

THE INDUSTRIAL PROPERTY BILL
(No. XV of 2019)

Explanatory Memorandum

The main objects of this Bill are to –

- (a) expand the scope of protection of industrial property to cover utility models, layout-designs of integrated circuits, breeder's rights and geographical indications, and thereby promote innovation and creativity, the introduction and development of new, improved and innovative plant varieties in Mauritius and the protection of products which have a specific geographical origin and possess qualities, characteristics or a reputation which are essentially due to that origin;
- (b) bring together under one enactment the provisions of the law relating to the protection of industrial property rights namely, patents, utility models, layout-designs of integrated circuits, breeder's rights, industrial designs, marks, trade names and geographical indications, and to provide for related matters;
- (c) enable Mauritius to accede to the Patent Cooperation Treaty, for the filing of international patent applications, the Hague Agreement Concerning the International Registration of Industrial Designs and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and to comply with its obligations thereunder following accession.

2. The Bill also –

- (a) makes better provision in relation to the Industrial Property Office of Mauritius, which shall be headed by a Director, and in relation to the Industrial Property Tribunal;

- (b) provides for the setting up of an Intellectual Property Council the role of which shall be mainly advisory, and which shall ensure coordination among the public and private sectors in the formulation of intellectual property policies and enforcement of intellectual property rights.

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*Minister of Public Infrastructure and
Land Transport, Minister of Foreign
Affairs, Regional Integration and
International Trade*

05 July 2019

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ARRANGEMENT OF CLAUSES

Clause

- | | |
|--|---|
| PART I – PRELIMINARY | |
| 1. Short title | 16. Information concerning foreign application |
| 2. Interpretation | 17. Filing date and classification of patent |
| PART II – ADMINISTRATION | 18. Publication of patent application |
| 3. Industrial Property Office of Mauritius | 19. Examination of patent |
| 4. Director | 20. Grant or refusal of patent |
| 5. Staff, assessors and technical experts | 21. Rights conferred by patent |
| 6. Registers | 22. Duration of patent |
| 7. Intellectual Property Council | 23. Compulsory licence for patent |
| 8. Industrial Property Tribunal | 24. Appeal against decision granting compulsory licence or remuneration |
| 9. Jurisdiction of Tribunal | 25. Invalidation of grant of patent |
| PART III – PATENTS, UTILITY MODELS, PATENT COOPERATION TREATY | Sub-Part B – Utility Models |
| Sub-Part A – Patents | 26. Matters excluded from utility model protection |
| 10. Matters excluded from patent protection | 27. Registrable utility model |
| 11. Patentable invention | 28. Application for registration of utility model |
| 12. Right to patent | 29. Filing date of utility model |
| 13. Application for patent | 30. Examination and registration of utility model |
| 14. Unity of invention, amendment and division of application | 31. Rights conferred by utility model |
| 15. Right of priority | 32. Duration of utility model |

33. Conversion of patent application or utility model
34. Invalidation of registration of utility model
- Sub-Part C – Patent Cooperation Treaty**
35. Interpretation of Sub-Part C
36. International application designating Mauritius
37. Functions of Office
38. Entering national phase
39. Reinstatement of rights following failure to enter national phase
40. Restoration of right of priority
41. Processing international application
- PART IV – LAYOUT-DESIGNS OF INTEGRATED CIRCUITS**
42. Application for registration
43. Filing date of layout-design
44. Registration of layout-design
45. Originality
46. Right to protection
47. Scope of protection
48. Commencement and duration of protection
49. Invalidation of registration of layout-design
50. Exploitation by Government agency or third person
- PART V – PROTECTION OF NEW PLANT VARIETIES**
51. Interpretation of Part V
52. National treatment
53. Conditions for protection
54. Novelty
55. Distinctness
56. Uniformity
57. Stability
58. Application for breeder's right
59. Filing date of breeder's right
60. Provisional protection
61. Right of priority
62. Examination of application
63. Grant or refusal of breeder's right
64. Scope of breeder's right
65. Duration of breeder's right
66. Exceptions to breeder's right
67. Exhaustion of breeder's right
68. Restrictions on exercise of breeder's right
69. Measures regulating commerce
70. Variety denomination
71. Invalidation of breeder's right
72. Cancellation of breeder's right
- PART VI – INDUSTRIAL DESIGNS GOVERNED BY THE HAGUE AGREEMENT**
- Sub-Part A – Industrial Designs**
73. Conditions for protection
74. Industrial design excluded from protection
75. Right to registration
76. Application for registration of industrial design
77. Amendment and withdrawal
78. Right of priority
79. Filing date of industrial design
80. Examination of application
81. Registration and publication of industrial design
82. Rights conferred by registration of industrial design
83. Limitations and exceptions
84. Duration of industrial design
85. Invalidation of registration of industrial design
- Sub-Part B – The Hague Agreement**
86. Interpretation of Sub-Part B
87. Application for international design registration
88. Effect of international registration
89. Examination of international registration and notification to International Bureau
90. Conflict between this Act and the Hague Agreement
- PART VII – MARKS, TRADE NAMES, GEOGRAPHICAL INDICATIONS, MADRID PROTOCOL**
- Sub-Part A – Marks**
91. Registration of mark
92. Application for registration
93. Right of priority
94. Filing date of mark
95. Division, withdrawal and amendment
96. Examination, publication, opposition and registration
97. Duration of mark
98. Rights conferred by registration of mark

- 99. Invalidation of registration of mark
 - 100. Removal on ground of non-use
 - 101. Collective mark
 - 102. Certification mark
 - 103. Cancellation of registered mark and limitation of goods and services
 - Sub-Part B – Trade Names**
 - 104. Protection of trade name
 - Sub-Part C – Geographical Indications**
 - 105. Scope of protection
 - 106. Application for geographical indication
 - 107. Filing date of geographical indication
 - 108. Examination, publication, opposition and registration
 - 109. Scope of exclusive right
 - 110. Limitations and exceptions
 - 111. Duration of geographical indication
 - 112. Invalidation of registration of geographical indication
 - 113. Rectification of Register
 - 114. Cancellation of registration
 - Sub-Part D – Madrid Protocol**
 - 115. Interpretation of Sub-Part D
 - 116. Language
 - 117. Examination of international application of which Mauritius is country of origin
 - 118. Certification
 - 119. Handling fee
 - 120. Ceasing of effect of basic application or basic registration
 - 121. Publication of application for international registration and opposition
 - 122. Ex-officio provisional refusal of protection
 - 123. Provisional refusal of protection based on opposition
 - 124. Statement of grant of protection
 - 125. Decision following provisional refusal of protection
 - 126. Decision affecting protection of mark following statement
 - 127. Effect of international registration
 - 128. Invalidation
 - 129. Record in International Register
 - 130. Collective and certification marks
 - 131. Replacement
 - 132. Transformation
 - 133. Conflict between this Act and the Madrid Protocol
 - PART VIII – MISCELLANEOUS**
 - 134. Change in address, application and ownership
 - 135. Licence
 - 136. Agents
 - 137. Protection of rights
 - 138. Appeal to Supreme Court
 - 139. Offences
 - 140. Unfair practice
 - 141. Regulations
 - 142. Consequential amendment
 - 143. Repeals
 - 144. Savings and transitional provisions
 - 145. Commencement
-

A BILL

To provide for the protection of industrial property rights, namely, patents, utility models, layout-designs of integrated circuits, breeder's rights, industrial designs, marks, trade names and geographical indications, for an Industrial Property Office headed by a Director, for the setting up of an Intellectual Property Council which is advisory in nature, for the jurisdiction of the Industrial Property Tribunal, and for related matters

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Industrial Property Act 2019.

2. Interpretation

In this Act –

“appearance” means the packaging, shape, colour or other non-functional characteristic of a product;

“Budapest Treaty” means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on 28 April 1977, as amended;

“certificate” means the document witnessing the title granted to protect a patent, a utility model, a layout-design, a breeder's right, an industrial design, a mark or a geographical indication against the exploitation by persons other than the owner of a registered right;

“certification mark” means a sign certified by the owner of a mark as being capable, in respect of the origin, material or mode of manufacture of goods, the performance of services or their quality, standard, or other characteristics, of distinguishing goods or services from other goods or services not so certified;

“collective mark” means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services, of

different enterprises which use the sign under the control of the registered owner of the collective mark;

“competent authority” means the Permanent Secretary of the Ministry;

“compulsory licence” means an authorisation given by the competent authority to a person to exploit a patent or utility model without the consent of the owner of the patent or utility model;

“Council” means the Intellectual Property Council;

“decision of 30 August 2003” means the decision of 30 August 2003 of the General Council of the World Trade Organization on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health;

“Director” means the Director of the Office;

“economic tie” means a tie between 2 persons whereby –

- (a) one of them may exercise on the other; or
- (b) a third party may exercise on both of them,

a decisive influence with respect to the exploitation of an industrial design;

“exploit” means, in relation to –

- (a) a patented invention or a utility model invention which is a product –
 - (i) make, import, offer to sell, sell or use the product; or
 - (ii) stock the product for any of the purposes referred to in subparagraph (i);
- (b) a patented invention or a utility model invention which is a process –
 - (i) make use of the process; or
 - (ii) do any act referred to in paragraph (a) in respect of a product obtained directly by means of the process;

- (c) a registered layout-design –
 - (i) by incorporation in an integrated circuit or otherwise, reproduce the design, in whole or in part, otherwise than by reproducing a part that does not comply with the requirement of originality referred to in section 45; or
 - (ii) import, sell or otherwise distribute for commercial purposes the design, an integrated circuit in which the design is incorporated or an article incorporating the integrated circuit in so far as it continues to contain the design;
- (d) a registered industrial design –
 - (i) make, sell or import an article bearing or embodying a design which is a copy, or substantially a copy, of the registered design; or
 - (ii) put on the market or sell an article that embodies the design;

“geographical indication” means an indication which identifies a good as originating in the territory of a country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

“industrial design” means the appearance of a product resulting from its features, particularly the shape, lines, contours, colours, texture or materials of the product or its ornamentation;

“industrial property right” includes a patent, a utility model, a layout-design, a breeder’s right, an industrial design, a mark, a trade name and a geographical indication;

“industry” –

- (a) means any human economic activity leading to the production of goods or services; and
- (b) includes handicraft, agriculture, fisheries and other services;

“integrated circuit” means a product in its final or an intermediate form –

- (a) in which at least one of the elements is an active element and some or all of the interconnections are integrally formed in or on a piece of material; and
- (b) which is intended to perform an electronic function;

“Intellectual Property Council” means the Council referred to in section 7;

“International Bureau” means the International Bureau of the World Intellectual Property Organization;

“International Classification” means, in relation to –

- (a) a patent, the classification established by the Strasbourg Agreement Concerning the International Patent Classification, of 24 March 1971, as amended;
- (b) an industrial design, the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs, of 8 October 1968, as amended;
- (c) a mark, the classification according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended;
- (d) a mark, the Vienna Classification for the figurative elements of marks, established by the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973), as amended;

“invention” means an idea of an inventor which provides, in practice, the solution to a specific problem in the field of technology and which may be, or may relate to, a product or a process;

“law practitioner” has the same meaning as in the Law Practitioners Act;

“layout-design” means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;

“mark” –

- (a) means a visually perceptible sign or combination of signs, capable of distinguishing the goods or services of an enterprise from those of other enterprises; and
- (b) includes –
 - (i) a certification mark and a collective mark; and
 - (ii) words, letters, numerals, figures, pictures, a combination of colours, the shape of goods or parts of the goods, or the packaging or other conditioning of goods;

“Minister” means the Minister to whom responsibility for the subject of industrial property is assigned;

“Ministry” means the Ministry responsible for the subject of industrial property;

“Office” means the Industrial Property Office of Mauritius referred to in section 3;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property, of 20 March 1883, as amended;

“patent” means the title granted to protect an invention;

“prior art” includes anything disclosed publicly anywhere in the world, before the filing date or, where applicable, the priority date, of an application for a certificate, whether by publication in tangible form, by oral disclosure, by use or in any other manner other than by a disclosure which occurred –

- (a) within the 12 months preceding the filing date or the priority date; and
- (b) following an act committed by the applicant or his predecessor in title or an abuse by a third party with regard to the applicant or his predecessor in title;

“priority date” means the filing date of an earlier application for an industrial property right which serves as the basis for claiming priority under this Act and provided for in the Paris Convention;

“producer” means –

- (a) a producer of agricultural products or a person exploiting natural products; or
- (b) a manufacturer of handicraft or industrial products;

“product” means any natural or agricultural product or a product of handicraft or industry;

“register” means a register referred to in section 6;

“trade name” means a name or designation used to identify an enterprise in the course of trade;

“Tribunal” means the Industrial Property Tribunal referred to in section 8;

“TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco, on 15 April 1994;

“utility model” means a technical creation that consists of a new shape or configuration, or component, of an object that increases its functionality or utility.

PART II – ADMINISTRATION

3. Industrial Property Office of Mauritius

(1) There shall be a department within the Ministry which shall be known as the Industrial Property Office of Mauritius.

(2) The objects of the Office shall be to –

- (a) administer and implement this Act; and
- (b) assist in the protection, promotion and development of industrial property governed by this Act.

(3) The Office shall have such powers as are necessary to attain its objects and may, inter alia –

- (a) implement strategies, programmes and action plans for the development of industrial property;
- (b) compile and maintain a database for industrial property;
- (c) devise and assist in the preparation of educational and sensitisation programmes on industrial property;
- (d) undertake and assist in conducting research in industrial property.

(4) The Minister may give to the Office such written directions of a general character, not inconsistent with this Act, as he considers necessary, and the Office shall comply with those directions.

4. Director

- (1) The Office shall be administered by a Director who shall be –
 - (a) a public officer;
 - (b) appointed by the Public Service Commission; and
 - (c) responsible for the control, operation and management of the daily business of the department.
- (2) The Director shall –
 - (a) on receipt of an application for a certificate –
 - (i) grant a filing date to the application;
 - (ii) examine the application;
 - (iii) grant a patent or a breeder's right, where appropriate;
 - (iv) register a utility model, a layout-design, an industrial design, a mark or a geographical indication, where appropriate;
 - (v) cause to be published relevant information pertaining to the grant of a patent or breeder's right or the registration referred to in subparagraph (iv);

- (b) record the particulars of the application and the decision arrived at in the appropriate register;
- (c) on his own initiative or on receipt of a complaint, investigate any allegation of an offence under this Act or the Protection against Unfair Practices (Industrial Property Rights) Act; and
- (d) ensure that the policies and procedures of the Office comply with relevant international standards and guidelines as regard the rights provided for under this Act.

(3) Where the Director is satisfied that the circumstances so justify, he may, on receiving a written request, extend the time for doing any act required to be done under this Act on giving notice to the parties concerned and on such terms and conditions as he may determine.

(4) The Director may, subject to this Act, correct any error of translation or transcription, clerical error or mistake, in any application or document filed with him or in any recording effected pursuant to this Act.

(5) (a) The Director may, for the purpose of conducting an investigation under this Act, use the services of any police officer or other public officer designated for that purpose by the Commissioner of Police, or the Head of Civil Service, as the case may be.

(b) The Commissioner of Police shall give such assistance as may be necessary to the Director to enable him to discharge his functions under this Act.

(6) The Director shall have such powers as may be necessary to carry out the functions of the Office and to enforce this Act or the Protection against Unfair Practices (Industrial Property Rights) Act, and may, in particular –

- (a) require any person who is being investigated to provide such information or document as may be relevant to the investigation;
- (b) require any public officer to provide any information or document in his custody;
- (c) apply to the Judge in Chambers for an order authorising him or any of his officers, at all reasonable times, to enter and search any premises, secure and detain any document or

material which is of relevance to an investigation being conducted;

- (d) detain any document or goods that may be relevant to the investigation.

(7) Where, after an investigation under subsection (2)(c), the Director concludes that an offence under this Act or the Protection against Unfair Practices (Industrial Property Rights) Act has been committed, he shall refer the matter to the Director of Public Prosecutions.

(8) The Director may, in the discharge of his duties under this Act and the Protection against Unfair Practices (Industrial Property Rights) Act, issue administrative procedures.

5. Staff, assessors and technical experts

(1) There shall be posted to the Office such public officers as may be necessary to assist the Director in the proper discharge of his functions.

(2) The officers posted to the Office shall be public officers and shall be under the administrative control of the Director.

(3) The Director may, subject to the approval of the Minister, appoint, on an ad hoc basis, such assessors and technical experts on such terms and conditions as he may determine.

6. Registers

(1) The Office shall maintain separate registers for patents, utility models, layout-designs, breeder's rights, industrial designs, marks and geographical indications.

(2) All the entries and recordings provided for in this Act shall be effected in the appropriate register.

(3) Subject to section 135(1), any person may consult the registers and obtain extracts therefrom under such conditions, and on payment of such fee, as may be prescribed.

7. Intellectual Property Council

(1) There shall be an Intellectual Property Council which shall consist of –

- (a) a Chairperson, to be appointed by the Minister after consultation with the Prime Minister, who shall be the holder of a Master of Laws (L.L.M.) or Master in Economics, with at least 5 years proven experience in the field of intellectual property right and possessing analytical skills;
- (b) the Director;
- (c) a representative of the Ministry responsible for the subject of agriculture;
- (d) a representative of the Ministry responsible for the subject of arts and culture;
- (e) a representative of the Ministry responsible for the subject of education;
- (f) a representative of the Ministry responsible for the subject of health;
- (g) a representative of the Ministry responsible for the subject of innovation;
- (h) a representative of the Attorney-General's Office;
- (i) a representative of the Mauritius Research Council;
- (j) a representative of the Customs Department of the Mauritius Revenue Authority;
- (k) a representative of the Anti-Piracy Unit of the Police Force;
- (l) a representative of the Economic Development Board; and
- (m) 2 representatives from the private sector, having wide knowledge and experience in intellectual property, to be appointed by the Minister.

(2) (a) The members of the Council referred to in subsection (1)(a) and (m) shall hold office for a period of 2 years and shall be eligible for reappointment for a further period of 2 years.

(b) The members of the Council shall be paid such allowance as the Minister may determine.

(3) (a) The Council shall –

- (i) advise the Minister on any matter relating to intellectual property; and
- (ii) ensure coordination among the public and private sectors in the formulation of intellectual property policies and enforcement of intellectual property rights.

(b) At any meeting of the Council, 9 members shall constitute a quorum.

(4) (a) The Council shall meet at least once every month at such time and place as the Chairperson shall determine.

(b) Where the Chairperson is absent at a meeting, the members present shall elect a member to chair the meeting.

(c) The Director shall designate an officer of the Office to act as Secretary to the Council.

(5) The Council may set up such committees as it considers necessary to assist it in the discharge of its functions.

(6) Subject to this section, the Council shall regulate its proceedings in such manner as it may determine.

8. Industrial Property Tribunal

(1) There shall be an Industrial Property Tribunal which shall consist of –

- (a) a Chairperson, who shall be a law practitioner of not less than 5 years' standing, having experience in the field of industrial property; and
- (b) not more than 3 other members, who shall have experience in the field of industrial property, finance or business administration,

to be appointed by the Minister, after consultation with the Prime Minister.

(2) The members, including the Chairperson, of the Tribunal shall hold office for a period of 5 years.

(3) For the purpose of hearing and determining any matter, the Tribunal shall consist of the Chairperson and 2 other members.

(4) The members of the Tribunal shall be appointed on such terms and conditions, and be paid such fees, as the Minister may determine.

(5) The Secretary to Cabinet and Head of the Civil Service may, with approval of the Public Service Commission, designate –

(a) such public officers as he may consider appropriate to assist the Tribunal in the exercise of its functions;

(b) a public officer to act as Registrar of the Tribunal.

9. Jurisdiction of Tribunal

(1) The Tribunal shall have jurisdiction to hear and determine –

(a) an appeal by any person who feels aggrieved by a decision of the Director to reject his application for a certificate;

(b) an appeal by any person who feels aggrieved by a decision of the Director to reject his opposition to the registration of an industrial property;

(c) an application by any interested person, to the Tribunal, to invalidate the grant of a patent or the protection of a plant variety, or the registration of a utility model, a layout-design, an industrial design, a mark or a geographical indication.

(2) Any appeal to the Tribunal under subsection (1)(a) or (b) shall be –

(a) filed within 28 days from the date the aggrieved person receives written notification of the decision of the Director;

(b) in such form and manner as the Tribunal may determine.

(3) Any application for invalidation under subsection (1)(c) shall be in such form and manner as the Tribunal may determine.

(4) The Tribunal shall sit at such time and place as the Chairperson may determine.

(5) The Tribunal shall, subject to this Act, regulate its own proceedings and may –

(a) make such orders for requiring the attendance of persons and the production of articles or documents, as it considers necessary for the conduct of its proceedings; and

(b) take evidence on oath.

(6) For the purpose of hearing an appeal, the Tribunal may confirm, amend or cancel a decision made by the Director or give such determination as it considers appropriate.

(7) For the purpose of hearing an appeal under subsection (1)(a) or (b) or an application under subsection (1)(c), the Tribunal shall, where necessary, hear the parties and shall, where appropriate, make an order determining whether, and subject to what conditions or limitations as to the mode or place of use or otherwise, the grant of a patent or the protection of a plant variety, or the registration of a utility model, a layout-design, an industrial design, a mark or a geographical indication, is to be permitted.

(8) In any appeal under subsection (1)(b), no additional ground of opposition to the grant of a patent or the protection of a plant variety, or the registration of a utility model, a layout-design, an industrial design, a mark or a geographical indication, other than those stated by the party in his notice of opposition, shall, except by leave of the Tribunal, be allowed to be taken by the party giving notice of opposition.

(9) Where, after the Tribunal has allowed any additional ground of opposition under subsection (8), the respondent decides to withdraw his application, he shall give notice accordingly to the Tribunal and any other party to the appeal within one month from the date the Tribunal grants leave under subsection (8), and no costs shall be awarded against him.

(10) In any appeal under this section, the Tribunal may, after hearing the parties to the appeal, order that any industrial property proposed to be registered or granted, be modified in any manner not substantially affecting its identity.

(11) The applicant shall advertise any modification of an industrial property under subsection (10) in 2 newspapers, one of which shall be approved by the Director before it is registered or granted.

(12) (a) Where any party who has given notice of appeal or applied for an invalidation does not reside or carry on business, and does not possess property, in Mauritius, the Tribunal may require him to give security for costs in respect of the proceedings prior to the hearing of the appeal or application for invalidation, and, in default of such security being given, may treat the appeal or application for invalidation as having been abandoned.

(b) Where the Tribunal treats an appeal or application for invalidation as having been abandoned under paragraph (a), it shall set aside the appeal or application.

PART III – PATENTS, UTILITY MODELS, PATENT COOPERATION TREATY

Sub-Part A – Patents

10. Matters excluded from patent protection

The following shall be excluded from patent protection –

- (a) discoveries, scientific theories and mathematical methods;
- (b) literary, dramatic, musical or artistic works and any other aesthetic creation;
- (c) schemes, rules or methods for doing business, performing purely mental acts and playing games;
- (d) computer programmes;
- (e) methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods practised on the human or animal body;
- (f) known substances for which a new use has been discovered and not applicable to the use itself, where they constitute a patentable invention under section 11;
- (g) plants and animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes; and

- (h) an invention, the primary or intended use of which would be contrary to public order or morality, whether or not the commercial exploitation of the invention is prohibited by law.

11. Patentable invention

- (1) An invention shall be patentable where it –

- (a) is new;
- (b) involves an inventive step; and
- (c) is industrially applicable.

- (2) An invention shall be new where it is not anticipated by prior art.

(3) An invention shall involve an inventive step where, having regard to the differences and similarities between the claimed invention and the prior art, the claimed invention as a whole would not have been obvious to a person having ordinary skill in the art at the filing date or, where applicable, the priority date of the claimed invention.

(4) An invention shall be industrially applicable where it can be made or used in an industry.

12. Right to patent

- (1) The right to a patent shall belong to the inventor.

(2) Where 2 or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(3) Where 2 or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, where priority is claimed, the earliest validly claimed priority date shall have the right to the patent, provided the application is not withdrawn, abandoned or rejected.

(4) (a) Subject to paragraph (b), where an invention is made in the execution of, or under, an employment contract, the right to the patent shall, in the absence of any contrary contractual provision, belong to the employer.

(b) Where the economic gains obtained by the employer are disproportionately high as compared to the employee's salary and the reasonable

expectations of gain that the employer had from his employee's inventive output at the time the employer hired the employee, the employee shall be entitled to appropriate compensation which shall not be less than one third of the net direct and indirect gains obtained by the employer from the exploitation of the invention.

(5) Where –

- (a) an invention is made by an employee, otherwise than in the execution of, or under, an employment contract; but
- (b) the employee used material, data or know-how of the employer to make the invention,

the right to the patent shall, in the absence of any contrary contractual provision, belong to the employer, but the employee shall be entitled to appropriate compensation which shall not be less than one third of the net direct and indirect gains obtained by the employer from the exploitation of the invention.

(6) Any invention claimed in an application for a patent filed by an employee within one year from the date of termination of an employment contract which falls within the scope of the former employer's main business shall be presumed to have been made under the terminated contract, unless the employee produces proof to the contrary.

(7) Any promise made or undertaking given by an inventor to his employer to the effect that he waives any remuneration he is entitled to under this section shall be void and of no effect.

(8) (a) (i) The obligation of an employer to pay compensation shall arise from the making, and the exploitation, of a patentable invention.

(ii) The failure or negligence of an employer to successfully procure a patent shall not exempt him from paying compensation to the employee.

(b) (i) An employer may, within 60 days from the date of receipt of a communication from an employee about the making of the invention, give written notice to the employee that he is not interested in the invention and that the employee may procure the right to the patent exclusively.

(ii) Where an employer fails to give the notice referred to in subparagraph (i), he shall be deemed to be interested in the invention.

(c) Where an employee carries out the commercial exploitation of an invention, the employer shall be entitled to compensation that is proportionate

to the economic value of the materials, data or know-how used by the employee in making the invention.

(9) Where an employer fails to file an application for a patent within one year from the date he receives written notification from an employee of the making of an invention, the right to the patent shall belong to the employee.

(10) Any right to a patent may be assigned or may be transferred by succession.

(11) (a) An inventor shall be named as such in the patent unless he requests the Director, in writing, not to do so.

(b) Any promise made or undertaking given by an inventor to any person to the effect that he will make a request under paragraph (a) shall be void and of no effect.

13. Application for patent

(1) An application for a patent shall be –

- (a) filed with the Director in such form and manner as he may determine; and
- (b) accompanied by the payment of such non-refundable fee as may be prescribed.

(2) The application shall include –

- (a) the name of, and such other data as may be prescribed concerning, the applicant, the inventor and his agent, if any;
- (b) the title, a description of the invention and the claims, including any drawing and an abstract;
- (c) where the applicant is not the inventor, a statement justifying the applicant's right to the patent; and
- (d) where the applicant's ordinary residence or principal place of business is outside Mauritius, an address within Mauritius for service of any document, in accordance with section 136.

(3) (a) The description referred to in subsection (2)(b) shall –

- (i) explain and disclose the invention in a manner which is sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art; and
- (ii) indicate the best mode for carrying out the invention, which is known to the inventor at the filing date or, where applicable, at the priority date of the application.

(b) Where a patent for an invention is claimed and the process for making that invention is not generally known, including by means of its description in the specifications of another patent application, the patent application shall describe it in a manner which is sufficiently clear and complete for that process to be carried out by a person having ordinary skill in the art.

(c) Where the description provides sufficient information to allow the invention to be made and used by a person skilled in the art on the filing date, without undue experimentation, the description of the claimed invention shall be considered to be sufficiently clear and complete.

(d) A description referred to in subsection (2)(b) shall contain a clear identification of –

- (i) the origin of genetic or biological resources collected in Mauritius and directly or indirectly used in the making of the invention; and
- (ii) any element of traditional knowledge associated or not associated with those resources, which was, with the prior informed consent of Mauritius, directly or indirectly used in the making of the claimed invention.

(e) The Director may, at any time before the grant of a patent, require the description in a foreign patent application to be adapted to the ordinary skill in the art of a citizen of Mauritius in order to ensure technology dissemination.

(f) (i) The Director shall, in the case of a patent application concerning microorganisms, consider that paragraph (a) has been complied with where the applicant submits the application with a declaration that the microorganism has been deposited with an international depositary authority, in accordance with the Budapest Treaty.

(ii) The Director shall accept the deposit and its date as indicated by the international depositary authority, where the applicant provides

him with a copy of the receipt of the deposit issued by the international depositary authority.

(4) Any claim under subsection (2)(b) shall –

- (a) define the matter for which protection is sought;
- (b) be clear and concise; and
- (c) be fully supported by the description, where the claim reasonably conveys to a person having ordinary skill in the art that the applicant was in possession of the claimed invention at the filing date.

(5) The applicant shall include drawings in the application where they are necessary for understanding the invention.

(6) An abstract under subsection (2)(b) shall –

- (a) be concise and precise;
- (b) only serve as technical information;
- (c) not be taken into account for the purpose of interpreting the scope of the protection; and
- (d) unless otherwise indicated by the Director, be of not less than 50 nor more than 150 words.

(7) Where the prescribed fee is not paid, the Director shall notify the applicant, in writing, that the application shall be considered not to have been filed unless payment is made within 2 months from the date of receipt of the notification.

(8) (a) An applicant may, before an application is granted, withdraw the application on payment of the prescribed fee.

(b) Where an application is withdrawn without having been open for public inspection and no rights have been claimed or are outstanding in connection with the application, a subsequent application may be made in respect of the same invention.

(c) No priority right may be claimed on the withdrawn application upon the lodging of the subsequent application.

14. Unity of invention, amendment and division of application

(1) An application for a patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) An applicant may, in writing, amend an application at any time before it is granted where the amendment does not go beyond the matter claimed in the initial application.

(3) (a) An applicant may, before the application is open for public inspection, divide an application into 2 or more divisional applications which shall not go beyond the matter disclosed in the initial application.

(b) Every divisional application shall be entitled to the filing date or, where applicable, the priority date of the initial application.

(4) Where a patent has been granted following an application that did not comply with the requirement of unity of invention under subsection (1), the non-compliance shall not be a ground for the invalidation of the patent.

15. Right of priority

(1) An application for a patent may contain a declaration claiming, in accordance with the Paris Convention, priority for one or more earlier national or regional applications filed, by the applicant or his predecessor in title in, or for, any State party to the Convention or any member of the World Trade Organization, at any time not later than 12 months from the filing date of the earlier application.

(2) (a) Where an application contains a declaration under subsection (1), the Director may request the applicant to furnish, within such period as may be prescribed, a copy of the earlier application certified as correct by the authority with which it was filed.

(b) The Director shall accept the form and the content of the certification referred to in paragraph (a) as issued by the authority with which the application was filed.

(c) The Director may retrieve a copy of the earlier application referred to in paragraph (a) from a database.

(3) Where the applicant does not comply with a request under subsection (2)(a), the declaration shall be considered not to have been made.

(4) Where an application contains a declaration referred to in subsection (1), the application shall not be invalidated because of an act done during the preceding twelve-month period, as provided for in the Paris Convention, and no such act shall give rise to a third party right or right of personal possession.

16. Information concerning foreign application

(1) An applicant shall, where so requested by the Director, furnish the date and particulars of any application for a patent filed abroad by him or his predecessor relating to the same or essentially the same invention as that claimed in the application.

(2) The applicant shall, in relation to a foreign application referred to in subsection (1), furnish a copy of –

- (a) any communication received by him concerning the result of any search or examination carried out in respect of the foreign application;
- (b) the patent granted on the basis of the foreign application;
- (c) any final decision rejecting the foreign application or refusing the grant requested in the application; and
- (d) any final decision invalidating the patent granted on the basis of the foreign application.

17. Filing date and classification of patent

(1) The Director shall consider the date of receipt of an application for a patent as the filing date where, at the time of receipt, the application is accompanied by the prescribed fee and contains –

- (a) an express or implied indication that the granting of a patent is sought;
- (b) an indication of the identity of the applicant and the place where he may be contacted by the Office; and
- (c) a description of the invention.

(2) (a) Where an application does not, at the time of receipt, comply with subsection (1), the Director shall invite the applicant to file the required correction within such time as he may determine.

(b) Where the applicant does not file the necessary correction within the required time limit, the application shall be considered to have been abandoned.

(3) Where the application refers to drawings which are not included in the application, the Director may request the applicant to furnish the missing drawings.

(4) Where the applicant complies with a request under subsection (3), the Director shall grant the date of receipt of the missing drawings as the filing date.

(5) Where the applicant fails to comply with a request under subsection (3), the Director shall grant as the filing date, the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

(6) The Director shall, after granting a filing date to the application, proceed to classify the invention in accordance with the International Classification.

18. Publication of patent application

- (1) (a) The Director shall, after 18 months from the filing date –
- (i) open an application for a patent for public inspection; and
 - (ii) give notice in the Gazette of the opening of the application for inspection.
- (b) The notice referred to in paragraph (a)(ii) shall include –
- (i) the number and the filing date of the application;
 - (ii) the title of the invention;
 - (iii) the priority date, where applicable;
 - (iv) the name of the applicant or applicants and of the inventor or inventors;

- (v) the name and address of the approved agent, if any;
- (vi) the International Classification;
- (vii) one drawing, if any, that depicts the main elements of the invention; and
- (viii) the abstract.

(c) The Director may give notice of the opening of the application for inspection on the website of the Office.

(d) Any interested person shall, on payment of the prescribed fee, receive a copy of a patent application open for public inspection.

(2) An applicant for a patent may, on payment of the prescribed fee, at any time from the filing date till the end of the period of 18 months referred to in subsection (1), request the Director to open the application for public inspection and to give the notice referred to in that subsection.

(3) (a) An interested party may, within such period and subject to the payment of such fee as may be prescribed, file a notice of opposition with the Director.

(b) A notice of opposition shall identify the opponent and specify the grounds, including all relevant evidence, which the opponent considers relevant to object to the grant of the patent.

(c) The Director shall give a copy of the notice of opposition to the applicant.

(d) The applicant may, within such time as may be prescribed, file a counter-statement.

(e) The Director may conduct a hearing for the applicant and the opponent to argue their case and submit additional evidence, where available, including oral evidence.

19. Examination of patent

(1) The Director shall, after classifying the invention, examine the application to verify whether –

- (a) it complies with section 11; and
- (b) any information requested under section 16 has been furnished.

(2) For the purpose of subsection (1), the Director shall take into account any information referred to in section 13.

(3) (a) Where the application does not fulfill the requirements of subsection (1), the Director shall request the applicant to correct the defect in the application within such time as he may determine.

(b) Where a request made under paragraph (a) is not complied with within the required time limit, the application shall be considered to have been abandoned.

20. Grant or refusal of patent

(1) Where the Director is satisfied that an application for a patent complies with the provisions of this Act, he shall grant the patent.

(2) Where the Director refuses an application for a patent, he shall notify the applicant in writing.

(3) Where a patent is granted, the Director shall –

- (a) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- (b) record the patent in the appropriate register;
- (c) give notice of the grant of the patent in the Gazette; and
- (d) on payment of such fee as may be prescribed, make available copies of the patent to the public.

(4) (a) Subject to paragraph (b), the Director may, at the request of the owner of the patent and subject to the payment of such fee as may be prescribed, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred.

(b) The Director shall not make any change which shall result in the protection conferred under the patent going beyond the protection claimed in the initial application.

21. Rights conferred by patent

(1) (a) A patent shall confer on its owner the right to prevent any other person from exploiting the patented invention.

(b) The rights of the owner of a patent shall be defined by the claims set out in the application for the patent.

(2) The rights conferred by the grant of a patent shall not extend to –

(a) acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the patent or with his consent;

(b) the use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;

(c) acts done privately and on a non-commercial scale or for a non-commercial purpose, which do not significantly prejudice the economic interests of the patent owner;

(d) acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical practitioner, a dental specialist or a dental surgeon;

(e) acts done for experimental and scientific research on or with the subject matter of the patented invention;

(f) acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the patent owner;

(g) acts performed by any person who, in good faith, before the filing date or, where applicable, the priority date of the application on which the patent is granted, was using the invention or was making effective and serious preparations for such use in Mauritius; or

(h) acts performed by any person to make, construct, use or sell the patented invention solely for any use reasonably related

to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.

22. Duration of patent

(1) Subject to subsection (2), a patent shall expire 20 years after the filing date of the application for the patent.

(2) (a) For the purpose of maintaining a patent or patent application, the patent owner shall pay to the Director such annual fee as may be prescribed, within such time as may be prescribed.

(b) Where the annual fee referred to in paragraph (a) is not paid within the prescribed time, the Director may grant to the patent owner a delay of 6 months for the payment of the annual fee and such surcharge as may be prescribed.

(c) Where the prescribed annual fee is not paid in accordance with this subsection –

(i) the application for the patent shall be considered to have been withdrawn; and

(ii) the patent shall lapse.

(d) Where the Director is satisfied that the non-payment of the prescribed annual fee was due to a reasonable excuse, and that any rights which third parties may have are not unreasonably infringed, the Director may, not later than one year from the time the payment should have been made, restore the lapsed patent subject to the payment of such fee as may be prescribed.

23. Compulsory licence for patent

(1) Subject to subsection (3), where the competent authority is satisfied that –

(a) the public interest, including national security, nutrition, health or the development of other vital sectors of the national economy, so requires;

(b) a judicial or administrative body has determined that the manner of exploitation, by the owner of a patent or his licensee, is anti-competitive, and that the exploitation of the

invention in accordance with this subsection would remedy such practice;

- (c) the owner of the patent is abusively exercising his exclusive rights or neglecting to take measures to prevent his licensee from abusively exercising those rights; or
- (d) the invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Mauritius,

he may, without the consent of the owner of the patent, authorise a Government agency or a third party to exploit the patented invention.

(2) (a) Subject to subsection (3), where the competent authority is satisfied that, without infringing a first patent, an application for a second patent relates to an invention which involves an important technical advancement of considerable economic significance in relation to an invention claimed in the first patent, it may, on an application from the new inventor and without the consent of the owner of the first patent, issue a compulsory licence to the inventor of the second patent on payment of the prescribed fee.

(b) An application for the issue of a compulsory licence shall be accompanied by the payment of such non-refundable fee as may be prescribed.

(3) An application for a compulsory licence under subsection (2) shall be accompanied by evidence that the owner of the patent has received, from the person seeking the compulsory licence, a request for an authorisation to exploit the second patent, but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time which shall, unless the competent authority in exceptional circumstances otherwise determines, be 6 months from the date on which the request for authorisation to exploit the second patent was made.

(4) No evidence of a request for an authorisation referred to in subsection (3) shall be required in cases of national emergency, circumstances of extreme urgency, cases of public non-commercial use or where the compulsory licence is to be granted to remedy a practice determined, after judicial or administrative process, to be anti-competitive, where the owner of the patent is, as soon as reasonably practicable, notified of the decision of the competent authority.

(5) No request for a compulsory licence on the ground of insufficient availability as specified in subsection (1)(d) shall be made before the expiry of a period of –

- (a) 4 years from the filing date of the application for the patent; or
- (b) 3 years from the date of the grant of the patent,

whichever period expires last.

(6) A request under subsection (5) shall be refused where the owner of the patent justifies his inaction or insufficient action by legitimate reasons.

(7) The owner of a patent or any interested party may make a request to be heard by the competent authority before it makes a decision under subsection (1).

(8) (a) The exploitation of the invention shall be –

- (i) limited to the purpose for which it was licensed; and
- (ii) subject to the payment of an adequate remuneration, to be determined by the competent authority depending on the circumstances of each case, to the owner of the patent.

(b) The competent authority shall, in determining the remuneration under paragraph (a)(ii), take into account –

- (i) the economic value of his decision; and
- (ii) the need to correct anti-competitive practices.

(c) The competent authority shall, in determining the remuneration with respect to the compulsory licence for a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, prescribe an alternative process of making the same product which is not known or is unavailable, by taking into account, where applicable, the terms and conditions of the decision of 30 August 2003.

(9) The owner of a patent or holder of a compulsory licence may request the competent authority to vary the terms of the decision authorising the exploitation of the patented invention on the ground of changed circumstances after hearing the parties.

(10) The owner of a patent may make a written request to the competent authority to terminate a compulsory licence.

(11) Where, after hearing the parties, the competent authority is satisfied that –

- (a) the circumstances which led to its decision under subsection (1) have ceased to exist and are unlikely to recur;
- (b) the holder of a compulsory licence has failed to comply with the terms of its decision; or
- (c) the need for adequate protection of the legitimate interests of the holder of the licence does not justify the maintenance of its decision,

he shall terminate the compulsory licence.

(12) A compulsory licence may only be transferred to –

- (a) the enterprise or business of the holder of the licence; or
- (b) the part of the enterprise or business where the patented invention is being exploited.

(13) A compulsory licence shall be non-exclusive and shall not exclude –

- (a) the exploitation of the invention by the patent owner himself, through manufacture in Mauritius or through importation, or both;
- (b) the conclusion of licence contracts by the owner of the patent; and
- (c) the continued exercise, by the owner of the patent, of his rights under section 21(1).

(14) The exploitation of an invention by the holder of a compulsory licence shall predominantly be for the supply of the market in Mauritius except where –

- (a) it is permitted to remedy a practice which is anti-competitive according to subsection (1)(b);

- (b) the compulsory licence concerns a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, and the purpose of the licence is to export the patented products;
- (c) the products manufactured by the patented process are for a foreign territory or country with no, or with insufficient, manufacturing capacity, in accordance with the terms and conditions of the decision of 30 August 2003.

(15) Where a compulsory licence is granted –

- (a) the owner of the first patent shall be entitled to a cross-licence, on reasonable terms, to use the invention claimed in the second patent; and
- (b) the use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.

(16) This section shall apply, where appropriate and with such modifications as may be necessary, to a pending application for a patent except in the case of insufficient availability of the patented product or of the product manufactured with the patented process.

24. Appeal against decision granting compulsory licence or remuneration

An applicant for a patent or the owner of a patent may appeal by judicial review to the Supreme Court against a decision of the competent authority regarding the grant of a compulsory licence or remuneration payable.

25. Invalidation of grant of patent

(1) An interested person may apply to the Tribunal for the invalidation of a patent where –

- (a) the matter is excluded from patent protection under section 10;
- (b) any of the requirements of section 10, 11 or 14 has not been fulfilled;
- (c) the owner of the patent is not the inventor or his successor in title; or

(d) the owner of the patent is shown to have engaged in inequitable conduct in order to be granted the patent.

(2) Where the ground for invalidation is proved as regards a part of the invention, only that corresponding claim shall be invalidated.

(3) An invalidated patent shall be considered as null and void ab initio.

(4) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

Sub-Part B – Utility Models

26. Matters excluded from utility model protection

The following shall be excluded from utility model protection –

- (a) discoveries, scientific theories and mathematical methods;
- (b) literary, dramatic, musical or artistic work and any other aesthetic creation;
- (c) schemes, rules or methods for doing business, performing purely mental acts and playing games;
- (d) computer programmes;
- (e) plants and animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes;
- (f) inventions, the primary or intended use of which would be contrary to public order or morality; and
- (g) inventions having as subject matter a process or a method.

27. Registrable utility model

- (1) An invention may be registered as a utility model where it is –
 - (a) new; and

(b) industrially applicable.

(2) An invention shall be new where it is not anticipated by prior art.

(3) An invention shall be industrially applicable where it can be made or used in an industry.

(4) Sections 12 to 15 shall apply, where appropriate and with such modifications as may be necessary, to an application for a utility model certificate as they apply to an application for a patent.

28. Application for registration of utility model

An application for the registration of a utility model shall be –

(a) filed with the Director in such form and manner as he may determine; and

(b) accompanied by such non-refundable fee as may be prescribed.

29. Filing date of utility model

(1) The Director shall consider the date of receipt of an application for the registration of a utility model as the filing date where, at the time of receipt, the application is accompanied by the prescribed fee and contains –

(a) an express or implied indication that the registration of a utility model is sought;

(b) an indication of the identity of the applicant and the place where he may be contacted by the Office; and

(c) a description of the invention.

(2) (a) Where an application does not, at the time of receipt, comply with subsection (1), the Director shall request the applicant to correct the defects in the application within such time as he may determine.

(b) Where the applicant does not comply with paragraph (a) within the required time limit, the application shall be considered to have been abandoned.

30. Examination and registration of utility model

(1) The Director shall, after attributing a filing date to an application, examine whether the application complies with section 27 and any other relevant provision of this Act.

(2) Where the Director is satisfied that the provisions of this Act have been complied with, he shall –

- (a) register the utility model;
- (b) record the registration of the utility model in the appropriate register;
- (c) issue to the applicant a certificate of registration of the utility model and a copy of the description of the utility model;
- (d) publish details relating to the registration of the utility model in the Gazette in such form and manner as he may determine; and
- (e) make available copies of the utility model to the public on payment of such fee as may be prescribed.

(3) Where an application fails to comply with this Act, the Director shall reject the application and notify the applicant of his decision.

31. Rights conferred by utility model

(1) (a) A utility model shall confer on its owner the right to prevent any other person from exploiting the utility model invention.

(b) The rights of the utility model owner shall be defined by the claims set out in the application for the utility model.

(2) The rights conferred by the registration of a utility model shall not extend to –

- (a) acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the utility model or with his consent;

- (b) the use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;
- (c) acts done privately and on a non-commercial scale or for non-commercial purpose, which do not significantly prejudice the economic interests of the utility model owner;
- (d) acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical practitioner, a dental specialist or a dental surgeon;
- (e) acts done for experimental and scientific research on or with the subject matter of the utility model invention;
- (f) acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the utility model owner;
- (g) acts performed by any person who in good faith, before the filing date or, where applicable, the priority date of the application on which the utility model is granted, was using the invention or was making effective and serious preparations for such use in Mauritius; or
- (h) acts performed by any person in order to make, construct, use or sell the utility model invention solely for any use reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.

32. Duration of utility model

(1) The registration of a utility model shall be for a period of 6 years from the filing date of the application for registration.

(2) The registration of a utility model may be renewed for 2 further consecutive periods of 2 years –

- (a) on payment of such renewal fee, within such time, as may be prescribed; and

- (b) subject to compliance with such conditions as may be prescribed.

(3) Where the renewal fee referred to in subsection (2) is not paid within the time prescribed, the Director may grant to the utility model owner a delay of 6 months for the payment of the renewal fee and such surcharge as may be prescribed.

(4) Where the renewal fee is not paid in accordance with subsection (3), the registration of the utility model shall lapse.

33. Conversion of patent application or utility model

(1) (a) At any time before the grant or refusal of a patent, an applicant for a patent may, on payment of the prescribed fee, convert his application into an application for a utility model.

(b) At any time before a utility model certificate is granted or refused, the applicant for a utility model certificate may, on payment of the prescribed fee, convert his application into an application for a patent.

(c) The converted application shall be attributed the filing date of the initial application for a patent or utility model, as the case may be.

(2) An application under subsection (1)(a) or (b) shall not be made more than once.

34. Invalidation of registration of utility model

(1) An interested person may apply to the Tribunal for the invalidation of the registration of a utility model where –

- (a) the person requesting the invalidation proves that any of the requirements of section 14, 26 or 27 has not been fulfilled;
- (b) the utility model owner is not the inventor or his successor in title; or
- (c) the utility model owner is shown to have engaged in inequitable conduct in order to have the utility model registered.

(2) Where the ground for invalidation is proved as regards a part of the invention, only the corresponding claim shall be invalidated.

(3) An invalidated utility model shall be considered as null and void ab initio.

(4) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

Sub-Part C – Patent Cooperation Treaty

35. Interpretation of Sub-part C

In this Sub-part –

“designated Office”, “elected Office”, “international application” and “receiving Office” have the same meaning as in the Patent Cooperation Treaty;

“international filing date” means the international filing date referred to in Article 11 of the Patent Cooperation Treaty;

“international preliminary examination” means the international preliminary examination referred to in Article 33 of the Patent Cooperation Treaty;

“Patent Cooperation Treaty” means the Patent Cooperation Treaty done at Washington on 19 June 1970, as amended;

“priority” means the priority referred to in Article 8 of the Patent Cooperation Treaty.

36. International application designating Mauritius

Subject to this Sub-part, an international application designating Mauritius shall be treated as an application for a patent or utility model certificate filed under this Act, and shall have as its filing date the international filing date accorded under the Patent Cooperation Treaty.

37. Functions of Office

(1) The Office shall act as a receiving Office in respect of an international application filed with it, by a resident or national of Mauritius, in such language as may be prescribed and which shall be accompanied by such transmittal fee as may be prescribed.

(2) The Office shall act as a designated Office in respect of an international application in which Mauritius is designated for the purpose of obtaining a patent or other protection under this Act.

(3) The Office shall act as an elected Office in respect of an international application in which Mauritius is designated, where the applicant files a demand for the purpose of an international preliminary examination under Chapter II of the Patent Cooperation Treaty.

(4) (a) The Office, acting in its capacity as designated Office or elected Office, shall not process an international application before the expiry of the time limit referred to in Article 22 of the Patent Cooperation Treaty unless the applicant files with the Office a request for early commencement of the processing of the international application and complies with the requirements of Article 22.

(b) Where the applicant does not comply with Article 22, the international application shall be considered to have been withdrawn.

38. Entering national phase

An applicant shall, in respect of an international application designating Mauritius and before the expiry of the time limit specified in Article 22(1) or 39(1)(a) of the Patent Cooperation Treaty or such later time limit as may be prescribed, pay the prescribed fee to the Office and, where necessary, file with it a translation of the international application into a prescribed language.

39. Reinstatement of rights following failure to enter national phase

(1) Where an international application is considered to have been withdrawn under section 37(4)(b), the applicant may make a request to the Office, in the prescribed form, to have his rights reinstated provided he has a reasonable excuse.

(2) The Office shall, when considering an application under subsection (1), give the applicant an opportunity to make observations, in writing, on his application, within the prescribed time limit.

40. Restoration of right of priority

(1) An applicant may, where he has an international filing date which is later than the date on which the priority period expired, but within the period of

2 months from the date the priority period expired, request that the right of priority of the earlier application be restored.

(2) The Director shall restore the right of priority with respect to that international application where he finds that the failure to file the international application within the priority period –

- (a) was unintentional; and
- (b) occurred in spite of due care having been taken by the applicant.

(3) Where the Director refuses to restore the right of priority of an earlier application, the applicant may, within the prescribed time limit, make written representations to the Director who may thereafter grant or refuse the request of the applicant.

41. Processing international application

(1) The Office shall process an international application in accordance with this Act, the Patent Cooperation Treaty and the regulations made under the Patent Cooperation Treaty.

(2) For the purpose of subsection (1), in the event of conflict, between this Act and the Patent Cooperation Treaty or the regulations made thereunder, the Patent Cooperation Treaty and the regulations made thereunder shall prevail over this Act.

(3) Further details concerning the processing of international applications by, and other functions of, the Office in connection with the Patent Cooperation Treaty, including fees payable, time limits, prescribed languages and other requirements in relation to international applications, may be prescribed by way of regulations.

PART IV – LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

42. Application for registration

- (1) An application for the registration of a layout-design shall be –
- (a) filed with the Director in such form and manner as he may determine; and

- (b) subject to the payment of such non-refundable fee as may be prescribed.

(2) Where the prescribed fee is not paid, the Director shall notify the applicant that the application shall be considered as not having been filed unless payment is made within 2 months from the date of receipt of the notification.

(3) An application under subsection (1) shall –

- (a) contain a brief and precise designation of the layout-design;
- (b) indicate the name, address and nationality of the applicant and, where applicable, the habitual residence of the applicant;
- (c) subject to subsection (4), be accompanied by a copy or drawing of the layout-design, together with information defining the electronic function which the integrated circuit is intended to perform;
- (d) specify the date of the first commercial exploitation of the layout-design anywhere in the world or indicate whether the exploitation has been commenced or not; and
- (e) provide particulars justifying the right to protection under section 46.

(4) Any copy or drawing referred to in subsection (3)(c) may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, where the parts submitted are sufficient to allow the identification of the layout-design.

43. Filing date of layout-design

(1) The filing date of an application for registration of a layout-design shall be the date on which the application containing –

- (a) the identity of the applicant and his contact information; and
- (b) graphic representations of the layout-design for which registration is sought,

is received by the Office.

(2) Where an application does not comply with section 42(3), the Director shall promptly give written notification of the non-compliance to the applicant and request him to file the required correction within 2 months from the date of receipt of the notification.

(3) (a) Where the correction is made by the applicant within the time limit specified in subsection (2), the date of receipt of the application shall be deemed to be the filing date.

(b) The Director shall communicate the filing date to the applicant.

(c) Where the applicant does not file the required correction within the time limit specified in subsection (2), the application shall be considered to have been abandoned.

44. Registration of layout-design

(1) Where the Director is satisfied that –

- (a) an application complies with the requirements of section 42;
- (b) the layout-design –
 - (i) is original; and
 - (ii) has not been commercially exploited; or
 - (iii) has been commercially exploited for not more than 2 years,

he shall issue to the applicant a certificate and record the registration of the layout-design in the appropriate register.

(2) The register referred to in subsection (1) shall contain –

- (a) the title of the layout-design;
- (b) the filing date; and
- (c) where appropriate –
 - (i) the date of the first commercial exploitation of the layout-design anywhere in the world; and

- (ii) the name and address of the right holder and such other particulars as the Director may determine.

(3) The registration of a layout-design shall be published in such form and manner as the Director may determine.

45. Originality

(1) A layout-design shall be considered to be original where it is –

- (a) the result of its creator's own intellectual effort; and
- (b) not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(2) A layout-design consisting of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original.

46. Right to protection

(1) (a) The right to a layout-design which has been registered shall belong to the creator of the layout-design.

(b) The right to a layout-design may be assigned or transferred by succession.

(2) Where several persons have jointly created a layout-design, the right to the layout-design shall belong to them jointly.

(3) Where 2 or more persons have created the same layout-design independently of each other, the person whose application has the earliest filing date shall have the right to the layout-design where his application for registration is not withdrawn, abandoned or rejected.

(4) Where a creation is made in the execution of, or under, an employment contract, the right to the creation shall belong, in the absence of any express provision to the contrary, to the employer.

(5) (a) A layout-design shall contain the name of the creator unless he indicates, in a special written declaration signed by him and addressed to the Director, that he does not wish to be named.

(b) Any promise or undertaking made or given by the creator to any person to the effect that he will make a declaration under paragraph (a) shall be void and of no effect.

47. Scope of protection

(1) The registration of a layout-design shall confer on its registered holder the right to prevent any unauthorised person from exploiting the design.

(2) The rights conferred by the registration of a layout-design shall not prevent –

- (a) the reproduction or use of the protected layout-design for private non-commercial purposes;
- (b) acts done in respect of the protected layout-design for the purpose of teaching, education or scientific research in academic, educational or research institutions;
- (c) the reproduction or use of the protected layout-design for the sole purpose of its evaluation or analysis;
- (d) the incorporation, in an integrated circuit, of a layout-design created on the basis of evaluation or analysis and which is original within the meaning of section 45 or the performance of any act falling under subsection (1) in respect of a layout-design so created;
- (e) the performance of any act specified in paragraph (c)(ii) of the definition of “exploit” where the integrated circuit in which such a layout-design is incorporated, or the article incorporating such an integrated circuit, has been put on the market in Mauritius or in another State by the right holder or by a person acting with the right holder’s consent or having an economic tie with the right holder;
- (f) subject to subsection (3), the performance of any act specified in paragraph (c)(ii) of the definition of “exploit” in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering the act did not know and had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating such an

integrated circuit, that it incorporated an unlawfully reproduced layout-design;

- (g) the performance of any act specified in paragraph (c)(ii) of the definition of “exploit” where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party; or
- (h) the use of an integrated circuit in which the layout-design is incorporated, or of an article incorporating such an integrated circuit, in the body or gear of an aircraft, a land vehicle or vessel that temporarily or accidentally enters the jurisdiction of Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, vehicle or vessel.

(3) Where a person referred to in subsection (2)(f) receives notice that a layout-design was unlawfully reproduced, he –

- (a) may perform an act specified in paragraph (c)(ii) of the definition of “exploit” only with respect to stock in hand or ordered before he received the notice; and
- (b) shall be liable to pay to the right holder a sum equivalent to the reasonable royalty that would be payable under a freshly negotiated licence.

48. Commencement and duration of protection

(1) Any protection granted in respect of a layout-design under this Act shall commence –

- (a) on the date of the first commercial exploitation anywhere in the world, of the layout-design by or with the consent of the right holder, provided that an application for protection is filed by the right holder with the Director within the time limit referred to in section 44(1)(b)(iii);
- (b) on the filing date granted to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.

(2) Any protection granted in respect of a layout-design under this Act shall lapse at the end of 10 years from the date of commencement of the protection.

49. Invalidation of registration of layout-design

(1) An interested person may apply to the Tribunal for the invalidation of the registration of a layout-design where –

- (a) the layout-design is not entitled to protection under section 45;
- (b) the right holder is not entitled to protection under section 46.

(2) Where the ground for invalidation is established with respect only to a part of the layout-design, only the corresponding part of the registration shall be invalidated.

(3) An invalidated layout-design shall be considered as null and void ab initio.

(4) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

50. Exploitation by Government agency or third person

(1) Where the competent authority –

- (a) is satisfied that the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of a protected layout-design for public non-commercial use; or
- (b) has, on an application by any party, determined that the manner of exploitation of a protected layout-design, by the right holder or his licensee, is anti-competitive, and after such determination, the competent authority is satisfied that it is necessary to remedy such anti-competitive practice,

he may, upon a request made, without the consent of the right holder, authorise a Government agency or a third person to exploit the layout-design.

(2) The exploitation of the layout-design under subsection (1) shall be –

- (a) limited, in scope and duration, to the purpose for which it was authorised;
- (b) non-exclusive; and
- (c) subject to the payment to the right holder of an adequate remuneration which takes into account the economic value of the authorisation of the competent authority and, where applicable, the need to correct anti-competitive practices.

(3) Upon a request from the right holder or the beneficiary of the authorisation, the competent authority may, after hearing the parties, vary the terms of the decision authorising the exploitation of the layout-design where changed circumstances justify such variation.

(4) Upon a request from the right holder, the competent authority shall terminate the non-voluntary licence where he is satisfied that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the beneficiary of the authorisation has failed to comply with the terms of the authorisation.

(5) Notwithstanding subsection (4), the competent authority shall not terminate an authorisation where he is satisfied that the adequate protection of the legitimate interests of the beneficiary of the authorisation justifies the maintenance of the authorisation.

(6) Where a third person has been designated by the competent authority in accordance with subsection (1), the authorisation may only be transferred with the enterprise or business of the beneficiary of the authorisation or with the part of the enterprise or business within which the layout-design is being exploited.

(7) A request for the authorisation of the competent authority shall be accompanied by evidence that the right holder has received, from the person seeking the authorisation, a request for a contractual licence but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(8) Any interested person may, within 2 months from the date of a decision of the competent authority under this section, make an application to the Supreme Court for a judicial review of the decision.

PART V – PROTECTION OF NEW PLANT VARIETIES

51. Interpretation of Part V

In this Part –

“breeder” means –

- (a) a person who has bred, or discovered and developed, a plant variety;
- (b) the person who is the employer of a person referred to in paragraph (a) or who has commissioned the latter’s work; or
- (c) the successor in title of the person referred to in paragraph (a) or (b);

“breeder’s right” means the right of a breeder provided for in this Part;

“member of UPOV” means a party to the UPOV Convention;

“national”, in relation to a member of UPOV, means –

- (a) where the member of UPOV is a State, a national of that State;
- (b) where the member of UPOV is an inter-governmental organisation, a national of any of the States which are members of that organisation;

“UPOV” means the Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961, as revised;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged.

52. National treatment

(1) Without prejudice to the rights specified in this Part, the nationals of a member of UPOV and the persons resident in, or having their registered office within, the territory of a member of UPOV shall, insofar as the grant and

protection of breeder's rights in Mauritius are concerned, enjoy the same treatment as is accorded to nationals of Mauritius.

(2) Every person referred to in subsection (1) who applies for the grant and protection of a breeder's right in Mauritius shall comply with the obligations, conditions and formalities imposed on nationals of Mauritius.

53. Conditions for protection

(1) A breeder's right shall be granted where a variety is –

- (a) new;
- (b) distinct;
- (c) uniform; and
- (d) stable.

(2) The grant of a breeder's right shall not be subject to any further condition where the variety is designated by a denomination in accordance with section 70 and the applicant for a breeder's right complies with this Act, including payment of such non-refundable fee as may be prescribed.

54. Novelty

(1) A variety shall be considered to be new where, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purpose of exploitation of the variety –

- (a) in Mauritius earlier than one year before the filing date; or
- (b) in a State other than Mauritius earlier than 4 years or, in the case of trees or vines, earlier than 6 years before the filing date.

(2) Where the application for a breeder's right is made within one year from the commencement of this Act, the variety shall be considered to be new notwithstanding the fact that propagating or harvested material of the variety has been sold or disposed of to others for the purpose of exploitation of the variety, in Mauritius, within 4 years, or, in the case of trees or vines, within 6 years, before the filing date of the application.

55. Distinctness

(1) A variety shall be considered to be distinct where it is clearly distinguishable from any other variety the existence of which is a matter of common knowledge at the time of the filing of the application for the grant of a breeder's right.

(2) Where an application for the grant of a breeder's right or for the entering of another variety in the relevant register of varieties is made and granted in any State, it shall be taken to render that other variety a matter of common knowledge from the date of the application.

56. Uniformity

A variety shall, subject to any variation that may be expected from the particular features of its propagation, be considered to be uniform where it is sufficiently uniform in its relevant characteristics.

57. Stability

A variety shall be considered to be stable where its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

58. Application for breeder's right

- (1) An application for a breeder's right by any person shall be –
 - (a) filed with the Director in such form and manner as the Director may determine; and
 - (b) accompanied by the payment of such non-refundable fee as may be prescribed.
- (2) The application shall contain –
 - (a) a description of the plant variety;
 - (b) the proposed denomination for the plant variety which qualifies for approval and registration under section 70;
 - (c) an address, within Mauritius, for service of any document where the applicant's ordinary residence or principal place of business is outside Mauritius, in accordance with section 136.

(3) Where the Director is satisfied that the application complies with subsections (1) and (2), he shall cause information relating to the application for a breeder's right and proposed denomination to be published in the Gazette in such form and manner as he may determine.

59. Filing date of breeder's right

(1) The Director shall consider the date of receipt of an application for the grant of a breeder's right as the filing date where the application complies with section 58(1) and (2).

(2) (a) Where an application does not, at the time of receipt, comply with section 58(1) and (2), the Director shall request the applicant to file the required correction within such time as he may determine.

(b) Where the applicant does not file the necessary correction within the time referred to in subsection (2), the application shall be considered to have been abandoned.

60. Provisional protection

(1) The interests of an applicant for a breeder's right shall be provisionally protected from the date of publication of the application for the grant of a breeder's right till the date of the grant of that right.

(2) The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period specified in subsection (1), does an act which, upon a breeder's right being granted, requires the breeder's authorisation as specified in section 64(3) to (5).

61. Right of priority

(1) A breeder who files an application for the protection of a variety in one of the member States of UPOV shall, for the purpose of filing an application with the Office, for the grant of a breeder's right for the same variety, enjoy a right of priority for a period of 12 months from the filing date of the first application.

(2) (a) A breeder who wishes to benefit from the right of priority shall, in the application filed with the Office, claim the priority of the first application.

(b) The Director shall require a breeder to furnish, within 3 months from the filing date of an application under subsection (1) for the grant of a breeder's right –

- (i) a copy of the documents which constitute the first application, certified to be a true copy by the authority with which the first application was filed; and
- (ii) samples or other evidence which show that the variety which is the subject matter of both applications is the same.

(c) Where a breeder fails to comply with subsection (2)(b), the application shall be dealt with as if no priority is claimed.

(3) The breeder shall be allowed a period of 2 years from the expiry of the period of priority or, where the first application is rejected or withdrawn, a period of 3 months from such rejection or withdrawal, to furnish to the Office all necessary information, document and material required for the purpose of the examination of an application under section 62.

(4) Any event which occurs within the period specified in subsection (1), such as the filing of another application or the publication or use of the variety that was the subject of the first application, shall not constitute a ground for rejecting the application or give rise to any third party right.

62. Examination of application

(1) The Director shall examine an application to determine whether it complies with sections 53 to 57.

(2) For the purpose of an examination, the Director may –

- (a) cause the growing of the variety;
- (b) carry out other necessary tests;
- (c) take into consideration the results of growing tests or other trials which have already been carried out; and
- (d) require the breeder to furnish such information, documents and material as he considers appropriate.

(3) The Ministry may, for the purpose of an examination under subsection (1), enter into an agreement with any other person situated in or outside Mauritius.

63. Grant or refusal of breeder's right

(1) Where the Director is of the opinion that an application for a breeder's right complies with sections 53 to 57, he shall grant a breeder's right.

(2) Where the Director refuses an application for a breeder's right, he shall notify the applicant in writing.

(3) Where a breeder's right is granted, the Director shall –

- (a) issue to the applicant a certificate;
- (b) register the breeder's right; and
- (c) cause to be published in the Gazette, in such form and manner as he may determine, information relating to the grant of the breeder's right and the approved denomination.

(4) The Director shall not refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety in a foreign State or by an intergovernmental organisation has not been applied for, has been refused or has expired.

64. Scope of breeder's right

(1) Where 2 or more persons have jointly bred, or discovered and developed, a variety, the breeder's right shall belong to them jointly.

(2) Where 2 or more persons have bred, or discovered and developed, the same variety, independently of each other, the person who filed an application for a breeder's right first shall have the breeder's right.

(3) (a) Subject to sections 66 and 67, any of the following acts in respect of the propagating material of a protected variety, shall require the authorisation of the breeder for –

- (i) production or reproduction (multiplication);
- (ii) conditioning for the purpose of propagation;

- (iii) offering for sale;
- (iv) selling or other marketing;
- (v) exporting;
- (vi) importing; or
- (vii) stocking for any of the purposes referred to in subparagraphs (i) to (vi).

(b) A breeder may, on such terms and conditions as he may determine, give authorisation for the purpose of any act referred to in paragraph (a).

(4) Subject to sections 66 and 67, any of the acts referred to in subsection (3)(a) in respect of –

- (a) harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety, shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the propagating material;
- (b) products made directly from harvested material of the protected variety falling within the provisions of paragraph (a), through the unauthorised use of the harvested material, shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the harvested material.

(5) (a) Subsections (3) and (4) shall also apply in relation to varieties –

- (i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (ii) which are not clearly distinguishable, in accordance with section 55, from the protected variety; and
- (iii) the production of which requires repeated use of the protected variety.

(b) For the purpose of paragraph (a)(i), a variety shall be considered to be essentially derived from another variety (the "initial variety") where –

- (i) it is predominantly derived from the other variety, or from a variety which is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics which result from the genotype or combination of genotypes of the initial variety;
- (ii) it is clearly distinguishable from the initial variety; and
- (iii) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics which result from the genotype or combination of genotypes of the initial variety.

(c) Essentially derived varieties may be obtained by –

- (i) selection of a natural or induced mutant;
- (ii) selection of a somaclonal variant;
- (iii) selection of a variant individual from plants of the initial variety;
- (iv) backcrossing; or
- (v) transformation by genetic engineering.

(6) A breeder's right may be assigned or may be transferred by succession.

65. Duration of breeder's right

(1) Subject to subsection (2), a breeder's right shall remain valid for 25 years from the date of the grant of the right.

(2) (a) For the purpose of maintaining a breeder's right, the owner of a breeder's right shall pay to the Director such annual fee, at such time, as may be prescribed.

(b) Where the annual fee is not paid within the time prescribed, the Director may grant to the owner of a breeder's right a delay of 6 months for the payment of the annual fee and such surcharge as may be prescribed.

(c) Where the annual fee is not paid in accordance with this subsection, the application for breeder's right shall be considered to have been withdrawn and the breeder's right shall lapse.

(d) Where the owner of a breeder's right gives reasonable justification for the non-payment of the annual fee and the Director is satisfied that rights of third parties which may have arisen are not unreasonably infringed, the Director may, not later than one year from the date the payment should have been made under subsection (2)(b), restore the lapsed breeder's right.

66. Exceptions to breeder's right

(1) A breeder's right shall not extend to an act done –

- (a) privately and for non-commercial purposes;
- (b) for experimental purposes; or
- (c) for the purpose of breeding other varieties, and except where section 64(5) applies, acts referred to in section 64(3) and (4) in respect of such other varieties.

(2) Notwithstanding section 64, a breeder's right may, under such conditions as may be prescribed, be restricted in relation to the varieties specified in a list, to be drawn up by the Office after consultation with the Ministry responsible for the subject of agriculture, of agricultural and vegetable crops with a historical common practice of saving seed in Mauritius in order to permit farmers to use, for propagating purposes on their own holdings, the product of the harvest which they have obtained by planting on their own holdings the protected variety or a variety covered by section 64(5)(a)(i) or (ii), where this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

(3) Fruits, ornamentals and forest plants shall be excluded from the list referred to in subsection (2).

67. Exhaustion of breeder's right

(1) A breeder's right shall not extend to an act concerning any material of the protected variety or of a variety covered by section 64(5), which has been

sold or otherwise marketed in Mauritius by the breeder or with his consent, or any material derived from the said material, unless the act involves –

- (a) further propagation of the variety; or
- (b) an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption.

(2) In subsection (1) –

“material”, in relation to a variety, means –

- (a) propagating material of any kind;
- (b) harvested material, including entire plants and parts of plants; or
- (c) any product made directly from the harvested material.

68. Restrictions on exercise of breeder’s right

(1) Subject to this Act, the exercise of a breeder’s right shall not be restricted unless the Office considers that it is in the public interest to do so.

(2) Where any restriction has the effect of the Office authorising a third party to perform an act for which the breeder’s authorisation is required, the third party shall pay reasonable compensation to the breeder.

69. Measures regulating commerce

A breeder’s right shall be independent of any measure taken by a relevant authority to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material.

70. Variety denomination

(1) (a) A variety shall be designated by a denomination which shall be its generic designation.

(b) Subject to subsection (4), no right in the designation registered as the denomination of a variety shall hamper the free use of the denomination in connection with the variety, even after the expiry of the breeder's right.

(2) A denomination shall –

- (a) enable the variety to be identified;
- (b) not consist solely of figures except where this is an established practice for designating varieties;
- (c) not be liable to –
 - (i) mislead; or
 - (ii) cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder; and
- (d) be different from every denomination which designates, in the territory of any member State of UPOV, an existing variety of the same plant species or of a closely related species.

(3) (a) A breeder shall, on making an application for a breeder's right, submit the denomination of the variety to the Office.

(b) Where the denomination does not satisfy the requirements of subsection (2), the Director shall –

- (i) refuse to register it; and
- (ii) require the breeder to propose another denomination within such time as the Director may determine.

(c) The Office shall register a denomination at the same time that a breeder's right is granted.

(4) (a) A variety shall be submitted to every member of UPOV under the same denomination.

(b) The Director shall register the denomination submitted under subsection (3) unless it considers the denomination unsuitable and requires the breeder to submit another denomination.

(5) (a) The Director shall ensure that the relevant authority of every member of UPOV is informed of the submission, registration and cancellation of a variety denomination.

(b) Any authority wishing to make observations on the registration of a denomination may address its observations to the Office.

(6) Where, by virtue of a prior right, the use of a denomination for a variety is not allowed to a person who, in accordance with subsection (7), would be obliged to use it, the Director shall require the breeder to submit another denomination for the variety.

(7) Any person who, in Mauritius, offers for sale or markets propagating material of a variety protected in Mauritius is obliged to use the denomination of that variety, even after the expiry of the breeder's right in that variety, except where, in accordance with subsection (6), prior rights prevent the use.

(8) (a) Where a variety is offered for sale or marketed, it shall be permitted to associate a mark, geographical indication, trade name, business sign or other similar indication with a registered variety denomination.

(b) Where an indication under paragraph (a) is associated to the variety, the variety denomination shall be recognisable.

71. Invalidation of breeder's right

(1) An interested person may apply to the Tribunal for the invalidation of a breeder's right.

(2) A breeder's right shall be invalidated where it is established that –

- (a) any of the requirements specified in section 54, 55, 56 or 57 was not satisfied at the time the breeder's right was granted;
- (b) the grant of the breeder's right was based on false, misleading or incomplete information and documents furnished by the breeder; or
- (c) the breeder's right has been granted to a person who is not entitled to it and such right is not transferred to the person who is entitled to it.

(3) An invalidated breeder's right shall be considered as null and void ab initio.

(4) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

72. Cancellation of breeder's right

The Director may cancel a breeder's right where –

- (a) the requirements specified in section 56 or 57 are no longer satisfied; or
- (b) the breeder, after being requested to do so and within such period as may be prescribed –
 - (i) does not provide the Office with the information, documents or material necessary for verifying the maintenance of the variety;
 - (ii) fails to pay such fee as may be prescribed to maintain his right; or
 - (iii) does not, where the denomination of a variety is cancelled after the grant of the right, propose another suitable denomination.

PART VI – INDUSTRIAL DESIGNS GOVERNED BY THE HAGUE AGREEMENT

Sub-Part A – Industrial Designs

73. Conditions for protection

(1) (a) An industrial design shall be protected where it is new and original.

(b) An industrial design shall be considered to be new where it has not been disclosed to the public anywhere in the world by publication in tangible form, exhibition, use in trade or in any other way, before the filing date or, where applicable, the priority date, of the application for registration.

(c) (i) An industrial design applied to, or embodied in, a product that is a component part of a complex product shall be considered to be

new where the component part remains visible during the normal use of the complex product.

(ii) In subparagraph (i) –

“normal use” –

(a) means use by an end user; but

(b) does not include maintenance, servicing or repair work.

(d) An industrial design shall not be considered to be original where it does not significantly differ from known designs or combinations of known designs features.

(2) For the purpose of determining novelty and originality, no disclosure of an industrial design shall be taken into consideration where it occurred –

(a) within 12 months before the filing date or, where applicable, the priority date, of the application; and

(b) by reason of or in consequence of –

(i) an abuse committed by a third party with regard to the applicant or his predecessor in title; or

(ii) an act committed by the applicant or his predecessor in title, other than the filing of an application to register, or otherwise obtain legal protection for, the industrial design with an industrial property authority.

74. Industrial design excluded from protection

An industrial design shall not be registered where –

(a) its features are solely dictated by technical or functional considerations; or

(b) its commercial exploitation may be contrary to public order or morality.

75. Right to registration

(1) The exclusive right to use an industrial design shall be acquired by registration.

(2) The right to an industrial design –

(a) shall belong to the creator of the design;

(b) may be assigned or may be transferred by succession.

(3) Where 2 or more persons have created the same industrial design, the right to the industrial design shall belong to them jointly.

(4) Where 2 or more persons have created the same industrial design independently of each other, the person whose application has the earliest filing date or, where priority is claimed, the earliest validly claimed priority date, shall have the right to the industrial design, provided that the said application is not withdrawn, abandoned or rejected.

(5) Where an industrial design is made in the execution of an employment contract, the purpose of which is to create one or more designs, the right to the industrial design shall belong, in the absence of any contrary contractual provision, to the employer.

(6) (a) The creator of an industrial design shall be named as such in the industrial design unless he makes a declaration, in writing, to the Office that he does not wish to be so named.

(b) Any promise or undertaking made or given by the creator of an industrial design to the effect that he will make a declaration under paragraph (a) shall be void and of no effect.

76. Application for registration of industrial design

(1) An application for the registration of an industrial design shall –

(a) be filed with the Director in such form and manner as he may determine;

(b) contain a graphic representation of the industrial design; and

(c) be accompanied by such non-refundable fee as may be prescribed.

(2) Where an applicant is not the creator of an industrial design, the request shall include a statement justifying the right of the applicant to the registration of the industrial design.

(3) An application may contain –

(a) up to 100 industrial designs provided they all refer to products that belong to the same class of the International Classification; and

(b) a request that publication of the industrial design be deferred for a specified period not exceeding 12 months from the filing date or, where applicable, from the priority date of the application.

77. Amendment and withdrawal

(1) (a) An applicant may, subject to paragraph (b), amend an application at any time while it is being processed.

(b) No amendment shall be accepted where it involves a change in, or addition to, any of the designs contained in the application for registration.

(2) An applicant may, at any time before an industrial design is registered, withdraw the application entirely or in respect of one or more designs, on payment of such fee as may be prescribed.

78. Right of priority

(1) An application for registration may contain a declaration claiming, in accordance with the Paris Convention, the priority date of one or more earlier applications filed for the same industrial design by the applicant or his predecessor in title, in or for any State party to the Convention or any member of the World Trade Organization, at any time not earlier than 6 months from the filing date of the earlier application.

(2) Where an application contains a declaration claiming priority, the Director may request the applicant to furnish, within such time as he may determine –

(a) a copy of the earlier application, certified as correct by the foreign authority;

- (b) a certificate from that authority showing the date of filing; and
- (c) an English translation of the document.

(3) Where the Director finds that the conditions for the right of priority or the requirements for claiming priority have not been satisfied, the declaration claiming priority shall be considered not to have been made.

(4) Where an application contains a declaration under subsection (1) –

- (a) the application may not be refused because of an act done during the six-month period, as provided for in the Paris Convention; and
- (b) no such act shall give rise to any third party right or right of personal possession.

79. Filing date of industrial design

The filing date of an application for registration of an industrial design shall be the earliest date on which the application contains –

- (a) indications allowing the identity of the applicant to be established and allowing the applicant to be contacted; and
- (b) graphic representations of the industrial design for which registration is sought.

80. Examination of application

(1) (a) The Director shall examine and determine whether an application for registration of an industrial design complies with the requirements of section 73 and with the definition of industrial design in section 2.

(b) Where the application does not comply with the requirements of section 73 and the definition in section 2, the Director shall request the applicant, in writing, to correct the application within 2 months from the date of receipt of the request or such further period as he may determine.

(2) Where the required correction is not made within the specified period, the application shall be considered to have been withdrawn.

81. Registration and publication of industrial design

(1) (a) Where the conditions referred to in section 73 are satisfied, the Director shall register the industrial design, publish the details relating to its registration and issue to the applicant a certificate of registration of the industrial design on payment of such registration fee as may be prescribed.

(b) Where an application does not satisfy the requirements of section 73, the Director shall reject the application.

(c) Where a request has been made under section 76(3)(b) for deferment of publication, the Director shall ensure that –

- (i) the file relating to the application and the representation of the design are not open for public inspection; and
- (ii) the application is not published until the expiry of the period of deferment.

(2) The Director shall, at the expiry of the period of deferment, give public notice of the application in the Gazette.

82. Rights conferred by registration of industrial design

(1) Where any person, other than the registered owner, exploits a registered industrial design in Mauritius, he shall require the written consent of the registered owner.

(2) Where an industrial design is registered for a part of a product that is integral and inseparable from that product, any infringement of the registered design shall be assessed taking into account the overall appearance of the product embodying the registered design, and not only that part in isolation.

83. Limitations and exceptions

No right conferred by the registration of an industrial design shall prohibit –

- (a) an act in respect of a product that embodies the industrial design, after the product has been put on the market in Mauritius or abroad by the registered holder or by a person acting with the holder's consent or having an economic tie to the holder;

- (b) the use of the industrial design in the body or gear of any aircraft, land vehicle or vessel that temporarily or accidentally enters Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, land vehicle or vessel.
- (c) an act done –
 - (i) privately and for a non-commercial purpose;
 - (ii) for the purpose of teaching, education or scientific research in academic, educational or research institutions; or
 - (iii) only for experimental purposes relating to the industrial design;
- (d) the reproduction of any features of the industrial design –
 - (i) dictated solely by functional or technical considerations or necessary to fulfill a technical purpose;
 - (ii) in their exact form in order to permit the product in which the design is embodied to be mechanically connected to or placed in, around or against, another product so that each product may perform its function; or
 - (iii) embodied in a component part of a complex product, where that part is used for the purpose of repairing that product so as to restore its original appearance.

84. Duration of industrial design

(1) The registration of an industrial design shall be valid for a period of 5 years from the filing date of the application for registration.

(2) The registration of an industrial design may be renewed for 3 further consecutive periods of 5 years –

- (a) on payment of the prescribed fee; and
- (b) subject to the conditions determined by the Director having been complied with.

(3) The Director may allow a delay of 6 months for the late payment of the prescribed renewal fee subject to the payment of such surcharge as may be prescribed.

(4) Where the renewal is not effected in accordance with this section, the registration of the industrial design shall lapse.

85. Invalidation of registration of industrial design

(1) Any interested person may apply to the Tribunal for the invalidation of the registration of an industrial design where –

- (a) the industrial design is not entitled to protection under section 73;
- (b) the right holder is not entitled to protection under section 75;
- (c) the registered owner of the industrial design is not the creator or his successor in title.

(2) Where a ground for invalidation is proved with respect to only one or some of the designs included in the registration, that design or those designs, as the case may be, shall be invalidated.

(3) An invalidated industrial design shall be null and void ab initio.

(4) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

Sub-Part B – The Hague Agreement

86. Interpretation of Sub-part B

In this Sub-part –

“Hague Agreement” means the Hague Agreement Concerning the International Registration of Industrial Designs;

“1999 Act” means the Act of the Hague Agreement signed in Geneva on July 2, 1999;

“Common Regulations” means Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement;

“Contracting Party” means any State or intergovernmental organisation party to the 1999 Act;

“international registration” means a registration made in accordance with the 1999 Act;

“International Register” means the official collection of data concerning international registrations maintained by the International Bureau.

87. Application for international design registration

An application for international design registration may be filed directly with the International Bureau or with the Office, on the official application form of the International Bureau.

88. Effect of international registration

(1) An international registration that designates Mauritius as a Contracting Party shall, as from the date of the international registration, have the same effect as an application for registration filed under this Act.

(2) Where, in accordance with the 1999 Act and the Common Regulations –

- (a) no refusal has been notified to the International Bureau; or
- (b) a refusal has been notified to the International Bureau, but has been withdrawn subsequently,

the international registration shall have the same effect, from the date of the international registration, as a registration of industrial design granted by the Director under this Act.

(3) A recording made in the International Register in respect of an international registration designating Mauritius as a Contracting Party shall have the same effect as a recording in the relevant register.

(4) (a) Subject to renewal, an international registration designating Mauritius shall have the same duration of protection provided under this Act.

(b) The renewal shall be requested from the International Bureau and be recorded in the International Register.

89. Examination of international registration and notification to International Bureau

(1) Where an international registration designating Mauritius does not comply with the prescribed requirements, but is compatible with Article 12(1) of the 1999 Act, the Director shall, before the expiry of the refusal period applicable under the Common Regulations, notify a refusal of protection to the International Bureau in accordance with the Common Regulations.

(2) Notwithstanding section 80(1)(b), where a notification of refusal has been issued under subsection (1), the period of 2 months referred to in section 80(1)(b) shall be replaced by a period of 3 months.

(3) Where a notification of refusal has been issued under subsection (1) and the refusal is withdrawn subsequently, the Director shall send to the International Bureau a statement to that effect in accordance with the Common Regulations.

(4) Where no notification of refusal has been issued under subsection (1), the Director shall, within the prescribed refusal period, send a statement to the effect that protection is granted to the industrial designs that are the subject of international registration to the International Bureau in accordance with the Common Regulations.

(5) Where the international registration is invalidated in Mauritius and the invalidation is not subject to appeal, the Director shall notify the International Bureau in accordance with the Common Regulations.

(6) (a) The holder of the international registration who received a notification issued under subsection (1) shall enjoy the same remedies which are available to the applicant for the registration of an industrial design under this Act.

(b) The holder of an international registration involved in an invalidation procedure referred to in subsection (5) shall be afforded the same opportunity of defending the right as is available to the holder of an industrial design registered under this Act.

90. Conflict between this Act and the Hague Agreement

In the event of conflict between this Act and the 1999 Act and the Common Regulations, the provisions of the 1999 Act and the Common Regulations shall prevail.

**PART VII – MARKS, TRADE NAMES, GEOGRAPHICAL
INDICATIONS, MADRID PROTOCOL**

Sub-Part A – Marks

91. Registration of mark

- (1) The exclusive right to use a mark shall be acquired by registration.
- (2) No sign shall be registered as a mark where it –
 - (a) is devoid of any distinctive character or is incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
 - (b) consists solely of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of goods or of rendering of services, or other characteristics of goods or services;
 - (c) consists solely of a sign or indication that has become generic in current language or in the bona fide established practices of the trade, or is a usual or recognised technical or scientific name of a product or service;
 - (d) consists solely of a shape that results from the nature of the goods or provides a technical result, functional advantage or substantial value to the goods;
 - (e) is contrary to public order or morality;
 - (f) is likely to mislead, in particular as regards the geographical origin of the goods or services concerned or their nature, quality or other characteristics; or
 - (g) contains, as the armorial bearing, the flag or other emblem of a State party to the Paris Convention or an international organisation, an official sign indicating control warranty adopted by any such State or organisation, or constitutes an imitation of those signs from a heraldic point of view.
- (3) (a) A mark shall not be registered where it conflicts with a third party right in force in Mauritius, in particular where the mark –

- (i) is similar to a mark registered earlier or to a mark having an earlier filing or priority date, in respect of similar goods or services, or so nearly resembles such a mark as to be likely to cause confusion;
- (ii) constitutes a reproduction, imitation or translation liable to create confusion with a mark that is well known in Mauritius in respect of similar goods or services of another enterprise; or
- (iii) is registered in Mauritius for goods or services which are not identical or similar to those in respect of which registration is applied for and the use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use; and
- (iv) cannot be used in Mauritius by virtue of any law.

(b) Notwithstanding paragraph (a), the Director may, in case of honest concurrent use, or of other circumstances in which he finds it proper to do so, allow the registration of a mark by more than one owner, subject to such conditions and limitations as he may determine.

(4) The prior user of a mark that is neither registered nor the subject of a pending application under this section may oppose an application for registration by another person, of a similar mark for similar goods or services, where he submits evidence of prior use.

92. Application for registration

- (1) An application for registration of a mark shall be –
 - (a) filed with the Director in such form and manner as he may determine; and
 - (b) accompanied by the payment of such non-refundable fee as may be prescribed.
- (2) The application for registration of a mark shall include –

- (a) the name and address of the applicant and such other information as may be prescribed;
- (b) where applicable, a statement indicating the type of mark and any specific requirements applicable to that type of mark;
- (c) a representation of the mark; and
- (d) a list of the goods or services for which registration of the mark is sought, grouped in accordance with the applicable class or classes of the International Classification.

93. Right of priority

(1) (a) An application for registration of a mark may contain a declaration, by the applicant or his predecessor in title, claiming, in accordance with the Paris Convention, priority for one or more earlier applications filed for the same mark in respect of corresponding goods or services, in or for any State party to the said Convention or any Member of the World Trade Organization.

(b) The priority referred to in paragraph (a) shall be for a period of 6 months from the filing date of the application for registration.

(2) The applicant may, within 3 months from the declaration claiming priority pursuant to subsection (1), furnish –

- (a) a copy of the earlier application certified as correct by the foreign authority with which it was filed in a language accepted by the Office; and
- (b) a certificate issued by the foreign authority with which the earlier application was filed showing the date of the earlier application.

(3) Where the Director finds that the conditions for the right of priority or the requirements for claiming priority have not been satisfied, the declaration claiming priority shall be considered not to have been made.

94. Filing date of mark

(1) The filing date of an application for registration of a mark shall be the date on which the application is received by the Director provided that, at the time of receipt, it contains the matters specified in section 92.

(2) Where the application does not contain a requirement, the Director shall –

- (a) notify the applicant in writing of the omission which shall be corrected within a period of 2 months from the date of receipt of the notification; and
- (b) grant, as the filing date, the date of receipt of the required correction where such correction is made.

(3) Where no correction is made, the application shall be treated as if it has not been filed.

95. Division, withdrawal and amendment

(1) (a) The applicant may divide his application into 2 or more applications in order to separate the goods or services specified in the initial application.

(b) Every divisional application made under paragraph (a) shall retain the filing date and, where applicable, the right of priority of the initial application.

(c) After a division, every application shall be independent and any publication of the application effected prior to the division shall be effective for each divisional application.

(2) An applicant may, at any time before a mark is registered, withdraw his application, limit the list of goods or services covered in the application or amend his application provided that the amendment does not substantially affect the identity of the mark.

96. Examination, publication, opposition and registration

(1) The Director shall examine and determine whether an application complies with the requirements of section 92 and whether the mark for which registration is sought complies with the definition of mark.

(2) Where the Director finds that the requirements of section 92 have not been satisfied, he shall request the applicant to –

- (a) furnish additional information; or

(b) amend the application,

within such period as may be prescribed.

(3) Where the applicant fails to comply with a request under subsection (2), the application shall lapse.

(4) Where the requirements referred to in subsection (1) are satisfied, the Director shall forthwith accept the application and cause it to be published in the Gazette.

(5) (a) Any person may, within such period as may be prescribed and subject to payment of the prescribed fee, lodge with the Director an opposition to the registration of a mark.

(b) An opposition shall be by way of notice and shall state the grounds of opposition.

(c) The applicant shall send to the Director and the opponent a copy of any counter-statement to the opposition together with the grounds on which he relies.

(d) Where the applicant does not send a counter-statement under paragraph (c), he shall be deemed to have abandoned the application.

(e) Where the applicant sends a counter-statement, the Director shall, after hearing the parties, where he considers appropriate, decide whether the mark may be registered.

(6) (a) After an application is published and until the registration of the mark, the applicant shall have the same privileges and rights which he would have had if the mark had been registered.

(b) Notwithstanding paragraph (a), it shall be a valid defence to an action brought under that paragraph in respect of an act done after the application was published, where the defendant establishes that the mark could not have been validly registered at the time the act was done.

(7) (a) Where the Director refuses an application for the registration of a mark, he shall notify the applicant in writing.

(b) (i) The applicant may, within 6 months from the date of receipt of the notification referred to in paragraph (a), make written

representations to the Director to reconsider the application for the registration of a mark.

(ii) Where the applicant fails to make any written representations within the period referred to in subparagraph (i), the application for registration shall be considered to have been abandoned.

(c) The Director shall, within one month from the date of receipt of the written representations, inform the applicant of his decision and the reasons thereof.

(8) Where the Director finds that the conditions referred to in subsection (1) are satisfied, and –

- (a) the registration of the mark has not been opposed within the prescribed time limit; or
- (b) the registration of the mark has been opposed and the opposition has been decided in the applicant's favour,

he shall register the mark, publish the details relating to the registration and issue to the applicant a certificate of registration.

97. Duration of mark

(1) The registration of a mark shall be for a term of 10 years from the filing date of the application for registration.

(2) The registration of a mark may be renewed for consecutive periods of 10 years –

- (a) on payment of such renewal fee, at such time, as may be prescribed; and
- (b) subject to such conditions as the Director may determine.

(3) Where the renewal fee referred to in subsection (2) is not paid within the time prescribed, the Director may grant to the owner of a mark a delay of 6 months for the payment of the renewal fee and such surcharge as may be prescribed.

(4) Where the renewal is not effected in accordance with this section, the registration of the mark shall lapse.

(5) (a) Where a mark has lapsed under subsection (4) and been removed from the register, the previous registered owner of the mark may, within one year from the date of expiry of the registration of the mark, make an application to the Director for the registration of the mark.

(b) Where the previous registered owner of the mark makes an application under paragraph (a), he shall have precedence over any other person who applies for the registration of the mark.

(c) Where a person, other than the previous registered owner of a mark, applies, within the one-year period referred to in paragraph (a), for the registration of the mark which has lapsed, the application shall not be processed until the expiry of the one-year period unless the previous registered owner of the mark makes an application under paragraph (a).

(6) Where the Director is satisfied that –

(a) there has been, during 3 years immediately preceding the removal of the mark from the register, bona fide use of the mark; or

(b) no deception or confusion is likely to arise from the use of the mark which is the subject matter of the application for registration, by reason of any previous use of the mark,

he shall register the mark.

98. Rights conferred by registration of mark

(1) No person shall, without the written agreement of the registered owner, use a registered mark in relation to goods and services for which it has been registered.

(2) Every registered owner of a mark shall, in addition to any other rights, remedies or actions available to him, have the right to institute Court proceedings against any person who, without his written agreement, uses the mark, or does any act likely to cause an infringement.

(3) A registered owner may, where the use of any sign similar to the registered mark, or where the use of such sign in relation to goods and services similar to those for which the mark has been registered, is likely to cause confusion in the public, institute Court proceedings in accordance with subsection (2).

(4) The rights conferred by the registration of a mark shall not extend to acts in respect of articles which have been put on the market in Mauritius by the registered owner or with his consent.

99. Invalidation of registration of mark

(1) An interested person may apply to the Tribunal for the invalidation of the registration of a mark, totally or partially, where –

- (a) the registered sign does not comply with the definition of a mark; or
- (b) the mark does not comply with section 91(2) or (3).

(2) The invalidation of the registration of a mark shall be effective from the date of registration of the mark.

(3) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

100. Removal on ground of non-use

(1) An interested person may request the Director to remove from the relevant register a mark in respect of any goods or services in respect of which it is registered on the ground that up to one month before the filing of the request, the mark had, after its registration, not been in use by the registered owner or a licensee during a continuous period of not less than 3 years.

(2) Notwithstanding subsection (1), a mark shall not be removed from the register where the Director is satisfied that there –

- (a) were reasonable circumstances that prevented the use of the mark; and
- (b) was no intention not to use or abandon the mark in respect of those goods or services.

101. Collective mark

(1) An application for the registration of a collective mark shall –

- (a) designate the mark as a collective mark; and

- (b) be accompanied by a copy of the agreement governing the use of the collective mark.

(2) The registered owner of a collective mark shall notify the Director of any change made in the agreement referred to in subsection (1), which shall be kept on record and be published where the Director finds it appropriate.

(3) A collective mark shall not be the subject of a licence.

(4) An interested person may apply to the Tribunal for the invalidation of the registration of a collective mark in any of the circumstances specified in subsection (5).

(5) The Tribunal shall invalidate the registration of a collective mark where any interested person requesting the invalidation proves that the –

- (a) mark is being used exclusively by the registered owner;
- (b) registered owner is using or permitting its use in contravention of the terms of the agreement referred to in subsection (1)(b);
- (c) registered owner is using or is permitting its use in a manner liable to deceive any person as to the origin or any other common characteristics of the goods or services concerned.

(6) The invalidation of the registration of a collective mark shall be effective from the date of registration of the mark.

(7) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

102. Certification mark

(1) (a) An application for the registration of a certification mark shall be accompanied by a copy of the agreement governing the use of the mark.

(b) The Director shall publish the relevant particulars of the application and agreement in the Gazette and make the agreement available for public consultation on payment of such fee as may be prescribed.

(2) The registered owner of a certification mark shall notify the Director of any change made in the agreement referred to in subsection (1) which shall be kept on record and be published in the Gazette where the Director finds it appropriate.

(3) The holder of a certification mark shall not use the mark to certify his own goods or services.

(4) An interested person may apply to the Tribunal for the invalidation of the registration of a certification mark in any of the circumstances specified in subsection (5).

(5) The Tribunal shall invalidate the registration of a certification mark where the registered holder –

- (a) has contravened subsection (3); or
- (b) has allowed the use of the mark –
 - (i) in contravention of the agreement referred to in subsection (1); or
 - (ii) in a manner liable to deceive as to the origin, or any other common characteristics, of the goods or services concerned.

(6) The invalidation of the registration of a certification mark shall be effective from the date of registration of the mark.

(7) The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

103. Cancellation of registered mark and limitation of goods and services

The owner of a registered mark may apply for the cancellation of the mark or a limitation in respect of some or all of the goods or services for which it is registered.

Sub-Part B – Trade Names

104. Protection of trade name

- (1) No name or designation shall be used as a trade name where –
 - (a) by its nature or the use to which it may be put, it is contrary to public order or morality; or

- (b) it is liable to deceive any person as to the nature of the enterprise identified by that name.

(2) Notwithstanding any other enactment providing for an obligation to register trade names, such names shall be protected, even before or without registration, against an unlawful act committed by a third party.

(3) For the purpose of subsection (2), the use of an existing trade name by a third party as a trade name or a mark or collective mark, or the use of a similar trade name or mark which is likely to mislead the public, shall be unlawful.

Sub-Part C – Geographical Indications

105. Scope of protection

(1) Where there are homonymous geographical indications for identical products, the Director shall, in cases of permitted concurrent use of the indications, determine the practical conditions under which the homonymous indications shall be differentiated from each other, taking into account the need to ensure the equitable treatment of the producers concerned and that consumers are not misled.

- (2) The following shall not be protected as geographical indications –
 - (a) an indication the use of which needs to be prevented on the ground of public order or morality;
 - (b) a geographical indication that is not, or that ceases to be, protected in its country of origin, or which has fallen into disuse in that country; and
 - (c) an indication that is identical with the term customary in common language in Mauritius as the common name for the relevant goods or services.

106. Application for geographical indication

- (1) An application for the registration of a geographical indication shall be –
 - (a) filed with the Office in such form and manner as the Director may determine; and

- (b) subject to payment of such non-refundable fee as may be prescribed.

(2) A group of producers, or a legal entity that groups the producers, that operates in a specified geographical area to produce specified goods, or a Government department, on behalf of the group of producers or legal entity, may apply for registration of a geographical indication.

(3) An application for the registration of a geographical indication shall contain –

- (a) the name, address and domicile of the person filing the application;
- (b) the geographical indication for which registration is sought;
- (c) the geographical area to which the geographical indication applies;
- (d) the goods designated by the geographical indication;
- (e) the specific characteristics of the goods for which the geographical indication is used;
- (f) the area and method of production of the goods;
- (g) the link between the characteristics of the goods and the area and method of production;
- (h) the manner in which the specific characteristics are controlled;
- (i) the Code of Practice which establishes the rules for the use of the geographical indication;
- (j) proof that the name of the product is protected in the country of origin;
- (k) the Internal Control Plan relating to the geographical indication.

(4) An applicant may, at any time, withdraw his application for the registration of a geographical indication.

107. Filing date of geographical indication

(1) The Director shall consider the date of receipt of an application for the registration of a geographical indication as the filing date where the application complies with section 106.

(2) (a) Where an application does not, at the time of receipt, comply with section 106, the Director shall request the applicant to file the required correction within such time as he may determine.

(b) Where the applicant does not file the necessary correction within the required time limit, the application shall be considered to have been abandoned.

108. Examination, publication, opposition and registration

(1) The Director shall examine and determine whether an application complies with the requirements of sections 105 and 106 and whether the geographical indication for which registration is sought complies with the definition of geographical indication.

(2) Where the Director finds that the conditions referred to in subsection (1) are satisfied, he shall cause the application to be published in such manner as he may determine.

(3) (a) An interested person may, within such time and subject to payment of such fee as may be prescribed, give notice to the Director of his opposition to the registration of the geographical indication on the ground that a requirement of section 105 or 106 has not been satisfied.

(b) The Director shall send a copy of the notice of opposition to the applicant.

(c) The applicant shall, within the prescribed period and in such manner as the Director may determine, send to the Director and the opponent, a counter-statement of the grounds on which he relies for his application.

(d) Where the applicant sends a counter-statement in accordance with paragraph (c), the Director may hear the parties where he considers it appropriate, before making his decision on the notice of opposition.

(e) Where the applicant does not send the counter-statement within the prescribed period and in the manner determined by the Director, the application shall lapse.

(4) Where the Director finds that the conditions referred to in subsection (1) are satisfied, he shall –

- (a) register the geographical indication;
- (b) issue to the applicant a certificate of registration; and
- (c) give notice of the registration in the Gazette.

(5) Where the application fails to comply with the conditions specified in subsection (1), the Director shall refuse the application.

109. Scope of exclusive right

No person other than a group of producers or a legal entity that groups the producers and carrying on an activity in the relevant geographical area shall have the right to use a registered geographical indication in the course of trade with respect to the goods specified in the relevant register.

110. Limitations and exceptions

(1) (a) Section 98(3) shall apply to geographical indications protected under this Act.

(b) Where registration of a mark has been applied for and the mark has been registered in good faith, or where rights to a mark have been acquired through use in good faith, before the commencement of this Act, or before the geographical indication is protected in its country of origin –

- (i) the registration or the validity of the registration of that mark; or
- (ii) the right to use that mark,

shall not be affected on the ground that the mark is identical with, or similar to, a geographical indication.

(2) Nothing in this Act shall prevent continued and similar use in Mauritius of a foreign geographical indication by any national or resident of Mauritius who has used that geographical indication in connection with goods or services in Mauritius, in a continuous manner with regard to the same or related goods or services –

- (a) for at least 10 years preceding 15 April 1994; or
- (b) in good faith at any time before that date.

111. Duration of geographical indication

(1) The registration of a geographical indication shall be for a term of 10 years from the filing date of the application for registration.

(2) (a) The registration of a geographical indication may be renewed for consecutive periods of 10 years on payment of such renewal fee as may be prescribed and on such conditions as the Director may determine.

(b) The Director may, on an application for the renewal of the registration of a geographical indication, request the applicant to furnish such other information and documents as he may determine.

(3) Where the renewal fee is not paid within the prescribed time, the Director may grant to the registered owner a delay of 6 months for the payment of the renewal fee and such surcharge as may be prescribed.

(4) Where the renewal is not effected in accordance with this section, the registration of the geographical indication shall lapse.

112. Invalidation of registration of geographical indication

(1) An interested person may apply to the Tribunal for the invalidation of the registration of a geographical indication where –

- (a) it does not qualify for protection;
- (b) the geographical area specified in the registration does not correspond to the geographical indication; or
- (c) the indication of the products for which the geographical indication is used or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

(2) In any proceedings under this section, the interested person referred to in subsection (1) shall give notice of the request for invalidation to –

- (a) the person who filed the application for registration of the geographical indication or his successor in title; and

(b) the group of producers or legal entity referred to in section 106(2), having the right to use the geographical indication.

(3) Any person referred to in subsection (2)(b) or any other person having an interest in the matter may, within such period as the Tribunal may determine, apply to join in the proceedings.

(4) Where the registration of a geographical indication is invalidated, the registration shall be considered null and void ab initio.

(5) The decision of the Tribunal shall be notified to the Director.

(6) Where the registration of a geographical indication is invalidated, the Director shall record the decision of the Tribunal in the appropriate register and cause a notice to that effect to be published in the Gazette.

113. Rectification of register

(1) Any person who has an interest in a geographical indication may apply to the Director for rectification of the register on any of the grounds specified in subsection (2).

(2) The grounds referred to in subsection (1) shall be as follows –

(a) the geographical area specified in the register does not correspond to the geographical indication;

(b) the indication of the goods for which the geographical indication is used is missing or unsatisfactory;

(c) the indication of the quality, reputation or other characteristic of the goods is missing or unsatisfactory.

(3) The Director shall rectify the register where he is satisfied that such rectification is necessary.

114. Cancellation of registration

(1) A person who has an interest in a geographical indication may request the Director to cancel the registration of the geographical indication on the ground that it does not qualify or no longer qualifies for protection by virtue of sections 105 and 106.

(2) Where the Director cancels the registration of a geographical indication, he shall remove from the register the entry relating thereto.

Sub-Part D – Madrid Protocol

115. Interpretation of Sub-Part D

In this Sub-part –

“basic application” means an application for registration of a mark, filed with the Office under this Act, and which is used as a basis for the filing of an international application under the Madrid Protocol;

“basic registration” means a mark registered with the Office under this Act, and which is used as a basis for the filing of an international application under the Madrid Protocol;

“Common Regulations” means the Common Regulations under the Madrid Agreement and Madrid Protocol;

“international application” means an application to obtain registration of a mark under the Madrid Protocol;

“International Register” means the register relating to the collection of data concerning international registration of marks and maintained by the International Bureau;

“subsequent designation” means –

- (a) a request for extension of protection (territorial extension) under Article 3ter(2) of the Madrid Protocol; or
- (b) a designation recorded in the International Register;

“Madrid Protocol” means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted in Madrid on June 27, 1989, as amended;

“office of origin” means the office with which the basic application has been filed or in the register of which the basic registration has been effected, as the case may be.

116. Language

Any communication, including an international application, for transmission to the International Bureau through the intermediary of the Office shall be in the English language.

117. Examination of international application of which Mauritius is country of origin

Where an international application is filed with the Office for transmission to the International Bureau, the Office shall verify whether –

- (a) it may be considered as the office of origin in respect of that application; and
- (b) the particulars furnished are in accordance with the Madrid Protocol and the Common Regulations.

118. Certification

(1) Where the Office determines that it may be considered as the office of origin in respect of an international application and that the particulars furnished are in accordance with the Madrid Protocol and the Common Regulations, the Director shall –

- (a) certify the application;
- (b) indicate the date of receipt; and
- (c) forward the application to the International Bureau.

(2) Where the Office determines that it cannot be considered as the office of origin in respect of an international application and that the particulars furnished are not in accordance with the Madrid Protocol and the Common Regulations, the Director shall inform the applicant accordingly.

(3) The certification and transmission of an international application to the International Bureau shall be subject to the prescribed handling fee.

119. Handling fee

The prescribed handling fee for the certification and transmission, to the International Bureau, of an international application originating from Mauritius shall be paid to the Director.

120. Ceasing of effect of basic application or basic registration

Where, in accordance with Article 6 of the Madrid Protocol, the registration resulting from the basic application, or the basic registration, ceases to have effect, the Director shall –

- (a) inform the International Bureau accordingly; and
- (b) request the cancellation of the international registration in respect of the goods and services affected.

121. Publication of application for international registration and opposition

(1) The Director shall, in such manner as may be prescribed, publish an application for international registration where Mauritius is a designated party.

(2) (a) An interested person may lodge with the Director an opposition to the international registration.

(b) An opposition referred to in paragraph (a) shall be dealt with in accordance with section 96.

122. Ex officio provisional refusal of protection

(1) Where a mark which is the subject of an international registration, cannot be protected under this Act, the Director shall, before the expiry of the refusal period provided for under Article 5 of the Madrid Protocol, notify the International Bureau of the provisional refusal of protection for the mark.

(2) The holder of an international registration shall enjoy the same remedies as if the mark had been filed for registration directly with the Office.

123. Provisional refusal of protection based on opposition

(1) Where an opposition is filed with the Director in respect of an international registration designating Mauritius, the Director shall, before the expiry of the refusal period provided for under Article 5 of the Madrid Protocol, notify the fact to the International Bureau as a provisional refusal of protection based on an opposition, in accordance with the provisions of the Madrid Protocol and the Common Regulations.

(2) The holder of the international registration shall enjoy the same remedies as if the mark had been filed for registration directly with the Office.

124. Statement of grant of protection

(1) Where all procedures have been completed and there is no ground for the Director to refuse protection, the Director shall, as soon as possible and before the expiry of the refusal period provided for under Article 5 of the Madrid Protocol, send to the International Bureau a statement to the effect that protection is granted to the mark in Mauritius.

(2) Where the Director is satisfied that the conditions for protection of the mark are in accordance with section 91, he shall send to the International Bureau a statement that protection is granted to that mark in Mauritius.

(3) The statement referred to in subsection (1) shall be sent before the expiry of the refusal period provided for under Article 5 of the Madrid Protocol.

125. Decision following provisional refusal of protection

(1) Where the Director has notified the International Bureau of a provisional refusal of protection in accordance with section 122 or 123 and after completion of the procedures, the provisional refusal has been totally or partially withdrawn, the Director shall send to the International Bureau, as the case may be –

- (a) a statement to the effect that the provisional refusal has been withdrawn and that protection of the mark is granted in Mauritius for all the goods and services for which protection has been requested; or
- (b) a statement indicating the goods and services for which protection of the mark is granted in Mauritius.

(2) Where the Director has sent to the International Bureau a notification of total provisional refusal in accordance with section 122, he shall –

- (a) where all procedures relating to the protection of the mark have been completed; and
- (b) where he confirms refusal of the protection of the mark in the Contracting Party concerned for all goods and services,

send to the International Bureau a statement to that effect.

126. Decision affecting protection of mark following statement

Where a statement is sent in accordance with section 124 and there is a decision which affects the protection of a mark in an international registration designating Mauritius, the Director shall –

- (a) to the extent that he is aware of the decision, send to the International Bureau a further statement indicating the goods and services for which the mark is protected in Mauritius; or
- (b) communicate any other information regarding the protection of the mark.

127. Effect of international registration

(1) An international registration shall have the same effect as an application for registration of a mark filed with the Office as regards the date of the international registration.

(2) Where the Director –

- (a) does not notify a refusal to the International Bureau in accordance with the Madrid Protocol and the Common Regulations;
- (b) notifies a refusal which is subsequently withdrawn; and
- (c) sends the statement of grant of protection,

the mark which is subject to international registration in Mauritius shall be considered to be protected in Mauritius as from the date of the international registration.

128. Invalidation

Where an international registration is invalidated in Mauritius and the invalidation is no longer subject to appeal, the Director shall notify the International Bureau in accordance with the Madrid Protocol and the Common Regulations.

129. Record in International Register

A record made in the International Register for an international registration shall be considered recorded in the register of the Office where Mauritius is a designated Contracting Party.

130. Collective and certification marks

Where Mauritius is designated in an international application for the registration of a collective mark or a certification mark, the regulations governing the use of the collective mark or certification mark shall be submitted directly by the applicant to the Office within the prescribed time limit.

131. Replacement

(1) (a) Where a mark registered with the Office is also the subject of an international registration and both registrations are in the name of the same person, the international registration shall be deemed to replace the national registration with the Office, without prejudice to any rights acquired by virtue of the latter, provided that –

- (i) the protection resulting from the international registration extends to Mauritius;
- (ii) all the goods and services listed in the national registration are the same as in the international registration in respect of Mauritius;
- (iii) the extension of the international registration to Mauritius takes effect after the date of the registration of the mark in Mauritius.

(b) The holder of the international registration may request the Director to take note of the international registration on the relevant register and the Director shall take note accordingly.

(2) A request made to the Director under subsection (1), shall be made on the prescribed form and be subject to payment of the prescribed fee.

(3) (a) Where the Director has taken note of an international registration under subsection (1)(b), he shall notify the International Bureau accordingly.

(b) The notification to the International Bureau shall indicate –

- (i) the number of the international registration;
- (ii) where only some of the goods and services listed in the international registration are concerned, those goods and services;
- (iii) the filing date and number of the application for registration of the mark in Mauritius;
- (iv) the registration date and number of the registration in Mauritius;
- (v) the priority date, if any, of the registration in Mauritius; and
- (vi) all information relating to other rights, if any, acquired by virtue of the registration in Mauritius.

132. Transformation

(1) Where an international registration designating Mauritius is cancelled at the request of the Office of origin in accordance with Article 6(4) of the Madrid Protocol, in respect of all or some of the goods and services listed in the international registration, an application may be made to the Director, within 3 months from the date on which the international registration was cancelled, by the person who was the holder of the international registration at the date of its cancellation, for registration of the same mark (“an application resulting from transformation”), in respect of goods and services covered by the list of goods and services contained in the international registration for which protection has been requested in Mauritius.

(2) Subject to subsections (3), (4), (5) and (6), the provisions of this Act applicable to an application for registration filed directly with the Director shall apply with such modifications as may be necessary to an application resulting from transformation.

(3) An application resulting from transformation shall be made on the prescribed form and shall include –

- (a) a statement that the application is made by way of transformation;

- (b) the international registration number of the international registration which has been cancelled;
- (c) the date of the international registration, or the date of the subsequent designation, as appropriate;
- (d) the date on which the cancellation of the international registration was recorded;
- (e) where applicable, the date of any priority claimed in the international application and recorded in the International Register.

(4) An application resulting from transformation shall be accompanied by the payment of such non-refundable fee as may be prescribed.

(5) (a) Where a mark is protected in Mauritius on or before the date on which an international registration is cancelled and all the requirements relating to an application resulting from transformation have been met, the Director shall register the mark.

(b) The date of registration shall be the date of the cancelled international registration or the date of the subsequent designations, as appropriate, and the registration shall enjoy any priority enjoyed by the cancelled international registration.

(6) (a) Where a mark is not protected in Mauritius on or before the date on which the registration was cancelled, any procedures or measures undertaken on or before the date on which an application resulting from transformation is filed for the purpose of the international registration shall be considered as having been undertaken for the purpose of the application resulting from transformation.

(b) The filing date of the application resulting from transformation shall be the date of the international registration or the date of the subsequent designation, as appropriate.

133. Conflict between this Act and the Madrid Protocol

In the event of any conflict between the provisions of this Act and those of the Madrid Protocol and the Common Regulations, the provisions of the Madrid Protocol and the Common Regulations shall prevail.

PART VIII – MISCELLANEOUS

134. Change in address, application and ownership

- (1) An application by an interested party for a change in –
 - (a) the address of an applicant or the owner of a registered right;
 - (b) the application for, or ownership of, a patent, a plant variety, a utility model, a layout-design, an industrial design or a mark shall be made in writing to the Director on payment of such fee as may be prescribed and shall be entered in the relevant register.

(2) Where the Director accepts a change referred to in subsection (1), he shall enter the change in the relevant register and cause it to be published in the Gazette.

(3) Any change referred to in subsection (1) shall not have any effect against third parties until an entry is made under subsection (2) in the relevant register.

(4) Where, on an application under subsection (1) for a change in the ownership of the registration of a mark or collective mark, the Director determines that the change is likely to deceive or cause confusion, particularly with regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used, he may refuse it.

135. Licence

(1) Any licence for an industrial property right, other than a geographical indication, or an application for such a licence, shall be submitted to the Director who shall record it and publish non-confidential information in relation thereto in the Gazette, but shall keep the terms and conditions of the licence confidential.

(2) The licence shall have no effect against third parties until the recording is effected.

136. Agents

Where the residence or principal place of business of an applicant is outside Mauritius, a law practitioner resident and practising in Mauritius, or an agent approved by the Minister, shall represent him.

137. Protection of rights

(1) The holder of an industrial property right may, subject to subsection (2), apply to the Supreme Court for remedy against any other person who has infringed, or is likely to infringe, that right.

(2) No proceedings under this Act by the owner of an industrial property right or an exclusive licensee shall be initiated after the expiry of a period of 5 years from the date on which the claimant became aware, or had reason to know, of the infringing act.

138. Appeal to Supreme Court

(1) Any person who is dissatisfied with a determination of the Tribunal as being erroneous in law may appeal to the Supreme Court.

(2) An appeal under this section shall be prosecuted in the manner provided by the rules made by the Supreme Court.

(3) Any appeal to the Supreme Court shall be made within 21 days from the determination of the Tribunal.

139. Offences

(1) The performance of any act referred to in sections 21, 31, 47, 64, 82, 98 and 109 in Mauritius by any person other than the owner of the title of protection or the licensee and without the agreement of the owner shall be unlawful.

(2) Any person who knowingly performs any act in breach of subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 250,000 rupees and to imprisonment for a term not exceeding 5 years.

140. Unfair practice

(1) (a) Any act in breach of sections 21, 31, 47, 64, 82, 98 and 109 shall amount to an act of unfair practice and may give rise to a claim in damages.

(b) A Court may, in addition to damages, grant such other remedy or relief as it may consider appropriate.

(2) Any claim arising out of an unfair practice shall be prosecuted in accordance with the Protection against Unfair Practices (Industrial Property Rights) Act.

(3) In any action under subsection (1), the Court may, notwithstanding any other enactment, order the forfeiture or removal of any article or matter, as the case may be, that was used in, is related to or gave rise to, an act of unfair practice, as the Court may determine.

141. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide –

- (a) for the procedure for the grant of patents and the registration of utility models, layout-designs of integrated circuits, breeders' rights, industrial designs, marks and geographical indications, and matters related thereto;
- (b) for the payment of fees;
- (c) for any matter necessary for, or consequential to, the implementation of this Act; and
- (d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 250,000 rupees.

142. Consequential amendment

The Protection against Unfair Practices (Industrial Property Rights) Act is amended –

(a) in section 2 –

(i) in the definition of “unfair practice” –

(A) by repealing paragraph (a) and replacing it by the following paragraph –

(a) section 140 of the Industrial Property Act 2019;

- (B) by repealing paragraphs (b) and (c);
- (ii) by inserting, in the appropriate alphabetical order, the following new definition –
 - “industrial property enactments” means this Act and the Industrial Property Act 2019;
- (b) in sections 5(2) and 6(2), by inserting, after paragraph (c), the following new paragraph –
 - (ca) a utility model, layout-design or geographical indication;

143. Repeals

The following Acts are repealed –

- (a) the Geographical Indications Act;
- (b) the Layout Designs (Topographies) of Integrated Circuits Act;
- (c) the Patents, Industrial Designs and Trademarks Act.

144. Savings and transitional provisions

(1) An application for the grant or registration of an industrial property which has been granted under a repealed enactment shall, on the commencement of this Act, be deemed to have been granted under this Act.

(2) An application for the grant or registration of an industrial property which has been made under a repealed enactment, but not been dealt with at the commencement of this Act, shall be considered to have been made under this Act and processed accordingly.

(3) Any matter referred to the Controller of the Industrial Property Office under the repealed enactment but which has not been dealt with at the commencement of this Act shall be dealt with by the Director in accordance with this Act.

(4) Any certificate issued under the repealed enactment before the commencement of this Act for the grant or registration of an industrial property and which is in force at the commencement of this Act shall remain valid until its expiry.

(5) The registration of an industrial property which has been renewed under the repealed enactment shall, on the commencement of this Act, remain valid until its expiry.

(6) The hearing of an appeal or other matter before the Industrial Property Tribunal established under the repealed enactment which –

(a) has started and is pending at the commencement of this Act shall continue as if the repealed enactment was still in operation; or

(b) has not started at the commencement of this Act shall, where it falls under the jurisdiction of the Tribunal under this Act, be transferred to the Tribunal.

(7) The Director shall be the custodian of the registers maintained by the Industrial Property Office under the repealed enactment and of any other relevant records.

(8) Any person who, at the commencement of this Act, is the holder of a public office under a repealed enactment shall be considered to have been appointed to a corresponding public office under this Act.

(9) Where this Act does not make provision for the necessary transition from a repealed enactment, the Minister may make regulations for such transition.

(10) In this section –

“a repealed enactment” means an enactment which is repealed under section 143;

“the repealed enactment” means the Patents, Industrial Designs and Trademarks Act.

145. Commencement

(1) Subject to this section, this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
