARTICLE 16

Content of certificates of title and registration certificates

1. The certificates of title and registration certificates referred to in the preceding article shall contain, in particular, the identity of the right it evidences, the identity of the title holder, the filing date, the priority date, if any, the address and its validity.
2. The certificates of title of patent of invention and utility model shall also include the title of the invention, the identity of the inventor, the abstract and the drawings.
3. The industrial design certificate of title shall contain the title of the drawing and the drawings.
4. The trademark registration certificate shall contain a reproduction of the mark, the class of goods or services, its description and the colour claim.
5. The registration certificate of the remaining rights shall contain the reproduction of the respective signs.

ARTICLE 17

Certificates^{*2} (*Certidões*)

1. Certificates may be issued to applicants for the registration and endorsement of industrial property rights and endorsement, as evidence of the filing of their respective applications.
2. The certificates shall be delivered within five days from the date that the request is filed.
3. The certificates referred to above shall contain, in addition to the signature of the Managing Director, the embossed seal of the IPI.
4. The models of these certificates shall be approved by order of the relevant Minister.

^{*2} **Translator's Note** - The words “*certidão*” and “*certificado*” are translated in English as “certificate”. However, *Certidão* has its own legal meaning which should not be confused with the more generic and common term *Certificado*. It refers to an authenticated copy or transcript recording the contents of an original document that is recorded and filed in the organ that issued it.

SECTION III

Rights of Dispute

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ARTICLE 18

Appeals

1. An appeal instituted against any decision which grants, refuses or suspends any rights pursuant to this Code, shall be submitted an application to the Director General, within thirty days from the date of publication or notification of the decision.
2. Without prejudice to the provisions of article 10 of this Code, only a party whose application for registration, opposition or reply to the opposition has been rejected or dismissed by Director General shall have the right to institute a claim.
3. The Director General shall issue a decision on the appeal within thirty days from the date of it being filed.
4. Without prejudice to the provisions of the following article, the decision on appeal referred to in the preceding paragraph may be subject to a judicial appeal in terms of article 20 of the Code.

ARTICLE 19

Administrative appeal

1. An administrative appeal with non-suspensive effects, may be submitted to the Minister, against any decision which grants, refuses or suspends rights pursuant to this Code.
2. The administrative appeal shall be filed within thirty days from the date of publication or notification of the decision.
3. Without prejudice to the provisions of article 10, only a party whose application for registration, opposition, reply to the opposition or whose appeal the Director-General has rejected or dismissed, shall have the right to institute an administrative appeal.
4. The Minister shall make a decision on the administrative appeal within thirty days from the date of it being instituted.
5. The institution of an administrative appeal shall not suspend the period of litigation in challenging the act appealed against, in terms of the following article.

ARTICLE 20

Judicial appeal

The Administrative Court shall adjudicate the judicial appeals instituted against the grant or refusal of industrial property rights, which are the subject matter of this Code, according to the legislation relating to administrative litigation procedure.

SECTION IV

Transferability, extinction and reinstatement of rights

ARTICLE 21

Right of Transfer

1. Industrial property rights are transferable *inter vivos* and *mortis causa*.
2. *Inter vivos* transfers shall be effected in a written document which shall contain the consent and the signature of the holder of the right which is being transferred.
3. Transfers of rights, co-ownership, burdens and encumbrances shall be endorsed on the certificate of title or certificate of registration.
4. Save as otherwise agreed, the rights arising from the application for registration of trade names, establishment names, establishment insignia and logos may only be transferred, for a consideration or free of charge, together with the commercial or industrial establishment to which they are associated.
5. If the personal name, company name, establishment insignia or logo of the owner appears on the trade name, the company name, establishment insignia or logo, an express contractual provision is required for the transfer thereof.

ARTICLE 22

Forms of extinction

1. Industrial property rights are extinguished by:
 - a) Waiver by the owner;
 - b) Annulment;
 - c) Nullity;
 - d) Lapse.
2. When a patent for invention, utility model and industrial design is extinguished, its subject matter

falls into the public domain.

ARTICLE 23

Waiver by the owner

Industrial property rights may be waived by means of a written declaration to the IPI by the proprietor thereof, his legal representative or agent with special powers therefor.

ARTICLE 24

Annulment

1. The acts which decide on the granting or refusal of the registration of industrial property rights are wholly or partially annulable.
2. Only persons who have an interest as established by this Code are entitled to raise the issue of annulment of a right.
3. For the purposes of the preceding paragraph, the following persons are entitled to seek the annulment of a right:
 - a) A person who proves that the right belongs to him;
 - b) A person with a right based on priority or on another legal title which right was ignored when the industrial property right was granted.
4. When applying for an annulment the applicant may request that the title revert to him, provided that he meets the legal requirements established in this Code.
5. Annulment of the industrial property rights may be raised within ninety days from the date of publication of the final grant or refusal of the right.
6. The declaration of annulment must be granted by a competent court.

ARTICLE 25

Nullity

1. Any act which grants or refuses the registration of industrial property rights is wholly or partially null if:
 - a) The subject matter cannot be protected;
 - b) The procedures and formalities necessary for the granting of the right were not fulfilled;

- c) The rules of safety, public order and health have been violated;
 - d) The act is a violation of morals, customs and *bonos mores*.
2. Any interested party may, at any time, raise the nullity of the industrial property rights.
 3. The nullity of the registration shall be effective from the date of filing of the application.
 4. The declaration of nullity must have been granted by a competent court.

ARTICLE 26

Lapse

1. Industrial property rights shall lapse irrespective of the lapse being invoked, in the following circumstances:
 - a) Its period of validity has expired;
 - b) Failure to pay fees.
2. Causes of lapse not envisaged in the preceding paragraph shall only take effect if an interested party invokes them.
3. Any interested party may also apply for a declaration of a lapse of rights as envisaged in paragraph 1 of this Article, if such has not already been done.

ARTICLE 27

Restoration of rights

1. The applicant or holder of an industrial property right who, despite all due care required by the circumstances and through no fault directly imputed to him, does not meet a deadline which could result in the refusal or affect the validity of the right, may, on application, have his rights restored.
2. The application, duly substantiated, shall be submitted in writing within two months from the cessation of the impediment which prevented the deadline from being met, and the application shall, in any event, only be accepted, within one year of the unobserved deadline.
3. The omitted act must be performed within the two month period referred to above, together with payment of a restoration fee.
4. The provisions of this article shall not apply to the time periods referred to in article 58 (3), in articles 68 (1) and (2), 113 and 129 and Article 130 and when any declaration of expiry of proceedings are pending in respect of the same industrial property right.

5. An applicant or holder whose industrial property rights have been reinstated may not invoke them against a third party who, during the period between the loss of the rights and the publication of their restoration, has in good faith started using or marketing the subject - matter of the right or made effective and serious preparations to do so.
6. In the case of the filing of an application for registration or registration, a third party who wishes to avail himself of the provisions of the preceding paragraph may, within thirty days from the date of publication of the restoration of rights, institute a claim against the decision to restore the rights of the applicant or the owner.

SECTION V

Protection of industrial property rights

ARTICLE 28

Legal protection

Industrial property rights are afforded the protection established by law for the protection of property in general and, specifically, by the provisions of this Code and other legislation and conventions in force.

ARTICLE 29

Jurisdiction

1. The Common Court shall have jurisdiction to resolve all disputes between private persons resulting from a violation of the industrial property rights established in this Code.
2. Notwithstanding the provisions of the preceding paragraph, any dispute between private persons may be resolved by resorting to extra-judicial mechanisms of dispute resolution, namely arbitration, mediation and conciliation.
3. For the purposes of the preceding paragraphs, the onus shall be on the interested party to prove his industrial property right.

ARTICLE 30

Interim Relief

Any person who has a well-founded fear that serious injury shall be done to his legal rights or interests

may approach the court for any interim measure which it deems appropriate to safeguard the industrial property rights provided for in this Code, in accordance with the Civil Procedure Code.

ARTICLE 31

Security of real rights

Industrial property rights can be pledged and given as security and are subject to seizure and attachment.

TITLE II

Rules of Industrial property rights

CHAPTER I

Patents of Invention

SECTION I

Patentability

ARTICLE 32

Patentability requirements

An invention is patentable if it is new, involves an inventive activity and is industrially applicable.

ARTICLE 33

Novelty

An invention shall be considered new if it is not anticipated by prior art.

ARTICLE 34

State of the art

State of the art shall consist of everything disclosed in Mozambique or anywhere in the world by oral disclosure, use or any other way, prior to the filing date; by filing micro-organisms in any filing institution recognized in terms of the Treaty of Budapest prior to the filing date or, where appropriate, prior to the priority date of the application claiming the invention.

ARTICLE 35

Inventive step

An invention shall be deemed to involve an inventive step if, to a person having skill in the art, the invention is not obviously part of the state of the art.

ARTICLE 36

Industrial application

An invention shall be considered capable of industrial application if its subject matter can be manufactured or used in any kind of industry.

ARTICLE 37

Invention not devoid of novelty

1. An invention shall not be considered as forming part of art if it was disclosed during the twelve months preceding the filing date or the priority date of the patent application, in the following circumstances:
 - a) Where the disclosure of the invention was promoted by the inventor or his successors in title, to professional or scientific institutions or publications, in competitions at exhibitions or trade fairs which are official or officially recognized by the government;
 - b) Where the disclosure was a result from an obvious abusive act by third parties against the inventor or his successors in title.
2. In the case of paragraph a) above, the inventor shall, at the time of filing the application, declare in writing that the invention was actually disclosed or published and shall provide evidence of this fact within three months from the filing date.

ARTICLE 38

Exclusions from patentability

1. The following shall not be considered inventions for the purposes of this Code:
 - a) Scientific theories and mathematical methods;
 - b) Discoveries aimed at making known or revealing something that already exists in nature, notwithstanding that it was previously unknown to Man;
 - c) Systems, plans, rules and methods for the performance of purely intellectual activities, for

- playing games or for business activities;
- d) Projects, whatever their nature or area of application;
 - e) Computer programmes as such;
 - f) Mere presentation of information;
 - g) Aesthetic creations and artistic or literary works;
 - h) Methods for treatment of the human or animal body by surgery or therapy, including diagnostic methods practised on the human or animal body although the products, substances or compositions used in any of these methods may be patented.
2. The following is excluded from patent protection:
- a) inventions contrary to morality, *bonos mores*, public security, public order, public and plant health and the environment;
 - b) All or part of plants and animals, including the biological processes of obtaining same and the products derived therefrom, save for the micro-organisms which are, in the main, obtained from non-biological or non- microbiological processes or methods;
 - c) Substances, materials, mixtures, elements or goods of any type, as well as the modification of their physical and chemical properties and the respective processes of obtaining or modifying them, when aimed at producing nuclear energy.

SECTION II

Ownership of invention

ARTICLE 39

Right to a patent

The right to the patent shall belong to the inventor or to his successor in title.

ARTICLE 40

Co-ownership

When the invention has been made jointly by two or more persons, all or any of them may apply for the patent, and they shall all expressly indicate this condition.

ARTICLE 41

Presumption of entitlement

Until proven otherwise, it is presumed that the applicant is entitled to obtain the grant of a patent.

ARTICLE 42

First to file rule

1. If two or more persons have created the same invention independently, the right to the patent is granted to the inventor who first files a valid application therefor, irrespective of the dates of the invention, unless a right of priority is being claimed.
2. If there is an agreement prior to the invention, they may all appear as applicants in the patent application.
3. In the absence of agreement on the ownership of the patent, the inventors may submit the dispute to arbitration or judicial decision.

ARTICLE 43

Inventions by employees

If the inventor is an employee, the right to a patent is determined as follows:

- a) If the invention was made during the performance of an employment contract that involves an inventive activity or that corresponds to the actual functions of the employee in terms of a study or research contract specifically assigned to him, the right to the patent belongs to the employer;
- b) Without prejudice to the employee being justly compensated therefor, if the invention did not fall within the scope of employment or within the activity of the employer but the employee used the means and resources of the employer, the right to the patent belongs to the employer.

ARTICLE 44

Definition of employee

For the purposes of this Code, an employee shall mean any person who undertakes to perform for an employer, whether under direct legal control or otherwise, a job that has the purpose or that results in an inventive activity.

ARTICLE 45

Remuneration of employees

1. For those cases established by article 43 a), the employee shall always be entitled to the remuneration as agreed in the respective contract and, for the cases established in sub-paragraph *b)* of the same article, the employee shall be entitled to equitable remuneration.
2. If the parties have not established the amount of equitable remuneration or if there is disagreement as to the amount, it may be established by arbitration.
3. The amount of the remuneration may be established before or after the invention.
4. If due to a supervening event the employee is not fully compensated within the agreed time period, there shall be an agreement to reschedule the outstanding payments according to the legislation in force or applicable commercial practice.
5. If, after an agreement pursuant to the preceding paragraph the employee is not paid, all the employer's rights to the patent shall lapse and shall be transferred to the employee.

ARTICLE 46

Communication of the invention

1. The employee shall, as soon as possible, notify the employer in writing, of the invention carried out.
2. Should the employee fail to comply with the obligations of the above paragraph his rights to the invention shall expire, whether under this Code or those resultant from the contractual provisions relating to the employment relationship.
3. The employer has six months from the date of communication of the invention by the employee, to express his interest on the said invention.
4. Should the employer waive his rights to the employee's invention or fail to express his intention within the time period referred to in the preceding paragraph, the employee shall have the right to assume ownership of the invention or transfer it to third parties.

ARTICLE 47

Restriction Period

Subject to proof to the contrary, every invention whose patent application has been filed by the employee during the year following the date of termination of the employment relationship shall be assumed to be

have been made during the term of the employment contract.

ARTICLE 48

Public servants and officers

The provisions of this section shall also apply, *mutatis mutandis*, to the organs and institutions of the public administration, in respect of officials and other officers of the public administration services.

ARTICLE 49

Non-limitation of rights

The rights of the worker under this section cannot be limited by contract, nor may they be waived in advance.

ARTICLE 50

Inventor's right

If the patent application is not made in the name of the employee, he shall have the right to be mentioned as such in the application and in the patent title.

SECTION III

Filing of the application

ARTICLE 51

Applicant and place of application

1. The provisions of article 10 of this Code shall be observed for the purposes of filing an application.
2. The application shall be filed at the IPI, either directly or by correspondence.

ARTICLE 52

Supporting documentation

1. The application for registration of a patent shall contain the following documents:
 - a) Descriptive report;
 - b) One or more claims;

- c) The drawings, if any;
 - d) The abstract of the invention.
2. Fantasy expressions used to designate the invention may not be claimed, but may be registered as a mark.
 3. The application shall be filed in triplicate and must be accompanied by proof of payment of the prescribed fee.

ARTICLE 53

Mandatory particulars of the application

1. In addition to the documents provided for in article 52 (1), the patent application shall contain the following:
 - a) The identity and nationality of the applicant, the inventor or his successors in title, or of the applicant's agent;
 - b) The title of the invention.
2. If the applicant is not the inventor or his successors, the application shall contain a statement substantiating the applicant's right to the patent.

ARTICLE 54

Description of the invention

1. The descriptive report shall describe the invention sufficiently clearly and fully so that a person skilled in the field is able to execute it and should indicate at least one way of executing the invention that is known to the applicant, on the date of the filing or if there is a claim for priority, on the date of priority of the application.
2. The descriptive report shall contain a clear identification of the genetic resources or biological material collected in Mozambique and used directly or indirectly in creating the invention, including all traditional knowledge related to the use of the said resources or materials.
3. Should the invention consist of a micro-organism or involve a microbiological process necessary to obtain same, the descriptive report shall be considered to contain a clear and full description provided the applicant annexes to his application, a declaration issued by a recognised filing institution or by an international filing institution certifying that samples of the microbiological

material were therein deposited, together with a copy of the receipt of the said material.

4. Drawings shall be provided if they are necessary for understanding the invention.

ARTICLE 55

Structure of the claim

1. The definition of the technical features of the invention is in two parts, an introductory part which mentions the known technical characteristics, and the other part which elaborates on the technical characteristics for which protection is sought.
2. The claim shall be clear and concise and shall be based entirely on the description.
3. The patent claim or claims shall define the scope and extent of protection of the invention described.
4. The abstract shall refer exclusively to technical information and shall not define the scope and extent of protection of the invention

ARTICLE 56

Multiplicity of claims or applications

1. An applicant may claim multiple priorities from applications made in several countries, provided that there is unity of invention between them.
2. An applicant may also submit several applications for registration of patents, based on the same application provided that the descriptive report of the invention of the earlier application contains evidence to suggest that there is more than one invention.

ARTICLE 57

Unity of invention

1. Only one patent may be requested per application and there shall be only one patent per invention.
2. A single application may relate to various inventions so linked as to form a single inventive concept.
3. The applicant may, at any time prior to the examination phase, modify the application, divide it into two or more applications, provided that the modification shall not go beyond the information contained in the initial application.
4. Each divisional application shall benefit from the filing date and, if applicable, the priority date, of the initial application.

SECTION IV

Claim to priority

ARTICLE 58

Benefit of priority

1. A patent application originally filed in any member state of the Paris Union or of the World Trade Organization shall enjoy priority for the purposes of registration in the IPI, provided the applicant claims such right within twelve months from the date of the first application made in those countries for the same invention.
2. For the purposes of the preceding paragraph, the claim of right of priority shall only be valid if the filing or registration copy of the first application is presented, duly certified by the administration of the industrial property of the country concerned and, if the application was made in a foreign language, it shall be accompanied by an official translation thereof.
3. Should the aforesaid proof not be capable of being furnished at the time of filing of the application, the applicant may, upon payment of a fee, apply to the IPI to grant a period of up to sixty days to present the missing document.
4. Should the time period referred to in the preceding paragraph expire before the condition being fulfilled, the application to claim right of priority claim shall be considered void.
5. Without prejudice to the provisions of article 11 (3) of this Code, the right of priority shall attach only to matters contained in the application for right of priority and shall not include any claims

which are introduced later notwithstanding that it applies to the same subject matter.

ARTICLE 59

Cession of the right of priority

Where a right of priority is ceded, documentary proof of the cession shall be presented within one hundred and eighty days from the filing date or, where applicable, within sixty days from the date on which it was lodged in the IPI, and consular legalization in the country of origin shall be dispensed with.

ARTICLE 60

Presentation of rights of protection granted abroad

The applicant of a patent of invention is obliged to provide the IPI the date and number of every patent application or right of protection filed in a foreign country in respect of the same invention applied for in Mozambique and shall include the following:

- a) Copies of any communication received by the applicant and relating to the search or examination results carried out abroad;
- b) Copies of the patent or other right of protection granted on the basis of the foreign application;
- c) Copies of any provisional or final decision rejecting or granting the foreign application;
- d) Copies of any decision to grant a patent or other right of protection granted on the basis of the foreign application.

ARTICLE 61

Date of filing

1. The date of filing shall be considered as the date on which the application is received, provided that at the time of receipt of the application it contains:
 - a) An express or implicit indication that the grant of a patent is sought;
 - b) Information which enables one to establish the identity of the applicant;
 - c) The factors which, at first glance, appear to be a description of an invention.
2. In cases where the application is sent by mail, the date of filing is deemed to be the date on which the application is received by the IPI.
3. When the application contains a claim of right of priority, the date of filing shall be considered as

the date of the application in which the priority is being claimed.

4. Should the application refer to drawings that are not included therein, the applicant shall produce same within sixty days from the date of notification to this effect.
5. Should the applicant produce the drawings within the period prescribed in the preceding paragraph, the date of filing shall be the date of receipt of said drawings.
6. If the applicant fails to submit the drawings within the time period indicated in paragraph 3 of this article, the date of filing shall be the date when the application was received and any reference to the said drawings shall be considered invalid.

SECTION V

Subsequent formalities

ARTICLE 62

Formal examination

Once the date of filing is determined, the IPI proceeds with the formal examination of the application, ensuring that it meets the conditions set out in Articles 11, 52, 53, 54 and 55 of this Code.

ARTICLE 63

Rejection due to complexity

1. If the initial application is complex, the Director General of the IPI shall notify the applicant to divide the application within a period of one hundred and eighty days.
2. Should the applicant not divide the application nor submit comments on the rectification to be made, the application shall be rejected.
3. Should the applicant submit comments and should these not be accepted by the Director General, the applicant is given a further period which shall not exceed thirty days, within which to comply with the aforesaid notification.

ARTICLE 64

Application for amendment of the application

An applicant may, at any time prior to the substantive examination, apply to the Director General to limit the scope of protection of the invention, by limiting the extent or scope of claims.

ARTICLE 65

Conversion of the application

A patent applicant may at any time prior to the substantive examination and upon payment of a fee, change the patent application to an application for a utility model.

ARTICLE 66

Publication

1. After the formal examination, if the application complies with the provisions of this Code, the IPI shall publish the abstract of the invention in the Industrial Property Bulletin.
2. The publication referred to in the preceding paragraph shall not be made before the expiry of eighteen months from the filing date or the priority date.
3. Regional and international patent applications are excluded from the provisions of the preceding paragraph and the period of twelve months shall be considered to have been fulfilled before it enters the national phase.
4. Notwithstanding the provisions of paragraph 2 of this Article, the publication may be anticipated at the express request of the applicant.
5. After the publication of the application any person may request a copy of the claims, description and drawings relating to the patent application.
6. Without prejudice to the provisions of the preceding articles, any claims or expressions included in number Article 52 (2) shall be officially eliminated, both from the patent certificate as well as from the publications arising from the application.

ARTICLE 67

Provisional protection

From the date of publication referred to in the previous article, the patent application gives the applicant, provisionally, the protection that he would receive on being granted the right.

ARTICLE 68

Opposition

1. Any person who feels that the granting of the patent would be prejudicial to him shall be entitled to oppose the patent application, within sixty days from the date of its publication in the Industrial Property Bulletin, in terms of the following articles and upon payment of the respective fee.
2. The time period referred to above may be extended only once for a maximum period of sixty days, at the request of the interested party and upon payment of the respective fee.
3. The opposition shall be submitted in triplicate and shall contain matters of fact and law to substantiate it.
4. The IPI shall send a copy of the opposition to the applicant, giving him notice to respond to the opposition within thirty days.
5. The time period referred to above may be extended only once for a maximum period of thirty days, at the request of the interested party and upon payment of the prescribed fee.
6. Failure to respond within the prescribed period shall be equivalent to the applicant abandoning the application.
7. Having read the papers filed by the interested parties the Director General shall decide on the outcome of the opposition and shall notify the interested parties of his decision.

SECTION VI

Examination of the application and decision

ARTICLE 69

Substantive examination

1. On expiry of the time period referred to in paragraph 1 of the preceding article and within 36 months

from the date of filing of the application, or at the conclusion of argument in the event of opposition, at the request of the applicant and against payment of the prescribed fee, the IPI shall proceed with the examination of the process.

2. The examination shall consist, primarily and obligatorily, in examining the patent, the patent title, abstract, description, claims and drawings of the invention in respect of which registration is sought and checking the patentability requirements established in Article 32.
3. Should it be deemed necessary, the IPI may request technical assistance or for a substantive examination to be undertaken by national or international technical entities or experts.
4. Should the applicant fail to request an examination within the period stipulated in paragraph 1 hereof, the application shall be treated as abandoned.

ARTICLE 70

Provisional refusal

1. The result of the study of the process referred to in paragraph 1 above shall be submitted to the Director General for decision which may be a provisional refusal or approval.
2. The decision referred to in the preceding paragraph shall be delivered within thirty days from the date that the results of the study of the process were submitted to the Director General.
3. Registration shall be provisionally refused if the examination reveals grounds for refusal.
4. The applicant shall be notified of the provisional refusal within five days from the date of the decision.
5. The applicant shall reply to the notice of provisional refusal within 30 days, failing which the refusal shall automatically become final.

ARTICLE 71

Grant or refusal of a patent

1. If, on the basis of the applicant's reply to the notice of provisional refusal the IPI concludes that the refusal is unfounded or that the subject matter of the objections raised have been remedied, the IPI shall issue a decision to grant the patent within thirty days from the submission of the said reply.
2. If, on the basis of the applicant's reply there is no change on the assessment of the basis for the provisional refusal, the Director General shall issue a decision of final refusal.

3. The patent application is also granted or denied, depending on whether the opposition, if any, has been dismissed or upheld, respectively.
4. The applicant shall be notified of the final decision to grant or refuse the application within five days.

ARTICLE 72

Grounds for refusal

1. The following shall constitute grounds for refusal:
 - a) Any one of the requirements established in article 32 is missing;
 - b) Failure to observe the provisions of articles 52, 53, 54, 55 and 56 of this Code;
 - c) Any of the exclusions from patentability established in article 38, is found.

SECTION VII

Rights conferred by the patent

ARTICLE 73

Duration of a patent

1. The validity of a patent registration is twenty years from the filing date.
2. The validity of the registration referred to above is subject to the submission and payment of the applicable annual fees.

ARTICLE 74

Rights of the patent holder

1. Without prejudice to the further provisions of this chapter, the patent holder enjoys the following exclusive rights relating to the invention:
 - a) Exploit the patented invention;
 - b) Grant or assign the patent;
 - c) Conclude licence agreements for the exploitation of the invention;
 - d) Oppose the improper use of the patent.
2. The rights referred to in the preceding paragraph may be exercised by third parties expressly authorised by the patent holder.

3. For the purposes of this Code, whenever a patent has been granted in respect of a product, exploitation of a patented invention shall mean any of the following acts:
 - a) Manufacturing, importing, offering for sale, selling and using the product;
 - b) Stocking the product for the purposes of offering it for sale, selling or using it.
4. Whenever a patent has been granted in respect of a process, its exploitation shall mean:
 - a) Use of the process;
 - b) Doing any of the acts referred to in paragraph (a) in respect of a product which was obtained directly by means of the use of the process.
5. During the validity of the patent, the owner may use the words “patent number” (“*patente número*”) or “Pat. No....” on the goods.

ARTICLE 75

Limitation of the rights derived from a patent

The rights of the patent holder shall not extend to the following:

- a) Acts relating to a patented invention for the purposes of scientific research;
- b) Acts relating to products which have been placed on the market in Mozambique by the patent holder or with his consent;
- c) The use of products on board foreign aircraft, vehicles or vessels which temporarily or accidentally enter the air space, territory or territorial waters of Mozambique;
- d) Acts done privately and on a non-commercial scale or for non-commercial purpose, provided that it does not significantly prejudice the commercial interests of the patent holder;
- e) Acts relating to the preparation in a pharmacy of provisional medication for an individual in accordance with prescription given by a registered medical practitioner.

ARTICLE 76

Rights of prior use

1. Any person who in good faith, at the date of filing of the application or the date of priority was using the invention or was making effective and serious preparations for its manufacture or for the use of the process of the invention claimed in a patent application, has the right to exploit the patented invention.

2. The right referred to herein may only be transferred together with the enterprise or company in which the preparatory acts or use of the product or process subject to the patent were carried out.

ARTICLE 77

Assignment of a patent

1. The owner of a patent or his successors in title may assign a patent by public deed.
2. Where the patent belongs to more than one patent holder, the carrying out of any business using the patented invention shall require the consent of the co-owners.
3. In the absence of agreement between the co-owners, the latter may independently assign their rights, exploit the patented invention and take legal action against those who exploit the invention without their consent.
4. The assignment of a patent shall only be effective against third parties once it is endorsed in the IPI.

ARTICLE 78

Waiver of the patent

The holder of a patent may at any time abandon his rights thereto on written declaration, with the agreement of the co-owners, holders of real rights in security or rights under a licence of exploitation, if applicable.

SECTION VIII

Regional Patent

ARTICLE 79

Scope

1. A patent granted by the African Regional Intellectual Property Organization, hereinafter referred to as ARIPO, of which Mozambique is a designated State, shall be considered a national patent.
2. Patents, utility models and industrial designs are governed by the Harare Protocol on Patents, Utility Models and Industrial Designs of 10 December 1982 and its subsequent amendments, hereinafter referred to as the “Harare Protocol”.
3. Insofar as they do not contradict the provisions of the preceding paragraph, the provisions of this Code shall apply to applications for registration of regional patents.

ARTICLE 80

Filing of application

1. Regional patent applications shall be filed using a proper form, submitted to the IPI or directly to ARIPO.
2. Regional patent applications filed in Mozambique shall be drafted in English and accompanied by an official translation into Portuguese language of the abstract.
3. Regional patent applications filed at the IPI, acting as the Receiving Office, shall be subject to payment of a national transfer fee, in addition to the fees prescribed by ARIPO.

ARTICLE 81

Receiving Office

The IPI may only act as the Receiving Office for regional patent applications which filed by persons who have the capacity to carry out legal and procedural acts in terms of article 10 of this Code.

ARTICLE 82

Converting a regional patent application

1. A regional patent application that has been refused or withdrawn may be converted into a national patent application.
2. A regional patent application that has been refused or withdrawn may also be converted into a national utility model application.

ARTICLE 83

Provisional protection

After publication of the application of the regional patent under rule *19-bis* of the Harare Protocol, in which Mozambique is a designated State, it shall benefit from the provisional protection in terms of article 67 of this Code.

SECTION IX

International Patent

ARTICLE 84

Scope

1. International patent applications are governed by the provisions of the Patent Cooperation Treaty of 19 June 1970 and its successive revisions, hereinafter referred to as the PCT.
2. The provisions of this Code and its regulations shall also apply insofar as they does not conflict with the PCT and other instruments on the subject.

ARTICLE 85

Filing of international patent applications

1. International patent applications shall be filed using a proper form, in the language of the respective legal instruments of implementation and accompanied by a Portuguese translation of the abstract of the invention.
2. International patent applications filed at the IPI, acting as the Receiving Office, shall be subject to payment of a national transfer fee, in addition to the fees prescribed in the PCT.

ARTICLE 86

Receiving Office

The IPI may only act as the Receiving Office for international patent applications filed by persons who have the capacity to carry out legal and procedural acts in terms of article 10 of this Code.

ARTICLE 87

Designated or elected office

In accordance with article 2 of the PCT, the IPI shall act as the Designated or Elected Office for international applications intended to protect inventions in Mozambique.

ARTICLE 88

Effect of international patent applications

International patent applications for which the IPI acts as a designated or elected office shall produce the same effects as a national patent.

ARTICLE 89

Provisional protection

On publication of the international patent application under the PCT, in which Mozambique is a designated State, the patent shall enjoy provisional protection in accordance with article 67 of this code.

SECTION X

Exploitation of the patent

ARTICLE 90

Compulsory exploitation

1. The patent holder shall be compelled to exploit his patented invention, directly or indirectly.
2. The exploitation of the invention shall commence within three years from the date that the patent was granted or four years after the filing of the application, whichever period expires last.
3. Failure to exploit the invention within the period indicated above may result in the patent holder being compelled to grant a licence of exploitation to third parties.
4. The patent holder may also be compelled to grant a licence to a third party to exploit the patent if the use of another patent depends on it.
5. The licence of exploitation referred to above may only be compelled after the potential user has made efforts to obtain the consent of the owner of the patent under reasonable conditions and without success.

ARTICLE 91

Licence of exploitation

1. The patent holder may enter into licence agreements for the purpose of exploiting (working) the patent.
2. A licence agreement shall only be effective against third parties after it has been endorsed by the IPI.
3. Any improvement to the licensed patent shall belong to the person who made the improvement but

- the other contracting party shall be given a right of first refusal to register it.
4. On payment of a fee and for a period not exceeding 12 months, the patent holder may request the IPI to place the patent on offer to the public for exploitation purposes, in the Industrial Property Bulletin.
 5. The advertised patent shall have its annual fees reduced by half during the period between the offer and the grant of the first licence.
 6. A patent under an exclusive licence of exploitation may not be advertised to the public.
 7. The patent holder may, at any time prior to the express acceptance of the terms of the offer by an interested party, withdraw the offer in which event the provisions of paragraph 5 of this article shall not apply.

ARTICLE 92

Compulsory licence

1. The invention may be exploited by authorization of the relevant Minister without the consent of the patent holder, for reasons of public interest.
2. For the purposes of this article an invention is in the public interest if it is of fundamental importance to public health, national defence and economic and technological development.
3. The application for a compulsory licence shall be addressed to the IPI, accompanied by proof that the applicant sought a contractual licence from the patent holder and did not obtain it on reasonable commercial terms and within a reasonable time.
4. The provisions of the above paragraph shall not apply to cases of national emergency or other circumstances of extreme urgency.
5. The IPI shall, in all cases mentioned in this article, immediately notify the owner of the patent of the grounds for granting the compulsory licence.
6. The patent holder shall receive adequate remuneration from the beneficiary, adjusted to each particular case and taking into account the commercial value of the patent.
7. The extent and duration of such use is limited to the purposes for which the patent exploitation was authorized.
8. Although the use provided for in terms of this article is not exclusive, it may not be disposed of unless it is transferred or ceded with the enterprise that exploits the patented invention.

9. The exploitation of the invention by a third party designated by the competent authorities in accordance with this article, shall be predominantly aimed at supplying the domestic market.

ARTICLE 93

Opposition to non-exploitation

The patent holder may at any time oppose an application for a compulsory licence by a third party, substantiated by facts that show that the failure to comply with the law was not attributable to him.

ARTICLE 94

Proof of exploitation

1. Proof of exploitation shall be done by an official certificate that must be issued by the competent body in the respective area of exploitation.
2. The above document shall certify that the invention is being exploited in manufacturing processes in industrial plants where it claims it is worked or that the subject matter of the invention is actually being marketed.

ARTICLE 95

Dependent patents

1. A patent is said to be dependent when its purpose constitutes a substantial technical progress in relation to the earlier patent.
2. A product patent may be considered dependent upon the respective process patent, and likewise, a process patent may be considered dependent upon a product patent.
3. When any of the above circumstances occur, there shall be no right to cross-licence.

CHAPTER II

Utility Models

ARTICLE 96

Requirements

Every invention which involves a significant inventive step and has an industrial application is eligible for protection as a utility model, with the exception of pharmaceutical and agro- pharmaceutical products.

ARTICLE 97

Inventive step

For the purposes of this Chapter, an invention shall be deemed to have a significant inventive step if it functionally improves the utility of an object or its manufacture.

ARTICLE 98

Unity of invention

The application for a utility model shall refer to a single main model that may include several distinct or additional elements or several constructive and configurative variants, provided that the technical-functional unit and body of the object is maintained.

ARTICLE 99

Conversion of the application

The applicant for a utility model may at any time prior to publication and against payment of a conversion fee, change the application for a utility model into a patent application thereby benefiting from the filing date of the initial application

ARTICLE 100

Procedure

1. The administrative procedure relating to applications for utility models shall be simpler and faster than those applicable to patent applications.
2. The time periods relating to opposing the grant of the utility model, reply to the opposition and reply

to notices of provisional refusal shall be thirty days.

ARTICLE 101

Ancillary regime

1. Except as provided in the preceding article, the provisions relating to patents of invention shall apply, *mutatis mutandis*, to utility models and to their respective applications, provided that they are not incompatible with the specific characteristics of utility models.
2. The provisions of Articles 33, 69 and 70 of this Code shall be excluded from the provisions of the preceding paragraph.

ARTICLE 102

Grant of Utility Model

1. Publication in the Industrial Property Bulletin shall be done within six months from the date of the application for registration, unless a deferment or anticipation of the publication has been requested.
2. The provisions of the above paragraph shall not apply to applications for regional registration of utility models, in respect of which the six-month period is considered fulfilled before it enters the national phase.
3. If there is no opposition, after thirty days of date of publication the utility model application shall be granted without any formalities as to the substantive examination.

ARTICLE 103

Duration

1. The duration of the utility model shall be fifteen years from its date of filing.
2. The validity of the registration referred to above shall be subject to the submission and payment of the applicable annual fees.

ARTICLE 104

Rights conferred by registration

1. The provisions relating to the rights conferred by patents shall, apply *mutatis mutandis*, to utility models.

2. During the validity of the patent, the owner may use the words "utility model number" (*modelo de utilidade número*, in Portuguese) "Util. Mod. No ... " or the abbreviation "UM No...." (*M.U. N. °*, in Portuguese) on the products.

CHAPTER III

Industrial designs

SECTION I

General principles

ARTICLE 105

Requirements

1. The following shall constitute the requirements for the protection of an industrial design:
 - a) It shall not have been disclosed by publication in tangible form, or used in any other way prior to the filing date or the priority date of the application for registration, this being its originality;
 - b) It shall not be illegal or offensive to public order and morality or *contra bonos mores*.
2. For the purposes of paragraph a) above, the following shall not be considered original:
 - a) An industrial design that has already been the subject of prior registration, even if it is null or has lapsed;
 - b) An industrial design that has been described in publications in such a way as to make it capable of being understood and worked by experts in the field;
 - c) An industrial design used in a well-known manner or which in any way has become part of the public domain.

ARTICLE 106

Ownership of rights

1. Rights conferred by industrial designs belong to the creator or his successors in title.
2. If the authorship of the industrial designs is of several people, they shall jointly own the right, in which case an application for registration may be made jointly or severally.

3. Where various people have, independently from one another, created the same industrial design, the right shall belong to the one who first files the application.

ARTICLE 107

Designs created by employees

The provisions of article 43 and following of this Code shall apply, *mutatis mutandis*, to designs created by the employee in the course and scope of his employment.

ARTICLE 108

Right of priority

Any person who has duly filed an application for industrial design in a member state of the Paris Union or in a signatory member state of the WTO or ARIPO shall enjoy a right of priority in respect of the filing of an application for registration in Mozambique.

SECTION II

The application and its effect

ARTICLE 109

Application

1. The application shall consist of a notice of application accompanied by drawings, photographs or other graphic images which are appropriate to the subject matter of the industrial design for which it is intended and it may include an example of the subject matter of the industrial design. Proof of payment of the prescribed fee must be included.
2. If the applicant is not the creator, the application must be accompanied by a statement substantiating the applicant's right to register the industrial design.
3. While the application is pending, the applicant may withdraw it by written declaration.

ARTICLE 110

Filing and examination of the application

1. The date of filing shall be the date when the application is received, provided that as at the date of

filing the prescribed fee has been paid and the application contains the name of the applicant and an example of the subject matter of the industrial design or a graphical image thereof.

2. Once it has issued a filing date, the IPI shall examine the application to ascertain whether it fulfils the requirements set out in article 109 of this Code.
3. Two or more industrial designs may be included in the same application, provided they are within the same class or they incorporate the same set or composition of industrial objects.

ARTICLE 111

Provisional protection

1. The application for an industrial design shall give the applicant, from the date of publication, the provisional protection that he would receive on being granted the right.
2. The protection referred to above shall be applicable before the date of publication in relation to any person who has been notified of the filing of the application.
3. No court order relating to actions instituted on the basis of provisional protection shall be given before the final grant or refusal of the industrial design.

ARTICLE 112

Publication

The application for the registration of the industrial design shall be immediately published in the Industrial Property Bulletin, unless a deferment of publication has been requested.

ARTICLE 113

Opposition

1. Any person who feels that the granting of the industrial design would be prejudicial to him may oppose the application, within thirty days from the date of its publication in the Industrial Property Bulletin, in terms of the following clauses and against payment of the respective fee.
2. The time period referred to above may be extended only once for a maximum period of thirty days, at the request of the interested party and against payment of the respective fee.
3. The opposition shall be submitted in triplicate and shall be substantiated by matters of fact and law.
4. The IPI shall send a copy of the opposition to the applicant, giving him notice to respond to the

opposition within thirty days.

5. The time period referred to above may be extended only once for a maximum period of thirty days, at the request of the interested party and upon payment of the respective fee.
6. Failure to respond within the prescribed period shall be equivalent to the withdrawal of the application by the applicant.
7. Having read the papers filed by all interested parties the Director General shall decide on the outcome of the opposition and shall notify the interested parties of his decision.

ARTICLE 114

Substantive examination

1. The IPI shall study process upon expiry of the time period indicated in paragraph 1 of the preceding article or at the conclusion of argument in the event of opposition.
2. The study of the process shall consist mainly and mandatorily in examining the industrial design and checking its compliance with the requirements set out in Article 109 of this Code

ARTICLE 115

Provisional refusal

1. The result of the study of the process referred to in paragraph 1 of the preceding article shall be submitted to the Director General for decision which may be a provisional refusal or approval.
2. The decision referred to in the preceding paragraph shall be delivered within thirty days from the date that the results of the study of the process were submitted to the Director General.
3. The applicant shall be notified of the provisional refusal within five days from the date of the decision.
4. The applicant shall reply to the notice of provisional refusal within thirty days, failing which the refusal shall become final.

ARTICLE 116

Grant or refusal of the application

1. If, on the basis of the applicant's reply, the IPI concludes that the refusal is unfounded or that the objections raised have been remedied, it shall issue a decision to grant the application within thirty

- days from the submission of the said reply.
2. If, on the basis of the applicant's reply there is no change in the assessment of the basis for the provisional refusal, the Director General shall issue a decision of final refusal.
 3. The application for industrial design is also granted or denied, depending on whether the opposition, if any, has been dismissed or upheld, respectively.
 4. The applicant shall be notified of the final decision to grant or refuse the application within five days.

ARTICLE 117

Grounds for refusal

Failure to comply with the requirements prescribed in Article 109 of this Code shall constitute grounds for refusal.

SECTION III

Effect of registration

ARTICLE 118

Duration

1. The validity of the registration of an industrial design shall not exceed five years commencing from the date of filing, which is renewable for an equal period up to a maximum of twenty-five years.
2. The validity of the registration referred to above is subject to the payment of the applicable annual fees.

ARTICLE 119

Rights conferred by registration

1. The exploitation of an industrial design registered in Mozambique, by any person other than the registered owner thereof shall require his consent.
2. A registered industrial design confers upon its owner the right to prevent any third party from producing, manufacturing, selling or exploiting the subject matter, without the owner's consent.
3. In addition to the aforesaid rights, the registered owner of an industrial design has the right to

institute legal proceedings against any person who infringes the exclusive rights of industrial design or who, without his consent, makes preparations for that purpose.

4. During the validity of the registration, the owner may use the words "Design No." (*Desenho Nr.*, in Portuguese) or the abbreviation "D.No." (*D.Nr.*, in Portuguese) on the design.

ARTICLE 120

Effects of regional registration

An industrial design registered by ARIPO and of which Mozambique is a designated State, shall have the same effects as an industrial design registered under this Code, unless the IPI has notified ARIPO of a decision in terms of which the registration shall not be effective in Mozambique pursuant to rule 20 of the Harare Protocol.

CHAPTER IV

Marks

SECTION I

National registration

ARTICLE 121

Requirements

The requirements for the protection of a mark shall be:

- a) It must be capable of distinguishing the goods or services of one entity from the goods and services of another;
- b) It shall not be illegal or offensive to public order and morality or *contra bonos mores*.
- c) It shall not be capable of misleading the consumer or the public in regard to the specific characteristic features of the goods or service to which the mark relates, in particular as regards to the geographical origin of the goods or services, or their nature or characteristics;
- d) It shall not reproduce, imitate or contain features of armorial bearings, flags, coats of arms, coins, emblems, escutcheons, abbreviations or other symbols of official use in the State, Municipality, other national or foreign public entities or intergovernmental organizations, created by regional

- or international convention, except with the authority of such State or organization;
- e) It shall not reproduce official badges, stamps and seals of inspection and warranty or private emblems, the name of the Red Cross or other similar organizations;
 - f) It shall not be identical or similar to a mark of high renown or one which is well-known in Mozambique;
 - g) It shall not reproduce or imitate the characteristic features of other distinctive signs of trade registered in Mozambique;
 - h) It shall not constitute a generic, common, ordinary or merely descriptive feature of the goods or services for which protection is sought;
 - i) It shall not be identical to or an imitation or translation of a mark registered in Mozambique in the name of a different person or one with an earlier filing date of an applicant seeking registration for identical goods and services.

ARTICLE 122

Imitation of a mark

A registered mark shall be deemed to have been imitated by another when, cumulatively:

- a) The registered mark has priority;
- b) Both marks relate to identical goods or services;
- c) The marks display graphical, phonetic or figurative similarities and are likely to create confusion for consumers.

ARTICLE 123

Application

1. Applications for trademark registration shall be drafted in Portuguese and filed at the IPI accompanied by proof of payment of the prescribed fee, a copy of the mark and a list of the goods or services for which registration is sought.
2. The applicant may only file an application for trademark registration for an activity actually and lawfully conducted by him, either directly or through enterprises that he directly or indirectly controls.
3. The products or services shall be arranged by class according to the international classification

established by the Nice Agreement of 15 June 1957 and its subsequent amendments.

ARTICLE 124

Capacity to register

1. Without prejudice to the provisions of article 10 of this Code, any person with legal personality who engage in any lawful activity or provide any lawful service shall have the right to apply for the registration of a mark.
2. For the purposes of the above paragraph, lawful activity shall be understood to mean any activity for which the applicant has been authorized by the competent authorities.
3. Corporate entities that have been legally granted or awarded a certification or guarantee mark shall have the right to register collective marks and may apply it to specific features of the products or services.
4. Corporate entities and public bodies that oversee, control or certify the conformity of a product or service with certain standards or technical specifications, including the quality, nature, material used, methodology and geographical origin, shall be entitled to register a certification mark.

ARTICLE 125

Supporting documentation

1. The application for registration shall be contain the following documents:
 - a) If the applicant is an individual of Mozambican nationality, or resident in the country, a copy of the licence for carrying out of the activity;
 - b) If the applicant is a legal entity domiciled or with representation in Mozambique, the final registration certificate or business licence;
 - c) if the applicant is a foreign individual or legal entity without residence or office in Mozambique, a power of attorney duly notarized, conferring special powers of representation to an Official Industrial Property Agent;
 - d) A graphical representation of the mark;
 - e) Authorization from the owner of a foreign mark for whom the applicant is an agent or representative in Mozambique, by means of a licence authorizing the foreign business activity in the Republic of Mozambique;

- f) Authorization of any person, not being the applicant, whose name, firm, company or establishment name, insignia or picture appear on the mark;
 - g) Authorization from the competent authority to include in the mark flags, armorial bearings, escutcheons, emblems, coins, or emblems of State, municipalities or other public or private bodies, whether national or foreign, official badges, stamps and seals of inspection and warranty, private emblems or the name of the Red Cross or other similar organizations;
 - h) Commendation awards or other distinctions referred to or reproduced in the mark which are not considered to be awards according to the definition in this Code;
 - i) Valid certificate of registration evidencing the right to include in the mark the name of or any reference to a specific rural or urban real estate and, if the proprietor thereof is not the applicant, the authority of the said proprietor;
 - j) Authorization from the owner of the earlier registration and from the holder of an exclusive licence, if any, unless otherwise provided for in the contract.
2. If the mark contains inscriptions in little-known characters, the applicant shall submit a transliteration and, if possible, the translation of such inscriptions.
 3. Once the application is filed it shall be submitted to a preliminary or formal examination and, if it is properly instituted the date of filing shall be the date that it was filed.
 4. An application that does not, procedurally, meet the requirements established in Articles 121, 122, 123 and 124 of this Code, but which contains sufficient information relating to the applicant, the features of the mark and its class, may be lodged, against a receipt, duly dated, which sets out the requirements to be met by the applicant within five days, failing which the application shall be deemed non-existent.
 5. Once the requirements set out in the previous paragraph have been complied, the date of filing shall be the date in paragraph 3 of this article.

ARTICLE 126

Single registration

The same mark for the same product or service may only have one registration.

ARTICLE 127

Abandonment of the application

While the application is pending, the applicant may abandon it by means of a simple request addressed to the IPI.

ARTICLE 128

Priority

1. The application may contain a declaration claiming priority of a national registration over a previous registration, in terms of the conditions provided for by the Paris Convention. The applicant shall present a copy of the prior application duly certified by the administration of industrial property of the country to which the application relates.
2. Failure to submit the copy of the application referred to above shall invalidate the priority claim, and only the filing date shall be relevant.
3. Once the certification is confirmed, the application shall have the effects provided for in the Paris Convention.

ARTICLE 129

Publication

Once the formal requirements have been fulfilled, the IPI shall immediately publish the application, as it was accepted, in the Industrial Property Bulletin.

ARTICLE 130

Opposition

1. Any person who feels that the granting of the mark would be prejudicial to him may oppose the application, within thirty days from the date of its publication in the Industrial Property Bulletin, in terms of the following clauses and against payment of the respective fee.
2. The time period referred to above may be extended only once for a maximum period of sixty days, at the request of the interested party and upon payment of the respective fee.
3. The opposition shall be submitted in triplicate and shall be substantiated by matters of fact and law.
4. The IPI shall send a copy of the opposition to the applicant, giving him notice to respond to the

opposition within thirty days.

5. The time period referred to above may be extended only once for a maximum period of thirty days, at the request of the interested party and upon payment of the respective fee.
6. Failure to respond within the prescribed period shall be equivalent to the withdrawal of the application by the applicant.
7. Having read the papers filed by all interested parties the Director General shall decide on the outcome of the opposition and shall notify the interested parties of his decision.

ARTICLE 131

Substantive examination

1. The IPI shall examine the process upon expiry of the time period indicated in paragraph 1 of the preceding article or at the conclusion of argument in the event of there being opposition.
2. The examination of the process shall consist, primarily and obligatorily, of an examination of the mark for which registration is sought and its comparison with the marks registered for the same product or service or for similar or related products or services.

ARTICLE 132

Provisional refusal

1. The result of the study of the process referred to in paragraph 1 of the preceding article shall be submitted to the Director General for decision which may be a provisional refusal or approval.
2. The decision referred to in the preceding paragraph shall be delivered within thirty days from the date that the results of the study of the process were submitted to the Director General.
3. The applicant shall be notified of the provisional refusal within five days from the date of the decision.
4. The applicant shall reply to the notice of provisional refusal within 30 days, failing which the refusal shall become final.

ARTICLE 133

Grant or refusal of a mark

1. If, on the basis of the applicant's reply, the IPI concludes that the refusal is unfounded or that the

objections raised have been remedied, it shall issue a decision to grant the application within thirty days from the submission of the said reply.

2. If, on the basis of the applicant's reply there is no change in the assessment of the basis for the provisional refusal, the Director General shall issue a decision of final refusal.
3. The application for registration of a mark is also granted or denied, depending on whether the opposition, if any, has been dismissed or upheld, respectively.
4. Where there are grounds to refuse the registration of a mark only in respect to some of the products or services for which the application was filed, the refusal shall only extend to such products or services.
5. The applicant shall be notified of the final decision to grant or refuse the application within five days.

ARTICLE 134

Grounds for refusal

The following shall constitute grounds for refusal:

- a) The lack of any of the elements in Articles 121, 122, 123 and 124 of this Code;
- b) If there has been an infringement of any of the provisions in Articles 126,135 and 216 of this Code;
- c) If the mark displays signs made up exclusively of the shape which results from the nature of the product itself, the shape of the product necessary to obtain a technical result or the shape which gives the product a substantial value;
- d) If the mark displays signs made up exclusively of indications which may be used commercially to designate the kind, quality, quantity, purpose, value, geographical origin, the time or means of production of the goods or of the rendering of the service, or other characteristics of the goods or service;
- e) If the mark consists exclusively of signs or indications which have become customary in the current language or in *bona fide* and established commercial practices;
- f) If the mark displays colours, unless they are combined together or with graphics, wording or other elements in a particular and distinctive manner;
- g) If it is found that the applicant intends to practice unlawful competition, or that this is possible

irrespective of his intention.

ARTICLE 135

Rights conferred by registration

1. Registration of a mark shall grant its owner the right to its exclusive use and to prevent third parties from using in commercial activities, without the owner's consent, identical or similar signs for products or services identical or similar to those for which the mark has been registered, where such use is likely to cause confusion to the public.
2. The preceding paragraph shall not prejudice the preferential right of registration to bona fide users of an identical or similar mark, provided such use occurred before the date of filing or priority of the registration in the country.
3. The right referred to above, may only be ceded together with the enterprise or company or part thereof, directly connected with the use of the mark.
4. The right referred to in paragraph 2 of this Article is not afforded to the user who after publication of the application to register the mark, does not oppose it in the terms set out in Article 130 of this Code.
5. The owner of a registered mark shall have the right to institute legal proceedings against any person who infringes or makes preparations to infringe his rights
6. The rights conferred by registration shall not extend to acts in respect of products launched in Mozambique by the owner or with his consent.
7. During the validity of the registration, the owner may use the words "registered trademark" or the symbol "®" on the products.

ARTICLE 136

Well known marks

1. The registration of a mark will be refused or annulled if the mark wholly or essentially constitutes a reproduction, imitation or translation of another mark that is well known in Mozambique, if it is to be used on identical or similar products or services that are liable to create confusion therewith.
2. Parties with an interest in the refusal or annulment of the registration of marks referred to in the preceding paragraph, may only intervene in the respective proceedings after they have registered or applied to register, in Mozambique, the mark that gives rise to and substantiates their interest.
3. For the purposes of this Code, a well-known mark shall be considered as such if it is well known by the public directly interested thereon as a result of its promotion in Mozambique.

ARTICLE 137

Mark of high renown

1. The registration of a mark shall be refused or annulled if the mark wholly or essentially constitutes a reproduction, imitation or translation of another mark that enjoys high renown in Mozambique or in the world, even though used on products or services that are not identical or similar, if the later mark intends to take undue advantage of, or be prejudicial to, the distinguishing character or renown of the mark
2. The provisions of paragraph 2 of the preceding article shall apply to the preceding paragraph.
3. For the purposes of this Code, a mark of high renown shall be considered as such if it is well known by the public directly interested thereon as a result of its promotion in Mozambique or in the world.

ARTICLE 138

Declaration of intention to use

1. Every five years from the date of registration or renewal, a declaration of intention to use the mark shall be submitted to the IPC, subject to payment of the prescribed fee.
2. The aforesaid declaration shall be submitted within one year, which begins six months before and terminates six months after the expiry of the five-year period to which it refers.

3. A marks for which a declaration was not submitted shall not be enforceable against third parties, and the Director General shall declare their registration lapsed at the request of any interested party or if it is found to be prejudicial to the rights of third parties at the time of granting other registrations.
4. If there has been no request nor declaration for the lapse of the registration, it shall again be considered to be in full force provided the owner submits a declaration of intention to use and submits proof of use.
5. Even if proof of use of the mark has not been submitted, its renewal may be granted, but registration remains subject to the provisions of paragraphs 3 and 4 of this article.
6. In the case referred to in paragraph 3 of this article, notice shall always be given to the registered owner.

ARTICLE 139

Duration and renewal of protection

1. Trademark protection shall endure for ten years from the date of filing of the application.
2. The aforesaid protection may be renewed indefinitely for equal periods upon payment of the respective fee.

ARTICLE 140

Assignment

1. The owner of the registered trademark has the right to assign it with or without the transfer of the enterprise to which the mark belongs.
2. The transfer of the right recognized in the preceding paragraph complies with the provisions of article 21.

ARTICLE 141

Licence to use

1. The owner of a mark may conclude licensing agreements for use of the mark, without prejudice to his right to exercise effective control over the specifications, the nature and the quality of the respective products or services.
2. Without prejudice to his own rights, the owner may give the licensee the power to take action to defend the mark.
3. The licence agreement shall be registered at the IPI for it to be enforceable against third parties.

SECTION II

Regional registration

ARTICLE 142

Right to register

The owner of a registered mark or the applicant of an application for registration filed at the IPI, may secure its protection in States which are signatories of regional treaties relating to the protection of intellectual property and to which Mozambique is a Contracting Party, in accordance with the provisions defined by their respective instruments of implementation.

ARTICLE 143

Filing of application

1. The application for regional registration of the mark shall be made using a specific form and shall be filed by the applicant or his representative at the IPI or at the Bureau of the regional administration of intellectual property.
2. It shall be necessary to appoint a representative if an applicant, who is not ordinarily resident or has its head office in Mozambique, files its application at the IPI.

ARTICLE 144

Priority

The applicant of an application for the registration of a regional mark may claim priority of a prior registration or application for registration in terms of the Paris Convention.

ARTICLE 145

Duration and renewal of registration

1. Protection of a regionally registered mark shall endure for ten years from the date of filing of the application.
2. The aforesaid protection may be renewed indefinitely for equal periods upon payment of the respective fee.

ARTICLE 146

Subsequent designations

The owner of a registered regional mark or the applicant of an application for regional registration, their heirs or successors, if any, may file applications for subsequent designation of extension of registration or application to other States signatories of the said treaties.

ARTICLE 147

Endorsement of amendments

1. Requests to record an amendment such as, a change of sign, name or address of the owner, restriction of class and of the list of goods or services, voluntary cancellation of registration in certain countries, assignment and partial cessions, shall be made on a specific form, accompanied by proof of payment of the respective fee.
2. A request to record a change referred to above shall contain the following:
 - a) The registration number of the mark to which it relates;
 - b) The name and address of the owner or his representative.
3. A request to record a change of holder which is based on a contract shall refer to the contract and add supporting documents.

ARTICLE 148

Reinstatement of registration

1. When a mark has been declared lapsed due to it not being renewed and failure to pay the respective fee, the owner, may apply to have his rights reinstated.
2. The application for reinstatement of rights shall be submitted within six months from the date of the trademark being removed from the database of the regional authority of the regional intellectual property bureau, accompanied by the payment of the respective fee.

ARTICLE 149

Designated office

In cases where Mozambique is named in the application for regional registration, the IPI, as the receiving office shall publish in the Industrial Property Bulletin the applications filed in the Industrial Property Bulletin, to enable those parties who may be prejudiced by the possible registration to oppose it.

ARTICLE 150

Opposition

Any person who feels that the grant of a mark will prejudice him shall have the right to oppose the application for registration, within thirty days from the date of publication of the Industrial Property Bulletin containing the notice and against payment of the respective fee.

ARTICLE 151

Procedural formalities

1. The provisions applicable to national registrations shall apply, *mutatis mutandis*, to regional registrations.
2. The provisions applicable to national registration shall also govern the subsequent steps of the process.

ARTICLE 152

Grounds for refusal of registration

The protection in Mozambique of a mark that is subject to an application for regional registration shall be refused when there are grounds for its refusal in terms of this Code.

ARTICLE 153

Declaration of intention to use

1. The provisions of Article 138 of this Code shall apply to regional marks.
2. The time periods for the filing of the declaration of intention to use shall be computed from the date of notification by ARIPO of the application.

SECTION III

International registration

ARTICLE 154

Right to register

1. The owner of a registered mark, of Mozambican nationality or having his domicile or place of business in Mozambique may, in accordance with the Madrid Agreement relating to the international registration of marks of 14 April 1891 as amended, secure the protection of his mark in States that have acceded or may accede to the said Agreement.
2. The owner of a registered mark, of Mozambican nationality or having his domicile or place of business in Mozambique may, in accordance with the Madrid Protocol of 17 June 1989, secure the protection of his mark in States that have acceded or may accede to the said Protocol.

ARTICLE 155

Application for registration

The application for international registration is made on a special form and filed at the IPI.

ARTICLE 156

Waiver of protection

The owner of an international registration may waive the protection of his mark, in whole or in part, in one or more of the Contracting Parties, by means of a simple statement delivered to the IPI, to be forwarded to the International Bureau.

ARTICLE 157

Changes to registration

1. The IPI shall notify the International Bureau of all the changes made to the national marks that may affect the international register so that they may be recorded in the respective database of the International Bureau, published and notification be given to the contracting parties which have granted them protection.
2. Applications relating to the transfer of marks to persons who do not have the legal capacity to obtain an international registration, shall not be considered.

ARTICLE 158

Publication

A notice of the application for protection in Mozambique shall be published in the Industrial Property Bulletin to enable any party who considers himself to be prejudiced by a possible grant of protection to launch an opposition.

ARTICLE 159

Opposition

Any person who feels that the grant of a mark will prejudice him shall have the right to oppose the application for registration, within thirty days from the date of publication of the Industrial Property Bulletin containing the notice and against payment of the respective fee.

ARTICLE 160

Procedural formalities

1. The provisions applicable to national registrations shall apply, *mutatis mutandis*, to international registrations.
2. The provisions applicable to international registrations shall also govern the subsequent steps of the process.

ARTICLE 161

Grounds for refusal of registration

The protection in Mozambique of a mark which is subject to an application for international registration shall be refused when there are grounds for its refusal in terms of this Code.

ARTICLE 162

Declaration of intention to use

1. The provisions established in Article 138 of this Code apply to international marks.
2. The time periods for the filing of the declaration of intention to use shall be computed from the date of notification of the international registration.
3. For the purposes of the preceding paragraph, the date of registration shall be the date that the International Bureau of the World Intellectual Property Organization registers the application on its database.

CHAPTER V

Designation of origin and geographical indication

SECTION I

General Provisions

ARTICLE 163

Acquisition of rights

1. The right of ownership over a geographical indication or a designation of origin shall be acquired on registration in accordance with the provisions of this Code.
2. Once registered, geographical indications and designations of origin become the common property of those who effectively reside or have their place of business in the locality, region or territory, and can be used interchangeably by those who carry out any characteristic productive activity in the area, subject to the consent of the registered owner.

3. The exercise of this right does not depend on the importance of the operation, the nature of the products, nor an affiliation to any association and, consequently, the geographical indication or designation of origin shall apply to all products that are characteristic of and originating in the locality, region or territory, in the usual and traditional conditions, or duly regulated.
4. Ownership of the geographical indication or designation of origin is not transferable.

ARTICLE 164

Territorial scope and duration

1. The rights conferred by a registered geographical indication or a registered designation of origin extend to the entire national territory.
2. The duration of geographical indications and designations of origin is unlimited.

ARTICLE 165

List of registered designations of origin and geographical indications

The Industrial Property Institute, hereinafter referred to as the IPI, shall keep an up-to-date register of registered geographical indications and designations of origin.

ARTICLE 166

Symbols and indications

1. The words “protected designation of origin” (*denominação de origem registada*) or “PDO” (*DO*) and “protected geographical indication” (*indicação geográfica registada*) or “PGI” (*IG*), shall appear on the labelling of products originating in Mozambique and marketed in the national territory or abroad.
2. Symbols and indications referred to in paragraph 1, may also appear on the labelling of products originating in other countries, provided they have been recognized in terms of this Code.
3. The symbols associated with the words “protected designation of origin” or “protected geographical indication” shall be approved by decision of the Minister in charge of industrial property.

SECTION II

Registration process

ARTICLE 167

Capacity to apply

1. Legal and procedural action can only be instituted by:
 - a) An interested group or the owner of a right, established or resident in Mozambique, through a legal representative or a duly authorized employee;
 - b) By an Official Industrial Property Agent, duly authorized by the IPI.
2. Interested groups that are not established or domiciled in Mozambique may only apply for the registration of a designation of origin or geographical indication through an Official Industrial Property Agent employed by the IPI.
3. For the purpose of this Code a 'group' shall mean any organization, irrespective of its legal form or constitution, of producers or manufacturers of the same product.
4. If the name designates a trans-border geographic area or a traditional name area connected to a trans-border geographic area, several groups may lodge a joint application.
5. A natural or legal person may be treated as a group, if the following conditions are met cumulatively:
 - a) The person concerned is the only producer in the designated geographical area wishing to institute an application;
 - b) The defined geographical area possesses characteristics which differ substantially from neighbouring areas or the characteristics of the product differ from those produced in neighbouring areas.
6. Groups may only submit an application for registration for products that they produce or obtain.

ARTICLE 168

Requirements

1. The application for registration is made using a special form, accompanied by proof of payment of the applicable fee.
2. The application referred to in the preceding paragraph is addressed to the IPI, and shall contain:
 - a) The name and address of the group making the application;
 - b) The specifications;
 - c) The single document.

3. The single document referred to in paragraph 2c) above shall contain, in a succinct manner, the following information:
 - a) The name, description of the product, including, where appropriate, specific rules relating to its packaging and labelling, and a concise description of the geographical area;
 - b) A description of the link between the product and the geographical environment or the geographical origin, as applicable, including, if appropriate, the specific elements in the product description or production method that justify such link.
4. If the application relates to a geographical area in a third country, the application for registration shall comply with the conditions set out in this Article and shall contain proof that the designation in question is protected in its country of origin.
5. The application shall be written in Portuguese or if drafted in another language it shall be accompanied by an official translation into Portuguese.

ARTICLE 169

Specifications

1. In order to qualify for a protected designation of origin or protected geographical indication, the product shall comply with specifications.
2. The specifications shall contain:
 - a) The name of the product, including the designation of origin or geographical indication;
 - b) The description of the product, including raw materials, if any, and the main physical, chemical, microbiological or organoleptic characteristics of the product;
 - c) The demarcation of the geographical area;
 - d) The factors that prove that the product originates in the defined geographical area;
 - e) The description of the method used to obtain the product and, if necessary, the unvarying and authentic local methods used, as well as any information concerning its packaging whenever the group launching the application decides and justifies that the packaging must take place in the defined geographical area, in order to safeguard its quality, warrant its origin or ensure its control.

3. If there are no demarcated boundaries of the geographical area to which a designation of origin or geographical indication refers, such boundaries shall be declared by the officially recognized authority responsible for the respective area and production, taking into account the uses and customs as well as the higher interests of the national or regional economy.
4. The specifications shall also contain the factors which justify:
 - a) In case of a designation of origin, the relationship between the quality or the characteristics of the product and respective geographical environment; or,
 - b) In case of a geographical indication, the relationship between a specific quality, reputation or other characteristic of the product and its geographical origin;
 - c) The name and address of the authorities or bodies that check compliance with the provisions of the specifications and their specific responsibilities;
 - d) Any specific labelling rule for the product in question;
 - e) Any requirements laid down by other national regulations.

ARTICLE 170

Compliance with the Specifications

1. With regard to geographical indications and designations of origin relating to a geographical area in Mozambique, the verification of compliance with the specifications before it is placed on the market, shall be done by the competent authorities to be designated by supplementary legislation or by control authorities operating as product certification bodies.
2. With regard to designations of origin and geographical indications relating to geographic areas outside Mozambique, the verification of compliance with the specifications before it is placed on the market shall be done by the competent authorities to be designated by the competent authorities designated by the third country or by bodies designated for this purpose.
3. The cost of such verification of compliance with the specifications shall be borne by the operators subject to those controls.

4. The authorities referred to in paragraphs 1 and 2 shall provide adequate guarantees of objectivity and impartiality and shall have at their disposal the qualified staff and resources necessary to perform their duties of verification of compliance with the specifications in question.

ARTICLE 171

Approval of amendments to the specifications

1. Any group which has a legitimate interest and satisfies the conditions established may request the approval of an amendment to the specifications, particularly to take into account scientific and technical developments or to revise the demarcation of the geographical area.
2. The application shall describe the proposed amendment and present the reasons therefor.
3. Whenever the amendment gives rise to one or more amendments to the single document, the application for approval of an amendment shall be subject to the procedure established in articles 21, 167, 172, 173, 177 and 178 of this Code.
4. For minor amendments, the IPI shall decide on the approval of the amendment without following the procedure in the preceding paragraph.
5. An amendment shall be considered minor if it:
 - a) Is not aimed at the essential characteristics of the product;
 - b) Does not change the relationship;
 - c) Does not change the name of the product or a part thereof;
 - d) Does not affect the demarcated geographical area;
 - e) Does not increase the trade restrictions imposed on the product or its raw materials.
6. On approval, the IPI shall publish in the Industrial Property Bulletin the updated single document and the reference to publication of the updated specifications.

ARTICLE 172

Examination of the application

When examining the application the IPI shall check whether it complies with the requirements of articles 168 and 169 of this Code.

ARTICLE 173

Publication

Once the requirements have been fulfilled, the IPI shall cause the application for registration, together with the single document, to be published in the Industrial Property Bulletin.

ARTICLE 174

Provisional protection

1. The application for registration of the designation of origin or geographical indication grants the applicant, from its publication in the Industrial Property Bulletin, provisional protection identical to that which he would receive on being granted the right, which shall be considered in the calculation of a potential claim.
2. The provisional protection referred to above is enforceable, even before publication, against any person who has notice of the filing of the application and received the necessary elements constituting the process.
3. Judicial decisions relating to actions founded on the basis of provisional protection shall not be granted before the final grant or refusal of the registration of the protected designation of origin or protected geographical indication, and the action shall be suspended until the pleadings have been closed.

ARTICLE 175

Grounds for refusal

1. The following shall constitute grounds for refusal:
 - a) Failure to pay the prescribed fees;
 - b) Failure to submit the necessary elements to formulate a complete statement of the process;
 - c) Failure to observe formalities or procedures necessary for the grant of the right;

- d)** Failure to prove the effective use of the name or no link between the product and the region of origin;
- 2.** In any of the cases referred to above, the applicant shall be given notice to rectify the application within thirty days.
- 3.** Registration of a designation of origin or geographical indication shall be refused in the following circumstances:
- a)** The application is instituted by a person without the necessary legal capacity to do so;
 - b)** It does not constitute a designation of origin or a geographical indication;
 - c)** It constitutes a reproduction or imitation of a designation of origin or geographical indication previously registered;
 - d)** The product name has become generic for the goods designated by it;
 - e)** The registration has been cancelled or fallen into disuse in its country of origin;
 - f)** It conflicts with the name of a plant variety or an animal breed;
 - g)** It is likely to mislead the public, particularly as to the nature, quality and geographical origin of the particular product;
 - h)** It is illegal, against public order or morality;
 - i)** It encourages unlawful competition.
- 4.** For the purposes of the provisions of sub-paragraph d) of the preceding paragraph, the term “name that has become generic” shall mean the name of a product which, although referring to the place or the region where it was originally produced or marketed, it has become the common name of that product in Mozambique.

ARTICLE 176

Conflict with marks

1. A designation of origin or geographical indication shall not be registered where, in the light of a mark's reputation and renown and the length of time it has been used, its registration is liable to mislead the consumer as to the true identity of the product.
2. An application for registration of a mark that is similar or identical to a protected designation of origin or protected geographical indication registered under this Code or with a prior filing date, shall be refused.
3. Registered marks which conflict with the provisions of the preceding paragraph fall to be annulled.

ARTICLE 177

Homonyms of identical designation of origin or geographical indication

1. The registration of a designation of origin or a geographical indication which is homonymous or partly homonymous, to one which is already registered in accordance with the present Code shall take into account local and traditional practices and the actual risk of confusion.
2. The use of a homonymous protected designation of origin or protected geographical indication shall only be authorized in practical circumstances that shall ensure that the one which was registered subsequently differs sufficiently from the prior one, taking into account the need to ensure that the respective producers are treated equitably and that it does not mislead the consumer.

ARTICLE 178

Opposition

1. Within thirty days of the date of publication of the application in the Industrial Property Bulletin, any natural or legal person with a legitimate interest may institute an opposition, on notice directed to the Director General, upon payment of the respective fee.
2. The IPI shall send a copy of the opposition to the applicant, giving him notice to respond to the opposition within sixty days.
3. The time periods referred to in paras. 1 and 2 may be extended only once for a maximum period of thirty days, at the request of the interested party and upon payment of the respective fee.

4. Failure to respond within the time periods referred to in paras. 2 and 3 shall be equivalent to the withdrawal of the application by the applicant.
5. If the applicant and the opponent reach an agreement within the period of sixty days referred to in paragraph 1 and the elements which were published were changed, the IPI shall again undertake an examination.

ARTICLE 179

Examination and decision

1. If no agreement is reached, or when the discussion has come to an end, the IPI shall proceed with the examination of the process.
2. If the opposition is not *upheld* or if it is considered that the requirements of this Code are fulfilled, the registration shall be granted.

ARTICLE 180

Publication of the decision

1. The decision shall be published in the Industrial Property Bulletin together with the single document and the reference to the publication of the specifications.
2. Publication in the Industrial Property Bulletin shall have the effect of being direct notification to the parties and, unless otherwise specified, it marks the commencement of the periods set out in this Code.

ARTICLE 181

Amendment of the decision

1. If within 60 days after the publication of a decision it is found that the decision should be amended, the process shall be submitted to the Director General for decision, together with the facts that gave rise to that opinion and which substantiate the revocation of the decision.
2. The interested parties shall be immediately notified of the decision referred to above.

ARTICLE 182

Amendment or correction of non-essential elements of the decision

1. Any amendment or correction that does not affect the essential elements of the designation of origin or geographical indication may be authorized in the same process.

2. Amendments or corrections referred to in paragraph 1 shall be published in the Industrial Property Bulletin, for the purposes of appeal, and recorded in the respective processes.

ARTICLE 183

Proof of rights

1. Proof of a protected designation of origin or a protected geographical indication shall be by means of a certificate.
2. The models of certificates of registration of designations of origin or geographical indication shall be approved by decision of the Minister responsible for industrial property.
3. The certificates of protected designation of origin or geographical indication issued by international organizations to be given effect in Mozambique shall be of equal value as the certificates referred to in the preceding paragraphs.
4. Before the notice is published in the Industrial Property Bulletin and against payment of the prescribed fee, the parties or any other interested parties may request the IPI for a transcript of the final order pertaining to the application and the reasons therefor.
5. Any interested person may also request a certificate (*certidão*) of the registrations which were effected, documents and processes which were filed as well as well as the evidence submitted with the applications for registration of the designation of origin or geographical indication, upon payment of the prescribed fee.
6. At the request of the applicant or the owner of the right and upon payment of the prescribed fee, the following shall be issued:
 - a) Filing certificates (*certidão*);
 - b) Certificates of registration of the designation of origin or geographical indication granted by international organizations that will be valid in Mozambique.

ARTICLE 184

Endorsements

1. The following shall be subject to endorsement by the IPI:
 - a) Legal actions instituted for the nullity or annulment of a designation of origin or geographical indication;
 - b) Facts or decisions that alter the designation of origin or geographical indication.

2. The facts referred to in the preceding paragraph shall only be enforceable against third parties after the date of their endorsement.
3. Even if not endorsed, the facts which are subject to endorsement may be raised by the parties or their successors.
4. The endorsements shall be effected upon request of any of the interested parties, accompanied by documents to substantiate the said facts.
5. The facts shall also be recorded in the certificate of title, if any, or in an annexure to the certificate.
6. A notice of endorsement shall be published in the Industrial Property Bulletin.

ARTICLE 185

Inspections of establishments

With a view to clarifying the allegations contained in the process, the provisions of Article 13 of this Code shall apply, *mutatis mutandis*.

ARTICLE 186

Cancellation

1. Failure to comply with the conditions laid down in the specifications benefiting from a protected designation of origin or protected geographical indication shall result in the cancellation of the registration.
2. Any natural or legal person with a legitimate interest, may request the cancellation of the registration, by providing grounds therefor.
3. The procedure established in Articles 167, 172, 173, 175 and 176 of this Code shall apply, *mutatis mutandis*, to the procedure of cancellation of registration.

CHAPTER VI

Trade name, establishment name and establishment insignia

ARTICLE 187

Subject matter of the registration

1. The purpose of a trade name is to provide a name to an entity that shall serve as its exclusive designation and unique individuality.
2. The purpose of an establishment name is to identify the place of manufacture, processing, storage or marketing of products and provision of services.
3. The purpose of an establishment insignia is to provide graphic signs that distinguish the façade of commercial establishments.

ARTICLE 188

Rights to trade name, establishment name and insignia

All persons who have a legitimate interest, namely farmers, livestock farmers, industrialists, traders, shall have the right to a trade name, establishment name and establishment insignia, provided they are domiciled or established in the country.

ARTICLE 189

Composition of the trade or establishment name

The following may constitute trade or establishment names:

- a) Any fancy or specific names;
- b) Historical names, save where their use would be offensive or lead to a different interpretation of its true meaning;
- c) The name of the property or location of the establishment, when this is admissible or contains a distinguishing feature;
- d) The name, business name or company name, pseudonym or nickname of the owner.

ARTICLE 190

Exclusions to protection

1. The following may not be protected as a trade name or establishment name:
 - a) The name of an individual or a company name belonging to a third party, except with the consent of the owner or evidence of its legitimate use;
 - b) The names of establishments registered in the name of another;
 - c) The elements that constitute a mark protected by another.

2. The provision in sub-para. *a)* above does not prevent two or more persons with identical names from including them in their trade names, provided that they are perfectly distinguishable.

ARTICLE 191

Composition of the establishment insignia

1. Establishment insignia may consist of any external sign composed of figures or designs, alone or combined with names or designations referred to in Article 189 of this Code, or combined with other words or devices, provided that the whole constitutes a specific form or configuration as a distinctive and characteristic feature of the establishment.
2. The ornamentation of façades and of those parts of shops, warehouses or factories which are exposed to the public, as well as the colours of a flag, may also constitute an insignia provided that it perfectly distinguishes the particular establishment.

ARTICLE 192

Rights conferred by registration of a trade name, establishment name and insignia

1. The ownership and exclusive use of the trade name, establishment name and insignia are guaranteed by their registration.
2. Priority of registration at the IPI of a trade and establishment name is granted to a natural or legal person legally constituted with the same name.
3. Ownership of a trade name, establishment name and establishment insignia shall also confer the right to prevent the unlawful use thereof.
4. During the validity of the registration, the owner of the establishment or company to which the trade name, the name of establishment or insignia of establishment refers, shall have the right to add the words “registered name” (*nome registado*) or “registered insignia” (*insígnia registada*) or the initials “*NR*” or “*IR*”^{*3}, respectively.

^{*3}**Translator's Note** - The abbreviations *NR* and *IR* are abbreviations in Portuguese for which there are no equivalents in English

ARTICLE 193

Inalterability

During the validity of the registration the trade name, establishment name and insignia shall remain unaltered in terms of its composition or shape, failing which it may lapse.

ARTICLE 194

Application for registration of a trade name, establishment name and establishment insignia

1. The application for the registration of a trade name, name and insignia of establishment is done by application on a specific form addressed to the Director General.
2. The application shall contain the following:
 - a) The name, company name of the owner, his nationality, domicile and place of business;
 - b) The commercial name, establishment name or establishment insignia which is subject to registration;
 - c) If the applicant is a natural person who carries out any commercial or industrial activity, the licence for carrying out such activity;
 - d) If the applicant is a legal entity, the articles of association published in the Government Gazette or the licence for carrying out the commercial or industrial activity.
3. For the insignia of an establishment, the application shall contain two graphic representations.
4. The registration of insignia of an establishment which includes references to any awards shall require their prior registration.
5. If the owner has other establishments he may use the registered name or insignia on them without the need of any further registration.

ARTICLE 195

Protection of trade names

Notwithstanding any legislative or regulatory provision which compels the registration of trade names, such names are protected, even prior to registration, against any unlawful act committed by a third party.

ARTICLE 196

Publication

Notice of the application for the protection of a trade name, establishment name and insignia shall be published in the Industrial Property Bulletin so that any person whose right or interest may be prejudiced in the event that such registration is granted, may oppose same.

ARTICLE 197

Opposition

1. Any person who feels that the grant of a trade name, name of establishment and insignia of establishment may prejudice him shall have the right to oppose the application, within thirty days from the date of publication of the Industrial Property Bulletin containing the notice and against payment of the respective fee.
2. The time period referred to above may be extended only once for a maximum period of sixty days, at the request of the interested party and upon payment of the respective fee.

ARTICLE 198

Subsequent formalities

The provisions of Article 131 of this Code shall be applicable, mutatis and mutandis.

ARTICLE 199

Modification of the trade name, establishment name or insignia

1. The registered trade name, name or insignia of an establishment may be modified on request of the interested party.
2. The modifications made in accordance with the aforesaid paragraph are subject to endorsement in accordance with the procedure established in this Code.

ARTICLE 200

Duration and renewal of protection

1. Protection of a trade name, name or insignia of establishment shall endure for ten years from the date of filing of the application.
2. The aforesaid protection may be renewed indefinitely for equal periods upon payment of the

respective fee.

ARTICLE 201

Lapse

In addition to the cases provided for in article 22 of this Code, the registration of the trade name, name or insignia of establishment shall lapse by reason of the following:

- a) Closure of the establishment to which it pertains;
- b) Failure to use it for three consecutive years.

ARTICLE 202

Transferability

1. The trade name is freely transferable by means of contract *inter-vivos* and *mortis causa*.
2. Ownership of the name of an establishment and insignia of an establishment may only occur with the simultaneously transfer of the respective enterprise to which they relate.

CHAPTER VII

Logos

ARTICLE 203

Applicable rules

The provisions applicable to insignia of establishments shall apply to logos, with the necessary adaptations.

ARTICLE 204

Proof of existence of the entity

1. The actual existence of the entity to be designated by the logo and the justification of the elements contained in the logo or its accompanying expressions shall be proved by means of any constitutive document evidencing the existence of the respective entity.
2. During the validity of the registration, the owner may add the words "Registered Logo" (*Logo Registado, in Portuguese*), *Log. Reg.* or the abbreviation *LR*4*, to the logo.

*4 **Translator's Note** - The abbreviations *Log.Reg.* and *LR* are abbreviations in Portuguese for which there are no equivalents in English.

CHAPTER VIII

Awards

SECTION I

General Provisions

ARTICLE 205

Protection

In order for protection to be afforded, in terms of this Code, to any award included in any trademark, trade name, name or insignia of an establishment or applied to products or services, the award must be registered.

ARTICLE 206

Ownership of awards

Ownership of any type of award shall belong to whom they were awarded, namely, industrialists, traders, farmers and other economic actors.

ARTICLE 207

Application for registration

1. The owners of awards referred to in previous article or their representatives may apply to the Director General for the registration of the award.
2. The application referred to above shall contain the following:
 - a) The name, business name or the trade name of the owner of the award, his nationality, domicile and place of business;
 - b) An indication of the awards that are subject to the application and the entities that awarded them;
 - c) An indication of the goods or services for which the awards were granted;
 - d) The trade name, the goods or services to which the awards apply.

SECTION II

Use and Transfer

ARTICLE 208

Use of awards

1. Any person who has legitimately acquired an award may use it even before its registration.
2. The words “registered award” (*recompensa registada*) or the abbreviations “*R.R.*” *⁵ or “*RR*” may only be used on references to or copies of the award, after its registration.

*⁵ **Translator's Note** - The abbreviations *R.R.* and *RR* are abbreviations in Portuguese for which there are no equivalents in English.

ARTICLE 209

Transfer

The ownership of an award may only be transferred in accordance with the legal formalities required for the transfer of the goods to which it relates or to which it is ancillary.

SECTION III

Termination of registration

ARTICLE 210

Annulment

1. In addition to the provisions of article 22 of this law, the registration of the reward shall be terminated in the following circumstances:
 - a) The right to the award or distinction is annulled or revoked;
 - b) If it is found that the award was obtained by unlawful means.
2. The entities referred to in article 1) r) of this Code shall be entitled to seek the annulment of the award.

ARTICLE 211

Effects of termination

Termination of the registration of the award shall extinguish the right to its use.

TITLE III

Offences

SECTION I

Classification of offences

ARTICLE 212

Infringement of industrial property rights

For the purposes of this Code, the following acts shall constitute infringements of industrial property rights:

- a) Unlawful competition;
- b) Breach of the exclusive rights in a patent;
- c) Breach of the exclusive rights in industrial designs;
- d) Counterfeiting and illegal use of the mark;
- e) Unlawful reference to or use of the award;
- f) Breach of the exclusive rights to a trade name, establishment name and insignia of an establishment;
- g) Illegal use of a logo;
- h) Improper reference to or misuse of private rights;
- i) Counterfeiting, imitation and illegal and unlawful use of a designation of origin and geographical indication.

ARTICLE 213

Unlawful Competition

1. Any act which is contrary to the good practices and usage in industrial or commercial activity or services shall constitute an act of unlawful competition.
2. A person commits an offence of unlawful competition if he:
 - a) Exhibits, sells, offers for sale or places into circulation a product, declaring it as the subject of a patent which has been filed or granted or of a registered industrial design, when it is not, or states in advertisements of any kind or commercial papers that the product is filed or patented or registered, when it is not;
 - b) Exhibits, sells, offers for sale or places into circulation a product with a mark, logo, trade name or insignia of an establishment, an award, a geographical indication or a designation of origin stating that it has been registered or filed, when it has not, or mentions it in advertisements of any kind or commercial papers as having been filed or registered, when it has not;
 - c) Commits acts which are liable to create confusion, in any way whatsoever, with the establishment, products, services or industrial or commercial activities of a competitor;

- d)** Uses or makes reference to a trade name, establishment name, insignia of an establishment or to marks belonging to another without the authorization of the lawful owner in order to take advantage of their good name or reputation;
 - e)** Declares or makes false statements, in the course of business, in order to discredit the establishment, service or industrial or commercial activities of a competitor;
 - f)** Misleads the public as to the nature, quality, method of manufacture, characteristics and use of products and services, in the course of business;
 - g)** Directly or indirectly uses a false statement as to the source of a product or service, or the identity of the producer, manufacturer or trader;
 - h)** Directly or indirectly uses a false designation of origin or imitates a designation of origin, even if the true origin of the product is mentioned or the designation is used accompanied by the expressions such as "kind", "type", "method", "imitation" or similar expressions;
 - i)** Suppresses, conceals or changes the designation of origin or the geographical indication of the goods or the registered mark of the producer or manufacturer, on products which are intended for sale and the packaging of which has not undergone any modification.
- 3.** A person also commits an offence of unlawful competition if he removes, discloses or uses confidential data or information relating to the production or use of certain products or processes or relating to the provision of services of a competitor, without his consent and in a manner which is contrary to honest commercial practices, provided that such information:
- a)** Is secret, in the sense that it is not known or easily accessible to persons in circles that normally deal with the kind of information in question, either as a whole or in the specific configuration and assembly of its components;
 - b)** Has a commercial value because it is secret;
 - c)** Has been subject to reasonable precautions, taken by the person lawfully in control of the information, under the circumstances, to keep it secret.
- 4.** The offences referred to in the preceding paragraph, are punishable with a fine equivalent to one hundred and twelve times the minimum wage, if the offender is a natural person and two hundred and twenty four times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 214

Infringement of exclusive patent rights

1. A person commits an infringement of the exclusive rights conferred by a patent if he:
 - a) Produces goods that are the subject of a patent of invention or utility model, without the authorization of the owner thereof;
 - b) Uses the patented product or process, without the authorization of its lawful owner;
 - c) Exports or imports, offers for sale or places into circulation or conceals, in bad faith, products obtained by any of the ways referred to in the preceding sub-paragraphs;
 - d) Discloses the patent of invention without the authorization of its lawful owner.
2. The offence referred to in the preceding paragraph is punishable with a fine equivalent to eighty nine times the minimum wage, if the offender is a natural person and two hundred times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 215

Infringement of the exclusive rights in an industrial design

1. A person commits an infringement of the exclusive rights in an industrial design if he:
 - a) Uses, reproduces or imitates industrial designs, wholly or in part, without the authorization of the owner thereof;
 - b) Exports, imports, offers for sale or places into circulation a registered industrial design, without the consent of the owner thereof;
 - c) Produces goods that incorporate a registered industrial design, without the consent of the owner thereof;
 - d) Exports, imports, offers for sale or places into circulation or conceals, in bad faith, products that incorporate a registered industrial design, without the consent of the owner thereof.
2. The offence referred to in the preceding paragraph is punishable with a fine equivalent to thirty three times the minimum wage, if the offender is a natural person and one hundred and twelve times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 216

Counterfeiting and illicit use of a mark

1. A person commits an offence of counterfeiting a mark if he:
 - a) Reproduces, totally or partially, a registered mark without the consent of the owner thereof;
 - b) Changes the registered mark of another already placed on products that are placed on the market;
 - c) Uses counterfeited or imitated marks;
 - d) Uses, reproduces or imitates well-known marks or marks of high renown;
 - e) Uses a mark to identify goods or services other than those of the owner of the registered mark in such a way as to mislead consumers as to the goods or services;
 - f) Exports, imports, sells or offers for sale or places into circulation products or articles with a mark that is counterfeit, imitated or used under the circumstances referred to above.
2. A person commits an offence of illicit use of a mark if he:
 - a) Uses a mark an unauthorized mark or one whose application for registration has been refused by the IPI, to identify his products or services;
 - b) Uses a mark containing expressions or figures that are against this Code and public order or are contrary to *bonos mores*;
 - c) Exports, imports, sells or offers for sale or places into circulation products or articles with a prohibited mark.
3. The offences referred to in the preceding paragraphs, are punishable with a fine equivalent to one hundred and twelve times the minimum wage, if the offender is a natural person and two hundred and twenty four times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 217

Infringement of the exclusive rights to a trade name or establishment name or insignia of an establishment

1. A person commits an infringement of the exclusive rights conferred by a trade name, establishment name or the insignia of an establishment if he:
 - a) Uses in his establishment, in advertisements, correspondence, products or services or in any other manner, a trade name or establishment insignia that constitutes a reproduction, imitation or trade name or the insignia of an establishment which is already registered by another person, without the authorization of its lawful owner;

- b) Exhibits, sells, offers for sale or stores products with references to a trade name or insignia of an establishment without the authorization of its lawful owner.
2. The offence referred to in the preceding paragraph is punishable with a fine equivalent to eleven times the minimum wage, if the offender is a natural person and twenty two times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 218

Illegal use of a logo

A person who illegally uses on printed matter, in his establishment, on products or in any other manner, a sign that constitutes a reproduction or imitation of a logo already registered by another shall be liable to pay a fine equivalent to eleven minimum wages, in the case of natural person and twenty-two minimum wages, in the case of a legal person, all of the public sector.

ARTICLE 219

Improper reference to or use of private rights

1. The following shall constitute improper reference to or use of private rights by a person who:
 - a) Claims to be the owner of an industrial property right when the right does not belong to him, has been declared null or has lapsed or when the application for registration has been refused;
 - b) Is the owner of an industrial property right and uses his private rights for products or services other than those that the registration protects.
2. The offence referred to in the preceding paragraph is punishable with a fine equivalent to forty four times the minimum wage, if the offender is a natural person and eighty eight times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 220

Imitation and illegal use of a designation of origin and geographical indication

1. A person who carries out any of the following acts commits the offence of counterfeiting, imitation and illegal use of a designation of origin and geographical indication:
 - a) Reproduces or imitates, in whole or in part, a protected designation of origin or a protected geographical indication;

- b) Not being entitled to a designation of origin or a geographical indication, he uses on his products signs which constitute a reproduction, imitation or translation of the said designation or indication, even if the true origin of the products is mentioned or the designation or indication is accompanied by expressions such as “kind”, “type”, “quality”, “method”, “imitation”, “rival of”, “superior to” or similar expressions;
 - c) Manufactures, imports, exports, sells, displays or offer for sale or stores a product that shows a false geographical indication and designation of origin.
2. A person commits an offence of unlawful use of a designation of origin or a geographical indication, if he:
- a) Uses an unauthorized designation of origin or a geographical indication, or one whose application for registration has been refused by the IPI, to identify his products or services;
 - b) Uses a designation of origin or a geographical indication containing expressions or figures that are against this Code and public order or are *contra bonos mores*;
 - c) Exports, imports, sells or offers for sale or places into circulation products or articles with prohibited designations of origin or geographical indications.
3. The offences referred to in the preceding paragraphs, are punishable with a fine equivalent to one hundred and twelve times the minimum wage, if the offender is a natural person and two hundred and twenty four times the minimum wage if the offender is a corporate entity, both of the public sector.

ARTICLE 221

Repeated offences

1. A repeated offence occurs when an offender who was punished for an offence in terms of this Code, commits another identical offence within two years from the date of application of the sanction.
2. A person who repeats an offence provided for in this Code shall be liable to pay the fine applicable to the offence committed, and the minimum and maximum limits shall first be doubled and then tripled.

SECTION II

Supervision of industrial property rights

ARTICLE 222

Competent authority

1. The National Inspectorate of Economic Activities hereinafter referred to as INAE, in conjunction with the IPI, shall be responsible for investigating the offences referred to in article 212 of this Code.
2. The General rules governing the activity of INAE shall apply to the execution of the tasks referred to in the preceding paragraph.

ARTICLE 223

Procedure

1. The investigation of offences shall be launched at the instance of the INAE, the IPI or pursuant to a complaint by an interested party.
2. In order to give effect to the provisions of the previous article, a joint team comprising of members of the INAE and IPI, shall be formed.
3. Once an infringement of industrial property rights provided for in this Code is found, the team drafts a notice to be submitted to the INAE and to the IPI.
4. The INAE has the power to apply the sanctions provided for in this Code, after having heard the Director General of the IPI.
5. The powers exercised under the preceding paragraph shall not include halting any activity which is carried out lawfully by legally authorized or licensed industrial or commercial establishments.

ARTICLE 224

Appeals

1. Any measure taken in terms of paragraph 4 of the preceding article shall be subject to appeal to the Ministry responsible for the INAE, within thirty days from the date of notification of the sanction.

2. The Minister of Industry and Trade shall make a decision on the appeal within thirty days from the date of it being lodged.

ARTICLE 225

Civil procedure

1. If deemed appropriate and in the interest of the public or of the aggrieved party, the INAE in conjunction with the IPI, may refer the case to an ordinary court.
2. Without prejudice to the specific powers of the court, the INAE may on its own initiative and in order to substantiate its claims, make additional inquiries to gather additional evidence to submit to the court.

ARTICLE 226

Seizure of products or imported merchandise or to be exported

1. Products or merchandise which are in the process of being imported or exported and which violate industrial property rights shall be seized.
2. The customs authorities in collaboration with INAE shall carry out the seizure.
3. The seizure may also be carried out at the request of any party who has an interest therein.
4. The customs authorities shall immediately give notice to the person concerned to submit evidence to show that there has been no violation of industrial property rights under this Code.
5. The person concerned may ask the customs authorities to take such measures that are deemed appropriate to safeguard the integrity of the seized goods.
6. The person concerned may lodge an appeal to the Customs Tribunal against any decision taken in terms of this article.
7. The person concerned may request the Customs Tribunal to order such provisional measures that are deemed appropriate to safeguard his rights.

ARTICLE 227

Destination of seized goods

1. Goods seized under this Code as well as the materials or instruments predominantly used to commit an infringement of the industrial property rights shall be forfeited to the State.
2. The items which have been declared forfeited to the State shall be totally or partially destroyed, particularly whenever it is not possible to eliminate the part thereof or the distinctive sign thereon that constitutes the infringement of the industrial property right.
3. In the case of goods that the competent authorities have declared harmful or in any way endanger public health, the competent court shall order their destruction.

ARTICLE 228

Payment of fines

1. The time period for the voluntary payment of the fines provided for in this Code shall be fifteen days from the date of notification.
2. Payment shall be made by means of a payment bill issued by the INAE to be deposited at the Revenue Office of the area where the establishment is situated or where the commercial activity is carried out.
3. Should the fine not be paid voluntarily within the period referred to above, the matter shall be referred to the competent court.

ARTICLE 229

Allocation of fines

The proceeds of the fines provided for in this Code shall be allocated in accordance with a joint ministerial diploma determined by the Ministers who oversee the areas of Industry and Trade and Finance.

TITLE IV

Fees

ARTICLE 230

Consideration

1. As consideration for the protection of the rights governed by this Code the interested party shall pay certain fees the time of instituting an application to the IPI.
2. The fees shall be fixed in accordance with the type of service requested or the right to be protected.
3. The IPI shall determine the manner of payment of the fees referred to in paragraph 1 of this article.
4. No application for registration, endorsement or any other application which is subject to the payment of fees may be granted if the applicant does not present proof of payment thereof.

ARTICLE 231

Payment terms

1. The first two annual fees in respect of patents, utility models and industrial designs, shall be paid at the time of filing the application.
2. Subsequent annual fees shall be paid within the last six months of each year, starting from the date on which the right was granted.
3. The fees referred to in the preceding paragraph may also be paid with a fifty percent surcharge within a maximum period of six months from the expiry of the right, failing which the right shall lapse.
4. The above provisions shall apply to international applications filed under any Treaty or Agreement in force in the country, and payment of the annual fees provided for in paragraph 1 of this Article shall be effected when the application for entry in the national phase is made.
5. Fees for the granting of registration of marks, trade names, names and insignia of establishments, logos, awards, designations of origin and geographical indications, shall be paid when the application for their registration is filed in the IPI.
6. Fees for the renewal of registrations of marks, trade names, establishment names, establishment insignia and logos shall be paid within the last six months of the validity of the registration, and they may also be paid with a fifty percent surcharge within a maximum period of six months from the expiry of the validity period.

ARTICLE 232

Revalidations

A request for a revalidation of the certificates of title and certificates of registration which have lapsed due to non-payment of fees, may be made on payment of three times the amount of the outstanding fees, within one year from the date of publication of the expiry notice in the Industrial Property Bulletin.

ARTICLE 233

Reduction of fees

1. Applicants in applications for invention patents, utility models and industrial designs who prove that they do not earn sufficient income to afford the cost relating to the applications for maintaining such rights may be entitled to a reduction of eighty percent of all fees, up until the fifth annual fee, if so requested prior to filing the respective application.
2. The General Director shall examine the proof referred to in the preceding paragraph and issue a ruling with his decision.

ARTICLE 234

Exemption from fees

1. The applicants referred to in the previous article who prove that they do not have the financial means to pay for the costs of maintaining their rights may be exempt therefrom.
2. Institutions for scientific research may also request an exemption from fees in respect of the rights derived from the work carried out within the framework of their activities.
3. The Director General shall examine the proof referred to in the paragraph 1 above and shall issue a ruling with his decision.

ARTICLE 235

Suspension of payment of fees

1. While a court action on any industrial property right is pending or while the right is subject to seizure or attachment, the respective patent, filing or registration of a mark shall not lapse by reason of non-payment of periodic fees that become due.

2. A notice of the final order granted on any of the decisions referred to in the preceding paragraph shall be published in the Industrial Property Bulletin.
3. Once the aforesaid notice is published, all outstanding fees must be paid, without any surcharge, within the prescribed time limit.
4. Should the outstanding fees not be paid within the time periods herein stipulated, the respective industrial property right shall be declared lapsed.

ARTICLE 236

Approval and updating of fees

The amounts of the applicable fees shall be approved and updated by joint decree issued by the Ministers responsible for the areas of Industry, Trade and Finance.

ARTICLE 237

Rights belonging to the State

Industrial property rights belonging to the State are subject to the formalities and charges relating to the application, grant or registration and their respective renewals and revalidations, whether they are exploited or used by the State or by enterprises of any kind.

ARTICLE 238

Rights belonging to non-profit organizations

1. Industrial property rights belonging to non-profit organizations are subject to the formalities and charges provided for in this Code.
2. Notwithstanding the aforestated, the Director General may, upon a justified request by the interested parties, submitted together with the application, decide on the exemption from payment of fees by non-profit organizations.

TITLE V

Industrial Property Bulletin

ARTICLE 239

Industrial Property Bulletin

The Industrial Property Bulletin is created and it shall be published by the IPI on a monthly basis.

ARTICLE 240

Contents of the Bulletin

The Industrial Property Bulletin shall publish the various legal acts pertaining to the administration of industrial property, namely:

- a)** Notices of the applications for registration of industrial property rights of different categories;
- b)** Amendments to the initial application;
- c)** Decisions issued in respect of industrial property rights;
- d)** Applications for reinstatement of rights;
- e)** Applications for the registration of technology transfer agreements, franchise agreements and similar;
- f)** Renewals and revalidations;
- g)** Declarations of waivers and abandonment;
- h)** Assignments, concessions of exploitation licences and changes in the identity, head office or residential address of the owners;
- i)** Offer of a patent for the purposes of exploitation;
- j)** Notices of lapse;
- k)** Final decisions of court proceedings relating to industrial property rights;
- l)** Addresses of Official Industrial Property Agents on duty;
- m)** Notices and results of the examinations undertaken by Official Industrial Property Agents;
- n)** Other acts and matters relating to industrial property that should be brought to the attention of the public.

ARTICLE 241

Index of the Bulletin

The IPI shall, at the beginning of each year, draw up an index of all the matters contained in the issues of the Industrial Property Bulletin relating to the previous year.

ARTICLE 242

Distribution of the Bulletin

1. The Bulletin may be distributed, on an exchange basis, to educational institutions and national services which have an interest thereto, to the World Intellectual Property Organization, regional industrial property organizations, foreign industrial property services and to any other national and foreign entities.
2. The Industrial Property Bulletin may also be purchased by any interested party upon payment of the corresponding subscription fee or at the single-issue fixed price.

TITLE VI

Final and Transitional Provisions

ARTICLE 243

Unmentioned Matters

Any matter which has not been expressly provided for in this Code shall be governed by analogy, failing which, by the standards of civil and criminal law that are not contrary to the principles of industrial property.

ARTICLE 244

Pending matters

Matters which are ongoing or awaiting a court decision are governed by the Industrial Property Code which is in force on the date of the filing of the application.

ANNEX I

Abbreviations

- AOPI: Official Industrial Property Agent
- ARIPO: African Regional Intellectual Property Organization
- BPI: Industrial Property Bulletin
- CPI: Industrial Property Code
- CRM: Constitution of the Republic of Mozambique
- CUP: Paris Convention
- DIU: Declaration of Intention to Use
- DO: Designation of Origin:
- DPI: Industrial Property Law
- IG: Geographic Indication:
- INAE: National Inspectorate of Economic Activities
- IPI: Industrial Property Institute
- OMC: World Trade Organization
- OMPI: World Intellectual Property Organization
- PI: Industrial/Intellectual Property
- PCT: Patent Cooperation Treaty
- TRIPS: Agreement on Trade-Related aspects of Intellectual Property rights, ADPIC in Portuguese.