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INDUSTRIAL PROPERTY ACT, 2014

(Act 7 of 2014)

I assent

J. A. Michel
President

25th April, 2014

AN ACT to provide for the adequate protection and enforcement of industrial property rights in order to encourage local inventive and innovative activities, stimulate transfer of foreign technology, promote foreign direct investment, create competitive business environment, discourage unfair practices, enhance free and fair practice and thereby foster socio economic development and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Industrial Property Act, 2014 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Short title and
commencement

Interpretation

2.

In this Act, unless the context otherwise requires —

“authorised officer” means a police officer or any officer or class or description of officers appointed by the Minister to exercise the powers and perform the duties conferred and imposed on an authorised officer by this Act.

“certification mark” means any mark that distinguishes goods or services that are certified by the owner of the certification mark in relation to origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from other goods or services not so certified.

“collective mark” means any mark that belongs to a collective entity such as a cooperative, an association or a federation of industries, producers or traders and that distinguishes the goods or services of the members of the collective entity from the goods or services of other enterprises;

“counterfeit goods” means any goods, including packaging, bearing without authorisation a mark which is identical to the mark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such mark, and which thereby infringes the rights protected under this Act;

“Court” means the Supreme Court of Seychelles;

“export” means the act of taking any goods out of Seychelles;

“foreigner” means a person who is not domiciled in Seychelles or has no registered business in Seychelles;

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

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

“goods infringing industrial property rights” means any goods which are made, reproduced, put into circulation or otherwise used in breach of the industrial property Act and without the consent of the rightsholder or a person duly authorised to do so by the rightsholder;

“import” means the act of bringing or causing any goods to be brought into Seychelles;

“industrial design” means any composition of lines or colours or any three dimensional form whether or not associated with lines or colours, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft;

“industrial property rights” means rights related to patents, utility models, industrial designs, certification mark, collective mark, mark, lay out designs, and geographical indications protected under this Act;

“infringement of industrial property rights” means performance of any of the acts, which is exclusively reserved for the rightsholder under the provisions of this Act, without the authorisation of the rightsholder;

“integrated circuit” means a product in its final form or intermediate form, in which the elements, at least one of which is an active element, and some or all of the inter-connections are integrally formed in or on a piece of material and which is intended to perform an electronic function;

“international classification” means the classification according to the Locarno Agreement establishing an international Classification for Industrial Designs, of October, 1968;

“interested person” means a person engaged in, or in promoting, research in a field to which the invention relates, or with a commercial or other interest in a mark, trade name or geographical indication;

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

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

“mark” means any sign capable of distinguishing goods (“trademark”) or services (“service mark”) of one enterprise from those of other enterprises;

“Minister” means the Minister responsible for Legal Affairs;

“non-voluntary license” means an authorisation given by the Registrar to a person to exploit a

technology that is protected by a patent or a utility model, a registered industrial design or layout-design of an integrated circuit in Seychelles without the approval of the rightsholder;

“Paris Convention” means the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883 as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979;

“patent” means a patent of any invention granted under this Act;

“Patent Cooperation Treaty” means the Patent Cooperation Treaty, done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and October 3, 2001;

“patentee” means the owner of a patent;

“person” includes any public body, company or association or any body of persons, corporate or unincorporated;

“prescribed” means prescribed by Regulations;

“priority date” means the date of filing of an earlier foreign application that serves as the basis for claiming right of priority;

“Registrar” means the person appointed by the President to be the Registrar-General of Patents and Trademarks for the purposes of this Act;

“Regulations” means the regulations made under this Act;

“rightsholder” means the owner of a protected industrial property right or his or her successors in title;

“trade name” means the name or designation identifying and distinguishing an enterprise;

“utility model certificate” means a title granted to protect a minor invention, which may not meet the stringent requirements of patentability of inventions;

“well-known mark” means a mark considered by the competent authority in the country of registration or use to be well-known in that country;

“World Trade Organisation” means the World Trade Organisation established on 1st January, 1995 under the Marrakesh Agreement.

Treatment of
foreigners

3.(1) Any person who is a national or is domiciled or has real and effective industrial or commercial establishment in a country which is a party to the Paris Convention or any other treaty that embodies the principle of national treatment to which Seychelles may be a party shall be treated in the same way as Seychellois except requirements that may be explicitly provided for purposes of administrative and judicial procedures.

(2) Any other foreign person that may not be covered under subsection (1) shall be treated in accordance with the provisions of a treaty between Seychelles and the country of the foreign person and in the absence of such a treaty or agreement based on the principle of reciprocity.

4.(1) Any patent, utility model certificate, industrial design registration certificate, registered mark, certification mark, collective mark, trade name and layout-design or application which may be transferred by sale or inheritance or any other means in accordance with this Act or any other written law.

Transfer of
right and
application

(2) Any transfer referred to in subsection (1) shall be recorded with the Registrar, upon payment of fees prescribed in the Regulations.

PART II - PATENTS

Chapter 1- General Provisions

5.(1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.

Patentable
inventions

(2) An invention, shall be considered new if it is not anticipated by prior art. Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date of the application claiming the invention.

(3) Notwithstanding the provisions of subsection (2) the disclosure to the public of the invention shall not be taken into consideration if it occurred within 12 months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his or her predecessor in title or an abuse committed by a third party in relation to the applicant or his or her predecessor in title.

(4) An invention shall be deemed as involving an inventive step if having regard to the prior art relevant to the application and as defined in subsection (2), it would not have been obvious to an ordinary person having skill in the art at the filing date or, as the case may be, at the priority date of the claimed invention.

(5) An invention shall be considered industrially applicable if—

- (a) it can be made or used in any kind of industry; or
- (b) it has specific, substantial and credible utility.

(6) For the purposes of this section, the “industry” shall be construed to any human economic activity leading to the production of goods and services, in particular, handicraft, agriculture, fishery, or services.

Matters
excluded from
patent
protection

6.(1) The following shall not be patentable—

- (a) inventions contrary to public order or morality;
- (b) plants or animals, including parts thereof, other micro-organism, or essentially biological processes for the production of plants or animals or parts thereof, other than non-microbiological processes;
- (c) schemes, rules or methods for doing business, for performing purely mental acts or for playing games;
- (d) discoveries, scientific theories and mathematical methods;
- (e) methods for treatment of the human or animal body by surgery or therapy, including diagnostic methods practiced on the human or animal body; or
- (f) natural substances, whether or not purified, synthesised or otherwise isolated from nature, excluding the processes of isolating natural substances from their original environment.

(2) The provision of subsection (1)(e) shall not apply to products for use in any of the methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body.

Chapter 2 - Right to a Patent and Naming of Inventor

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

Right to a
patent

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

(3) Where an invention is made in the execution of a contract of employment, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

(4) Where an employment contract does not require an employee to exercise any inventive activity but an invention resulted from both the personal contribution of the employee and using the resources, data, means, materials or equipment of the employer the right to the patent, in the absence of an express term to the contrary, shall belong to both the employer and the employee and the patent shall be owned jointly in equal shares.

8. When two or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who filed an application for such invention, or where two or more applications are filed for the same invention, to the applicant who has the earliest filing date or, the earliest priority date.

The first to
file rule

9.(1) The inventor shall be named as such in the application and the patent, unless in a special written declaration addressed to the Registrar, indicates that he or she wishes not to be named.

Naming of
inventor

(2) Any promise or undertaking by the inventor made to any person to the effect that he or she will make such declaration shall be without legal effect.

Chapter - 3 Application, Examination and Granting of Patents

Application

10.(1) The person having the right to a patent for an invention in accordance with section 9 may, upon payment of the prescribed fees, apply to the Registrar for the grant of a patent for that invention.

(2) The application for a patent shall be made in writing in prescribed form and shall contain a request, a description, one or more claims, an abstract, and where required, one or more drawings.

(3) In accordance with subsection (2) —

- (a) the request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention and in a case where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent;
- (b) the description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by an ordinary person having skill in the art, at the filing date or, as the case may be, at the priority date and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention —
 - (i) where an invention involves use of genetic or biological resources and associated traditional knowledge, the

description shall clearly identify the origin of the resource; and

- (ii) the description of an invention may be used to interpret the claims;
- (c) the claim or claims shall define clearly and concisely the matter for which protection is sought and shall be fully supported by the description; and
- (d) the abstract, which must be concise and precise, shall merely serve the purpose of technical information and shall not be taken into account for the purpose of interpreting the scope of protection.

(4) Drawings shall be required when they are deemed necessary for the understanding of the invention.

(5) An applicant may withdraw the patent application at any time before a patent is granted.

(6) An applicant who is not domiciled or who has no established business in Seychelles shall appoint an agent who is domiciled in Seychelles.

(7) An application may be made by an agent and the power of attorney from the applicant shall be submitted prior to granting of the patent.

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

Unity of invention and division of application

(2) The applicant may, at any time prior to the grant of patent, divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the disclosure in the initial application.

(3) Where an application is divided, each divisional application shall be entitled to the filing date or, where applicable, the priority date of the initial application.

(4) The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under subsection (1) shall not be a ground for the invalidation of the patent.

Amendment
of application

12. The applicant may, at any time prior to the grant of patent, amend the application, provided that the amendment shall not go beyond the original claims in the initial application.

Right of
priority

13.(1) The application may contain a declaration claiming a right of priority as provided for in the Paris Convention, of one or more earlier national or regional applications filed by the applicant or his predecessor in title in or of any state party to the Convention or any member state of the World Trade Organisation.

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

(3) The period of claiming right of priority, under subsection (1) is 12 months beginning from the first filing date, excluding the date of filing, of the invention in a foreign country.

(4) When the application is made within the period of priority, the filing in Seychelles of that application before the expiration of the period of priority shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, and such acts cannot give rise to any third-party right or any right of personal possession.

(5) Where the Registrar finds that the requirements under this section and the regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

14.(1) The applicant shall, at the request of the Registrar, furnish the date and number of any application for a patent filed by him or her abroad relating to the same or essentially the same inventions as that claimed with the Registrar.

Information
concerning
corresponding
foreign
application for
patents

(2) The applicant shall, at the request of the Registrar, furnish the following documents relating to the foreign applications referred to in subsection (1) —

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

(3) The applicant shall, at the request of the Registrar, furnish a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in subsection (2).

15.(1) The Registrar shall approve the date of receipt of the application as the filing date, provided that, at the time of receipt, the application contains —

Filing date

- (a) an express or implicit indication that the granting of a patent is sought;

- (b) indications allowing the identity of the applicant to be established; and
- (c) a part which, on the face of it, appears to be a description of an invention.

(2) If the Registrar determines that the application did not, at the time of receipt, fulfil the requirements referred to in subsection (1), he or she shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(3) Where the application refers to drawings, which in fact are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings —

- (a) if the applicant complies with the said invitation, the Registrar shall accord as the filing date the date of receipt of the missing drawings; or
- (b) if the applicant does not comply with the said invitation, the Registrar shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

Examination
of application

16.(1) The Registrar, after approving a filing date, shall examine whether the application complies with the requirements of section 10 (2) and (3) and the Regulations pertaining thereto.

(2) When, upon formal examination, the application is not in conformity with the requirements laid down in this Act and in the Regulation, the Registrar shall invite the applicant to amend the application. If the applicant fails to amend as required within a period of 60 days, the application shall be considered withdrawn.

Chapter 4 - Grant of a Patent, Duration of a Patent and Annual Fees

17.(1) A patent shall be granted, where the Registrar finds that the conditions referred to in section 16 (1) are fulfilled or otherwise he or she shall refuse the application and notify the applicant of that decision.

Grant of a
patent and
changes in a
patent

- (2) When a patent is granted the Registrar shall —
 - (a) publish a reference to the grant of the patent in the *Gazette*;
 - (b) issue the applicant a certificate of the grant of the patent and a copy of the patent;
 - (c) record the patent; and
 - (d) make available copies of the patent to any person on payment of the prescribed fee.

(3) The Registrar shall upon request of the patentee, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred thereby, provided that the change may not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

18.(1) A patent shall confer on its owner the right to prevent third parties from exploiting the patented invention in Seychelles.

Rights
conferred
by patent

(2) For the purposes of this Act, “exploitation of a patented invention” means any of the following acts —

- (a) when the patent has been granted in respect of a product —
 - (i) making, importing, offering for sale, selling and using the product;

- (ii) stocking such product for the purposes of offering for sale, selling or using;
- (b) when the patent has been granted in respect of a process —
 - (i) using the process;
 - (ii) doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process.

(3) The patentee shall, in addition to any other rights, remedies or actions available to him or her, have the right, except under circumstances provided under sections 19, 20 and 26, to institute proceedings in the Court against any person who infringes the patent by performing, without his or her agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

Limitations
of right

19. The rights of the patentee shall not extend to —

- (a) acts done only for experimental purposes relating to a patented invention;
- (b) acts in respect of articles which have been put on the market in and outside of Seychelles, by the patentee or with his or her consent;
- (c) the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the air space, territory or waters of Seychelles;
- (d) acts done privately and on a non-commercial scale or for non-commercial purpose, provided that it does not significantly prejudice the economic interests of the patent owner;

- (e) acts of extemporaneous preparation in a pharmacy of a medicine for an individual in accordance with prescription given by a registered medical or dental practitioner; or
- (f) acts of making, constructing, using, or selling the patented invention solely for uses reasonably related to the development and submission of information required under any law of Seychelles or another country that regulates the manufacture, construction, use or sale of any product, provided that any product produced under such authority shall not be made, used, or sold in the country other than for purposes related to generating such information, and that the product shall only be exported for the purposes of meeting marketing approval requirements.

20.(1) Any person who in good faith, before the filing or, where priority is claimed, 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 Seychelles, has a personal right to continue such use or to use the invention as envisaged in such preparations.

Right of a
prior user

(2) The right of prior users referred to in subsection (1) may be transferred only together with the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

21. A patent shall be granted for a period of 20 years commencing from the filing date of the application for protection.

Duration
of patent

22.(1) In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year, starting 1 year after the filing date of the application for grant of the patent.

Annual
fees

(2) If the annual fee is not paid within the period specified in subsection (1), the annual fee may be paid within 6 months along with the prescribed surcharge.

(3) If an annual fee is not paid in accordance with the provision of subsection (1) or (2), the patent application shall be deemed to have been withdrawn and the patent shall lapse.

Chapter 5 - Non-Voluntary Licences

Grounds
for issuance
of a non-
voluntary
licence

23. A non-voluntary licence for the exploitation of a patented invention may be issued where —

- (a) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires;
- (b) the patented invention is not or insufficiently exploited in Seychelles by the patentee or a person authorised by him or her without legitimate reason, after a period of 4 years from the date of filing of the patent application or 3 years from the date of the grant of the patent, whichever period expires last; or
- (c) the Court has determined that the manner of exploitation by the patentee or his or her licensee is anti-competitive;
- (d) there are reasonable grounds that the way in which the patentee or his or her licensee are exploiting the invention is abusive, anti-competitive or fails to meet reasonable conditions of demand for the protected product in sufficient quality and quantity; or
- (e) an invention protected in a subsequent patent cannot be effectively exploited in Seychelles

without infringing an earlier patent provided that the invention claimed in the second patent involves an important technical advancement of considerable economic significance in relation to the invention claimed in the first patent.

24.(1) An application for grant of non-voluntary licence should be made to the Registrar upon payment of the prescribed fee.

Application
for non-
voluntary
licence

(2) The application shall be accompanied with the evidence that the applicant was unable to obtain a licence on reasonable terms and conditions within a reasonable period and that he or she is capable of working the patented invention in Seychelles.

(3) The requirement for evidence of a prior attempt to obtain a voluntary licence under subsection (1) shall not apply, where the request for non-voluntary licence is based on the grounds of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

(4) Each application for a non-voluntary licence shall be considered by the Registrar on its individual merits.

25.(1) Where the Registrar finds the application to be satisfactory, it shall grant a non-voluntary licence.

Grant of
non-voluntary
licence

(2) The non-voluntary licence shall be registered and published in the *Gazette*.

(3) The grant of the non-voluntary licence shall not exclude —

- (a) the exploitation of the patented invention or conclusion of licence contracts by the patentee; or

(b) the grant of other non-voluntary licences.

(4) Where a non-voluntary license is granted based on an application under section 23(e), the owner of the earlier patent or his licensee shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the subsequent patent.

(5) The use authorised in respect of the earlier patent shall be non-assignable, except with the assignment of the later patent.

(6) The scope and duration of the non-voluntary licence shall be limited to the purpose for which it was authorised.

Rights and obligations of beneficiary of non-voluntary licence

26.(1) Any person who is granted a non-voluntary licence shall have the right to exploit the patented invention in Seychelles predominantly to meet the needs of the domestic market according to the terms set down in the decision granting the licence.

(2) The person who is granted a non-voluntary licence may only transfer the right under subsection (1) together with the enterprise or part of the enterprise within which the patented invention is exploited.

(3) A person who is granted a non-voluntary licence for the exploitation of a patented invention shall have the duty to —

- (a) commence exploitation of the patented invention in Seychelles within the period fixed in the decision granting the non-voluntary licence and, thereafter, shall exploit the patented invention sufficiently in Seychelles in accordance with the terms and conditions set by the Registrar; and
- (b) pay the patentee a reasonable exploitation fee, the amount of which shall be fixed by

agreement of all parties, unless otherwise provided for under this Act or an international agreement.

(4) Where the parties cannot agree on the amount of the fee under subsection (3) (b), the amount shall be fixed by the Registrar. The decision of the Registrar with regard to the remuneration may be subject to appeal before the Court.

27. The Registrar shall terminate the non-voluntary licence, at the patentee's request, where —

Termination of non-voluntary licence

- (a) the circumstances for granting the non-voluntary licence have changed; or
- (b) the beneficiary of the non-voluntary licence has failed to respect the terms and conditions set by the Registrar when granting the non-voluntary licence.

Chapter 6 - Termination, Surrender and Invalidation of a Patent

28. A patent shall terminate, if —

Termination of a patent

- (a) the patentee surrenders it by a written declaration to the Registrar; or
- (b) the annual fee is not paid when due.

29. Surrender of a patent —

Surrender of a patent

- (a) may be limited to one or more claims of the patent;
- (b) shall be immediately registered and published by the Registrar; and
- (c) which has been subjected to a licence shall only take effect upon submission of a declaration by which the registered licensee consents to the surrender.

Invalidation
of a patent

30.(1) Any interested person may request the Court to invalidate a patent.

(2) The Court shall invalidate the patent in whole or in part if the person requesting the invalidation proves that the —

(a) subject matter of the patent is —

- (i) not an invention within the meaning of section 2; or
- (ii) does not meet the requirements of patentability; or
- (iii) is excluded from patent protection according to sections 6 and 7;

(b) description does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art; or

(c) owner of the patent is not the inventor or the employer of the inventor or his or her successor in title.

(3) Any invalidated patent, claim or part of a claim, shall be regarded as null and void from the date of grant of the patent.

(4) The final decision of the Court shall be notified to the Registrar, who shall record it and publish a reference thereto in the *Gazette*.

Transfer of
patent

31. In the event a dispute over the rights relating to the patent arises, the interested person who won the case may apply the Court to transfer the title to him or her instead of invalidating it under section 30.

PART III - UTILITY MODELS CERTIFICATES

Protection
of minor
inventions

32.(1) A minor invention that possesses novelty and industrial applicability shall give rise to a right to protection.

(2) The right shall be evidenced by a utility model certificate issued by the Registrar.

33.(1) A minor invention shall not be considered new if, at the time of filing of the application, it has already been described in printed publications, made available to the public or has already been publicly used in Seychelles.

Non-
existence of
novelty
licence

(2) Any description or use, within 6 months prior to the filing of the application, shall not destroy novelty if it is based on the work of the applicant.

34. The following shall not be protected by a utility model certificate —

Non-
protectable
subject
matters

- (a) changes in the shape, proportions or material of a patented object or of one that forms part of the public domain, except where such a change alters the qualities or functions or the object thereby producing an improvement in its use or the effects of its intended functions;
- (b) the mere replacement of elements in a known combination by other known elements having an equivalent function, which does not thereby produce an improvement in its use or the effect of its intended functions; or
- (c) a minor invention that is contrary to public order or morality.

35. The Registrar shall, after approving a filing date, undertake a formal examination of the application and take a decision to grant or refuse a utility model certificate thereon.

Examination

36.(1) Where the Registrar decides to grant a utility model certificate he or she shall issue a utility model certificate to the successful applicant.

Issuance of
utility model
certificate

(2) The grant of the certificate shall confer the exclusive right to exploit the minor invention and prevent third

parties from exploiting the minor invention without the authorisation of the rightsholder.

Conversion of patent applications to applications for utility model certificates and vice-versa

37.(1) At any time prior to the grant or refusal of a patent an applicant for a patent may, upon payment of the prescribed fee, convert his or her application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(2) At any time prior to the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee convert his or her application into a patent application, which shall be approved as the filing date of the initial application.

(3) An application may not be converted more than once under subsections (1) and (2).

Duration of utility model certificate

38.(1) A utility model certificate is granted for a period of 10 years from the filing date of the corresponding application.

(2) Application for renewal of the certificate shall be filed, with the Registrar within 90 days prior to the expiration of the period of protection upon payment of the prescribed fees.

Application of rules on patents

39. The relevant provisions of Part II of this Act shall apply *mutatis mutandis* to utility model certificates.

PART IV - INDUSTRIAL DESIGNS

Protection of industrial designs

40.(1) An industrial design shall be protected under this Act if it is independently created and new.

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

(3) Notwithstanding the provisions of subsection (2), the disclosure to the public of the industrial design shall not be

taken into consideration if it occurred within 6 months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his or her predecessor in title or an abuse committed by a third party in relation to the applicant or his or her predecessor in title.

(4) An industrial design shall not be considered new solely by reason of the fact that it differs from an earlier industrial design in minor respects or that it concerns a type of product different from a product embodying an earlier industrial design known in and outside of Seychelles.

41. An industrial design shall not be protected under this Act, where—

Unprotectable industrial design

(a) it is contrary to public order or morality; or

(b) the design is functional and serves solely to obtain a technical result.

42.(1) The right to the industrial design shall belong to the person who has created it or to his or her successor in title.

Right to industrial design

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

(3) Where the industrial design has been created by an employee in the execution of a contract of employment, the right to the industrial design shall belong to the employer, unless the contract stipulates otherwise.

(4) Where an employment contract does not require an employee to exercise any creative activity but an industrial design resulted from both the personal contribution of the employee and using the resources, data, means, materials or equipment of the employer the right to the industrial design, in

the absence of an express term to the contrary, shall belong to both the employer and the employee and the industrial design shall be owned jointly in equal shares.

(5) When two or more persons have created the same industrial design independently, the right to the industrial design shall belong to the person who first filed an application for registration or who has the earliest priority date.

Naming of
creator

43.(1) The creator shall be named as such in the application and the industrial design registration certificate, unless in a special written declaration addressed to the Registrar, the creator indicates that he or she wishes not to be named.

(2) Any promise or undertaking by the creator made to any person to the effect that he or she will make such declaration shall have no legal effect.

Application

44.(1) An application for registration of an industrial design shall be made in the prescribed form and filed with the Registrar upon payment of the prescribed application fee.

(2) The application for the registration of an industrial design shall contain a request to register, information identifying the applicant, drawings, photographs or other adequate graphic representation of the product embodying the industrial design and an indication of the kind of products for which the industrial design is to be used.

(3) The application —

- (a) may be accompanied by a specimen of the article embodying the industrial design;
- (b) shall contain any other element or indication prescribed in the Regulations; and
- (c) shall be accompanied by a statement

justifying the applicant's right to the registration of the industrial design, where the applicant is not the creator.

(4) The application may relate to two or more designs incorporated in products belonging to the same class in the international classification.

(5) (a) The applicant may divide the application (hereinafter, "the initial application") at any time during pendency in order to separate into two or more applications (hereinafter, "divisional applications") the designs contained in the initial application.

(b) A division shall not be accepted if it involves a change in or addition to any of the designs contained in the initial application.

(c) Each divisional application shall retain the filing date and the right of priority of the initial application.

(d) After the division, each divisional application shall be independent.

(e) If publication of the application occurred before the division, the publication shall have effect for each divisional application.

(6) The applicant may withdraw the industrial design registration application at any time prior to the registration of the industrial design.

(7) An applicant may claim a right of priority in his application, in which case section 13 shall apply *mutatis mutandis*, except that the period specified in section 13(3) shall be construed as 6 months.

(8) An applicant who is not domiciled or who has no established business in Seychelles shall appoint an agent who is domiciled in Seychelles.

(9) An application may be made by an agent and the power of attorney from the applicant shall be submitted prior to issuing the industrial design certificate.

Examination,
registration
and
publication of
industrial
designs

45.(1) The Registrar shall approve the date of receipt of the application as the filing date, provided that, at the time of receipt, the application fee is paid and the application contains the name of the applicant and a graphic representation of the article embodying the industrial design.

(2) Where the application does not meet the requirements of subsection (1), the Registrar shall invite the applicant to remedy the irregularity. In such a case the provision of section 15 (2) shall apply mutatis mutandis.

(3) The Registrar shall, after according a filing date, examine whether the application complies with the requirements of sections 2 and 44 of this Act and the regulations pertaining thereto.

(4) Where the Registrar finds that the requirements referred to in subsection (1) have not been satisfied, it shall invite the applicant to make the required corrections; if the applicant does not comply with the invitation, the application shall be considered withdrawn;

(5) When the Registrar finds that the conditions referred to in subsection (3) are fulfilled, it shall register the industrial design, publish a reference to the registration in the *Gazette* and issue a certificate of registration of an industrial design upon payment of the prescribed fee, otherwise, he or she shall reject the application.

Rights
conferred by
registration

46.(1) The registration of industrial design confers an exclusive right on the owner to prevent third parties not having the owner's consent from making, selling, stocking for sale or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

(2) The registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute proceedings in the Court against any person who infringes his or her right by performing, without his or her agreement, any of the acts referred to in subsection (1) or who performs acts which make it likely that infringement will occur.

47. The holder of an industrial design rights may not prohibit third parties from —

Limitation of
rights

- (a) acts performed for non-commercial and experimental purposes; or
- (b) acts in respect of a product embodying the protected industrial design after the product has been put on the market by the owner of the industrial design or with his or her consent anywhere in the world.

48.(1) The registration and protection of an industrial design shall be valid for a period of 5 years from the filing date of the application for registration which may be extended for a further two consecutive periods of 5 years on payment of the prescribed fee.

Duration of
industrial
design
protection

(2) If the renewal fee is not paid within the period specified in subsection (1), such fees may be paid within a period of 6 months on payment of the prescribed surcharge.

(3) Application for renewal of protection of an industrial design shall be filed with the Registrar within 90 days prior to the expiration of the period of protection upon payment of the prescribed fees.

49. Section 29 shall apply mutatis mutandis to surrender of industrial design registration certificates.

Surrender of
industrial design
registration
certificate

Invalidation

50.(1) Any interested person may request the Court to invalidate the registration of an industrial design.

(2) The Court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of sections 2, 40, 41 and 42 are not fulfilled or if the registered owner of the industrial design is not the creator or his or her successor in title.

(3) Where the registered owner is found not to be the creator or his or her successor in title, the creator or his or her successor in title may request the Court to order the transfer of the title to him or her instead of invalidating it.

(4) When the grounds for invalidation are established with respect to only one or some of the designs included in the registration, invalidation shall be decided accordingly.

(5) Any invalidated industrial design shall be regarded as null and void from the date of its registration.

(6) The final decision of the Court shall be notified to the Registrar who shall record it and publish a reference thereto as soon as possible.

Non-voluntary licences

51. The provisions of sections 23 to 27 shall apply *mutatis mutandis* to industrial designs.

Licences

52.(1) The Registrar shall record any licence concerning a registration of an industrial design or the application for the registration of an industrial design and publish in the Gazette a reference to the recording of the license.

(2) The request to record a licence shall conform to the requirements prescribed in the Regulations.

(3) A license concerning a registration or an application shall have no effect against third parties until it has been recorded.

Change of ownership

53.(1) The Registrar shall record and publish in the Gazette any change in the ownership of the registration of an industrial design or the application for the registration of an industrial design at the request of either the holder or the new owner of the registration or application.

(2) The request to record a change in ownership shall conform to the requirements prescribed in the Regulations.

(3) A change in the ownership of a registration or an application shall have no effect against third parties until it has been recorded.

PART V - LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Chapter 1 - Requirements for Protection

Subject matter of protection

54.(1) The lay out designs of integrated circuits may be protected under this Act only when it is original within the meaning of section 55.

(2) A registration of the layout-design may only be requested if it has not yet been commercially exploited, or has been commercially exploited for not more than 2 years, anywhere in the world.

Originality

55.(1) A layout-design shall be considered original if it is the result of the intellectual effort of its creator and if, at the time of its creation, it is not known among the creators of layout-designs and manufacturers of integrated circuits.

(2) A layout-design, which consists of a combination of elements and interconnections that are common, shall be protected only if the combination, taken as a whole, is original within the meaning of subsection (1).

Right to protection

56.(1) The right to layout-design protection shall belong to the creator of the layout-design.

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

(3) Where the layout-design has been made or created in the performance of a contract of employment or in the execution of a work, the right to protection shall belong, unless otherwise stated in the contract, to the employer or the person who commissioned the work.

Chapter 2 - Application, Examination, Registration and Scope of Protection

Application
requirements

57.(1) Applications for the registration of layout-designs shall be in writing and shall be filed with the Registrar and separate applications shall be filed for each layout-design.

(2) The application under subsection (1) shall —

- (a) contain a request for registration of the layout-design and a brief and accurate description of the layout-design;
- (b) indicate the name, address, nationality and, if different from the address, the habitual residence of the applicant;
- (c) be accompanied by the power of attorney granted to the agent by the applicant, where the application is made through an agent.
- (d) specify the date of the first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not yet commenced; and
- (e) provide information establishing the right to protection under section 56.

(3) The application shall be accompanied by a copy or

drawing of the layout-design and where the integrated circuit has been used commercially, by a sample of the integrated circuit, and information defining the electronic function that the integrated circuit is designed to perform provided that the applicant may exclude from the copy or the drawing the parts which relate to the manner in which the integrated-circuit is manufactured, if the parts included are sufficient to allow the identification of the layout-design.

(4) Where the application does not duly comply with the requirements of subsections (2) and (3), the Registrar shall notify the applicant of the defects and invite him or her to correct them within 2 months —

- (a) if the defects are corrected within the time limit, the Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contained an express or implicit indication that the registration of a layout-design is requested and indications allowing the identity of the applicant to be established and was accompanied by a copy or drawing of the layout-design;
- (b) where the applicant fails to submit drawings of a layout-design with the original application, but corrects the application for the registration of the layout-design within the period specified the date of receipt of the corrections shall be deemed to be the date of filing of the application; or
- (c) where the applicant fails, after communication by the Registrar, to correct the application within the period specified, the application shall be deemed not to have been filed;

(5) Each application for protection of a layout-design shall be subject to the payment of the prescribed fee.

(6) If the fee is not paid, the Registrar shall notify the applicant that the application shall be deemed not to have been filed unless payment is made within 2 months from the date of the notification, and if the application fee is not paid within such period, the application shall be deemed not to have been filed.

Registration
and
publication

58.(1) Where the application complies with the requirements of section 57, the Registrar shall register the layout-design in the Register of Layout-Designs without examination of the originality of the layout-design, the right of the applicant to protection or the accuracy of the facts detailed in the application.

(2) The Register of Layout-Designs shall contain the number, title, filing date and, where indicated in the application under section 57(2) (d), the date of the first commercial exploitation, anywhere in the world, of the layout-design as well as the name and address of the rightsholder and other prescribed particulars.

(3) Any person may inspect the Register of Layout-Designs and obtain extracts therefrom, subject to the payment of the prescribed fee.

(4) The registration of a layout-design shall be published in the *Gazette*.

Scope of
protection
and rights
granted

59.(1) The protection afforded to a layout-design under this Act shall not be dependent on the integrated circuit which incorporates such layout-design being incorporated in an article.

(2) The rightsholder shall have the exclusive right to do or authorise others to do any of the following —

(a) reproducing, whether by incorporation in an

integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 55;

(b) importing, selling or otherwise distributing for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.

(3) The rightsholder shall, in addition to any other rights, remedies or actions available to him or her, have the right, except under sections 60 and 62, to institute proceedings in the Court against any person who infringes his or her right, by performing, without any agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

60.(1) The scope of protection and the rights granted under section 59 shall not extend to —

Limitation of
rights

(a) the reproduction of the protected layout-design for the purpose of evaluation, analysis, research or non profit teaching or education;

(b) the incorporation in an integrated circuit of a layout-design, created on the basis of such analysis, evaluation or research referred to in subsection (a), if such layout-design is itself original within the meaning of section 55, or for the performance of any of the acts referred to in section 59(2)(b) in respect of such layout-design;

- (c) the performance of any of the acts referred to in section 59(2)(b), where the act is performed in respect of a protected layout-design, or in respect of an integrated circuit in which such layout-design is incorporated, and such layout-design or integrated circuit has been put on the market by, or with the consent of, the rightsholder; or
- (d) the performance of any act referred to in section 59(2)(b) 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 such an act unknowingly performs or orders such an act and has no reasonable grounds of knowing at the time of acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design.

(2) Where the person performing or ordering any act under this subsection, is notified that such layout-design is an unlawful reproduction, then such person may, perform or order any act only with respect to the stock in hand or ordered before he or she was so notified and shall be liable to pay to the rightsholder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such layout-design.

Commencement
and duration of
protection

61.(1) The protection granted to 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 the rightsholder or any other person with his or her consent, provided an application for protection is filed by the

rightsholder with the Registrar within the period referred to in section 54(2); or

- (b) on the filing date accorded to the application for the registration of the layout-design filed by the rightsholder, if the layout-design has not been previously exploited commercially anywhere in the world.

(2) The protection granted to a layout-design under this Act shall terminate at the end of the tenth calendar year from the date of commencement of such protection.

62.(1) Subject to subsection (2), the provisions of sections 23 to 27 shall, *mutatis mutandis*, apply to registered layout-designs of integrated circuits.

Non-
voluntary
licences

(2) Non-voluntary licences of registered layout-designs shall be granted only for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

63.(1) Any interested person may request that the registration of a layout-design be invalidated on the grounds that —

Invalidation

- (a) the layout-design is not protectable under sections 2, 54 and 55;
- (b) the rightsholder is not entitled to protection under section 56; or
- (c) where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design, the said application was not filed within the time limit referred to in section 54(2).

(2) Where the grounds for invalidation are

- (c) the performance of any of the acts referred to in section 59(2)(b), where the act is performed in respect of a protected layout-design, or in respect of an integrated circuit in which such layout-design is incorporated, and such layout-design or integrated circuit has been put on the market by, or with the consent of, the rightsholder; or
- (d) the performance of any act referred to in section 59(2)(b) 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 such an act unknowingly performs or orders such an act and has no reasonable grounds of knowing at the time of acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design.

(2) Where the person performing or ordering any act under this subsection, is notified that such layout-design is an unlawful reproduction, then such person may, perform or order any act only with respect to the stock in hand or ordered before he or she was so notified and shall be liable to pay to the rightsholder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such layout-design.

61.(1) The protection granted to 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 the rightsholder or any other person with his or her consent, provided an application for protection is filed by the

Commencement
and duration of
protection

rightsholder with the Registrar within the period referred to in section 54(2); or

- (b) on the filing date accorded to the application for the registration of the layout-design filed by the rightsholder, if the layout-design has not been previously exploited commercially anywhere in the world.

(2) The protection granted to a layout-design under this Act shall terminate at the end of the tenth calendar year from the date of commencement of such protection.

62.(1) Subject to subsection (2), the provisions of sections 23 to 27 shall, *mutatis mutandis*, apply to registered layout-designs of integrated circuits.

Non-
voluntary
licences

(2) Non-voluntary licences of registered layout-designs shall be granted only for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

63.(1) Any interested person may request that the registration of a layout-design be invalidated on the grounds that —

Invalidation

- (a) the layout-design is not protectable under sections 2, 54 and 55;
- (b) the rightsholder is not entitled to protection under section 56; or
- (c) where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design, the said application was not filed within the time limit referred to in section 54(2).

(2) Where the grounds for invalidation are

established with respect only to a part of the layout-design, only the corresponding part of the registration shall be invalidated.

(3) A request for invalidation of the registration of the layout-design shall be filed before the Court accompanied with the grounds on which it is based.

(4) In the event of a dispute over the rights to the layout-design registration, the interested person may apply to the Court to transfer the title to him or her instead of invalidating it.

(5) Any invalidated layout-design registration, or part thereof, shall be regarded as null and void from the date of the commencement of protection.

(6) The Court shall notify the Registrar of its final decision and the Registrar shall record and publish this in the *Gazette*, in accordance with the Regulations.

PART VI - MARK, CERTIFICATION MARK, COLLECTIVE MARK, TRADE NAME AND GEOGRAPHICAL INDICATIONS

Chapter 1-Acquisition of exclusive rights in a Trade Mark and its Registration

Acquisition
of rights

64. The exclusive rights in a mark shall be acquired by registration in accordance with the provisions this Act.

Mark
inadmissible
for
registration

65.(1) A mark shall not be admissible for registration if—

- (a) is incapable of distinguishing the goods or services of one person from those of other persons;
- (b) is contrary to public order or morality, it being understood that the nature of the goods or

services in relation to which a mark is used shall not be an obstacle to registration;

- (c) is likely to mislead the public or business circles, in particular as regards to the geographical origin of the goods or services, or their nature or characteristics;
- (d) consists exclusively of signs or indications which, in current language or economic and business activities, have become the customary designation for the goods or services for which the registration of the mark have been requested;
- (e) it is identical with or similar to an earlier mark registered in the name of a different person, the goods or services in respect of which the registration of the sign has been applied for are identical with or similar to the goods or services for which the earlier mark has been registered, and there exists a likelihood of confusion on the part of the public because of its identity with, or similarity to, the earlier mark and the identity or similarity of the goods and services, and where an identical mark is used for identical goods or services, a likelihood of confusion shall be presumed;
- (f) (i) it constitutes a reproduction, an imitation, or a translation of an earlier mark that is well-known in Seychelles and the goods or services in respect of which the registration of the sign is applied for are identical with or similar to the goods or services for which the earlier mark is well-known, provided

that there exists a likelihood of confusion on the part of the public;

- (ii) it constitutes a reproduction, an imitation, or a translation of an earlier mark that is well-known in Seychelles and the goods or services in respect of which the registration of the mark is applied for are dissimilar to the goods or services for which the earlier well-known mark is registered provided that the use of the mark would indicate a connection between the goods or services for which it is used and the owner of the earlier registered well-known mark and the interests of the owner of the earlier registered well-known mark are likely to be damaged by such use;

(g) it consists of or contains as an element —

- (i) a reproduction of the flag adopted by a State,
- (ii) a reproduction of the armorial bearings, official signs and hallmarks indicating control and warranty adopted by a State,
- (iii) a reproduction of the armorial bearings, flags, or the name, abbreviation of an international intergovernmental organisation, or
- (iv) any imitation from a heraldic point of view of the signs enumerated in subsection (1)(g)(i) to (iii):

Provided that the sign reproduced or imitated

enjoys protection pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property, notwithstanding, the mark may be registered where the competent authority of the State or of the international intergovernmental organisation concerned has granted an authorisation;

- (h) consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production.

(2) For the purposes of subsection (1) (f), in determining whether a mark is well known, consideration shall be given to the degree of recognition of the mark in the relevant sector of the public in Seychelles, including but not limited to the degree of recognition arising from the advertising of the mark in Seychelles.

(3) Notwithstanding the provisions of subsection (1)(d), the Registrar or the Court may decide that a mark has acquired secondary meaning or distinctiveness through continued use, and in such case, the mark shall be registered.

66.(1) The prior user of a mark whose name does not appear in the Register or who does not have an application pending under section 65(1)(h), may oppose an application for registration of a similar or identical mark by another person for similar or identical goods, provided he or she —

- (a) proves that he or she has used that mark in good faith for at least 6 months prior to the filing date or, as the case may be, the date of priority;
- (b) proves that he or she has acquired clientele and that this clientele attaches a certain reputation to the mark; and

Right of prior user

- (c) he or she files an application for registration of his or her own mark before lodging a statement of opposition with the Registrar.

(2) The owner of an unregistered mark that is well-known in Seychelles has the exclusive right to prevent any unauthorised person from using in the course of trade any sign that is identical with or similar to the unregistered well-known mark for goods and services that are identical with or similar to the goods and services for which the unregistered well-known mark is used provided that such use is likely to confuse the public.

Chapter 2 - Procedures for Registration of Mark

Application
for
registration

67.(1) The application for registration of a mark shall be filed with Registrar and shall —

- (a) contain a request, a reproduction of the mark and a list of goods or services for which registration of the mark is requested, listed in the order of the relevant classes of international classification;
- (b) be accompanied by the payment of the prescribed application fee.

(2) When the mark consists of a sign that is not visually perceptible, the application shall contain a graphical reproduction of the mark. Such reproduction shall be specific and may not consist merely of a general description of the sign.

(3) Where the applicant wishes to claim colour as a distinctive feature of the mark, he or she shall submit a statement to that effect as well as the name or names of the colour or colours claimed and an indication, in respect of each colour, of the principal parts of the mark which are in that colour.

(4) Where the applicant wishes to apply for a three-dimensional mark, he or she shall submit a statement to that effect.

(5) An applicant who is a foreigner shall appoint an agent who is domiciled in Seychelles.

(6) An application may be made by an agent and the power of attorney from the applicant shall be submitted prior to issuing the industrial design certificate.

(7) The applicant may at any time withdraw the application or reduce the list of goods or services covered in the application.

68.(1) The application may contain a declaration claiming a right of priority as provided for in the Paris Convention or a treaty to which the Republic of Seychelles is a party, of one or more earlier national or regional applications filed by the applicant or his or her predecessor in title in any state party to the said Convention or in a party to any other treaty to which the Republic of Seychelles is a party.

Right of
priority

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

(3) The period of claiming right of priority, under subsection (1) is 6 months beginning from the first filing date of the mark in a foreign country.

(4) When the application is made within the period of priority, the filing in Seychelles of that application before the expiration of the period of priority shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the mark, and such acts cannot give rise to any third-party right or any right of personal possession of the mark.

(5) Where the Registrar finds that the requirements under this section and the regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

Exhibition
priority

69.(1) An applicant who has displayed goods or services under the mark applied for at an official or officially recognised international exhibition has a right of exhibition priority during a period of 6 months from the date of the first display of the goods or services under the mark applied for.

(2) In order to claim the right of exhibition priority under subsection (1) an applicant must declare in the application for the registration of a mark that he or she wishes to take advantage of the protection arising from the display of goods or services under the mark applied for.

(3) Where the application contains a declaration under subsection (2), the applicant shall, within 3 months of the filing of the application, furnish evidence of the display of goods or services under the mark applied for.

(4) Claiming exhibition priority shall have the effect that the date of the first display of the goods or services under the mark applied for shall count as the filing date of the application for registration of the mark.

(5) An exhibition priority granted does not extend the period of priority laid down in section 69(3).

Filing date

70.(1) The Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains —

- (a) an express or implicit indication that registration of the mark is requested;
- (b) information allowing the applicant's identity to be established;

(c) indications sufficient to contact the applicant or his or her representative if any;

(d) a reproduction of the mark which is sufficiently clear so that the Registrar is able to establish the object of the application;

(e) the list of goods or services for which registration of the mark is requested.

(2) If the Registrar finds that the application did not, at the time of receipt, fulfil the requirements referred to in subsection (1), it shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(3) Notwithstanding to the provisions of subsections (1) and (2), no filing date shall be accorded before the required fee is paid.

71.(1) The Registrar shall examine and determine whether the application meets the requirements of sections 2 and 66 and related provisions of the regulations.

Examination

(2) Where the Registrar finds that the requirements referred to in subsection (1) have not been satisfied, it shall invite the applicant to make the required corrections; if the applicant does not comply with the invitation within 60 days, the application shall be considered withdrawn.

(3) When the Registrar finds that the application is acceptable after its examination, it shall publish in the *Gazette* a notice inviting opposition against the registration of the mark at the cost of the applicant.

(4) Where the Registrar finds that the conditions referred to in subsection (1) are not fulfilled, it shall refuse the application and notify its decision to the applicant in writing explaining the reasons for its decision.

Opposition

72.(1) Any interested person may, within the period of 60 days and in the manner prescribed by the Regulations and upon payment of the prescribed fee, file an objection, in writing and stating the grounds against the registration of the mark with the Registrar on grounds that one or more of the requirements of sections 2 and 66, and the regulations pertaining thereto are not fulfilled.

(2) The Registrar shall immediately send a copy of the objection to the applicant and the applicant shall furnish to the Registrar a counter-statement stating the grounds on which he or she relies for his or her application within 1 month after receipt of the objection or such further period not exceeding 3 months, as the Registrar may allow and if the applicant does not do so, the application shall be deemed to have been withdrawn.

(3) If the applicant sends a counter-statement, the Registrar shall furnish a copy of the counter-statement of the applicant to the person who made objection and examining the merits of the case, which may include hearing either party, should they wish to be heard, it shall decide to whether or not to proceed with the registration of the mark.

(4) The Registrar shall furnish copies of its decision under subsection (3) to the applicant and the person who filed the objection within the period prescribed by the Regulations.

Pending cases

73.(1) After an application is published and until the registration of the mark, the applicant shall enjoy the same privileges and rights as he or she would have, if the mark had been registered, provided that it shall be valid defence to an action brought in respect of an act done after the application was published, if the defendant establishes that the mark could not have been validly registered at the time the act was done.

(2) Any infringement proceedings may not be initiated before the date on which the mark is in fact registered

74.(1) The Registrar shall register a mark and issue to the applicant a certificate of registration upon payment of the fee prescribed by the regulations where it finds that—

Registration of the marks and issuance of certificate

- (a) the conditions referred to in this Act and the Regulations are fulfilled; and
- (b) the request for registration of the mark has not been opposed; or it has been opposed and the opposition has been rejected.

(2) Where the Registrar finds that the conditions referred to in subsection (1) are fulfilled, it shall register the mark, publish in the *Gazette* a reference to the registration and issue to the applicant a certificate of registration.

Chapter 3 - Rights conferred by Registration, Duration and Renewal of Registration

75.(1) The owner of a registered mark has the exclusive right to prevent any unauthorised person from using in the course of trade any sign that is identical with or similar to the registered mark for goods or services that are identical with or similar to the goods and services in respect of which the mark is registered where such use would result in a likelihood of confusion.

Rights conferred by registration

(2) In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(3) The owner of a registered well-known mark has the exclusive right to prevent any unauthorised third party from using in the course of trade any sign that is identical with or similar to the registered well-known mark for goods or services that are dissimilar to the goods or services for which the registered well-known mark is used where such use would indicate a connection between the goods and services for which it is used and the owner of the registered well-known mark, and where the interests of the owner of the registered well-known mark are likely to be damaged by such use.

(4) The registered owner of a mark shall, in addition to any other rights, remedies or actions available to him or her, have the right to institute proceedings in the Court against any person who infringes the trade mark by using, without his or her agreement, the mark as aforesaid or who performs acts which make it likely that infringement will occur.

Limitation of
rights

76.(1) The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in or outside of Seychelles by the registered owner or any other person with his or her consent.

(2) The registration of a mark shall not confer upon its owner the right to preclude third parties from using the registered mark for information purposes, such as sales promotion or comparative advertising, provided that such use is not of such a nature as to deceive the public or does not constitute unfair competition.

(3) The registration of a mark shall not confer upon its owner the right to preclude third parties from bona fide use of their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, time of production or supply of their goods or services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

Duration of
registration

77. Without prejudice to the provisions of sections 79, 80 and 81 of this Act, the registration of a mark shall be for a period of 10 years from the filing date of the application for registration.

78.(1) The registration of a mark may, upon request of the owner and payment of renewal fee prescribed by the Regulations, be renewed for consecutive periods of 7 years

(2) At the time of the renewal, no change may be made in the mark or in the list of goods or services in respect of which the mark is registered, except that certain goods or services may be eliminated from the list.

(3) The renewal of the registration of a mark shall be made within 6 months before the date on which the renewal is due and shall end at the earliest 6 months after that date.

(4) In the event that the request for renewal is made and the renewal fee is paid after the date on which the renewal is due, a penalty prescribed by the Regulations shall be paid.

(5) The Registrar shall record renewal of the registration and notify same in the *Gazette*.

(6) A mark not renewed within the period specified in subsection (3) shall be considered as cancelled.

(7) The Registrar shall remove the mark from the register when it is not renewed in accordance with the provisions of this section.

(8) Where a trade mark has been removed from the Register for non-payment of the fee for renewal it shall, nevertheless, for the purpose of any application for the registration of a trade mark during 1 year next after the date of the removal, be deemed to be a trade mark that is already on the Register:

(9) Subsection (8) shall have no effect where the Court or the Registrar is satisfied —

- (a) that there has been no *bona fide* trade use of the trade mark that has been removed during the 2 years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use if the trade mark

that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.

Chapter 4 - Renunciation, Removal and Invalidation of a Registered Mark

Renunciation
of right

79.(1) The owner of a registered mark, who wishes to renounce the registration either wholly or in respect of part of the goods or services, for which the mark is registered, may submit his or her application to the Registrar for the renunciation of the registration of the mark.

(2) When a registered mark has been subject to a licence contract, the request for the renunciation of the right shall be accepted only upon submission of a written declaration by which the licensee consents to the renunciation.

(3) The Registrar, upon receiving the application submitted pursuant to subsection (1), shall cause the publication of such renunciation in the *Gazette*.

(4) The renunciation of registration shall be effective only after the decision for cancellation has been entered into the register.

Removal on
grounds of
non use

80.(1) Any interested person may apply to the Court to order the removal of a mark from the register in respect of any of the goods or services for which it is registered on the ground that the mark has not been used by the registered owner or a licensee for an uninterrupted period of 3 years or more.

(2) A mark shall not be removed if it is proved that special circumstances prevented the use of the mark and that there was no intention not to use or to abandon it in respect of those goods or services.

(3) Any removal on the grounds of non-use of a registration of a mark shall be deemed to have been effective as

of the date of registration, and it shall be recorded and a reference thereto published in the *Gazette*.

81.(1) Any interested person may request the Court to invalidate the registration of a mark.

Invalidation
of registration

(2) The Court shall invalidate the registration, if the person requesting the invalidation proves that any of the requirements of sections 2, 65 and 66 is not fulfilled.

(3) Any invalidation of a registration of a mark shall be deemed to have been effective as of the date of registration, and it shall be recorded and a reference thereto published in the *Gazette*.

Chapter 5 - Collective Marks, Certification Marks and Trade Names

82.(1) Subject to subsections (2) to (4), the provisions of Chapters 1 to 4 of this Part, shall apply to collective marks as they apply to marks.

Collective
marks

(2) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the terms and conditions governing the use of the collective mark.

(3) The registered owner of a collective mark shall notify the Registrar of any changes made in respect of the terms and conditions referred to in subsection (2).

(4) In addition to the grounds provided in section 81(1), the Court shall invalidate the registration of a collective mark if the person requesting the removal proves that only the registered owner uses the mark, or that he or she uses or permits its use in contravention of the terms and conditions referred to in subsection (2) or that he or she uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

Certification
mark

83.(1) Subject to subsections (2), (3), (4) and (5) the provisions of Chapters 1 to 4 of this Part, shall apply to certification marks as they apply to marks.

(2) The application for the registration of a certification mark must designate the mark as a certification mark and shall be accompanied by the terms and conditions governing its use.

(3) The registered owner of a certification mark shall notify the Registrar of any changes made in respect of the terms and conditions referred to in subsection (2).

(4) The owner of a certification mark may not use the mark to identify or certify his or her own goods or services.

(5) Any person who has proved that he or she satisfies the technical standards and other requirements of the terms and conditions referred to in subsection (2) may not be refused the right to use the certification mark in accordance with the terms and conditions referred to in subsection (2).

(6) In addition to the grounds provided in section 80(1), the Court shall, upon request of any interested person, remove the registration of a certification mark if the person requesting the removal proves that the owner of the certification mark uses it, or allows its use in contravention of the terms and conditions referred to in subsection (2) or that he or she allows its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

Trade name

84.(1) A name or designation may not be used as a trade name if, by its nature or through the use that can be made of it, which is contrary to public order or morality and in particular, is likely to deceive business circles or the public as to the nature of the enterprise designated by the name.

(2) Notwithstanding any written law providing for the obligation to register trade names, such trade names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(3) Any subsequent use of the trade name by a third party, whether as a trade name or a mark, certification mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

Chapter 6 - Special Provisions relating to Licences and Assignments of Marks

85.(1) The owner of a registered mark shall have the right to assign it without the transfer of the business to which the mark belongs.

Assignment
of a mark

(2) The provision of subsection (1) shall not apply to certification marks otherwise than with the consent of the Court.

86.(1) Any licensing contract relating to a registered mark or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used, where such control is appropriate or necessary.

Licensing of
marks and
collective
marks

(2) If the licensing contract does not provide for such quality control or if such quality control is not effectively exercised, the licensing contract shall not be valid, and the Court may declare the mark as abandoned by its owner.

(3) A registered collective mark or an application for the registration of a collective mark may not be the subject of a licensing contract.

Chapter 7 - Geographical Indications

87.(1) In the case of homonyms of geographical indications for wines, protection shall be granted for each indication, subject to the provisions of section 94.

Homonyms of
geographical
indications
for wines

(2) Where the parallel use of these indications is authorised, the Registrar shall determine the procedures under which the homonymous indications in question shall be differentiated from each other, taking into account the need to provide equitable treatment for the producers concerned and to ensure that consumers are not misled.

Geographical
indications
excluded
from
protection

88. The following geographical indications shall be excluded from protection —

- (a) geographical indications which do not fit to the definition of section 2;
- (b) geographical indications which are contrary to public order and morality;
- (c) geographical indications which are not protected in their country of origin or cease to be protected in their country of origin, or which have fallen into disuse in this country;
- (d) indications for goods which are identical to the term commonly used in current language as the common name for these goods in Seychelles.

Right to file
application

89.(1) The following shall have the right to file an application for protection of geographical indications —

- (a) a group of producers or a legal entity of groups of producers which operate in a specified geographical area and with respect to a specified goods; or
- (b) a government body.

(2) A government body on its own initiative or upon request of any of the persons designated in subsection (1)(a), file for, obtain and enforce the registration of geographical

indications with respect to goods where the producers of those goods are not formally organised and may not apply for, obtain and enforce the registration of geographical indications.

(3) The government body shall be the custodian of those geographical indications until it or the Court is satisfied that the persons or entities entitled to own and enforce rights in geographical indications are organised under the applicable laws or regulations.

90.(1) An application for registration of a geographical indication shall be filed with the Registrar.

Application
for
registration
of
geographical
indication

(2) The application shall contain —

- (a) the name, address and nationality of the applicant;
- (b) the geographical indication for which registration is requested;
- (c) the geographical area to which the registration of the indication shall apply;
- (d) the goods for which the geographical indication shall apply;
- (e) the quality, reputation or other characteristics of the goods for which the geographical indication is used; and
- (f) any other matter prescribed in the Regulations.

(3) The application shall be subject to payment of the prescribed fee.

91.(1) The Registrar shall examine the application and verify that it complies with the conditions set out in sections 2, 88 and 90 and with the provisions of the Regulations.

Examination
of
application

(2) When the Registrar finds that the application is acceptable after its examination, he or she shall cause the application, as accepted, to be published in the prescribed manner.

Objection

92. Any interested person may, within the periods set and in the prescribed forms, file an objection to the registration of a geographical indication with the Registrar, on the grounds that one or more of the conditions set out in sections 2, 88 and 90 have not been met.

Registration

93.(1) The Registrar shall register a geographical indication and issue to the applicant a certificate of registration upon payment of the fee prescribed by the Regulations where it finds that —

- (a) the conditions referred to in section 91 and the Regulations are fulfilled; and
- (b) the request for registration of the geographical indication has not been objected, or it has been objected and the objection has been rejected.

(2) Where the Registrar finds that the conditions referred to in subsection (1) are —

- (a) fulfilled, he or she shall register the geographical indication, publish a reference to the registration in prescribed manner and issue to the applicant a certificate of registration; or
- (b) not fulfilled he or she shall reject the application and notify its decision to the applicant in writing explaining the reasons for his or her decision.

94. The producers carrying on their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication, in the course of trade, with respect to the goods specified in the Register for that indication, provided that such products possess the quality, reputation or other characteristic specified in the Register.

Right to use a geographical indication

95.(1) The geographical indications shall be protected against

Rights conferred

- (a) the use, in the designation or presentation of goods, of any means indicating or suggesting that the goods in question come from a geographical region other than the true place of origin in a way which misleads the public as to the geographical origin of the goods; and
 - (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention;
- (3) The following in particular shall be prohibited —
- (a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - (b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
 - (c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

- (d) any action in violation or contravention under the Fair Competition Act, 2009.

(4) The protection under this Act shall also be available against—

- (a) the use of a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory;
- (b) against the use of a geographical indication which, even if identifying goods truly originating in the place designated by that geographical indication, designates goods that do not contain or present the quality, reputation or other characteristic that is essentially attributed to the goods in reason of their geographical origin.

(5) The provisions of this section shall not prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

Duration of protection

96.(1) Subject to subsection (2) the term of a registered geographical indication shall be indefinite.

(2) A registered geographical indication shall be protected as long as the specific characteristics, quality or reputation which have been the basis for the grant of the protection, exist.

Misleading marks

97. The registration of a mark which contains a geographical indication, or consists of such an indication, relating to goods which do not originate from the territory shall be refused or invalidated by the Registrar or the Court, at the

request of an interested party, if the use of this indication in the mark for such products in Seychelles is such as to mislead the public as to the true place of origin.

98.(1) The registration of a mark for wines which contains or consists of a geographical indication used to identify wines, or for spirits which consists of or contains an indication identifying spirits, shall be refused or invalidated by the Registrar or the Court at the request of an interested party, with regard to wines or spirits which do not have this origin.

Marks conflicting with a geographical indication for wines and spirits

(2) For the purposes of subsection (1) the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question, or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like, shall be refused or invalidated by the Registrar.

99. Where the registration of a mark has been requested in good faith, or the rights over the mark have been acquired by use in good faith prior to the date of commencement of this Act, or before the geographical indication is protected in its country of origin, this Act shall not prevent the possibility of registering the mark or impede the validity of the registration of the mark, or the right to use the mark, for the reason that this mark is identical or similar to a geographical indication.

Relationship between geographical indications and pre-existing trademark rights

100.(1) Any interested person or the Registrar may request the Court to order the invalidation of the registration of a geographical indication on the ground that it does not meet the criteria for protection under this Act.

Invalidation or amendment of registration

(2) A group having a legitimate interest may apply for approval of an amendment to a registration of a geographical indication.

(3) Where the amendment involves one or more substantial elements, the amendment shall comply with the procedure laid down in sections 90 to 93.

(4) In any proceedings under this section, notice of the request shall be—

- (a) served on the persons who filed the application for registration of the geographical indication or his or her successor in title; and
- (b) given by publication in the Gazette to all persons having the right to use the registered geographical indication.

PART VII - UNFAIR COMPETITION AND UNDISCLOSED INFORMATION

General
principles

101.(1) Any act or practice carried out or engaged in, in the course of industrial or a commercial activity, in relation to industrial property rights and which is contrary to honest practices, shall constitute an act of unfair competition.

(2) An act or practice that is contrary to honest practices, for the purposes of this part, shall mean practices that include—

- (a) breach of contract;
- (b) breach of confidence and inducement to breach of confidence or contract;
- (c) the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;
- (d) any violation of a legal obligation in general with a view to obtaining unlawful advantages

over competitors or which lead to such advantages being obtained, such as the breach of environmental or labor law.

(3) Any person damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies referred to in Part VIII.

(4) The provisions of this Part shall apply independently of, and in addition to, any written law protecting inventions, utility models, industrial designs, layout-designs, distinctive signs, literary and artistic works and other intellectual property subject matters.

102.(1) Any act or practice which, in the course of industrial or commercial activities, in relation to industrial property rights creates or is likely to create confusion with another's enterprise or its activities, in particular with the goods or services offered by such enterprise, shall constitute an act of unfair competition.

Confusion
with another's
enterprise or
its activities

(2) The confusion may relate in particular to—

- (a) a mark, whether registered or not;
- (b) a trade name;
- (c) any distinctive sign other than a mark or a trade name;
- (d) a product's external appearance;
- (e) the presentation of goods or services; or
- (f) a famous person or a well-known fictional character.

103.(1) Any act or practice; in the course of industrial or commercial activities, in relation to industrial property rights that damages, or is likely to damage, the goodwill or reputation

Damaging
another's
goodwill or
reputation

of another's enterprise shall constitute an act of unfair competition, whether or not this act or practice creates confusion.

(2) The damage to another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to —

- (a) a mark, whether registered or not;
- (b) a trade name;
- (c) any distinctive sign other than a mark or a trade name;
- (d) a product's external appearance;
- (e) the presentation of goods or services; or
- (f) a famous person or a well-known fictional character.

(3) The lessening of the distinctive nature or advertising value of a mark, trade name or any other distinctive business sign, a product's external appearance or the presentation of goods or services or of a famous person or well-known fictional character shall constitute "dilution of goodwill or reputation" for the purposes of subsection (2).

104.(1) Any act or practice, in the course of industrial or commercial activities, in relation to industrial property rights that misleads, or is likely to mislead the public with respect to an enterprise or its activities, in particular, the goods or services offered by such enterprise, shall constitute an act of unfair competition.

(2) The public may be misled by advertising or promotional activities, in particular, with respect to the —

- (a) manufacturing process of a product;
- (b) suitability of goods or services for a specific use or purpose;
- (c) quality or quantity or other characteristics of goods or services;
- (d) geographical origin of goods or services;
- (e) conditions on which goods or services are offered or supplied; or
- (f) price of goods or services or the mode of calculation.

105.(1) Any false or abusive allegation which, in the course of industrial or commercial activities, in relation to industrial property rights, discredits or is likely to discredit another's enterprise or its activities, in particular the goods or services offered by such enterprise, shall constitute an act of unfair competition.

Discrediting
another's
enterprise or
its activities

(2) Discrediting may arise out of advertising or promotion and, in particular, occur with respect to the —

- (a) manufacturing process for goods;
- (b) suitability of goods or services for a specific use or purpose;
- (c) quality or quantity or other characteristics of goods or services;
- (d) conditions on which products or services are offered or supplied; or
- (e) price of goods or services or the mode of calculation.

Unfair
competition
concerning
undisclosed
information

106.(1) Any act or practice which, in the course of industrial or commercial activities, in relation to industrial property rights that results in the disclosure, acquisition or use by others, of undisclosed information without the consent of the person lawfully in control of that information, (hereinafter referred to as "the rightful holder") and in a manner contrary to honest business practices shall constitute an act of unfair competition.

(2) The disclosure, acquisition or use of confidential information by others without the consent of the rightful holder may, in particular, result from —

- (a) industrial or commercial espionage;
- (b) breach of contract;
- (c) breach of confidence;
- (d) inducement to commit industrial or commercial espionage, breach of confidence or contract; or
- (e) acquisition of confidential information by a third party who knew or was grossly negligent in failing to know that this acquisition entailed one of the foregoing acts.

(3) For the purposes of this section, information shall be considered "undisclosed information" if —

- (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) it has commercial value because it is secret; and

- (c) its legitimate holder has taken reasonable steps, under the circumstances, to keep it secret.

(2) Any act or practice, in the course of industrial or commercial activities, in relation to industrial property rights shall be considered an act of unfair competition if it consists of or results in —

- (a) an unfair commercial use of undisclosed test or other data, the origination of which involves considerable effort and which were required as a condition of obtaining approval of the marketing of pharmaceutical, agricultural or chemical products which utilise new chemical entities and which were in fact submitted to the appropriate authority; or
- (b) the disclosure of such data, except where necessary to protect the public, or unless measures have been taken to ensure that the data are protected against unfair commercial use.

PART VIII - ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS

Chapter 1 - General Provisions

107. The general principles of enforcement of industrial property rights shall include the following —

General
principles

- (a) the procedures concerning the enforcement of intellectual property rights shall be fair and equitable;
- (b) the procedures shall not impose overly burdensome requirements concerning mandatory personal appearances;

- (c) parties to a legal proceeding shall be allowed to be represented by independent legal counsel;
- (d) infringement claims shall be substantiated with relevant evidence; and
- (e) measures or remedies against infringement shall be effective to prevent and deter infringement and adequate to redress the harm done.

Remedies
against
infringements
of rights

108.(1) The remedies against infringement of industrial property rights, made available under this Act include —

- (a) provisional measures;
- (b) civil remedies; and
- (c) criminal remedies.

(2) The holder of industrial property rights or the person authorised by him or her may seek for any or more or all of the remedies referred to in subsection (1).

(3) The Court may order cumulative remedies as it deems appropriate.

Burden of
proof

109.(1) For the purposes of civil proceedings in respect of the infringement of rights of the patentee, if the subject matter of a patent is a process for obtaining a product, the Court may order the defendant to prove that the process used to obtain an identical product is different from the patented process.

(2) Any identical product when produced without the consent of the patentee shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process if —

- (a) the product obtained by the patented process is new; or
- (b) there is a substantial likelihood that the identical product was made by the process and the patentee has been unable through reasonable efforts to determine the process actually used.

(3) In ordering the production of evidence to the contrary, the Court shall take into account the legitimate interests of the alleged infringer in not disclosing his or her manufacturing and business secrets.

110.(1) The Court may, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of the claims which lies in the control of the opposing party, order that this evidence be produced by the opposing party, subject, in appropriate cases, to conditions which ensure the protection of confidential information.

Evidence

(2) Where infringement is committed in a commercial scale, the Court may, upon request of a party or when found appropriate, order the production of communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

(3) In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the Court may make preliminary and final determinations, affirmative or negative, on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Chapter 2 - Provisional Measures and Civil Remedies

Provisional measures

111.(1) The Court shall have power to order prompt and effective provisional measures, to —

- (a) prevent an infringement of a right from occurring, in particular to prevent the entry into channels of commerce, imported goods after completing customs formalities; and
- (b) preserve relevant evidence in regard to the alleged infringement.

(2) The Court shall have power to order provisional measures, without giving the other party an opportunity of being heard, where appropriate, in particular where any delay is likely to cause irreparable harm to the rightsholder, or where there is a demonstrable risk of evidence being destroyed.

(3) The Court may, before making a decision under subsection (2), require the applicant to provide any reasonably available evidence in order to satisfy it with a sufficient degree of certainty that the applicant is the rightsholder and that the applicant's right is being infringed or that such infringement is imminent, and order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

(4) Where provisional measures have been ordered without giving the other party an opportunity of being heard, the defendant may file a request for review with the Court within 2 weeks from the date of receipt of the decision.

(5) In the review proceedings, the Court shall give the parties concerned an opportunity of being heard and shall confirm, modify or revoke the decision within a reasonable period.

(6) The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

(7) Where the applicant does not initiate proceedings in the Court leading to a decision on the merits of the case within 20 working days or 31 calendar days, whichever is longer, from the date of receipt of the decision ordering provisional measures or within any other reasonable period determined by the Court in the decision, the Court shall revoke the provisional measures upon request of the defendant.

(8) Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an industrial property right, the Court shall order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

112.(1) The Court shall order the infringer, who knowingly, or with reasonable grounds to know, engaged in infringing activity, to pay damages adequate to compensate for the injury the rightsholder has suffered because of an infringement of his or her industrial property right.

Damages

(2) In determining the amount of damages awarded to the rightsholder, the Court may consider —

- (a) the value of the infringed-on goods or service, measured by the suggested retail price or other legitimate measure of value submitted by the rightsholder;
- (b) the loss of earnings incurred by the rightsholder;
- (c) the unfair profits made by the infringer;

(d) the royalties or fees which would have been due if the infringer had requested authorisation to use the industrial property right in question; and

(f) where appropriate, any moral damages caused to the rightsholder.

(3) The Court shall order the infringer to pay the rightsholder's expenses, which may include appropriate attorney's fees.

(4) The Court may, where appropriate, order recovery of profits where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Other
remedies

113.(1) The Court may, upon the request of the applicant, order that goods, materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements.

(2) In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered and the interests of third parties shall be taken into account.

(3) The Court may, whenever this is considered adequate under the circumstances to create an effective deterrent to further infringement, taking due account of the need for proportionality between the seriousness of the infringement and the remedies and the legitimate interests of third parties, order that the infringing goods be destroyed, or be disposed of outside the channels of commerce, without compensation of any sort, in such a manner as to avoid any harm caused to the rightsholder.

(4) In respect of counterfeit goods, the simple removal of the mark or geographical indication unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

114. The Court shall order the infringer to inform the rightsholder of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services and of their channels of distribution unless this would be out of proportion to the seriousness of the infringement.

Information
to
rightsholder

115.(1) The Court shall order an applicant, at whose request measures were taken and who has abused enforcement procedures, to provide to a defendant wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

Indemnification
of
defendant

(2) The Court shall order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

(3) The public authorities and officials shall be exempted from liability to appropriate remedial measures where actions were taken or intended in good faith in the course of the administration of any law pertaining to the protection or enforcement of industrial property rights.

116.(1) Any decision by the Court in infringement proceedings shall be subject to an appeal to the Court of Appeal.

Appeals

(2) The appeal shall be filed within 60 days from the date of the decision.

117. Any civil proceedings shall be initiated within 5 years from the date on which the rightsholder knew or had reasons to know the infringing acts, except in case of infringing

Limitation
for civil
proceedings

use of distinctive signs in bad faith or for unfair competition purposes, for which there shall be no time limit to initiate the proceedings.

Chapter 3 - Criminal Remedies

Offence

118.(1) Any person who, except under justifiable circumstances provided under this Act, without the consent of a patent or utility model rightsholder, willfully and on a commercial scale—

- (a) manufactures the product that is protected by a patent or utility model certificate;
- (b) uses a process invention or minor invention that is patented or protected by utility model certificate;
- (c) exports, sells, displays or offers for sale, has in stock, conceals or receives, a product manufactured using a patented invention or minor invention protected by utility model certificate, or a product obtained by a patented process invention; or
- (d) imports a product that is the object of an invention or minor invention protected by patent or utility model certificate, or obtained by a process invention patented into Seychelles that has not been placed on the foreign market directly by the rightsholder or by a person authorised by the rightsholder,

commits an offence.

(2) Any person who, except under justifiable circumstances provided under this Act, without the authorisation of a registered industrial design rightsholder, willfully and on a commercial scale—

- (a) manufactures a product that incorporates a registered industrial design, or a substantial imitation that may cause confusion or likelihood of confusion;
- (b) exports, sells, displays or offers for sale, has in stock, conceals or receives, with a view to use for economic purposes, an object that illegally incorporates a registered industrial design, or a substantial imitation that may cause confusion or likelihood of confusion; or
- (c) imports a product that incorporates an industrial design registered in Seychelles or a substantial imitation that may induce to error or confusion, and that has not been placed on the foreign market directly by the rightsholder or with his or her consent,

commits an offence.

(3) Any person who, without the authorisation of registered mark rightsholder, willfully and on a commercial scale—

- (a) reproduces a registered mark, in whole or in part, or imitates it in a way that may create likelihood of confusion;
- (b) alters the registered mark already affixed on a product placed on the market; or
- (c) imports, exports, sells, offers or displays for sale, conceals or has in stock a product bearing a mark illegally reproduced or imitated, in whole or in part; or a product of his or her own industry or commerce, contained in a vessel, container or package that contains the registered trade mark,

commits an offence.

(4) Any person who, without the authorisation of a registered layout-designs rightsholder, willfully and on a commercial scale —

- (a) reproduces, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 55 of this Act; or
- (b) imports, sells or otherwise distributes for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design,

commits an offence.

Penalties

119.(1) Whoever intentionally commits an offence under section 118, shall on conviction be liable to imprisonment for a term not exceeding 5 years or a fine not exceeding SCR500,000 or with both such imprisonment and fine.

(2) Except where higher penalty is provided in any other written law, whoever by negligence violates a right protected under this Act shall on conviction be liable to imprisonment for a term not exceeding 3 years or a fine not exceeding SCR500,000 or with both such imprisonment and fine.

(3) In determining the penalties under subsections (1) to (2), the court shall take into account the —

- (a) severity of the damage caused to the rightsholder, consumers, the general public or the country;
- (b) the value of the infringing products;
- (c) degree and scope of the infringing activity and the size of the infringing products;
- (d) frequency of the offence committed by the infringer; and
- (e) other relevant matters, such as sufficiency of the penalty to provide a deterrent to future infringements.

(4) The penalty, where appropriate, shall include the seizure, forfeiture and destruction of infringing goods and of any materials and implements used in the commission of the offence.

(5) The seizure, forfeiture and destruction referred to in subsection (4) shall be without compensation of any kind to the offender.

120.(1) A police officer may arrest without warrant any person who, in any street or public place —

- (a) sells, exposes or offers for sale or hire; or
- (b) has, or is reasonably suspected of having, in his or her possession for the purpose of selling or letting for hire,

any product that infringes industrial property rights protected in Seychelles.

(2) Any authorised officer may, at any time, without a warrant —

Power to enter, search and seize

- (a) stop, search and board, whether forcibly or otherwise, any conveyance in which he or she reasonably suspects that there is any infringing product; and
- (b) seize, remove or detain such infringing product and anything which appears to him or her to be or to contain; or to be likely to contain, evidence of an offence under this Act.

(3) In the exercise of his or her power under subsection (2), an authorised officer may order the person in charge of a vehicle —

- (a) to stop and not to proceed until so authorised; or
- (b) to bring the vehicle to any police station.

PART IX - MISCELLANEOUS

Registers

121.(1) The Registrar shall maintain separate registers for patents, industrial designs, layout-designs, marks, certification marks, collective marks and geographical indications.

(2) All the recordings provided for in this Act shall be entered into the registers referred to in subsection (1).

(3) Any person may inspect the registers referred to in subsection (1) and may obtain extracts therefrom, on the payment of a prescribed fee.

Correction of errors

122. The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any registration entered into pursuant to this Act or the Regulations.

Extension of time

123.(1) If the Registrar is satisfied that the circumstances justify it, he or she may, upon receiving a written request,

extend the time for doing any act or taking any proceeding under this Act and the Regulations made thereunder, upon notice to the parties concerned and upon such terms as he or she may direct.

(2) The extension of time may be granted even if the time for doing the act or taking the proceeding has expired.

124.(1) The Supreme Court shall have jurisdiction in disputes relating to the application of this Act and the Regulations and in matters which under this Act are referred to the Court.

Competence of Court and appeals

(2) Any decision taken by the Registrar under this Act, in particular the grant of a patent, a utility model certificate, the registration an industrial design, a layout-design, the registration of a mark, collective mark, certification mark or geographical indication, or the rejection of an application for grant or registration of such title, may be subject of an appeal by an interested party before the Supreme Court and such appeal shall be filed within 2 months from the date of decision.

125. The Minister may make Regulations for carrying into effect the provisions of this Act and may prescribe all matters which by this Act, are necessary or expedient to be prescribed for giving effect to this Act.

Regulations

126.(1) The Patent Act (Cap 156) and the Trades Marks Decree (Cap 239) are hereby repealed.

Repeal and savings

(2) Notwithstanding of the repeal of the Patent Act and the Trades Marks Decree —

- (a) all statutory instruments made under the repealed laws shall remain in force as if made under this Act, until amended, replaced or repealed under the provisions of this Act;

- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed laws shall continue to be enforceable as if this Act had not been enacted; and
- (c) the Registrar appointed under the repealed laws shall be deemed to be the Registrar for the purposes of this Act, until the expiry of his or her term of office or a Registrar is appointed under this Act, whichever is earlier.

Transitional
provisions

127.(1) The provisions of this Act shall apply to any application pending on the date of the commencement of this Act.

(2) The patents granted under the repealed Patent Act and marks registered under the repealed Trades Marks Decree, on the commencement of this Act, shall subject to subsections (3) and (4), remain valid and shall be deemed to have been granted or registered under this Act.

(3) The patents referred to in subsection (2) shall remain valid for the remaining period of the duration of the protection accorded under repealed Patent Act, provided that annual fee is paid in accordance with the provision of this Act and the Regulations made thereunder.

(4) The registrations of marks referred to in subsection (2) shall be renewed upon the expiry of the period of registration in accordance with the provisions of this Act and the Regulations made thereunder.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 15th April, 2014.



Luisa Waye-Hive
Deputy Clerk