

INTELLECTUAL PROPERTY BILL, 2021

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INTELLECTUAL PROPERTY BILL, 2021

A BILL ENTITLED

AN ACT to repeal the Industrial Property Act, 2007; Industrial Property (Amendment) Act 2015; the Copyright Act 2004 to domesticate and incorporate provisions relating to the registration of Intellectual Property Rights under the World Intellectual Property Organization (WIPO) and African Regional Intellectual Property Organization (ARIPO); and for connected matters.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY PROVISIONS

1. Short Title

This Act may be cited as the Intellectual Property Act, 2021.

2. Interpretation

In this Act, unless the context otherwise requires –

“**Action**” includes a counterclaim and references to the plaintiff and to the defendant in an action shall be construed accordingly;

“**Anonymous work**” means a work or sound recordings of which no natural person is identified as author;

“**Competition laws**” means statutes directed against unlawful restraints of trade and abuse of monopolies;

“Architectural work” means the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features;

“ARIPO” means the African Regional Intellectual Property Organization;

“Artistic work” means any of the following or works similar thereto irrespective of artistic quality works equivalent to –

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings or prints.
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in audio-visual works; and
- (e) works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art;

“Applicant” means individual(s) or a legal entity that files an application for a Patent, Utility Model, Trademark, Copyright, Plant Breeder Rights, Industrial Design or any other intellectual property rights;

“Author” means an individual(s) who has created a literary, scientific musical or artistic work and includes writers, playwrights, composers, designers, painters, architects, sculptors, engravers, lithographers, illustrators, photographers, translators, arrangers, adaptors, and all other creators;

“Audio-visual works” means works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or

electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material, such as films or tapes in which works are embodied;

“Banjul Protocol” means the Protocol on Marks within the Framework of ARIPO.

“Basic application” means an application for registration of a Mark, filed with the Registrar General and which is used as a basis for the filing of an international application under the Madrid Protocol;

“Basic Registration” means a Mark registered by the Registrar General and which is used as the basis for the filing of an international application under the Madrid Protocol;

“Berne Convention” means Berne Convention for the Protection of Literary and Artistic Works (1886) and as revised;

“Broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof, including transmission by satellite; it includes transmission of encrypted signals where the means for decrypting are provided to the public by the broadcaster or with the broadcaster’s consent;

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

“Business identifier” means any distinctive sign and shall include any mark, business symbol, trade name or emblem used by an enterprise to convey, in the course of industrial or commercial activities, a particular commercial identity or commercial origin with respect to an enterprise or the products produced or the services rendered by that enterprise;

“Certification Mark” means a sign that is used by a person other than its owner, or which its owner has a bona fide intention to permit a person other than the owner to use. to certify regional or other origin, material, method of production, quality, accuracy, or other characteristics of such person’s goods or services, or that the work

or labor on the goods or services was performed by members of an organization;

“Collective mark” means any mark that belongs to a collective organization such as a cooperative, an association or a federation of industries, producers or traders even though the mark is used by the members of the collective;

“Communication to the public” means the transmission by any means, other than by broadcasting, of images or sounds or both of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable;

“Competent Authority” Means The Gambia Intellectual Property Office (GIPO);

“Compilation” means a work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship;

“Compulsory licenses” means licenses issued by the government allowing someone else to produce the patented product or process without the consent of the patent owner;

“Computer” means an electronic or similar device having information-processing capabilities;

“Computer program” means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

“Copies” means material objects, other than sound recordings, in which a work is fixed by any method now known or later developed, and which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. It includes the material object, other than a sound recording, in which the work is first fixed;

“Copyright” means an economic right or moral right protected under Part XV of this Act for a limited time;

“Copyright Owner” means an individual or a legal entity who owns any one of the exclusive rights of a Copyright in a work;

“Counterfeiting” means taking the following actions without the authority of the owner of intellectual property right subsisting in The Gambia in respect of protected goods –

- (a) the manufacture, production, packaging, re-packaging, labelling or making, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;
- (b) the manufacture, production or making of goods comprising or including, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his license;
- (c) the manufacturing, producing or making of copies, in The Gambia, or importation of copies produced abroad into The Gambia in violation of an author’s rights or related rights;
- (d) in relation to medicine and related products, the deliberate and fraudulent mislabelling of medicine and related products with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have real or fake packaging;

“Counterfeit Goods” means goods that are the result of counterfeiting any item that bears an intellectual property right, and includes any means used for the purposes of counterfeiting;

"Counterfeit Mark" means a spurious mark –

- (a) that is used in connection with trafficking in any goods, labels, patches, stickers, wrappers, budes, emblems, medallions, charms, boxes, containers, cans, hang tags, documentation or packaging of any type or nature;
- (b) that is identical with, or substantially indistinguishable from, a mark registered in the trade mark register of GIPO and in use, whether or not a person knows such a mark was registered;
- (c) that is applied to or used in connection with the goods or services for which the mark is registered with GIPO, or is applied to or consists of a label, patch, sticker, wrapper, badges, emblems, medallion, charms, boxes, containers, cans, hang tags, documentation or packaging of any type or nature, that is designed, marked or otherwise intended to be used on or in connection with the goods or services for which the mark is registered; and
- (d) the use of which is likely to cause confusion, to cause mistake, or to deceive;

"Court" means the High Court of The Gambia;

"Derivative work" means a work based upon one or more pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, audio-visual works, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revision annotations, elaboration, or other modifications, which as a whole, represent an original work of authorship;

"Designation", with its grammatical variations, means a request for the extension of protection under Article 3^{ter}(1) or (2) of the Madrid Protocol, as the case may be; it also means such extension as recorded in the International Register; **"Designated Contracting**

Party” means a Contracting Party for which an extension of protection has been requested under Article 3ter(1) or (2) of the Madrid Protocol, as the case may be, or in respect of which such extension has been recorded in the International Register;

“Device machine” or **“Process”** means one now known or later developed;

“Display work” means to show a copy of it, either directly or by means of a film, slide, television image or any other device or process or, in the case of an audio-visual work, to show individual images non-sequentially;

“Distribution” means the lawful placement into public circulation of the original or a copy of a work, a fixation of a performance or a sound recording in tangible form through sale or other transfer of ownership, including importing for the purpose of such putting into circulation and public offering for sale and other transfer of ownership;

“Exclusive license” means a license granted to the effect that the licensor is bound to abstain from granting any equivalent license to another person covering The Gambia;

“Exploitation” with regard to a patent, means everything related to the use, sale, marketing, advertising, technology transfer, licensing and other activities that may generate an economic return for an organization, based on Intellectual Property rights;

“Expression of Folklore” means the form in which cultural heritage of The Gambia, which is created, preserved and developed by ethnic communities of The Gambia or by unidentified Gambian authors, is expressed in ways that are otherwise not eligible for copyright protection;

“Genetic resources” means genetic material of actual or potential value;

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

“Harare Protocol” means the Protocol on Patents and industrial Designs within the Framework of ARIPO;

“Holder of an international registration” means a natural or legal person in whose name the international registration is recorded on the International Register;

“Industrial designs” means a useful article which is ornamental (attractive) or aesthetic (visual/artistic). It may consist of three-dimensional features such as the shape or surface of the article, or two- dimensional features such as patterns, lines or colour;

“Infringing copy” means –

- (a) a copy, the manufacture of which constitutes an infringement of any rights protected by this Act; or
- (b) where imported, a copy the manufacture of which would have constituted an infringement of such rights if manufactured in The Gambia by the importer;

“International application” means an application to obtain protection for an intellectual property right under international filing treaties administered by WIPO or ARIPO;

“International Bureau” means the International Bureau of WIPO;

“International Classification” means, as regards industrial designs, the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs and, as regards marks, the classification according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as last revised;

“International Register” means the official collection of data concerning international registrations of any intellectual property right maintained by the International Bureau or ARIPO;

“International registration” means the registration of a trade mark in the International Register;

“Joint work” means a work prepared by two or more authors with the intent that their contributions be merged into inseparable or interdependent parts of a unitary whole;

“Layout-designs” (topographies) of integrated circuits means the design of the layout, that is, the three-dimensional location of elements and interconnections of an integrated circuit;

“Literary works” include textual works with or without illustrations. They may be published or non-published;

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

“Making available” means to make a work available to the public, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them;

“Mark” means any word, phrase, symbol, design or a combination of these things capable of distinguishing the goods (**“trademark”**) or services (**“service mark”**) of one party from those of others;

“Minister” means the minister responsible for the administration of this Act;

“Most- favoured Nation Treatment” means treatment accorded immediately and unconditionally to the nationals of all other Member States of the World Trade Organization;

“Musical Work” means musical composition, with or without words;

“Office of origin” means the Office through which the international application is filed in accordance with Article 2(2) of the Madrid Protocol;

“Owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright;

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

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

“Perform a work” means to recite, render, play, dance or act a work, either directly or by means of device or process or, in case of audio-visual work, to show its images in any sequence or to make the sounds accompanying it audible;

“Person” means an individual, partnership, corporation, trustee or legal representation having certain legal rights and responsibilities;

“Priority date” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“Producer”, with respect to sound recordings, means the person, or legal entity that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;

“Public performance” means to perform a work outside the normal circle of a family and its closest social acquaintances;

“Pseudonymous” means a work on the copies or sound recordings of which the author is identified under a fictitious name;

“Registers” means separate registers maintained for patents, industrial designs, marks, copyright and related rights or the accumulation of all the separate registers into a central register;

“Regulations under the Protocol” means the Regulations under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks”;

“Related rights” means rights that in certain respects are derived from copyright. The purpose of related rights is to protect the legal interests of certain persons and legal entities who contribute to making works available to the public;

“Registrar General” means the officer responsible for the administration of all intellectual property rights matters;

“Rights Management Information” means information which identifies the work, the author of the work, the owner of any right in the work, the performer, the performance of the performer, or information about the terms and condition of use of the work/performance, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of the work to the public;

“Rome Convention” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961;

“Semi-conductor products” means the final or intermediate form of an incorporated circuit in a chip, which has an electronic function;

“Sound recordings” means works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying an audiovisual work, regardless of the nature of the fixation;

“Technological Protection Measure” means any software, devices or other technologies that, in the normal course of its operation, are used to block, limit or provide access to a work, or certain actions with respect to the work (e.g., copying). TPMs include such things as encryption, passwords, and access controls;

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

“Trade Secret” means any information of economic value which is known to a limited number of persons that a person or enterprise has taken reasonable effort to protect it from being known to all others and from misappropriation;

“Traditional Knowledge (TK)” means knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its culture or spiritual identity;

“Transfer of copyright ownership” means an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright, or any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a non-exclusive license;

“TRIPS” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, adopted 1 January 1995;

“Utility models” means an exclusive right granted for a less technical invention which allows the right holder to prevent others from commercially using the protected invention without his authorization for a limited period of time;

“WIPO” means the World Intellectual Property Organization;

“WTO” means the World Trade Organization;

“Works made for hire” means where the work is produced by officials, employees, or workers, as part of their duties, or where the work is commissioned by a person who is not the employer of the author and who pays or agrees to pay for it and the work is made in pursuance of that commission.

PART II – THE GAMBIA INTELLECTUAL PROPERTY OFFICE (GIPO)

SUB-PART A

3. Formation and Nature

There is hereby established **“The Gambia Intellectual Property Office”**, comprising a central administration and two departments, Copyright Department and Industrial Property Department, under the policy direction of the Minister responsible for the administration

of this Act. Its headquarters shall be at the Ministry of Justice in the City of Banjul.

4. Powers and duties of GIPO

The powers and duties of GIPO shall be to –

- (a) receive, examine and grant applications of all intellectual property rights;
- (b) provide to the public, intellectual property information for technological and economic development;
- (c) conduct programs, studies, exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically;
- (d) maintain registers for all intellectual property rights recorded under this Act;
- (e) promote inventiveness and innovativeness;
- (f) establish and operate an intellectual property documentation centre;
- (g) publish in the Official Gazette all publications required relating to intellectual property rights;

- (h) hold administrative hearings and render decisions and orders with respect to complaints in connection with intellectual property rights;
- (i) govern the recognition and conduct of agents, attorneys or other persons representing applicants for all intellectual property rights; and
- (j) do or perform all such other things or acts necessary for proper performance of its functions under this Act which may lawfully be done by a body corporate;

5. Immunities of the GIPO

An employee of GIPO shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his or her functions under this Act.

SUB-PART B

6. Organization and Structure

(1) There shall be Registrar General who shall be the head of GIPO and will be assisted by a Deputy Registrar General.

(2) There shall be a Registrar of Industrial Property and Registrar of Copyright and Related Rights as well as other staff.

7. Appointment of Registrar General

The Registrar General shall be appointed by the Public Service Commission; he or she shall perform the following duties –

- (a) be responsible for the day-to-day administration of GIPO;
- (b) coordinate all activities affecting bilateral and multilateral agreements relating to intellectual property in The Gambia;
- (c) establish a national public outreach and other programs within GIPO to enhance the protection of intellectual property rights and the development of intellectual property in The Gambia, as well as cooperation with international competent authorities responsible for the administration of intellectual property;
- (d) supervise all the units of GIPO in order to ensure effective and efficient performance of their respective functions and duties, and that they are in line with international best practices;
- (e) ensure implementation of administrative instructions relating to procedures for intellectual property administration and protection;

- (f) authorize the correction of any error of translation or transcription, clerical error or mistake in any application, document or recording filed with the Registrar General, as well as the extension of time for doing any act or taking any action mandated under this Act and or regulation thereunder; and
- (g) Perform such and any other functions relating to intellectual property as are incidental to the position of a Registrar General.

PART III - GENERAL CONDITION AND BASIC PRINCIPLES

8. National Treatment

(1) This Act shall accord to the nationals of other Member States of World Intellectual Property Organization, African Regional Intellectual Property Organization and World Trade Organization, treatment no less favour and privilege than that it accords to its own nationals with regard to the protection of intellectual property rights, subject to the exceptions already provided in the Paris Convention of 1967 and the Berne Convention of 1971.

(2) GIPO may avail itself of the exceptions permitted under subsection (1) in relation to legal or court and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of The Gambia, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the

provisions of TRIPS and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

PART IV – PATENT AND UTILITY MODELS

9. Purpose

The purpose of this Section is to provide for the promotion of inventive and innovative activities, to facilitate the acquisition of technology through the grant and regulation of patents and utility models.

10. Scope of Inventions, Patents; Patentability

The following matters shall not be regarded as inventions for the purpose of this Part –

- (a) matter that does not comply with the definition of invention under this Act;
- (b) discoveries, scientific theories and mathematical methods;
- (c) schemes, rules or methods for doing business, performing mental acts or playing games;
- (d) products of nature and substances obtained or extracted from nature, even if purified or otherwise

isolated from nature; this exclusion shall not apply to the processes of isolating those natural substances;

- (e) computer programs and the presentation of information; and
- (f) 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; this provision shall not apply to products for use in any of those methods.

11. Exemptions

(1) The following matter shall be excluded from patent protection –

- (a) plants and animals, including parts thereof, other than micro-organisms, and essentially biological processes for the production of plants or animals and parts thereof, other than non-biological and microbiological processes;
- (b) animals and plants varieties; inventions, the prevention within the territory of The Gambia of the commercial exploitation of which is necessary to protect public order or morality; such exclusion shall not be made merely because the exploitation of those inventions is prohibited upon by law or subject to regulation; pharmaceutical products;

(2) Until January 1, 2033, or until the expiry of such a later period of extension agreed upon the World Trade Organization for Least Developed Countries.

12. Patentable Inventions

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

(2) An invention is new if it does not form part of the state of the art.

(3) An invention shall be considered as involving an inventive step if, having regard to the state of the art, including written and non-written knowledge, it would not have been obvious to a person in the field with ordinary skill, creativity and intuition. An inventive step will not exist when the invention can be directly derived from the combination of any pieces of prior art.

(4) An invention shall be considered industrially applicable if it can be made in any kind of industry leading to the production of goods and services; it shall include, among others, manufacturing, handicraft, agriculture, fishery and other services.

13. Prior Art

(1) The state of the art shall consist of everything disclosed to the public, anywhere in the world, by publication or by oral disclosure, by use or in any other way, or by deposit of a material in any deposit institution, prior to the filing or, where appropriate, the priority date, of the application claiming the invention. The content of any patent application, the filing or priority date of which is earlier than the filing or priority date of the application claiming the invention, and which is

subsequently published, shall also be considered as comprised in the state of the art for the purposes of determining novelty and inventive step.

(2) Failure to disclose prior art known to the applicant that is material to the patentability of a claimed invention shall result in the refusal of the patent or, if granted, its invalidation in whole or in part.

14. Disclosure

For the purposes of determining novelty and inventive step, disclosure to the public of an invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of an abuse committed by a third party with regard to the applicant or his predecessor in title, or by reason of any act committed by the applicant or his predecessor in title, other than the filing of an application to patent or otherwise obtain legal registration for the invention, with an industrial property authority.

15. Right to Patent; Naming of Inventor

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

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

(3) If two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest priority date shall have the right to the patent, provided such application is not

withdrawn, abandoned or rejected. To this effect, the Registrar General shall take into account the matter claimed in the respective application.

16. Alienation

The right to a patent may be assigned by way of transfer or transmission by operation of the law.

17. Patent during Employment Relations

(1) Where an invention is made under an employment contract the purpose of which is to invent, the right to the patent shall belong, in the absence of signed contractual provisions to the contrary, to the employer. If the economic gains obtained by the employer from the commercial exploitation of that invention rise above the reasonable expectations of gain that the employer had from his employee's inventive output at the time he hired him, the employee shall be entitled to an equitable remuneration.

(2) Where an invention is made by an employee outside an employment contract, but in making that invention the employee used materials, data or know-how of the employer, the right to the patent shall belong, in the absence of signed contractual provisions to the contrary, to the employer. The employee shall be entitled to an equitable remuneration equivalent to one third of the economic gains obtained by the employer from the commercial exploitation of the invention.

(3) Any invention claimed in a patent application filed by a former employee within one year following the expiry of his employment, where the invention falls within the scope of the former employer's main line of business, shall be presumed to have been made during

the employment relationship, unless the employee produces evidence to the contrary.

(4) Any anticipated promise or undertaking by the inventor made to his employer to the effect that he will waive any remuneration he is entitled to under this section shall be without legal effect.

(5) The inventor shall be named as such in the patent, unless he or she indicates to the Registrar General in writing that he or she wishes not to be named. Any promise or undertaking by the inventor made to the effect that he or she will make such a declaration shall be without legal effect.

18. Application for a Patent

(1) The application for a patent shall be filed with the Registrar General and shall contain a request, a description, one or more claims, one or more drawings (where required), and an abstract, as prescribed in the Regulations. It shall be subject to the payment of the prescribed fees.

(2) The request shall contain a petition to the effect that a patent be granted, the name of applicant and other prescribed data concerning the applicant, the inventor(s) and the agent, if any, and the title of the invention.

(3) Where the applicant is not the inventor, the request shall include a statement justifying the applicant's right to the patent application.

19. Disclosure Requirement

The description shall disclose the invention in a manner sufficiently clear and complete for all the claimed embodiments of the invention to be carried out by a person having ordinary skill in the art within The Gambia, and shall, in particular, indicate at least the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

20. Biological Material

(1) In the case of inventions related to biological material that cannot be described as required under this Act, the applicant shall deposit a sample thereof, not later than the date of filing of the application, with a depositary institution recognized under the Budapest Treaty. After the publication of the application, any interested party shall have access to a sample of the deposited biological material, subject to the obligation by said party to use said sample for experimental purposes only.

(2) Where the claimed invention consists of or is directly derived from biological material or from traditional knowledge obtained from a particular community, the description shall indicate the source and the origin of that material or knowledge, as known to the applicant. The application shall also provide information, including evidence, of compliance with any applicable legal requirements in the supplying country regarding prior informed consent and sharing of benefits arising from the commercial or other utilization of such material and/or knowledge.

21. Claims

(1) Claims shall be clear and concise. They shall be fully supported by the description. A main claim shall define all novel and essential features of the invention. All claims dependent on a main claim shall be subordinated to and narrower than that main claim.

(2) In the case of inventions relating to chemical products and processes, the description, claims and abstract shall include the relevant internationally recognized chemical denomination of the claimed products or of the products obtainable with the claimed process. In the case of pharmaceutical products, the international non-proprietary name, wherever available at the date of filing the application, shall be included.

22. Drawings

Drawings shall be required when they are necessary to understand the invention.

23. Abstract

The abstract, must be concise and precise and should accurately describe the essential elements and industrial applicability of the invention. It shall serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection conferred by the patent.

24. Unity of Invention, Amendment and Division of Application

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

(2) The applicant may, up to the time when the application is in order or grant, divide the application into two or more applications (“**divisional applications**”), provided that each divisional application shall not introduce matter not comprised in the disclosure of the initial application.

(2) Each divisional application shall be entitled to the first filing date and, where applicable, the priority date of the initial application.

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

(4) The applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment shall not result in the application disclosing matter extending beyond what was disclosed in the initial application.

25. Right of Priority

(1) The application may, in accordance with Article 4 of the Paris Convention, contain a declaration claiming the priority of one or earlier applications filed for the same invention by the applicant or his predecessor in title in or for any State party to the said Convention or any Member of the World Trade Organization. The period of priority shall be for twelve months and shall be computed in accordance with the provisions of Article 4 of the Paris Convention, that is from the date of filing of the first application, but shall exclude the day of filing in the six months period, and shall end

on the last day of the period unless an official holiday or a day GIPO is not opened in which case the period shall be extended until the next working day.

(2) The effect of the claiming of priority shall be as provided in Article 4B of the Paris Convention. In particular, an application filed within the priority period shall not be refused or invalidated by reason of any acts occurring during that period, in particular, another filing or the publication or exploitation of the invention, and such acts shall not give rise to any third-party right or any right of personal possession.

(3) Where the application contains a declaration claiming priority, the Registrar General may request the applicant to furnish, within the prescribed time limit which shall not be less than three months following the date of filing, a copy of the earlier application or applications, certified as correct by the foreign authority with which it was filed. The Registrar General may also request that the copy be accompanied by a certificate from that authority showing the date of filing, and by a translation into a prescribed language.

(4) If the Registrar General finds that the conditions for the right of priority or the requirements for claiming priority have not been fulfilled, the declaration claiming priority shall be considered not to have been made.

26. Information Concerning Corresponding Foreign Applications for Patents

(1) The applicant shall indicate in the patent application the date and number of any application filed abroad ("**foreign application**") by him or by his predecessor in title relating to the same or essentially

the same invention as that claimed in the application filed in The Gambia.

(2) The applicant shall, at the request of the Registrar General, provide a copy of the patent granted on the basis of the foreign application, accompanied by a translation into English if required, relating to any of the foreign applications referred to in subsection (a) of this Section, as indicated by the Registrar General:

(3) The applicant shall provide the following documents, within sixty days from having received notice thereof, accompanied by a translation into English if required, relating to any of the foreign applications referred to in subsection (a) of this Section, as indicated by the Registrar General –

- (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 any final decision rejecting the foreign application or refusing the grant requested in the foreign application; and
- (c) a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in subsection (a) of this Section.

27. Filing Date; Examination, Grant, Publication

(1) The filing date of a patent application shall be the earliest date on which the application contains at least the following –

- (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;
- (c) a part, which, on the face of it, appears to be a claim and description of an invention; and
- (d) evidence of payment of the filing fees.

(2) If the Registrar General finds that the application did not fulfil, at the time of receipt, the requirements referred to in subsection (a) of this Section, he or she shall notify the applicant in writing inviting him or her to file the required correction within two months from the date of notification. If the correction is made in due time, the filing date shall be the date of receipt of the required correction; otherwise the application shall be treated as if it had not been filed.

(3) Where the application refers to drawings that in fact are not included in the application, the Registrar General shall notify the applicant in writing inviting him or her to furnish the missing drawings within two months from the date of the notification. If the applicant complies with the said invitation, the filing date shall be the date of receipt of the missing drawings. Otherwise, the filing date shall be the date of receipt of the application and any reference to the said drawings shall be treated as non-existent.

(4) For the purposes of this Section, and to decide on the grant or refusal of the application, the Registrar General may take into account, the following –

- (a) the results of any international search report and any international preliminary examination report established under the Patent Cooperation Treaty in relation to the application;
- (b) any document submitted;
- (c) a search and examination report carried out by an external search and examination authority or by a specialized agency within The Gambia or abroad; and
- (d) any information and evaluation provided in accordance with this section.

(5) The Registrar General shall examine the application in accordance with the provisions of this Act.

28. Grant of Patent; Changes in Patents

(1) Where the Registrar General finds that the conditions under this Act are fulfilled, he or she shall grant the patent. Otherwise, he or she shall refuse the application and notify the applicant of that decision.

(2) When he grants a patent, the Registrar General shall –

- (a) order a reference to the grant of the patent to be published in the Official Gazette;

- (b) issue to the applicant a certificate of the grant of the patent and a copy of the patent document;
- (c) ensure the patent is recorded on the Patents Register; and
- (d) make available copies of the patent to the public, on payment of the prescribed fee.

(3) The Registrar General shall, upon request of the holder of the patent, authorize changes in the text or drawings of the patent in order to limit the extent of the protection conferred thereby. No change shall be allowed that would result in the patent containing subject matter that extends beyond the matter disclosed in the initial application or in an extension of the matter claimed in the patent.

29. Rights Conferred by the Patent; Limitations and Exceptions

(1) A patent shall confer on its holder the exclusive right to prevent third parties from exploiting the patented invention in The Gambia. The scope of the rights conferred by the patent shall be defined in the claims.

(2) The rights under a patent may not be used to prevent –

- (a) acts in respect of a product covered by the patent after that product has been put on the market in The Gambia or abroad by the holder of the patent, by a person acting with the holder's consent or having an economic tie to the holder, or by an otherwise

authorized person. For the purposes of this provision, an economic tie shall exist between two persons where one of them may exercise on the other a decisive influence with respect to the exploitation of the patented invention, or where a third party may exercise such an influence on both persons;

- (b) acts done for purposes of scientific research in academic, educational or research and development institutions;
- (c) acts done for experimental purposes relating to the subject matter of the patented invention;
- (e) acts performed by 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 had made effective and serious preparations for such use in The Gambia (the “**prior user**”); acts done privately and for non-commercial purposes;
- (f) the use by a farmer of the product of his harvest for propagation or multiplication by him on his own holding or for exchange with other farmers in the context of traditional or communal practices, where the plant material used by the farmer to produce the harvest was put on the market in accordance with subsection (b) (i) of this Section;
- (g) the use of the invention in the body or gear of aircraft, land vehicles or vessels that temporarily or accidentally enter the jurisdiction of Gambia, or the importation of spare parts or accessories for the

purpose of repairing such aircraft, vehicles or vessels; or

- (h) the extemporaneous preparation in a pharmacy of a medicine for an individual in accordance with a prescription, and to dealing with the medicines so prepared.

(3) The right of the prior user referred to in subsection (b)(v) of this Section may be transferred or devolve 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.

30. Duration, Annual Fees, Restoration

(1)

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

(b) In order to maintain the patent or the patent application, as the case may be, an annual fee as prescribed shall be paid in advance to the GIPO for each year, starting one year after the filing date of the application for grant of the patent. A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge. If an annual fee is not paid in accordance with this subsection, the patent application shall be deemed to have been withdrawn or the patent shall lapse, as the case may be.

(2) The Registrar General may resuscitate a patent any time upon payment of surcharged prescribed in then Regulations or to be determined by the Registrar General.

31. Compulsory Licensing (Other use without authorization of the right holder)

(1) The Registrar General or the Court may grant, upon request, a compulsory license where the public interest, in particular, national security or cases of national emergency or other circumstances of extreme urgency, including those involving nutrition or health, so requires –

- (a) a court or administrative body has determined that the manner of exploitation of the patented invention, by the holder of the patent or someone acting under his or her authorization or with his or her consent, is anti-competitive, and that the exploitation of the invention in accordance with this subsection would remedy such practice;
- (b) the holder of the patent is abusing his or her exclusive rights or neglecting to take measures to prevent someone acting under his or her authorization or with his or her consent from abusing the exclusive rights conferred by the patent;
- (c) after the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last, the patented invention is not exploited or is insufficiently exploited, by working the invention in The Gambia,

notwithstanding this, a compulsory license shall not be issued if the owner of the patent demonstrates that legitimate reasons such as

force majeure exist which justify the non-exploitation or insufficient exploitation of the patented invention in The Gambia;

- (d) a patent (the “**second patent**”) claiming an invention that involves an important technical advance of considerable economic significance in relation to an invention claimed in an earlier patent (the “**first patent**”) cannot be exploited without infringing the earlier patent; or
- (e) the patent owner has refused to grant a voluntary license to a third party on reasonable commercial terms and conditions.

(2) Each request for a compulsory license shall be considered on its individual merits. The decision shall be taken after hearing the holder of the patent if he or she wishes to be heard. Where the compulsory license is granted by the court, the Registrar General shall be notified with the decision.

(3) The exploitation of the patented invention shall be limited to the purpose and duration for which it was authorized and shall be subject to the payment to the said holder of an adequate remuneration in the circumstances of each case. Such remuneration shall take into account the economic value of the compulsory license and, where the decision has been taken under subsection (a) (ii) or (iii) of this Section this shall be taken into account in determining the amount of the remuneration.

(4) The government of The Gambia may decide at any time the use of a patented invention for public non-commercial purposes through a government agency, a subcontractor or another third

person designated by the respective Ministry or the court. The right holder shall be informed promptly of such use.

(5) Upon request of the holder of the patent, or of the Government agency or person licensed to exploit the patented invention, the court may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorizing the exploitation of the patented invention to the extent that changed circumstances justify such variation.

(6) Upon the request of the holder of the patent, the Registrar General or the court may terminate the compulsory license if it is determined, after hearing the parties, if either or both wish to be heard, that the circumstances which led to the decision to grant the compulsory license have ceased to exist and are unlikely to recur.

(7) A compulsory license may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patented invention is being exploited.

(8) A compulsory license shall be non-exclusive; therefore, it shall not exclude –

- (a) the exploitation of the invention by the patent holder himself;
- (b) the conclusion of license contracts by the holder of the patent; and
- (c) the exercise, by the holder of the patent, of his rights under Section 13.10 (a) of this Act to the extent that

it does not interfere with the operation of the compulsory license.

(9) A request for a compulsory license shall be addressed to the Registrar General or to the court and accompanied by evidence that the holder of the patent has received, from the person seeking the compulsory license, a request for a contractual license, but that person has been unable to obtain such a license on reasonable commercial terms and conditions and within ninety days from the request.

(10) Evidence concerning an attempt to obtain a voluntary license shall not be required in cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use or when the license is granted to remedy a practice determined after judicial or administrative process to be anti-competitive; in such cases the holder of the patent shall be notified of the Registrar General's decision as soon as reasonably practicable.

(11) The exploitation of the invention under a compulsory license shall be predominantly for the supply of the market in The Gambia except when the compulsory license concerns a patent claiming a pharmaceutical product or a process to obtain a pharmaceutical product, and the purpose of the license is to export the patented product or the product manufactured by the patented process to a foreign territory with no or insufficient manufacturing capacity, in accordance with the WTO Decision of 30 August, 2003 or Article 31 of the TRIPS Agreement, as appropriate, and the Annex thereto.

(12) A compulsory license in respect of an invention in the field of semi-conductor technology or layout designs of integrated circuits shall only be granted for public non-commercial use or where a judicial or administrative body has determined that the manner of exploitation of the patented invention, by the holder of the patent or

someone acting under his authorization or with his consent, is anti-competitive and that the grant of the non-voluntary license would remedy such practice.

(13) Where a compulsory license is granted under subsection (1)(d) of this Section, the holder of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and the license on the first patent may not be assigned separately from the second patent.

32. Involuntary License

The Registrar General in consultation with the Minister may authorise the use of an invention by a third party.

33. Invalidation; Surrender

(1) Patents shall be granted without any guarantee about the novelty, inventive step or industrial applicability of the invention.

(2) Any interested person may request the Registrar General or the court to invalidate a patent. Invalidation shall be decided on the evidence submitted by the parties.

(3) The Registrar General or the court shall invalidate the patent if any section of this Act is not complied with.

(4) When the grounds for invalidation are established with respect to a main claim, any dependent claim may be deemed invalid if it does not comply with any section of this Act. If a dependent claim

is invalidated, the other claims may remain valid if they comply with the relevant sections of this Part.

(5) Any invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent, and shall be deemed as if it had never been granted. Any limitation shall be deemed to have existed from the applicable filing date.

(6) Any dispute over the right to the patent under this section shall be heard by the court. An interested person may request the court to transfer the granted patent to him or to invalidate the patent. In case the interested person claims co-inventor-ship, he may request the court to have his name added as co-inventor and, where applicable, as co-holder of the corresponding patent.

(7) The final decision of the court shall be notified to the Registrar General who shall instruct the Registrar to record it and publish a reference thereto as prescribed.

(8) A patent may be surrendered by its holder. The surrender may be limited to one or more claims.

34. International Applications Under the Patent Cooperation Treaty

Specific Meanings: for purposes of this Part, the expressions: **“designate,” “designated office,” “elect,” “elected office,” “international application,” “international filing date,” “international preliminary examination”, “priority period” and “receiving office”** have the same meanings as in the Patent Cooperation Treaty.

35. Filing Date and Effects of International application designating The Gambia

An international application designating The Gambia shall, subject to this section, be treated as an application for a patent filed under this Act having as its filing date the international filing date accorded under the Patent Cooperation Treaty.

36. GIPO as Receiving Office (RO)

GIPO shall act as a receiving office in respect of an international application filed by a resident or national of The Gambia.

37. Filing of International Applications with GIPO

An international application filed with the GIPO as receiving office shall be filed in English Language and the prescribed transmittal fee shall be paid to the Office.

38. GIPO Office as Designated Office

GIPO shall act as a designated office in respect of an international application in which The Gambia is designated for the purposes of obtaining a national patent under this Act.

39. GIPO as Elected Office

GIPO shall act as an elected office in respect of an international application in which The Gambia is designated if the applicant files

a demand for the purposes of international preliminary examination under Section 13.14 of the Patent Cooperation Treaty.

40. Processing International Applications

GIPO as a designated office or elected office shall not commence processing of an international application designating The Gambia before the expiration of the prescribed time limit except if the applicant complies with the requirements of that subsection and files with the Office an express request for early commencement of such processing.

41. Entering National Phase

The applicant shall, in respect of an international application designating The Gambia and before the expiration of the 30 months' time limit applicable under Article 22(1) or 39(1)(a) of the Patent Cooperation Treaty or of such later time limit as may be specified in the regulations to this Act, pay the national fee to the Office and file with the Office a translation of the international application into English if the international application was not filed in, and has not been published under the Patent Cooperation Treaty as a translation into English.

42. Failure to Enter National Phase

If the applicant does not comply with the requirements of Section 41 of this Act within the time limit referred to in that subsection, the international application shall be considered withdrawn for purposes of this Act.

43. Reinstatement of Rights After Failure to Enter National Phase

(1) Where the international application is considered withdrawn under Section 42 of this Act, the GIPO shall, upon request of the applicant in accordance with the regulations to this Act, reinstate the rights of the applicant with respect to that international application if it finds that the failure to meet the time limit referred to in Section 42 of this Act occurred in spite of due care required by the circumstances having been taken.

(2) GIPO shall not refuse a request for reinstatement of rights without giving the applicant the opportunity to make observations on the intended refusal within a time limit, which shall not be less than three months counted from the date of notification.

44. Restoration of Right of Priority

(1) Where the international application claims the priority of an earlier application and has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the Registrar General shall, upon request of the applicant in accordance with the regulations to this Part, restore the right of priority with respect to that international application if the Registrar General finds that the failure to file the international application within the priority period was unintentional or occurred in spite of due care required by the circumstances having been taken.

(2) The Registrar General shall not refuse, totally or in part, a request for restoration of right of priority without giving the applicant the opportunity to make observations on the intended refusal within a time limit, which shall not be less than three months counted from the date of notification.

45. Processing International Applications in Accordance with the Patent Cooperation Treaty

(1) GIPO shall process international applications in accordance with the provisions of the Patent Cooperation Treaty, the Regulations established thereunder and the Administrative instructions under those Regulations and with the provisions of this Part and the regulations thereunder. In the event of conflict, the provisions of the Patent Cooperation Treaty, the Regulations thereunder and the Administrative Instructions under those Regulations shall apply.

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

PART V - UTILITY MODEL

46. Utility Models (Applicability of provisions relating to patents)

The provisions of this Part relating to Patents shall apply mutatis mutandis to utility models certificates or applications thereof, as the case may be.

47. Special Provisions Relating to Utility Model Certificates

(1) An invention qualifies for a utility model certificate if it is new in The Gambia and industrially applicable.

(2) The provisions of this Act on patentable inventions and inventive steps, however, shall not apply to utility model certificates.

(3) A utility model certificate shall expire at the end of the 10th year after the date of the grant of the utility model, and shall not be renewable.

48. Conversions

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

(3) An application may not be converted under subsection (a) of this Section more than once.

PART VI - INDUSTRIAL DESIGNS

49. Subject Matter of Protection

(1) Registration under this Section shall not be granted to a design the features of which are dictated solely by technical or functional considerations.

(2) An industrial design shall not be registered if it is determined that its commercial exploitation would be contrary to public order or morality.

50. Registrable Industrial Designs

(1) An industrial design is protected and registrable if it is independently created and new or original.

(2) An industrial design shall not be regarded as new if it does not significantly differ from designs disclosed to the public anywhere in the world, by publication, exhibition, use in trade or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

(3) An industrial design applied to or embodied in a product that is a component part of a complex product shall only be considered to be new if the component part remains visible during the normal use of the complex product. To this effect “**normal use**” means use by the end user and does not include maintenance, servicing or repair works in relation to the product.

(4) For the purposes of determining novelty, disclosure to the public of an industrial design shall not be taken into consideration if

it occurred within twelve months preceding the filing date or, where applicable, the priority date of the application, and if it was by reason or in consequence of an abuse committed by a third party with regard to the applicant or his or her predecessor in title, or by reason of any act committed by the applicant or his predecessor in title, other than the filing of an application to register or otherwise obtain legal protection for the industrial design with an industrial property authority.

51. Right to Registration of Industrial Design; Naming of Designer

(1) The right to registration of an industrial design shall belong to people who first register his or her designs.

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

(3) The right to registration of an industrial design may be assigned, and may be transferred by succession.

(4) Where an industrial design is made in execution of an employment contract the purpose of which is to create one or more designs, the right to registration of the industrial design shall belong, in the absence of contractual provisions to the contrary, to the employer. If the economic gains obtained by the employer from the commercial exploitation of the industrial design rise above the reasonable expectations of gain of the employer at the time he or she hired the designer, the latter shall be entitled to an equitable remuneration.

(5) Any anticipated promise or undertaking by the designer to the effect that he or she will waive any remuneration he or she is entitled to under this section shall be without legal effect.

(6) The designer shall be named as such in the registration of the industrial design, unless he or she indicates to the Registrar General in writing that he or she wishes not to be named. Any promise or undertaking by the designer to the effect that he or she will make such a declaration shall be without legal effect.

52. Application; Right of Priority

(1) An application for the registration of an industrial design shall be filed with the Registrar General in the prescribed form and shall contain –

- (a) a request for registration;
- (b) a graphic representation of each industrial design included in the application;
- (c) an indication of the product or products in respect of which each design is to be used;
- (d) proof of payment of the prescribed application fee for each design; and
- (e) shall comply with other prescribed requirements.

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

(3) The application may contain up to one hundred industrial designs provided they all refer to products that belong to the same class of the International Classification.

(4) The application may contain a request that the publication of the industrial design be deferred for a specified period not exceeding 30 months from the date of filing or, if priority is claimed, from the date of priority, of the application.

(5) The application may, in accordance with Article 4 of the Paris Convention, contain a declaration claiming the priority of one or more earlier applications filed for the same industrial design by the applicant or his or her predecessor in title or for any state party to the said Convention or any Member of the World Trade Organization.

(6) The period of priority shall be of six months and shall be computed in accordance with the provisions of Article 4 of the Paris Convention, that is from the date of filing of the first application, but shall exclude the day of filing in the six months period, and shall end on the last day of the period unless an official holiday or a day GIPO is not opened in which case the period shall be extended until the next working day.

(7) The effect of the claiming of priority shall be as provided in Article 4B of the Paris Convention. In particular, an application filed within the priority period shall not be refused or invalidated by reason of any acts occurring during that period, in particular, another filing or the publication or exploitation of the industrial design, and such

acts shall not give rise to any third-party right or any right of personal possession.

(8) Where the application contains a declaration claiming priority, the Registrar General may request the applicant to furnish, within the prescribed time limit which shall not be less than three months following the date of filing, a copy of the earlier application certified as correct by the foreign authority with which it was filed. The Registrar General may also request that the copy be accompanied by a certificate from that authority showing the date of filing, and by a translation into a prescribed language.

(9) If the Registrar General finds that the conditions for the right of priority or the requirements for claiming priority have not been fulfilled, the declaration claiming priority shall be considered not to have been made.

(10) The applicant may amend or correct the application at any time during its pendency. An amendment or correction shall not be accepted if it involves a change in or addition to any of the designs contained in the initial application.

(11) The applicant may divide his application at any time during pendency in order to separate into two or more applications the designs contained in the initial application. A division shall not be accepted if it involves a change in or addition to any of the designs contained in the initial application.

(12) Each divisional application shall retain the filing date and the right of priority of the initial application. After the division, each divisional application shall be independent. If publication of the application occurred before the division, the publication shall have effect for each divisional application.

(13) The applicant may withdraw the application entirely or in respect of one or more designs at any time during its pendency.

53. Filing Date; Examination, Registration and Publication

(1) The filing date of an application for registration of an industrial design shall be the earliest date on which the application contains at least the following –

- (a) an express request for the registration of one or more industrial design;
- (b) indications allowing the identity of the applicant to be established or allowing the applicant to be contacted;
- (c) a representation of each industrial design for which registration is sought;
- (d) an indication of the product or products in respect of which each design is to be used; and
- (e) proof of payment of the prescribed application fee for each design.

(2) The Registrar General shall examine whether the application complies with the requirements in this Act and the Regulations pertaining thereto, and whether the industrial design for which registration is sought complies with the definition contained in this Act.

(3) If the application does not comply with the prescribed requirements, the Registrar General shall notify the applicant accordingly requesting him or her to correct the application within two months from the date of the notification. Upon justified request, that period may be extended by the Registrar General.

(4) If the required correction is not made within the specified period, the application shall be considered withdrawn.

(5) Where the Registrar General finds that the conditions referred to in subsection (b) are fulfilled he or she shall cause the application to be published in the prescribed manner.

(6) Where a request has been made under Section 54 (d) for deferment of publication, the application shall not be published until the expiry of the period of deferment.

(7) The Registrar General shall publish the industrial design upon request by the applicant at any time before the expiry of the period of deferment.

(8) Fees for securing protection for textile designs in particular with respect to examination or publication shall not unreasonably impair the opportunity to seek protection.

54. Rights Conferred by Registration

(1) The registration of an industrial design shall confer on its holder the right to prevent others from exploiting the registered industrial design in The Gambia. This right shall extend to designs

that so closely resemble the registered industrial design that they produce the same overall impression.

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

(3) Nothing in this Section shall prevent a registered industrial design from enjoying any protection to which it may be entitled under the law of copyright.

(4) The rights conferred by the registration of an industrial design shall not extend to –

- (a) acts in respect of a product that embodies the industrial design after the product has been put on the market in The Gambia or abroad by the registered holder or by a person acting with the holder's consent or having an economic tie to the holder; to this effect an economic tie shall exist between two persons where one of them may exercise on the other a decisive influence with respect to the exploitation of the industrial design, or where a third party may exercise such an influence on both persons;
- (b) the use of the industrial design on the body or mismatch such as gear of aircraft, land vehicles or vessels that temporarily or accidentally enter the jurisdiction of The Gambia, or the importation of

spare parts or accessories for the purpose of repairing such aircraft, vehicles or vessels;

- (c) acts done privately and for non-commercial purposes;
- (d) acts done for purposes of teaching, education or scientific research in academic, educational or research institutions;
- (e) acts done only for experimental purposes relating to the industrial design;
- (f) the reproduction of any features of the industrial design that are dictated solely by functional or technical considerations or that are necessary to fulfil a technical function or purpose;
- (g) the reproduction of any features of the industrial design that must necessarily be reproduced in their exact form in order to permit the product in which the design is embodied to be mechanically connected to or placed in, around or against another product so that each product may perform its function; and
- (h) the reproduction of any features of an industrial design, that is embodied in a component part of a complex product, where that part is used for the purpose of repairing that product so as to restore its original appearance.

(5) An international application may designate The Gambia for an industrial design under the Harare Protocol.

(6) The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent for making, selling, 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.

55. Duration of Registration

(1) The registration of an industrial design shall be for a period of ten (10) years from the filing date of the application for registration.

56. Invalidation

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

(2) The registration shall be invalidated if it is established that the object of the registration is not an industrial design in accordance with the provisions of the Act.

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

(4) Any invalidated registration shall be regarded as null and void from the date of the registration and shall be deemed not to have been granted.

(5) Any dispute over the right to registration of the industrial design shall be heard by the Court. An interested person may request the Court to transfer the registration of the industrial design to him or her, alternatively, to invalidate the registration. In case the plaintiff claims to be a joint designer, he or she may request the court to have his or her name added as joint designer and, where applicable, as co-holder of the corresponding registration.

(6) Any final decision of the Court on an action taken under this section shall be notified to the Registrar General who shall record it and publish a reference thereto as prescribed.

PART VII - TRADEMARK

57. Exclusive Right to a Mark

The exclusive right to a mark shall be acquired by registration.

58. Non-Registrable Trademark

A mark cannot be validly registered if it is –

- (a) incapable of distinguishing the source of goods or services of one enterprise from those of other enterprises;
- (b) if it is contrary to public policy and morality;
- (c) if it is likely to mislead or cause confusion within trade circles as regards the source of the goods or services;
- (d) if it is identical with or is an imitation of, or contains as an element, an armorial bearing, flag and other State emblems of the member countries, official signs and hallmarks indicating control and warranty adopted by member countries, and any imitation from a heraldic point of view, and armorial bearings, flags, other emblems, abbreviations, and names of international inter-governmental organizations of which one or more countries of the Union are members, except for those that are already the subject of international agreements in force, intended to secure their protection (“**Red Cross**”) and emblems protected by the Geneva Convention of August 12, 1949;
- (e) if it is likely to be confused with an unregistered mark that is well-known in The Gambia used on the same or related goods or services or with a registered mark that is well-known in The Gambia and used on unrelated goods or services;
- (f) if it consists of or comprises a mark which so resembles a mark already on the register or with an earlier filing or priority date, as to be likely, when used

on or connection with the goods or services of the applicant, to cause confusion, or to cause mistake, or to deceive; or

- (g) if it is not distinctive.

59. Application for registration of a mark

(1) The application for registration of a mark shall be filed with Registrar General and shall contain a request, a reproduction of the mark and a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the Nice International Classification, and shall be accompanied by the payment of the prescribed application fee.

(2) The application may contain a declaration claiming the priority of an earlier national or regional application filed by the applicant or his or her predecessor in title, in which case, the Registrar-General may require that the applicant furnishes within the prescribed time limit, a copy of the earlier application, certified as correct by the office with which it was filed.

(3) The effect of the declaration shall be as provided in any Convention to which The Gambia is a party, and if the Registrar-General finds that the requirements under this subsection and the regulations pertaining thereto have not been fulfilled, the declaration shall be considered not to have been made.

(4) The applicant may withdraw the application at any time during its pendency.

(5) All fees paid are non-refundable.

60. Examination, opposition and registration of a mark

(1) The Registrar General shall examine whether the application complies with the requirements of registration under this Act, and the regulations pertaining thereto.

(2) Where the Registrar-General finds that the conditions referred to in sub-section (1) of this section are fulfilled, he or she shall forthwith cause the application, as accepted, to be published in the prescribed manner.

(3) A person may, within three months or such further time, not exceeding two months in all, as the Registrar-General may allow, of the advertisement of the application, give notice to the Registrar-General of opposition to the registration of the mark on grounds that one or more of the requirements of section 59, and section 60, of this Act, and the regulations pertaining thereto are not fulfilled.

(4) The notice shall be given in writing and in duplicate, and shall include a statement of the grounds of opposition.

(5) The Registrar General shall send a copy to the applicant, and within one month after the receipt of the notice, or such further time, not exceeding three months in all, as the Registrar-General may allow, the applicant shall send to the Registrar-General a counter-statement in duplicate of the grounds on which he or she relies for

his or her application, and, if he or she does not do so, he or she is deemed to have abandoned his or her application.

(6) If the applicant sends a counter-statement, the Registrar-General shall furnish a copy thereof to the person giving notice of opposition, and shall require him or her to give security in such manner and to such amount as the Registrar-General may require, for such costs as may be awarded in respect of the opposition, and if the security is not given within fourteen days after the requirement was made or such further time as the Registrar-General may allow, the opposition is deemed to be withdrawn.

(7) If the person giving notice of opposition duly gives the security, the Registrar General shall inform the applicant thereof in writing, and thereafter the case shall be deemed to stand for the determination of the Court or Tribunal as the Registrar General may direct.

(8) The Registrar General may invoke quasi-judicial powers in an opposition proceeding before him or her and shall be required to issue a preliminary report recommending for the registration to be proceeded or to be discontinued.

(9) If any of the parties is not satisfied with the recommendation by the Registrar-General he or she may file the necessary processes in court for a determination thereof.

(10) If the applicant abandons his or her application, after notice of opposition in pursuance of this section, he or she is liable to pay to the opponent such costs in respect of opposition to registration, as the Registrar General may determine.

(11) Where the opponent is out of The Gambia, he or she shall, with the notice of opposition to registration, give the Registrar-General an address for service in The Gambia.

(12) A mark registered by WIPO in respect of which The Gambia has been designated by virtue of the Madrid Protocol for the international registration of marks, shall have the same effect in The Gambia, as one registered under this Act except where the Registrar-General communicates to WIPO in respect of the application for registration of the mark, a decision of his or her refusal to accept the registration of the mark in The Gambia.

(13) A mark registered by ARIPO in respect of which The Gambia has been designated by virtue of the Banjul Protocol On Marks, shall have the same effect in The Gambia, as one registered under this Act except where the Registrar-General communicates to ARIPO in respect of the application for registration of the mark, a decision of his or her refusal to accept the registration of the mark in The Gambia.

61. Opposition Proceedings; how brought before the Court

(1) When a case stands for the determination of the Court or Tribunal under the provisions of section 62(7) of this Act, the Registrar-General shall require the applicant to make a written application to the Court or Tribunal for an order that, notwithstanding the opposition of which notice has been given, the registration of the mark be proceeded with by the Registrar-General, or to take such other proceeding as may be proper and necessary for the determination of the case by the Court or Tribunal.

(2) The applicant shall thereupon make his or her application or take such other proceedings, within the period of one month or such

further time as the Court or Tribunal may allow, and shall also within the like period, give notice thereof to the Registrar-General.

(3) If the applicant fails to make the application or to take such other proceedings, of which failure the non-receipt by the Registrar-General of such notice shall be sufficient proof, the applicant is deemed to have abandoned his or her application.

(4) The Court or Tribunal has power in proceedings under section 61(7) of this Act to award to any party such costs as it may consider reasonable, and to direct how, and by what parties, they are to be paid.

(5) Any decision made by the Tribunal may be appealed before the Court.

62. Rights conferred by registration, duration and renewal

(1) Owners of registered marks, shall have the exclusive right to prevent any third party from making use, in the course of commercial operations, of identical or similar signs for goods or services that are identical or related to those of which the mark has been registered, if such use would lead to confusion unless with the prior consent of the owner and the Register-General determines that there is no likelihood of confusion.

(2) The use of a registered mark, in relation to goods or services for which it has been registered, by a person other than the registered owner, shall require the consent of the latter.

(3) The registered owner of a mark shall, in addition to any other rights, remedies or actions to which they are entitled, institute court

proceedings against a person who infringes the mark by using, without his or her consent, or who performs infringing acts.

(4) The rights extend to the use of a sign the same or similar to the registered mark and use in relation to goods and services the same or related to those for which the mark has been registered, where confusion may arise in the public.

(5) The registration of a mark shall be valid for a period of ten years from the filing date of the application for registration.

(6) The registration of a mark may, on request, be renewed for consecutive periods of ten years, provided that the registered owner pays the prescribed renewal fee.

(7) A grace period of six months shall be allowed for the late payment of the renewal fee, on payment of the prescribed surcharge.

63. Limitation on rights conferred

(1) The rights conferred by the registration of a mark shall not extend to acts relating to articles placed on sale in The Gambia or in any other country or imported into The Gambia by the owner of the mark or with his or her consent.

(2) The rights do not extend to the use of articles on aircraft, land vehicles or vessels of other countries, which temporarily or by accident entered the airspace, land territory or territorial waters of The Gambia.

(3) Without prejudice to the provisions of the Act, the Minister responsible for trade may, on his own accord or at the request of any interested party, declare that the rights in a registered mark have been exhausted and authorize third parties to import the goods identified by a mark which is registered or otherwise protected or bears such a mark from another territory, if such goods are not available in sufficient quantity and quality to meet local demand, or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that

—

- (a) the goods have been commercialized in the territory of The Gambia or that of another country from which they have been imported by the holder of the mark or with his or her consent; and
- (b) a similar or identical mark has been registered or otherwise protected in the territory from which the product has been imported and it belongs to the holder of the mark registered or otherwise protected in The Gambia or to a person over whom the holder has authority.

(4) If the importer fails to meet the goals which warranted the Minister's decision to consider the rights in the mark exhausted, the Minister shall revoke the authorisation on his own accord or at the request of the owner of the mark.

(5) If the conditions underlying the Minister's decision to consider the rights in the mark exhausted no longer obtain, the Minister may, on his or her own accord or at the request of the owner of the mark, revoke the authorisation without prejudice to the legitimate interests of the importer, in particular the right to clear his or her stock.

(6) The Minister responsible for public health may in consultation with the Minister of Justice, take steps to limit the use of marks in order to facilitate the prescription of pharmaceutical products and generic medical devices and access to such products and devices in order to dissuade the public from consuming products deemed harmful to health, provided these steps do not further unjustifiably reduce the capacity of the mark in question to distinguish the products of one party from those of another.

64. Non-user of trademark (Removal owing to failure to use)

A registered mark may, on application to the Registrar-General by any person or suo moto by the Registrar General, be taken off the register in respect of any of the goods or services for which it is registered on the ground that –

- (a) it was registered by the proprietor or a predecessor in the title without a bona fide intention to use the same in connection with the goods or services and that there has been no bona fide user thereof in connection therewith; or
- (b) there has been no bona fide use of the trademark in connection with the goods or services during the five years immediately preceding the application,

unless in either case the non-use is shown to be due to special circumstances in the trade and not to any intention not to use or to abandon the trademark in respect of such goods or services.

65. Collective marks

(1) 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 regulations governing the use of the collective mark.

(2) The registered owner of a collective mark shall notify the Registrar-General of any changes made in respect of the regulations referred to in subsection (1) of this section.

(3) In addition to the grounds provided in this Act the court shall invalidate the registration of a collective mark if the person requesting the invalidation proves that only the registered owner uses the mark, or that he or she uses or permits its use in contravention of the regulations referred to in subsection (2) of this section, 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 of the goods or services concerned.

66. Licensing of marks and collective marks

(1) A licence contract concerning the registration of a 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.

(2) If the licence contract does not provide for the quality control or if the quality control is not effectively carried out, the licence contract is not valid and the exclusive right referred in this Act may not be exercised.

(3) The registration of a collective mark, or an application therefor, may not be the subject of a licence contract.

PART VIII - THE MADRID PROTOCOL

67. Conflict between the Act and the Protocol

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

68. Delegation to the Regulations

Further details concerning the Protocol, in particular, the processing of international applications where The Gambia is considered to be the Office of origin and of international registrations designating The Gambia may be given in the Regulations.

69. Language

(1) Any communication, including an international application, for transmittal to the International Bureau through the intermediary of the Registrar General shall be in English.

(2) Any communication concerning an international application or an international registration addressed to the International Bureau by the Registrar General shall be in English.

PART IX - INTERNATIONAL APPLICATIONS ORIGINATING FROM THE GAMBIA

70. Entitlement to file an international application

(1) Any natural person or legal entity that is a national of The Gambia, is domiciled in or has a real and effective industrial or commercial establishment in The Gambia, is entitled to file an international application with the Registrar General provided the basic application(s) or basic registration(s), as the case may be, used as a basis to file the international application is in the name of that natural person or legal entity.

(2) The applicant shall provide, at the request of the Registrar General, such evidence as may be necessary to satisfy the Registrar General that the applicant is entitled to file the application in accordance with paragraph (1).

71. Examination of international applications in respect of which The Gambia is the country of origin

Where an international application is filed with the Registrar General for transmittal to the International Bureau, the Registrar General shall verify –

- (a) that The Gambia may be considered as the country of origin in respect of that application; and
- (b) that the relevant particulars appearing in the international application correspond to the relevant particulars appearing in the basic application or basic registration, as the case may be, in accordance with

the provisions of the Madrid Protocol and the Regulations under the Protocol.

72. Irregularities with the international application, to be remedied before the Registrar General

(1) Where the international application does not comply with the prescribed requirements, the Registrar General shall give the applicant the opportunity to submit the requested information or pay the handling fee.

(2) The prescribed handling fee shall be due and payable to the Registrar General in connection with the filing of an international application originating in The Gambia.

(3) Where the applicant does not provide the requested information or the payment of the handling fee within the stipulated time determined by the Registrar General, the international application is considered abandoned and the Registrar General shall not forward this to the International Bureau.

73. Certification

(1) Where the international application complies with the prescribed requirements, the Registrar General shall –

- (a) so certify in the international application, indicating the date on which the international application was received; and

- (b) forward the international application to the International Bureau.

74. Handling fee

The prescribed handling fee shall be due and payable to the Registrar General for the certification and transmittal to the International Bureau of an international application originating in The Gambia.

75. Irregularities with the international application, to be remedied before WIPO

(1) The Registrar General will respond to the International Bureau, as appropriate, to any irregularities issued under Rules 11 to 13 of the Regulations under the Protocol, within the time limit given by the International Bureau.

(2) Where the irregularity has to be remedied by the Office of origin, the Registrar General shall consult with the applicant and give a short time limit to provide the requested information. Where the information is received within the given time limit, the Registrar General shall forward this to the International Bureau.

76. Ceasing of effect of the basic application or basic registration

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

- (a) inform the International Bureau accordingly, in accordance with Rule 22 of the Regulations under the Protocol; and
- (b) request the cancellation of the international registration in respect of the goods and services affected.

PART X - INTERNATIONAL REGISTRATIONS WHERE THE GAMBIA IS A DESIGNATED CONTRACTING PARTY

77. Effects of an international registration

(1) An international registration designating The Gambia shall have the same effects as from the date of the international registration or of the subsequent designation of The Gambia, as the case may be, as an application for the registration of the mark filed directly with the Registrar General under the Act.

(2) The date of filing would be the date of the international registration where The Gambia is designated in the international registration or the date of the subsequent designation where The Gambia is designated subsequently to the international registration.

(3) The indication of classes of goods and services set out in the international registration, in which The Gambia is designated, shall not bind the Registrar General with regard to the determination of the scope of the protection of the mark.

(4) If no refusal is notified by the Registrar General to the International Bureau in accordance with the Protocol and the Regulations under the Protocol, or if a refusal has been so notified but has been subsequently withdrawn, or if a statement of grant of protection is sent by the Registrar General, the protection of the mark in The Gambia shall be the same as if the mark had been registered directly by the Registrar General on the date of the international registration or of the subsequent designation of The Gambia, as the case may be.

78. Examination of international registrations

(1) The Registrar General shall examine the marks that are the subject of international registrations designating The Gambia in relation to Sections 60 and 62 of the Act.

(2) Where any elements of the mark would be in a language other than English, and the holder has not declared that the word has no meaning, a translation into English is required. Where such translation is not included in the international registration, the Registrar would issue an ex officio provisional refusal.

79. Collective marks and certification marks

(1) For collective marks in international registrations designating The Gambia, Section 67 of the Act shall apply mutatis mutandis.

(2) Where the regulations governing the use of such mark have not been submitted directly to the Registrar General, the Registrar General would issue an ex officio provisional refusal.

80. Ex officio provisional refusal of protection

(1) Where the Registrar General finds that in accordance with the provisions of the Act, the mark that is the subject of an international registration designating The Gambia cannot be protected or can be accepted with conditions only, he or she shall, before the expiry of the refusal period applicable under Article 5(2)(b) of the Madrid Protocol, notify to the International Bureau a provisional refusal of protection, complying with the requirements of the Madrid Protocol and the Regulations under the Protocol.

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

(3) Any provisional refusal of the international registration designating The Gambia must be notified to the International Bureau, together with a statement of all grounds, before the expiry of 18 months from the date on which the notification of the extension has been sent to The Gambia by the International Bureau.

(4) The holder may contest the provisional refusal by requesting a review before the Registrar General/Tribunal/High Court of The Gambia within a period (of three months counted from the date of the notification to the holder sent by the International Bureau).

(5) Where the holder has no address for service in The Gambia, the request for review must be submitted in writing through a duly appointed representative domiciled in The Gambia together with a power of attorney.

(6) Where the holder does not respond to the provisional refusal within the given time limit, the designation of The Gambia is deemed abandoned.

81. Advertisement of the international registration; opposition

(1) Where in respect of an international registration, in which The Gambia has been designated, the Registrar General finds that the conditions referred to in the Act are fulfilled; he or she shall cause the international registration to be published as provided in the Act.

(2) A person who opposes the protection of an international registration designating The Gambia (the opponent) may file with the Registrar General a notice of opposition within the period of three months from the date of publication.

(3) Opposition to the international registration shall be governed by the provisions of this Act regarding opposition, mutatis mutandis.

82. Possible notification of Provisional Refusal based on opposition in accordance with Article 5(2)(c) of the Madrid Protocol

Where the period to file an opposition against an international registration ends after the expiry of the refusal period specified in Article 5(2)(b) of the Madrid Protocol or the Registrar General considers that it will end too late for the Registrar General to send a

notification under Section 76 (Provisional Refusal based on an opposition) within that refusal period, the Registrar General shall send a communication informing that fact to the International Bureau, complying with the requirements of Rule 16 of the Regulations under the Protocol.

83. Provisional refusal based on an opposition

(1) Where an opposition is filed with the Registrar General in respect of an international registration designating The Gambia, the Registrar General shall, before the expiry of the refusal period applicable under Article 5(2)(b) or (c) of the Madrid Protocol, notify that fact to the International Bureau as a provisional refusal based on an opposition, in accordance with the provisions of the Madrid Protocol and the Regulations under the Protocol.

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

(3) The holder may file the counter-statement within a period of (three months), counted from the date of the notification to the holder sent by the International Bureau.

(4) Where the holder has no address for service in The Gambia, the counter-statement must be submitted in writing through a duly appointed representative domiciled in The Gambia together with a power of attorney.

(5) Where the holder does not file the counter-statement within the given time limit, the designation of The Gambia is deemed abandoned.

(6) After giving both parties opportunities to present their arguments, the Registrar General shall make his or her decision on the opposition and the possible protection of the international registration in The Gambia.

84. No grounds for refusal - statement of grant of protection

Where all procedures before the Registrar General have been completed and there is no ground for the Registrar General to refuse protection, he or she shall as soon as possible and before the expiry of the refusal period applicable under Article 5(2) of the Madrid Protocol, send to the International Bureau, a statement to the effect that protection is granted to the mark in The Gambia.

85. Statement of grant of protection following the notification of a Provisional Refusal

Where the Registrar General has notified the International Bureau of a provisional refusal of protection in accordance with Sections (75) or (76) and, all the procedures before the Office having been completed, the mark is either totally or partially protected, the Registrar General shall send to the International Bureau, in accordance with the relevant provisions of the Regulations under the Protocol –

- (a) a statement to the effect that the provisional refusal is withdrawn and that protection of the mark is granted in The Gambia for all the goods and services for which protection has been requested, or

- (b) a statement indicating the goods and services for which or the conditions under which protection of the mark is granted in The Gambia.

86. Confirmation of total refusal

Where the Registrar General has sent to the International Bureau a notification of total provisional refusal in accordance with Sections (75) or (76) and, all the procedures before the Office having been completed, the Registrar General has decided to confirm such refusal of protection of the mark in The Gambia for all the goods and services for which protection has been requested, the Registrar General shall send to the International Bureau a statement to that effect, in accordance with the relevant provisions of the Regulations under the Protocol.

PART XI - FINAL DECISION FOLLOWING THE NOTIFICATION OF A PROVISIONAL REFUSAL

87. Appeals

(1) Any person aggrieved with any decision made by the Registrar General in respect to international registrations designating The Gambia may appeal therefrom to the Tribunal or the High Court of The Gambia within a period of three months from the date of such decision of the Registrar General.

(2) Any decision, judgment or order of the Tribunal or the High Court of The Gambia following the appeal filed in accordance with (1), shall be communicated to the International Bureau as a further decision in accordance with this Act.

88. Further decision affecting protection of a mark

Where a notification of provisional refusal has not been sent by the Registrar General within the applicable time limit under Article 5(2)(b) of the Madrid Protocol, or, where following the sending of a statement in accordance with provisions of this Act, a further decision, taken by the Registrar General or the High Court of The Gambia, affects the protection of a mark in The Gambia, the Registrar General shall, to the extent that the Registrar General is aware of that decision, without prejudice to Rule 19 of the Regulations under the Protocol, send to the International Bureau a further statement indicating the status of the mark and, where applicable, the goods and services for which the mark is protected in The Gambia.

89. Invalidation

Where, upon a final decision, the Court pronounces the invalidation of the effects of an international registration in The Gambia, the Registrar General shall, provided that the Registrar General is made aware of that decision, notify the International Bureau in accordance with the relevant provisions of the Protocol and the Regulations under the Protocol.

90. Recordings in the international register

(1) Any recording made in the International Register in respect of an international registration shall to the extent that it applies to The Gambia as a designated Contracting Party, have the same effect as if it had been recorded by the Registrar General in the register of marks.

(2) Where, under the laws of The Gambia, the Registrar General considers that the recording referred to in paragraph (1) has no effect in The Gambia, the Registrar General shall, where so provided for in the Regulations under the Protocol, send a communication to the International Bureau to this effect, in accordance with (draft provisions below on change in ownership and limitation).

91. Declaration that a change in ownership in an international registration has no effect in The Gambia

(1) Where The Gambia is notified by the International Bureau of a change in ownership of an international registration affecting The Gambia, the Registrar General may declare that the change in ownership has no effect in The Gambia. The effect of such a declaration shall be that, with respect to The Gambia as the designated Contracting Party, the international registration concerned shall remain in the name of the transferor.

(2) The declaration referred to in paragraph (1) shall indicate –

- (a) the reasons for which the change in ownership has no effect,
- (b) the corresponding essential provisions of the law, and
- (c) whether such declaration may be subject to review or appeal.

(3) The declaration referred to in paragraph (1) shall be sent to the International Bureau before the expiry of 18 months from the date on which the notification referred to in paragraph (1) was sent to The Gambia.

(4) The holder of the international registration may request a review of the declaration by the Registrar General within a period of three months, counted from the date of the notification sent by the International Bureau.

(5) Where the holder has no address for service in The Gambia, the request for review must be submitted in writing through a duly appointed representative domiciled in The Gambia together with a power of attorney.

(6) Any final decision relating to a declaration made in accordance with paragraph (4) shall be notified to the International Bureau.

92. Declaration that a limitation of goods and services in an international registration has no effect in The Gambia

(1) Where The Gambia is notified by the International Bureau of a limitation of the list of goods and services in an international registration affecting The Gambia, the Registrar General may declare that the limitation has no effect in The Gambia. The effect of such a declaration shall be that, with respect to The Gambia as the designated Contracting Party, the limitation shall not apply to the goods and services affected by the declaration.

(2) The declaration referred to in paragraph (1) shall indicate –

- (a) the reasons for which the limitation has no effect,
- (b) where the declaration does not affect all the goods and services to which the limitation relates, those which are affected by the declaration or those which are not affected by the declaration,
- (c) the corresponding essential provisions of the Act, and
- (d) whether such declaration may be subject to review or appeal.

(3) The declaration referred to in paragraph (1) shall be sent to the International Bureau before the expiry of 18 months from the date on which the notification referred to in paragraph (1) was sent to The Gambia.

(4) The holder of the international registration may request a review of the declaration by the Registrar General within a period of three months counted from the date of the notification sent by the International Bureau.

(5) Where the holder has no address for service in The Gambia, the request for review must be submitted in writing through a duly appointed representative domiciled in The Gambia together with a power of attorney.

(6) Any final decision relating to a declaration made in accordance with paragraph (4) shall be notified to the International Bureau.

93. Renewal of international registrations designating The Gambia

International registrations which, in accordance with Article 7 of the Madrid Protocol, have been renewed in respect of The Gambia as a designated Contracting Party shall continue to have effect in The Gambia.

94. Replacement

(1) Where –

- (a) a mark registered in The Gambia is also the subject of an international registration, and the protection resulting therefrom extends to The Gambia;
- (b) the same person is recorded as holder of the registration in The Gambia and of the international registration;
- (c) goods and services listed in the registration in The Gambia are also listed in the international registration in respect of Gambia; and
- (d) the extension of that international registration to The Gambia took effect after the date of registration of the mark in The Gambia, the holder of the international registration may request the Registrar General to take note of that international registration in the register.

(2) A request filed with the Registrar General in accordance with paragraph (1), shall be made on the prescribed form and shall be subject to the payment of the prescribed fee.

(3) Replacement of the national registration by an international registration is deemed to be automatic when the conditions under Article 4bis(1) of the Protocol are met. Replacement is not dependent on any action by the holder or the Registrar General. The effective date of replacement is the date of the international registration or the subsequent designation.

(4) The Registrar General may examine the request referred to in paragraph (1) for compliance with the conditions under Article 4bis(1) of the Protocol.

(5) Where the Registrar General has taken note of an international registration in accordance with paragraph (1), the Registrar General shall notify the International Bureau accordingly.

(6) The notification shall indicate the following –

- (a) the number of the international registration in question;
- (b) where only some of the goods and services listed in the international registration are concerned, those goods and services;
- (c) the filing date and number of the application for registration of the mark in The Gambia;

(d) the registration date and number of the registration in The Gambia;

(e) the priority date, if any, of the registration in The Gambia;
and

(f) information relating to other rights acquired by virtue of the registration in The Gambia.

(7) A national registration or registrations shall not be cancelled or otherwise affected by the fact that they are deemed to be replaced by an international registration or that the Registrar General has taken note in its Register of the latter.

(8) Where all the goods and services listed in the national registration or registrations are not listed in the international registration, the scope of replacement shall be limited to those goods and services that are listed in both the national and the international registration.

95. Transformation

(1) Where an international registration designating The Gambia is cancelled at the request of the office of origin, in accordance with Article 6(4) of the Madrid Protocol, in respect of all or some of the goods and services listed in the international registration, an application may be made to the Registrar General within three months from the date on which the international registration was cancelled, by the person who was the holder of the international registration at the date of its cancellation, for registration of the same trademark ("an application resulting from transformation"), in respect

of goods and services covered by the list of goods and services contained in the international registration.

(2) Subject to sub-paragraphs (3) to (8), the provisions applicable to a trademark application filed directly with the Registrar General shall apply mutatis mutandis to an application resulting from transformation.

(3) An application resulting from transformation shall include the following –

- (a) a statement that the application is made by way of transformation;
- (b) the international registration number of the international registration which has been cancelled;
- (c) the date of the said international registration, or the date of recording of the subsequent designation, as appropriate;
- (d) the date on which the cancellation of the international registration was recorded; and
- (e) where applicable, the date of any priority claimed in the international application and recorded in the International Register.

(4) An application resulting from transformation shall be subject to the payment of the prescribed transformation fees.

(5) Where an international mark has become protected in The Gambia on or before the date on which the international registration was cancelled and, provided that all the requirements relating to an application resulting from transformation have been met, that trademark shall be registered by the Registrar General. The date of registration shall be the date of the cancelled international registration, or the date of the subsequent designation, as appropriate, and that registration shall enjoy any priority enjoyed by the cancelled international registration.

(6) Where an international application has not yet become protected in The Gambia on or before the date on which the international registration was cancelled, any procedures or measures already undertaken on or before the date on which an application resulting from transformation is filed for the purpose of the international registration shall be considered as having been undertaken for the purposes of the application resulting from transformation. The filing date of the application resulting from transformation shall be the date of the international registration or the date of recording of the territorial extension to The Gambia made subsequently to the international registration, as appropriate.

96. Licenses

For recording of a license in an international registration with effect for The Gambia, Section 67 of the Act shall apply mutatis mutandis.

97. Corrections in the international register

(1) Upon receiving a notification from the International Bureau of a correction of an international registration where The Gambia is designated, the Registrar General may declare in a notification of

provisional refusal to the International Bureau that it considers that protection cannot, or can no longer, be granted to the international registration as corrected.

(2) The Registrar General shall send such declaration within a time limit of 18 months counted from the date of sending the correction to The Gambia by the International Bureau.

98. Trade names

(1) A name or designation shall not be used as a trade name if, by its nature or the use to which it may be put, it is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

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

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

(4) A name or a designation shall not be registered if it has a negative meaning in the major local languages in The Gambia.

99. Acts of unfair competition

(1) An act of competition contrary to honest practices in industrial or commercial matters is unlawful.

(2) The following acts, in particular, are deemed to constitute acts of unfair competition –

- (a) all acts of such a nature as to create confusion by any means whatsoever with the enterprise, the goods, or the industrial commercial activities of a competitor;
- (b) false allegations in the course of trade, of such a nature as to discredit the enterprise, the goods, or the commercial activities of a competitor;
- (c) indications, advertising or allegations, the use of which, in the course of trade, is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for their purpose, or the quality of the goods or services, conditions on which goods and services are offered or supplied, the price of goods or services or the modes of circulation;
- (d) any act likely to cause confusion in trade circles relating to –
 - (i) a mark, registered or not;
 - (ii) a trade name;

- (iii) a distinctive corporate sign other than a mark or trade name;
 - (iv) a product's external appearance;
 - (v) the presentation of goods or services; or
 - (vi) a famous person or well-known fictional character.
- (e) the acquisition, disclosure or use of a trade secret without the trade secret owner's consent.

PART XII - GEOGRAPHICAL INDICATIONS

100. Conditions for protection

Any interested person may institute proceedings in the Court to prevent, in respect of geographical indications –

- (a) the use of any indication or designation in the presentation of a good in the course of trade that suggests that the good in question originates in a geographical area other than its true place of origin in a manner which misleads the public as to the geographic origin of the good;
- (b) any use that would constitute an act of unfair competition under the Competition Act of The Gambia;

- (c) protection under this Part shall be available against another 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; and
- (d) any use of a geographical indication for goods (wines and 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 waivers, delocalizing clarifications or expressions such as “**kind**”, “**type**”, “**style**”, “**imitation**” or others of similar effect.

101. Marks containing a Geographical Indication

(1) Registration of a trademark containing a geographical indication or constituted by such indication shall be refused or invalidated if the use of such indication in the trademark for such products is liable to mislead the public as to the true place of origin.

(2) Likewise, registration of a geographical indication which, although literally exact with respect to the territory, region or locality from which the products originate, shall also be refused or invalidated if it suggests to the public that the products originate from a different territory.

102. Homonymous Geographical Indications

(1) In the case of homonymous geographical indications for identical products, protection under this Part shall be accorded to each indication.

(2) The Registrar General may allow homonymous geographical indications to be concurrently registered if he or she is satisfied that the public will not be misled. In case of permitted concurrent use of such indications, the Registrar General shall determine the practical conditions under which the homonymous indications will be differentiated, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled and issue appropriate legislation.

103. Competent Authority

GIPO shall be the competent authority for all intellectual property matters and shall authenticate all documents to that effect.

104. Exclusion from Provision

The following shall not be protected as geographical indications –

- (a) an indication that does not comply with the definition of geographical indications in this Act;
- (b) an indication the use of which must be prevented on grounds of public order or morality;

- (c) a geographical indication that is not, or that ceases to be, protected in its country of origin, or which has fallen into disuse in that country; or
- (d) an indication that is identical with the term customary in common language in The Gambia as the common name for the relevant goods or for related services.

105. Entitlement to File an Application

Natural or legal persons carrying on an activity as a producer in the geographical area specified in the application, with respect to the products specified in the application, as well as groups of such persons, groups of consumers and any competent entity shall be entitled to file an application for registration of a geographical indication.

106. Application for Registration

(1) Any person wishing to obtain the registration of a geographical indication shall file with the Registrar General.

(2) The following shall have the right to file an application for registration of a geographical indication –

- (a) a grouping of producers or a legal entity that groups producers that operates in a specified geographical area and with respect to specified goods; and

- (b) any competent authority on behalf of the persons or the legal entity indicated under subsection of this section; and

(3) The application shall contain a document proving payment to the Industrial Property office of the filing fee.

107. Content of Application

(1) Any application for the registration of a geographical indication shall specify –

- (a) the name, address and domicile of the persons or legal entity filing the application;
- (b) the geographical indication for which registration is sought;
- (c) the geographical area to which the geographical indication applies;

(2) The goods designated by the geographical indication.

(3) The application shall be accompanied by a specification describing in sufficient detail the specific qualities, reputation and other characteristics of the products for which the geographical indication is used, the area and method of production of the goods, the link between the characteristics of the goods and the area and method of production, the manner in which the specified

characteristics are controlled and other prescribed particulars, and shall be subject to the payment of the prescribed fee.

(4) The application shall indicate the manner in which the continued compliance of the conditions laid down in the specification will be controlled by an independent body or authority.

108. Examination and Registration of Application

(1) For every application for registration of a geographical indication, the Registrar General shall examine whether the applicant is entitled to apply for registration, whether the application contains particulars required in this Act and whether the prescribed fees have been paid.

(2) Where the applicant is not entitled to apply for registration, where the prescribed fees have not been paid or where the geographical indication is contrary to public policy or morality, the application shall be rejected.

(3) Where the application does not contain the particulars required under this Act, the application shall be deemed irregular. The irregularity shall be notified to the applicant or his or her agent with an invitation to regularize the elements within a period of three months as from the date of notification. That period may be extended by 30 days in a case of proven necessity at the request of the applicant or his or her agent. An application thus put in order within the said period shall retain the date of the original application. Failing regularizing of the application of the application within the prescribed time limits, the application shall be rejected.

(4) Where the requirements of subsection (1) are fulfilled, the geographical indication shall be registered by the Registrar General.

(5) No filing may be rejected under subsection 3 unless an opportunity has been given to the applicant or his or her agent to correct such application to the extent and in accordance with the prescribed procedures and forms.

109. Publication

(1) The Registrar General shall publish the registration and issue to the owners of the registration certificate containing, in particular, the following particulars as they appear in the Register –

- (a) Serial number of the geographical indication;
- (b) Filing date of the application for registration;
- (c) Geographical area to which the indication applies;
- (d) Products to which the indication applies; and
- (e) Identity of the applicant.

(2) As from publication referred to in subsection (1), any person may obtain an official copy and an extract of entries at his or her own expense.

110. Opposition

(1) Any interested party may oppose the registration of a geographical indication by sending the Registrar General, within a period of three months from the publication, a written statement setting out the reasons for opposition, which reasons must be based on infringement provisions in this Act, or of a prior right belonging to the opposition party.

(2) The Registrar General shall send a copy of the statement of opposition to the applicant or to his or her agent, who may reply, setting out his or her reasons, within a once-renewal period of 3 months. The reply shall be forwarded to the opponent or to his or her representative. If his or her reply does not reach the Registrar General by the prescribed time limit, the applicant shall be deemed to have withdrawn his or her application for registration and the registration shall be cancelled.

(3) Before taking a decision on the opposition, the Registrar General shall, on request, hear each or either of the parties or their agents.

(4) The Registrar General shall only cancel the registration in so far as the aforementioned opposition is valid.

(5) The final decision of cancellation shall be published in the government Gazette.

111. Cancellation and Modification of Registrations

(1) Any interested person or any competent authority may request the Registrar General to order –

- (a) the invalidation of a registration of a geographical indication on the ground that the registered indication did not qualify for protection as such under this Act;
- (b) the revocation of a registration of a geographical indication on the ground that the registered indication is used in a manner that does not correspond to the specifications of the products designated by the indication; or
- (c) the amendment of a registration of a geographical indication where the specifications recorded in the register need to be corrected.

(2) In any proceedings under this section, the Registrar General shall cause a notice of the request –

- (a) to be served on the persons who filed the application for registration of the geographical indication;
- (b) to be given by publication in the Official Gazette to all persons having the right to use the registered geographical indication; and
- (c) the persons referred to in subsection (b) of this section and any other interested person may, within a period, which shall be specified by the Registrar General in the said notice, apply to join in the proceedings.

112. Use of a Geographical Indication

(1) Subject to subsections (2) and (3) hereafter, only producers carrying on their activity for commercial purposes in the geographical area specified in the Register shall have the right to use a registered geographical indication with respect to the products specified in the register, provided that such products possess the essential characteristics and qualities in the register.

(2) Where products have been put into circulation under the conditions defined subsection (1), under a registered geographical indication, any person shall have the right to use the geographical indication for that purpose.

(3) Apart from the cases referred to in the preceding subsection (1) and (2), it shall be unlawful to use, for commercial purposes, a registered geographical indication, or a similar designation, with respect to the products specified in the Register or similar products, even if the true origin of the products is indicated or if the geographical indication is in the form of a translation or is accompanied by terms as such as **“kind”**, **“type”**, **“make”**, **“imitation”**, or the like.

(4) The Registrar General may decide by regulation that the quality of products put on sale or used under a registered geographical indication shall be prohibited.

(5) It shall be unlawful to use in the designation or presentation of a product any means that infers or suggests that the product concerned originates in a geographical area other than its true place of origin in a manner likely to mislead the public as to the geographical origin of the product.

PART XIII - PLANT BREEDER

113. Scope of application

The Provisions of this Act shall be applied to all plant general and species.

114. Administration

(1) A breeder right granted under this Act shall, on the basis of one application, be protected in The Gambia.

(2) GIPO is empowered to grant breeders' rights and to administer such breeder rights; GIPO shall be responsible for –

- (a) granting breeder rights;
- (b) establishing a documentation centre for the purposes of dissemination of information on breeders' rights;
- (c) maintaining a register;
- (d) providing information on breeders' rights;

- (e) collaborating with other regional and international bodies whose functions relate to the protection of new varieties of plants;
- (f) liaising with national authorities in all matters relating to the grant and administration of breeders' rights; and
- (g) performing such other functions as are necessary for the furtherance of the objectives of this Bill.

(3) The National Authority office shall maintain a register, to be known as the Register of Breeders' Rights.

(4) The Register shall include the information in particular –

- (a) information relating to applications for breeders' rights;
- (b) information relating to grants of breeders' rights;
- (c) any assignment and exclusive licenses of the rights;
- (d) any declaration of nullity or cancellation of rights; and
- (e) any submission, registration, rejection, change or cancellation of variety denomination.

(5) Any person shall, upon payment of a prescribed fee be entitled, during normal business hours, to examine the Register and to make or receive copies of or extracts from the information contained therein.

115. Conditions for Granting of Breeder Right

A breeder's right shall be granted where it is determined that a variety is new, distinct, uniform and stable. The grant of a breeder's right shall not be subject to any further or different conditions provided that –

- (a) the variety is designated by a denomination;
- (b) the applicant complies with the formalities provided for in this Act; and
- (c) the breeder pays the required fees.

116. Novelty

A variety shall be deemed to be new if, on the date of filing of an application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder of the variety, for purposes of exploitation of the variety in The Gambia earlier than one year before the date of filing of an application or in a foreign country earlier than four years.

117. Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of the filing of the application for registration or the priority date of the application for registration.

118. Uniformity

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

119. Stability

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

120. Eligibility for a plant breeder right

(1) A breeder is eligible for a plant breeder right if that breeder duly makes an application for it in accordance with this Act.

(2) The eligibility of a breeder to apply for a plant breeder right shall not be affected by the fact that, the same variety has not been applied for or has been refused in a foreign country.

(3) Where two or more persons have jointly bred or discovered and developed a variety, they are both eligible to apply for a plant breeder right with respect to that variety.

(4) Where a variety has been bred or discovered and developed in the execution of a commission or a contract of employment, the person that commissioned the work or the employer has the right to apply for the respective plant breeder right except as otherwise provided in the contract.

(5) Where a variety has been bred or discovered and developed by several persons independently of each other, the person who makes an application with an earlier prior date for protection has the right to apply for the plant breeder right.

121. Persons Entitled to Apply for Protection

(1) A person may apply to for the grant of a plant breeder right if that person is eligible in accordance with this Act.

(2) An application for the grant of a plant breeder right may be filed by the breeder of a new variety who is –

(a) a citizen or who is resident in The Gambia

(b) a foreign citizen or a resident in the territory of a party to a treaty to which The Gambia is party

- (c) a legal entity that has its registered office within the territory of a party to a treaty to which The Gambia is party or
- (d) a legal entity that has its registered office in The Gambia.

122. Filing of Application

(1) An application for the grant of a breeder's right shall be filed by the breeder or by an agent.

(2) An application is subject to the prescribed fee; and shall include the following details –

- (a) the name and address of the of the applicant,
- (b) the name and address of the person that has bred or discovered and developed the variety, if different from the applicant, and, if applicable, the name, address and other information required of the agent;
- (c) identification of the botanical taxon (botanical and common name);
- (d) the proposed denomination for the variety or provisional designation;

- (e) technical description of the variety;
- (f) information on prior applications and grants of breeders' rights for the same variety; and
- (g) date of sale or of disposal of to others for the purposes of exploitation of the variety.

123. Filing Date of Application

The filing date of the application for a breeder's right shall be the date of receipt of the application duly filed subject to the payment of the prescribed fees.

124. Right of Priority

(1) Any breeder who has duly filed an application for the protection of a variety in The Gambia or a party to an international agreement for the protection of new plant varieties (the "**first application**") shall, for the purpose of filing an application for the grant of a breeder's right, enjoy a right of priority for a period of twelve months which shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) In order to benefit from a right of priority, a breeder shall, in an application filed directly with GIPO, claim the priority of the first application.

125. Objection

(1) Any person who wishes to lodge an objection may only do so once an application for a breeder's right is published, in accordance with the procedures that may set out in the Regulations.

(2) Any person, who wishes to lodge an objection, shall submit a written and reasoned objection to GIPO together with the payment of the prescribed fee, at any time prior to the refusal or to the grant of the right within 3 months.

126. Examination of Applications

(1) The filing date of the application is the date on which the application was filed with GIPO.

(2) Where the application is incomplete or incorrect, GIPO shall request the applicant to complete or correct it within thirty days after notification.

(3) An application which is not corrected within the prescribed period shall be considered not to have been filed.

(4) GIPO shall examine the application to determine whether it complies with the requirements of novelty, distinctness, uniformity and stability.

(5) In examining the application, GIPO may enter into an arrangement with a relevant authority or person within The Gambia or outside The Gambia to carry out tests to determine whether the

variety is new, distinct, uniform, or stable use the results of tests that have already been carried out.

(6) An applicant shall submit to GIPO any information, document or material requested by the Office for purposes of the examination of the application and matters related to it.

(7) Where GIPO is satisfied that an application has been duly filed under this Act or the, the Office shall record the date of filing the application in the Register.

127. Granting and Rejection of a Breeder Right

(1) Where a plant variety fulfils the requirements of novelty, distinctness, uniformity and stability and that the proposed denomination of the variety is suitable for registration, GIPO shall grant a plant breeder's right, and where those requirements are not fulfilled, GIPO shall reject the application.

(2) GIPO shall in respect of each breeder's right granted –

- (a) issue a Breeder Right Certificate to the person who applied for the grant of the right;
- (b) enter the applicable particulars in the register; and
- (c) publish such particulars relating to the grant of such right as may be prescribed by regulations.

(3) Where the examination shows that the proposed denomination of the variety cannot be registered, GIPO shall request the applicant in writing to submit another denomination within a period of three months, or further time period that the Office may allow on good cause shown, failing which the application shall be rejected.

128. Rejection of application

(1) An application shall be rejected if it is established that:

- (a) the applicant is not entitled to file an application;
- (b) the applicant has not replied within the prescribed time limit to the official notifications issued by GIPO, particularly where the information given was erroneous or incomplete or the application contained a material irregularity;
- (c) the variety to which the applicant refers does not satisfy the requirements;
- (d) the applicant refuses or is unable to propose an acceptable denomination; or
- (e) the applicant does not comply with the payment of fees as prescribed.

(2) GIPO shall in respect of each rejected application notify its decision in writing to the applicant, enter the applicable particulars in the Register; and publish a notice of rejection.

129. Scope of Breeder Right

(1) The following acts in respect of the propagating material of a protected variety shall require the authorization of the breeder –

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale; (d) selling or other marketing;
- (e) exporting;
- (f) importing; and
- (g) stocking for any of the purposes mentioned in (a) to (f), above.

(2) A breeder's right shall not extend to –

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes; and

- (c) acts done for the purpose of breeding other varieties.

130. Restrictions on Exercise of Breeder's Right

(1) A compulsory license shall be granted to an applicant by GIPO only for reasons of public interest.

(2) GIPO, when granting a compulsory license, shall stipulate the acts covered and specify the reasonable conditions which shall include the payment of equitable remuneration to the breeder.

131. Duration of Breeder Right

A plant breeder right shall be granted for a period of twenty years from the date of the grant of the breeder right.

132. Nullity of Breeder Right

(1) GIPO declare a holder's right null and void –

- (a) if the conditions of novelty and distinctness were not complied with at the time of the grant of the plant breeder right;
- (b) where the grant of the right has been essentially based on information and documents furnished by the holder, if the conditions uniformity and stability

were not complied with at the time of the grant of the plant breeder right; or

- (c) Where the plant breeder right has been granted to a person, who is not entitled to it, except in the case of an assignment to a person who is so entitled.

(2) A plant breeder right which has been declared null and void shall be considered never to have been granted.

(3) GIPO shall enter in the Register the decision of the nullification of the plant breeder right and publish the decision in the Gazette or Varieties Bulletin within seven days or such other time after entry in the Register.

(4) An interested person may challenge the decision, by a written objection lodged with GIPO within thirty days after the date of the decision.

(5) GIPO may hold a hearing or decide the matter, based on written submissions of the interested parties within sixty days after receipt of the objection.

133. Cancellation

(1) GIPO shall cancel a plant breeder right if the conditions of uniformity and stability are no longer fulfilled.

(2) GIPO may cancel the registration of a variety in any of the following instances if after being requested to do so and within the prescribed period –

- (a) the breeder does not provide the Officer with the information, documents or material necessary for the verification of the maintenance of the variety;
- (b) the breeder fails to pay the annual fee required; or
- (c) the breeder does not propose a suitable denomination for the protected variety where the denomination of the variety is cancelled after the registration.

(3) The Registrar General shall record in the register, the decision of the cancellation of the registration of the variety and publish the decision in the Gazette or Varieties Bulletin.

134. Licenses

The holder of a breeder's right may grant, to any person, an exclusive or a non-exclusive license relating to all or any of the rights granted.

135. Assignment and transfer

(1) An application for the grant of a breeder's right or a breeder's right may be assigned or otherwise transferred.

(2) The assignment or transfer shall be in writing, signed by the parties concerned and shall be registered in the Register.

136. Civil remedies

(1) Where a person is aggrieved by the infringement of a plant breeder right, that person may bring an action before the Court for –

- (a) an order of injunction to prevent the commission or continuation of the commission of the act of infringement or to prohibit the continuation of the infringement;
- (b) the recovery of damages for the infringement;
- (c) the forfeiture, seizure or destruction of propagating or harvested material which has been produced contrary to this Act;
- (d) an order requiring the Customs Authority to detain goods imported or ready for export; and
- (e) any other remedy that the court considers fit.

137. Offenses

A person who wilfully –

- (a) offers for sale, sells or markets the propagating material of a variety protected in The Gambia;
- (b) markets propagating material of a variety protected in The Gambia without the registered variety denomination; or
- (c) uses the registered variety denomination of a variety protected in The Gambia for another variety of the same plant species or closely related species likely to cause confusion

commits an offence and is liable on summary conviction to a fine of D500,000 or to a term of imprisonment of not more than two years or to both.

138. Application of International Conventions

(1) The Minister shall ensure that the implementation of this Act does not affect the fulfilment of the Government's obligations pertaining to the protection of plant breeder rights under the International Conventions to which The Gambia is a party.

(2) The Minister may on behalf of the Government of The Gambia enter into a bilateral or multilateral agreement with a foreign government for the mutual recognition and protection of breeders rights.

PART XIV - TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES

139. Protection

The traditional knowledge and genetic resources of every individual, family and community in The Gambia shall be protected and respected.

140. Register

The Registrar General may maintain a register of Traditional Knowledge and Genetic Resources of an individual, family and community in The Gambia.

141. Access and benefit sharing

The Traditional Knowledge and Genetic Resources of every individual, family and community shall not be registered and or exploited by any third party without the prior informed consent of the individual, family and community and the terms of access and fair and equitable benefit sharing clearly outlined and filed with the Registrar General.

142. Duration of protection

The right for protection for Traditional Knowledge and Genetic Resources shall be for perpetuity.

143. Non-Disclosure

The traditional knowledge of an individual, family and community may not be disclosed and the registration shall not be published by the Registrar General.

144. Right of action before the Court

Any member of the family or community that owns the tradition knowledge and Genetic Resources shall have absolute right to challenge and remedy any alleged infringement against any third party and the court may award damages and or injunction.

145. Licensing and assignment

Owners of Traditional Knowledge and Genetic Resources may in writing license same to a third party. Traditional Knowledge and Genetic Resources owned by a family or community shall not be assigned.

146. Prohibition of Export of Genetic Resources

Genetic resources shall be exported outside The Gambia with a certificate of origin signed by the owners in The Gambia and authenticated by the Registrar General. A Custom official shall confiscate any genetic resource without valid document.

147. Act of Unfair Competition

(1) Any act of competition contrary to honest practices in industrial or commercial matters shall constitutes an act of unfair competition.

(2) The following in particular shall be prohibited –

- (a) all acts of such a nature as to create confusion by any means whatever with the enterprise, 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 enterprise, 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.

PART XV - COPYRIGHT AND RELATED RIGHTS

148. Copyright and Related rights

(1) Subject to this section, the works listed hereunder are eligible for copyright protection –

- (a) literary works;
- (b) artistic works;
- (c) musical works;
- (d) audio-visual works;
- (e) architectural works;
- (f) computer programs;
- (g) sound recordings; and
- (h) derivative works.

(2) Notwithstanding subsection (1), a work shall not be eligible for copyright unless it is –

- (a) an original intellectual creation; and
- (b) fixed or reduced to material form.

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

(4) Works shall be protected when they are fixed in a medium from which they can be perceived or retrieved, irrespective of their mode or form of expression, content, quality and purpose.

(5) Rights protected by copyright shall accrue to the author automatically on fixation of a work, and failure to register any copyright work or comply with any formalities shall not bar any claim from the author.

(6) Subject to national treatment in section 8, the provisions of this Act on the protection of sound recordings shall apply to –

- (a) sound recordings the producers of which are nationals of the Republic of The Gambia;
- (b) sound recordings first fixed in the Republic of The Gambia; and
- (c) sound recordings first published in the Republic of The Gambia.

149. Derivative Works and Collections

(1) The following shall be protected as works –

- (a) translations, adaptations, arrangements of music and other alterations of a work or expression of folklore shall be protected as original works without prejudice to the copyright in the original work;
- (b) collections of works and collections of expressions of folklore, whether in machine readable or other form,

provided that such collections are original by reason of the selection or arrangement of their contents; and

- (c) compilation of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations so however that protection shall not extend to the data or the material itself and shall be without prejudice to any copyright subsisting in the data or material contained in the compilation.

(2) The protection of any work referred to in subsection (a) shall be without prejudice to any protection available to a pre-existing work or expression of folklore incorporated in or utilized for the making of such a work.

150. Works excluded from Copyright

(1) Notwithstanding the provisions of Section 151 of this Part, no protection shall extend under this Part to –

- (a) any idea, procedure, system, method of operation, mathematical concept, principle, discovery or mere data.
- (b) any official legislative, judicial, or administrative text, including the Laws of the Government of The Gambia, as well as any official translation thereof;
- (c) news of the day or miscellaneous facts having the character of mere items of press information; and

- (d) political speeches and speeches delivered in the course of legal proceedings.

151. Economic Rights

(1) Subject to exceptions provided for in this Part, the owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the copyright work –

- (a) reproduction of the work in any manner or form;
- (b) translation of the work;
- (c) adaptation, arrangement or any other transformation to create a derivative work;
- (d) the distribution to the public of originals or copies of the work and if a physical copy limited to first sales or other first transfer of ownership only;
- (e) rental of the original or a copy of an audio-visual work, a sound recording, a work embodied in a sound recording or a computer program or other works to the public, and public performance;
- (f) for works other than sound recordings, broadcasting or rebroadcasting;
- (g) for works other than sound recordings, communication to the public; and

(h) making available.

(2) The right of distribution under subsection (a) (iv) of this Section does not apply to the original or a copy of the work that has already been subject to a sale or other transfer or ownership in any country authorized by the owner of copyright in the work.

(3) The right of rental under subsection (a) (v) of this Section does not apply to rental of computer programs where the program itself is not the essential object of the rental.

152. Moral Rights

(1) Independent of the author's or owner's economic rights, and even after the transfer of the said rights, the author of a work shall have the following moral rights –

- (a) to have his or her name indicated prominently on the copies and in connection with any public use of his or her work, as far as practicable;
- (b) to not have his or her name indicated on the copies and in connection with any public use of his or her work;
- (c) to use a pseudonym;
- (d) to object and seek relief in connection to any distortion, mutilation or other modification of, or other

derogatory action in relation to his or her work which would be prejudicial to his or her honour or reputation.

(2) Notwithstanding any assignment or sale of the original work, the author of a graphic work, three dimensional work and manuscript shall have a right to share in the proceeds of any sale of that work by public auction or through a dealer whatever the method used by the latter to carry out the operation.

(3) The conditions for the exercise of the right conferred by subsection (b) of this section shall be determined by Regulations to be made by GIPO established under this Part.

(4) The rights mentioned in subsections (a) and (b) shall not be transmissible during the life of the author, but the right to exercise any of those rights may be transferred by testamentary disposition or by operation of law following the death of the author.

153. Fair Use

(1) Notwithstanding the provisions in this Part, the fair use of a copyright work, including such use by reproduction in copies or sound recordings or by any other means specified by that section, for purposes such as parody, satire, criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include –

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (b) the nature of the copyrighted work;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for or value of the work.

(2) The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

154. Quotation

(1) The reproduction, in the form of quotation from a work that has been published shall be permitted without authorization of the owner of copyright, provided that the quotation is compatible with fair practice and does not exceed the extent justified by the purpose including quotations from newspaper articles and periodicals in the form of press summaries.

(2) Any quotation made in accordance with subsection (a) shall be accompanied by an indication of source and the name of the author, if the name appears in the work from which the quotation is taken.

155. Private Reproduction for Personal Purposes

(1) The private reproduction of an authorized copy of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright, where the reproduction is made by a natural person exclusively for his or her own personal purposes.

(2) The permission under subsection (a) shall not extend to reproduction –

- (a) of a work of architecture in the form of building or other construction;
- (b) of the whole or of a substantial part of a database in digital form;
- (c) in the form of reprography of a whole or of a substantial part of a musical work in the form of notation;
- (d) of a computer program, except as provided in this Part; and
- (e) private copying levies shall be paid in accordance with Section 182.

156. Temporary Reproduction

The temporary reproduction of a work shall be permitted if all of the following conditions are met –

- (a) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;
- (b) it is caused by a person or entity that by virtue of authorization by the owner of the copyright or by operation of law, is entitled to make that transmission or make the work perceptible; and
- (c) it is an accessory to that transmission or making perceptible, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those, referred to in subsections (a) and (b) of this section.

157. Reproduction and Other Utilization for Teaching

(1) The following acts shall be permitted without authorization of the author, or other owner of copyright –

- (a) the utilization by way of illustration for teaching purposes by an educational institution whose activities do not serve commercial gain of a work that has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, provided that such utilization is from an authorized copy and compatible with fair practice and does not exceed the extent justified by the purpose; the utilization can also include the making available of such works in computer networks, provided that access to the works is only available to enrolled pupils or students and their teachers;

(b) the reprographic reproduction, from an authorized copy for face-to-face teaching in non-profit educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that –

(i) the act of reproduction is an isolated act occurring, if repeated, on separate and unrelated occasions, and

(ii) there is no collective license available, offered by a collective management organization of which the educational institution is or should be aware, under which such reproduction can be made.

(2) The source of the work and the name of the author shall be indicated, as far as is practicable, on all copies made under subsection (a) of this Section or otherwise in reasonable connection with the work.

158. Reproduction by Libraries and Archives

Any library or archive whose activities do not serve direct commercial gain may, without the authorization of the owner of copyright, make a copy of a work by reproduction where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a person, provided that –

- (a) the library or archive is satisfied that a copy will be used solely for the purposes of study, scholarship or private research,
- (b) the act of reproduction is an isolated act occurring, if repeated, on separate and unrelated occasions, and
- (c) there is no collective license available or offered by a collective administration organization of which the library or archive is or should be aware, under which such copies can be made or where the copy is made in order to preserve and, if necessary, replace a copy, or to replace a copy which has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act of reproduction is an isolated act occurring, if repeated, on separate and unrelated occasions.

159. Reproduction, Broadcasting and Other Communication to the Public for Information Purposes

The following acts shall be permitted in respect of a work without the authorization of the owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable—

- (a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address, sermon (religious issues) or other work of a similar nature delivered in public, to the

extent justified by the purpose of providing current information;

- (b) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current issues or a broadcast work of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved;
- (c) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public by means of photography, audio-visual, broadcasting or other communication of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose.

160. Reproduction and Adaptation of Computer Programs

(1) The reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the owner of copyright, provided –

- (a) that the copy or adaptation is necessary for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
- (b) that the copy or adaptation is necessary for archival purposes and for the replacement of the lawfully

owned copy of the computer program in the event that the said copy of the computer program is lost destroyed or rendered unusable.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (a), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful. Any copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program.

161. Visually and Aurally Impaired Persons

(1) It shall be permitted without the authorization of the owner of copyright to reproduce a published work for visually or aurally impaired persons or persons with print disabilities in a specialized format which enables their perception of the work, and to distribute the copies exclusively to those persons, provided that the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually or aurally impaired or print disabled person; and the reproduction and distribution are made on a non-profit basis.

(2) The copies of works made in pursuance of this section shall bear a copyright notice identifying the copyright owner and the date of the original publication and notice that any further reproduction or distribution in a format other than a specialized format is an infringement.

(3) Authorized Entities may engage in the distribution of works pursuant to this section where the copies had been made abroad and the conditions mentioned above have been fulfilled.

(4) Authorized Entities may export accessible format copies made pursuant to this section to other Authorized Entities.

(5) Authorized Entities are those that:

- Limit the distribution of accessible format copies to eligible persons;
- Discourage the further reproduction and distribution of unauthorized copies;
- Maintain due care in, and records of, the handling of copies of works by the authorized entity, while respecting the privacy of eligible persons; and
- Make publicly available the titles of all of their accessible format works, as well as information on their policies, practices, and overseas authorized entity partners.

162. Ephemeral Recordings

Any broadcasting organization may make, without the authorization of the owner of copyright, for the purpose of its own broadcasts, an ephemeral recording of any work which it is authorized to broadcast. All copies of it shall be destroyed within six months of the making or within any longer term agreed to by the owner of the copyright;

However, where such recording has an exceptional documentary character, copies of it may be preserved in official archives.

163. Use for Public Security and for the Performance or Reporting of Proceedings

(1) A work may be used, without authorization from the copyright owner, for the purposes of public security and to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings and the discharge of related functions.

(2) Notwithstanding the provisions of the foregoing subsection, the moral rights of the author shall be upheld as far as is reasonable.

164. Duration of Copyright and Related Rights

(1) The term of a copyright and related rights conferred by this Act shall be computed according to the breakdown in the table below -

Type of work	Date of Expiration of copyright
1. Literary, musical, architectural, or artistic work and computer programs	Fifty years after the end of the year in which the author dies.
2. Audio-visual works	Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest.
3. Sound recordings	Fifty years after the end of the year in which the recording was published, or if not published, 50

4. Broadcasts

years after the end of the year in which the recording was fixed.

Twenty years after the end of the year in which the broadcast took place.

(2) In the case of anonymous or pseudonymous literary, musical or artistic works, and works created under 165(3) or (5) below, the copyright therein shall subsist until the expiration of fifty years from the end of the year in which it was first published—

Provided that in the event of the identity of the author becoming known the term of protection of a copyright shall be calculated in accordance with subsection (1).

(3) In the case of a work of joint authorship, reference in the preceding table to the death of the author shall be taken to refer to the author who dies last.

(4) The rights vested in the Minister on behalf of and in trust for the people of The Gambia in respect of expressions of folklore exist in perpetuity.

(5) Notwithstanding anything else contained in this Part copyright in works eligible for copyright and vested in GIPO is conferred in perpetuity on GIPO.

165. First Ownership of Copyright

(1) Subject to the provisions of subsections (2) to (5) of this section, the first owner of any Copyright granted under this Part shall be the author of the work.

(2) For a work of joint authorship, the co-authors shall be the first owners of the economic rights. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the first owner of the economic rights in the part that he or she has created.

(3) For a work created by an author, employed by a natural person or legal entity, in the course of his or her employment, the first owner of the economic rights shall, unless provided otherwise in a contract, be the employer.

(4) For an audio-visual work, the first owner of the economic rights shall be the producer, unless provided otherwise in a contract. The co-authors of the audio-visual work and the authors of the pre-existing works included in or adapted for the making of the audio-visual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be the subject of acts covered by their economic rights separately from the audio-visual work.

(5) Where a work is commissioned by a person who is not the author's employer under a contract of service; or not having been so commissioned, is made in the course of the author's employment under a contract of service, the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting the transfer.

166. Presumption Regarding Authorship, Producers of Audio visual Works and Publishers

(1) The natural person whose name is indicated as the author of a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the

name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

(2) The person whose name appears on an audio visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the producer of the work.

(3) In the case of an anonymous or pseudonymous work, subject to the provision of subsection (1) of this section, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his or her identity.

167. Assignment, Relinquishment and Licensing of Authors' Rights

(1) Subject to this section, copyright shall be transmissible by assignment, license, and testamentary disposition or by operation of law, as movable property.

(2) An assignment, license or testamentary disposition of copyright may be limited so as to apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

(3) Any assignment of copyright and any exclusive license to do an act subject to authorization by the owner of copyright shall be in writing signed by or on behalf of the assignor or licensor, as the case may be.

(4) An assignment in whole or in part of any economic right, or a license to do an act subject to authorization by the owner of copyright, shall not include

or be deemed to include the assignment or license of any other rights not explicitly referred to therein.

(5) An assignment, license or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist and the prospective copyright in any such work shall be transmissible by operation of law as movable property.

(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of anything to the contrary, be taken to include the disposition of any copyright or prospective copyright in the work which is vested in the testator.

168. Application for Registration; Issuance of Certificate

(1) The application for copyright registration shall be made pursuant to regulations of GIPO.

(2) When, after examination, the Registrar General determines that in accordance with the provisions of this Part, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of regulations of GIPO have been met, it shall register the claim and issue to the applicant a certificate of registration under the seal of GIPO. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

169. Registration of Transfers and other Documents

(1) Any transfer of copyright ownership or other document pertaining to a copyright may be registered in GIPO if the document filed for registration bears the actual signature of the person who executed it, or if it is accompanied by a sworn affidavit or official certification that it is a true sworn

affidavit or official certification that it is a true copy of the original, signed document.

(2) The Registrar General shall, upon receipt of a document provided by sub-section (1) and of the fee as specified by GIPO, shall register through the Registrar the document and return it with a certificate of record.

(3) Registration of a document in GIPO shall give all persons constructive notice of the facts stated in the registered document.

(4) In the case of works first published in The Gambia by Gambian authors, no persons claiming by virtue of a transfer to be the owner of copyright may institute an infringement action unless the claim has been registered in GIPO. An infringement action may be initiated after registration on a cause of action that arose before registration.

170. Protection of Performers and Broadcasting Organizations of Related Rights

(1) The protection of performers shall apply to performers who are nationals of the Republic of The Gambia, and performers who are not nationals of the Republic of The Gambia but whose performances –

- (a) take place on the territory of the Republic of The Gambia;
- (b) are incorporated in sound recordings that are protected under this Act; or
- (c) have not been fixed in sound recordings but are included in broadcasts qualifying for protection under this Part.

(2) The provisions of this Act on the protection of broadcasts shall apply to

–

- (a) broadcasts of broadcasting organizations the headquarters of which are situated in the Republic of The Gambia; and
- (b) broadcasts transmitted from transmitters situated in the Republic of The Gambia.

171. Rights of Performers

(1) A performer shall have the exclusive right to carry out or to authorize any of the following acts –

- (a) the broadcasting or other communication to the public of his or her performance, except where the broadcasting or the other communication is made from a fixation of the performance which the performer has authorized to be made or is a rebroadcasting made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his or her unfixed performance;
- (c) the direct or indirect reproduction of a fixation of his or her performance, in any manner or form;
- (d) the distribution of a fixation of his or her performance, or of copies thereof, to the public;

(e) the commercial rental to the public of a fixation of his or her performance, or copies thereof; and

(2) Once the performer has authorized the incorporation of his or her performance in an audio visual fixation, he or she shall, in the absence of contractual provisions to the contrary, be deemed to have assigned his or her exclusive economic rights with respect to that fixation to its producer.

(3) The right of distribution under item (d) of subsection (1) shall not apply to a copy of a fixation of his or her performance that has already been subject to a sale or other transfer of ownership of a physical copy in any country authorized by the performer.

(4) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his or her live aural performances or performances fixed in sound recordings, have the right to claim to be identified as the performer of his or her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his or her performances that would be prejudicial to his or her reputation.

(5) Modifications consistent with the normal exploitation of a performance in the course of a use authorized by the performer shall not be considered prejudicial to the performer's reputation.

(6) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed.

173. Equitable Remuneration for use of Sound Recordings

(1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer or a collective management organization licensed by the GIPO.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (a) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of fifty calendar years following the year of publication.

(4) For the purposes of this section, sound recordings that have been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

174. Rights of Broadcasting Organizations

(1) Without prejudice to the incorporated and underlying works, a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts –

(a) the rebroadcasting of its broadcast;

(b) the communication to the public of its broadcast;

- (c) the fixation of its broadcast; and
- (d) the reproduction of a fixation of its broadcast.

(3) Program-carrying signals transmitted by satellite which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorized receiving organization, may not be broadcast or communicated to the public by anyone else without authorization of the person or legal entity that decided what program the emitted signal would carry (originating organization).

177. Folklore

(1) Expression of folklore is protected by copyright under this Act against –

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means; and
- (c) adaptation, translation and other transformation, when the expression is made either for commercial purposes or outside a traditional or customary context.

(2) The protection conferred in subsection (1) does not include the right to control –

- (a) the doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source;
- (b) the utilization for purposes of education, utilization by way of illustration in an original work of an author, provided that the extent of such utilization is compatible with fair practice;
- (c) the borrowing of expression of folklore for creating an original work of an author, provided that the extent of such utilization is compatible with fair practice; or
- (d) the incidental utilization of expressions of folklore.

(3) The source of an identifiable expression of folklore shall be indicated in all printed publications, and in connection with any communications to the public, in an appropriate manner, and in conformity with fair practice, by mentioning the community or place from where the expression utilized was derived.

(4) The right to authorize an act referred to in subsection (1) shall vest in the Minister on behalf of and in trust for the people of The Gambia.

5) The GIPO shall ensure that any benefits accruing from the commercial exploitation of traditional cultural expression are realized by the relevant community from where it originated and where the community cannot be clearly identified or the work cuts across more than one community, the benefits shall be administered by the GIPO for the promotion of cultural activities in Gambia.

178. Technological Protection Measures

(1) Technological protection measures may be used by rights holders to protect access to and rights in their works.

(2) A beneficiary of any exception a beneficiary of any exception or limitation under this Part may circumvent any rights control technological protection measure to the extent required to benefit from such exception or limitation.

179. Protection of Rights Management Information

(1) Right holders may use rights management information in connection with the exercise of their rights.

(2) subsection (1) does not prohibit any governmental activities for public policy or security authorized by law.

180. Establishment of Collecting Societies

(1) The Collecting Society of The Gambia as established and regulated under the Copyright Act 2004 shall continue to exist.

(2) Notwithstanding subsection (1) private collecting societies may be established in accordance with right to association under the Constitution.

181. Protection of Traditional Cultural Expressions

(1) Traditional cultural expressions are protected against the following actions –

- (a) reproduction;
- (b) fixation of a previously unfixed performance;
- (c) communication to the public by performance, broadcasting, distribution by cable or other means;
- (d) adaptations, translations and other transformations;
- (e) when such expressions are made for commercial purposes outside their traditional or customary context by persons who are not Gambians citizens or domiciled in.

(2) The rights conferred under subsection (a) of this Section shall not include the right to control –

- (a) use for educational purposes;
- (b) use by way of illustration in an original works of an author; provided that the extent of such use is within the scope of fair use;
- (c) incidental inclusion of in a copyright work.

(3) In all publications including fixations of performances and in connection with any communication to the public or broadcast of any identifiable traditional cultural expression, its source shall be indicated in an appropriate manner and in conformity with fair practice, by mentioning the community or place from where the expression was derived.

(4) The right to authorize acts referred to in subsection (a) of this section shall vest in the GIPO.

(5) The GIPO shall ensure that any benefits accruing from the commercial exploitation of traditional cultural expression are realized by the relevant community from where it originated and where the community cannot be clearly identified or the work cuts across more than one community, the benefits shall be administered by the GIPO for the promotion of cultural activities in Gambia.

182. Levy on Copyright Material

(1) There shall be paid a levy on any material used or capable of being used to make a copy of a work.

(2) The material and levy payable under subsection (1) of this Section shall be as may be determined by the Minister from time to time and published and different levies may be imposed on different categories of materials.

(3) The levy shall be paid into the funds of the GIPO and GIPO shall have power to disburse the funds to the owners of the copyrighted works copied by paying their approved collective management organizations in accordance with regulations made by GIPO.

(4) In this section, “**material**” includes any object, equipment, machine, contrivances or any other device used or capable of being used to copy a work.

183. Royalty Rates for Broadcasting and Communication to the Public and Public Performance of Sound Recordings

(1) The amount of a royalty contemplated in Section 173 shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative collecting societies.

(2) In the absence of an agreement, the user, performer or owner may refer the matter to the courts or they may agree to refer the matter for disputes resolution in the form of mediation or arbitration.

(3) In the absence of an agreement between the performer and the owner of the copyright, or between their representative collecting societies, the performer or owner may refer the matter to the courts, or seek alternative disputes resolution in the form of mediation or arbitration.

PART XVI - ENFORCEMENT OF RIGHTS

184. Infringement of Copyright and Related Rights

(1) Copyright shall be infringed by a person who, without the authorization of the owner of the copyright –

- (a) does, or causes to be done, an act the doing of which is controlled by the copyright owner; or

- (b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he or she knows to be an infringing copy.

(2) The rights of a performer shall be infringed by a person who without the consent of the performer –

- (a) does, or causes to be done, any act that is an exclusive right of a performer, pursuant to Section 171; or
- (b) imports or causes to be imported, otherwise than for his or her own private or domestic use, an article which he or she knows would have been made contrary this Act had it been made in The Gambia by the importer.

(3) Copyright and related rights shall be infringed by a person who–

- (a) circumvents any access control technological protection measure;
- (b) manufactures, distributes, imports, offers to the public, provides or otherwise traffics in any devices which (1) are primarily designed or produced for the purpose of circumventing or enabling the circumvention of technological protection measures; or 2) marketed for the purpose of circumventing or enabling the circumvention of technological protection measures; or 3) have only a limited commercially significant purpose or use other than to circumvent any technological protection measures;
- (c) removes or alters any rights management information knowing, or with respect to civil remedies having reasonable grounds

to know, that it will induce, enable, facilitate or conceal an infringement; or

- (d) distributes, imports, broadcasts, communicates to the public or makes available to the public, protected works, sound recordings or copies thereof, knowing that rights management information has been removed or has been altered without the authority of the right holder and knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement.

(4) Infringement of any right protected under this Act shall be actionable at the suit of the owner of the right or exclusive licensees, and in any action for infringement the following reliefs shall be available to the plaintiff –

- (a) the relief by way of damages, injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights;
- (b) delivery up to the plaintiff of any article in the possession of the defendant which appears to the court to be an infringing copy, or any article used or intended to be used for making infringing copies;
- (c) in lieu of damages, the plaintiff at his or her option, be awarded an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned;
- (d) for the purpose of determining the amount of damages or a reasonable royalty to be awarded under this section, the court may direct an enquiry to be held and may prescribe such

procedures for conducting such enquiries as the court considers necessary; and

- (e) before the owner of the right institutes proceedings under this section, he or she shall give notice in writing to the exclusive licensee or sub- licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he may be entitled.

(5) Where in an action for infringement of copyright it is proved or admitted.

- (a) that an infringement was committed; and
- (b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement whether or not other relief is granted under this section.

(6) Where in an action under this section an infringement of copyright and related rights protected under this Act is proved or admitted, and the court, having regard (in addition to all other material considerations) to –

- (a) the flagrancy of the infringement; and
- (b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing

damages for the infringement, may award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(7) No injunction shall be issued in proceedings for infringement of any right protected under this Act which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(8) In an action under this section –

- (a) copyright shall be presumed to subsist in the work or other subject matter to which the action relates, if the defendant does not put in issue the subsistence of copyright therein; and
- (b) where the subsistence of copyright is proved, admitted or presumed under paragraph (a), the plaintiff shall be presumed to be the owner of the copyright if he or she makes a claim thereto and the defendant does not dispute that claim.

(9) Where in an action under this section, a name purporting to be the name of the author or joint author appears on copies of a literary or musical work as published or an artistic work when it was made, any person whose name so appears, if it is his or her true name or the name by which he is commonly known, shall be presumed, unless the contrary is proved, to be the author of the work.

(10) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work shall, in the absence of any proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author

- (a) provided that the presumption under this subsection shall cease to apply when the author reveals his or her identity; or

- (b) where the pseudonym leaves no doubts as to the identity of the author.

(11) Where, in any action under this section, the author of the literary, musical or artistic work to which the action relates is dead, it shall be presumed, unless the contrary is proved.

- (a) that the work is eligible for copyright; and
- (b) that any allegation by the plaintiff that the work is a first publication and was published in a specified country on a specified date, is true.

(12) Where, in an action under this section, the sound recording to which the action relates is reproduced on a record bearing a label or other mark which has been issued to the public, any statement on that label or mark to the effect that a person named thereon was the maker of the sound recording or by whom the recording was first published in a specified year shall, unless the contrary is proved, be presumed to be true.

185. Infringements of Marks and Trade Names

(1) A registered mark or a well-known mark shall be infringed by the performance of any infringement act referred to in this Act in The Gambia by a person other than the holder of the right in the mark and without the holder's authorization, subject to the limitations and exceptions provided for in this Act. A well-known mark shall be infringed by the use of a sign identical with or confusingly similar to the well-known mark whether registered or unregistered, without the agreement of the owner of the well-known mark, where the sign is used for the same or similar goods or services.

(2) A well-known mark shall be infringed by the use of a sign identical with or confusingly similar to the well-known mark, without the agreement of the owner of the well-known mark, provided that the use of the sign in relation to non-similar goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the reputation of the well-known mark or of the owner thereof is likely to be damaged by such use.

(3) On the request of a licensee if he or she has requested the holder of the mark to institute court proceedings for specific relief and the holder of the mark has refused or failed to do so within ninety days, the court may grant an injunction to prevent infringement, or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Part.

(4) A trade name shall be infringed by the performance of any violation of acts referred to in this Act.

(5) The court may, on the request of any competent authority or any interested person, group association or syndicate, including producers, manufacturers or traders, grant relief where it is satisfied that an act of infringement has been committed or is imminent.

186. Infringements of Geographical Indications

(1) A geographical indication protected under this Part shall be infringed by the performance of any infringement acts referred to in this Act or any use of a geographical indication by a party who does not have the right to use the geographical indication in accordance with this Part, subject to the limitations and exceptions provided for in this Act.

(2) On the request of any interested person or of any interested group of producers or consumers, the court may grant an injunction to prevent the

unlawful use of the geographical indication, award damages and grant any other remedy provided for in the general law or under this Part.

187. Infringements of Industrial Designs

(1) An industrial design registered under this Act shall be infringed by the performance of any violation acts referred to in this Act by a person other than the registered holder of the industrial design and without the holder's agreement, subject to the limitations and exceptions provided for in this Act.

(2) On the request of the registered holder of the industrial design or of a licensee if he or she has requested the holder to institute court proceedings for a specific relief and the holder has refused or failed to do so within ninety days, the court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Act.

188. Infringements of Patents and Utility Models

(1) Patent and Utility Model shall be infringed by the performance of any violation act referred to in this Act by a person other than the holder of the patent or Utility Model and without the holder's agreement, subject to the limitations and exceptions provided for in this Act.

(2) On the request of the holder of the patent or Utility Model the court may grant an injunction to prevent infringement or an imminent infringement and, where the infringer acted knowingly or with reasonable grounds to know, award damages and grant any other remedy provided for in the general law or under this Act.

189. Infringements of Layout Designs

(1) A layout-design (topography) of an integrated circuit protected under this Act shall be infringed by the performance of any violation acts referred to in this Act by a person other than the registered holder of the layout-design

(topography) and without the holder's agreement, subject to the limitations and exceptions provided for in this Act.

(2) On the request of the registered holder of the layout-design (topography) of an integrated circuit, or of a licensee if he or she has requested the holder to institute court proceedings for a specific relief and the holder has refused or failed to do so within ninety days, the court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Act.

190. Infringement of Plant Breeders Rights

(1) Plant Breeders Rights shall be infringed by the performance of any violation act referred to in this Act by a person other than the holder of the Plant Breeders Rights and without the holder's agreement, subject to the limitations and exceptions provided for in this Act.

(2) On the request of the holder of the Plant Breeders Rights the Court may grant an injunction to prevent infringement or an imminent infringement and, where the infringer acted knowingly or with reasonable grounds to know, award damages and grant any other remedy provided for in the general law or under this Act.

191. Infringement of Traditional Knowledge and Genetic Resources

(1) Traditional knowledge and Genetic Resources shall be infringed by the performance of any violation act referred to in this Act by a person other than the holder/s of the Traditional knowledge and Genetic Resources and without the holder's agreement, subject to the limitations and exceptions provided for in this Act.

(2) On the request of the holder/s of the Traditional knowledge and Genetic Resources the Court may grant an injunction to prevent infringement or an imminent infringement and, where the infringer acted knowingly or with

reasonable grounds to know, award damages and grant any other remedy provided for in the general law or under this Act.

PART XVII - CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

192. Equitable Procedures

The court shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered under this Act. Defendants shall have the right to written notice, which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by an independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

193. Evidence

(1) The court may, where a party to proceedings before it has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of those 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.

(2) In cases where 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.

194. Injunctions

(1) The Court shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. The Court may grant the order to prevent the entry into the commerce of The Gambia in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

195. Damages

(1) Where damages are awarded in accordance with this Section, the Court shall order the infringer to pay the holder of the right adequate compensation for the infringement, provided that the infringer acted knowingly or with reasonable grounds to know of the infringement. The court shall also order the infringer to pay for the right holder's expenses, including appropriate legal costs.

(2) The Court may order the infringer to pay for damages relating to acts of infringement that took place –

- (a) after the patent application or of the application for registration, as the case may be, was published in the prescribed manner;
or

- (b) after the applicant of the registration gave notice to the alleged infringer of the contents of the application; or
- (c) after the alleged infringer acquired knowledge of the contents of the application.

(3) The request for the court to order the payment of damages under subsection (2) may be filed only after the industrial property right in question is granted.

196. Other Remedies

(1) Where goods have been found to be infringing, the Court shall, wherever 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 as well as the legitimate interest of third parties, order, without compensation of any kind or type, that these goods be disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the holder of the right.

(2) In respect of goods bearing counterfeit marks or geographical indications, 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.

(3) The Court shall also, wherever this is considered adequate, taking due account of the conditions set out in subsection (1), order that materials or implements the predominant use of which has been the creation of infringing goods be disposed of outside the channels of commerce without

compensation of any sort in such a manner as to minimize the risks of further infringement.

197. Information to the Right Holder

The Court shall order the infringer to inform the holder of the right 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, where this would be in proportion to the seriousness of the infringement.

198. Indemnification of the Defendant

The Court shall order the person 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 as a consequence of such abuse, and to pay the defendant's procedural expenses, including appropriate attorney's fees.

199. Appeals

(1) Any decision by the Court in infringement proceedings may be subject to an appeal.

(2) The appeal shall follow the procedure provided for under the Civil Procedure Laws of the Republic of The Gambia.

200. Further Sanctions

When a person has been found guilty of an offence under any provision of this Act, the Court shall, whenever this is considered adequate under the circumstances to create an effective deterrent to further infringement, order the seizure, forfeiture, disposal or destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.

201. Provisional Measures

(1) The Court may order provisional measures to prevent any infringement or an unlawful use referred to in this Section from occurring, or to preserve relevant evidence in regard to an alleged infringement.

(2) In respect of any measure under this Section the court may require the applicant to furnish –

- (a) reasonably available evidence satisfying the court that the applicant is the holder of the right and that the applicant's rights are being infringed or that such infringement is imminent;
- (b) security or equivalent assurance required by the Court; and
- (c) any information necessary to identify the goods concerned by the authority that will execute the provisional measure.

(3) In exceptional circumstances where any delay is likely to cause irreparable harm to the holder of the right or where there is a demonstrable risk of evidence being destroyed, the court may order provisional measures without giving the other party an opportunity of being heard. In such case,

the court shall give the parties affected notice of the decision at the latest after the execution of the measures.

(4) Where, provisional measures have been ordered, the defendant may file a request for review with the court within Fourteen days from the notification of the decision. 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 after the notification of the decision.

(5) Where the applicant does not initiate court proceedings leading to a decision on the merits of the case within 20 working days or 31 calendar days, whichever is longer, from the notification 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 the request of the defendant.

(6) In granting a provisional measure in accordance with this section, the court/ Tribunal shall request the alleged infringer to lodge a guarantee to be able to continue in the use of the invention, in order to ensure the compensation of the right holder in the case that an infringement is finally determined.

(7) Where the provisional measures are revoked or where the court/ Tribunal decides on the merits of the case that there has been no infringement or threat of an infringement, the court/ Tribunal shall order the applicant, upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

202. Border Measures Requirements

Where justified, and provided the conditions set out in this Section are met, border measures may be ordered by the Court to prevent the importation of

goods bearing a counterfeit mark, goods bearing an unauthorized geographical indication or pirated copyright goods.

203. Application for Suspension of clearance

The holder of exclusive rights in a mark, copyright or a geographical indication under this Act, who has valid grounds for suspecting that the importation of counterfeit goods may take place, may file an application with the Registrar General requesting him or her to request the customs authority to suspend customs clearance of those goods.

204. Request; Prima Facie Evidence

(1) The application for suspension of customs clearance shall be presented in writing and shall state the grounds for the request.

(2) It shall be accompanied by –

- (a) prima facie evidence that the applicant is the holder of the exclusive right in the mark, copyright or geographical indication;
- (b) prima facie evidence that his or her right has been infringed or that an infringement is imminent;
- (c) a sufficiently detailed description of the goods alleged to be counterfeit in order to make them readily recognizable; and

- (d) the prescribed fee.

205. Content of Application

(1) The applicant shall furnish all information necessary, a sample of the genuine goods produced by or with the consent of the right holder, a sample or photograph of the goods alleged to be counterfeit, or other means enabling the customs authority to recognize the said goods, in order to enable the Registrar General to take a decision on the requested suspension.

(2) The information furnished by the person applying for suspension shall include, if known, the following –

- (a) the name and address of the importers and/or consignees of the goods alleged to be counterfeit;
- (b) the country or countries of origin or manufacture of the goods alleged to be counterfeit;
- (c) the names and addresses of persons or business entities involved in the manufacture and distribution of the goods alleged to be counterfeit;
- (d) the manner of transportation and the names and addresses of the transporters of the goods alleged to be counterfeit;
- (e) the port or ports where it is anticipated that the goods alleged to be counterfeit will be imported into the territory of The Gambia and presented to the customs authority for dispatch; and

- (f) the expected date of importation and presentation to the customs authority for dispatch.

206. Security

The Registrar General may require the right holder to provide security or other equivalent assurance to –

- (a) cover any liability on his part vis-à-vis the importer or consignee affected by border measures where the said measures are discontinued by virtue of an act or omission by the right holder or where the goods in question are subsequently found not to be infringing;
- (b) ensure payment of the expenditure incurred in keeping the goods in suspension by the customs authority; and

207. Procedure

(1) The decision by the Registrar General to suspend the release into free circulation of goods alleged to be counterfeit shall specify the period for which the customs authority will have to take action.

(2) The Registrar General shall forward his order without delay to the customs authority, and shall promptly notify the importer of the goods and the applicant with the order.

(3) The customs authority shall, upon receipt of the order of the Registrar General suspend the customs clearance procedures for the allegedly counterfeit goods.

208. Inspection and Examination of Goods

Without prejudice to the protection of confidential information, the customs authority shall allow the right holder and the importer to examine the goods the clearance of which has been suspended, and to remove samples for examination, testing and analysis, in order to substantiate their respective claims.

209. Time Limit; Release of Goods

(1) If, within a period of 10 working days after the applicant has been notified of the suspension of customs clearance for the goods in question, no proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant or the customs authority has not been notified accordingly, the goods shall be released, provided that all other conditions for importation have been complied with.

(2) The Registrar General may request to extend the suspension period by a further period of ten working days. A further extension may be ordered only if appropriate under the circumstances.

210. Review of Decision

(1) If proceedings leading to a decision on the merits of the case have been initiated, the Court shall review, upon the request of the defendant, the decision with the view to determining whether the measures shall be modified, revoked or confirmed.

(2) Where the suspension of the release of goods is continued in accordance with a provisional measure ordered by the Court, the period of further suspension shall be determined by the Court. Where no such determination has been made, said period shall not exceed 20 working days or 31 calendar days, whichever is the longer.

211. Destruction of Goods; Submission to Other Customs Procedures

(1) The Court may order the disposal of the counterfeit goods outside the channels of commerce in such a way as to preclude injury to the right holder, without compensation of any sort.

(2) The following shall not be permitted in respect of counterfeit goods –

(a) re-exporting the goods in an unaltered state; or

(b) placing the goods under a different customs procedure.

212. Right of Inspection and Information to the Right Holder

After a positive determination has been made by the Court on the merits of the case, the customs authority may, upon request, without prejudice to the protection of confidential information, inform the right holder of the names and addresses of the importer, consignor and consignee and of the quantity of the goods suspended from clearance, provided that this is in proportion to the seriousness of the infringement, and provide the right holder with copies of documents lodged in respect of such goods or with any information or documents relating to any previous importation of identical or similar goods in which the same importer, consignor or consignee were involved.

213. Compensation for Wrongful Detention

The Court shall order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released by virtue of failure to initiate proceedings leading to a decision on the merits of the case.

214. De Minimis Imports

Small quantities of goods of a non-commercial nature contained in the traveller's personal luggage or sent in small consignments shall be excluded from suspension from release into free circulation.

215. Goods in Transit

The provisions on border measures in this Act shall not apply to goods that are in transit in the territory of The Gambia, including those that transit through the territory of The Gambia but are not intended for importation.

216. Liability of Customs Department

The customs authority shall not be liable for any action taken or intended in good faith in respect of the release or suspension of release into free circulation of counterfeit goods including, in particular –

- (a) any failure to detect such goods; and

- (b) the inadvertent release of such goods.

217. Criminal Sanctions

(1) Any infringement of intellectual property rights under this Act, if committed wilfully and knowingly may be punishable by imprisonment of not less than two (2) year and not more than five (5) years, and or by a fine of not less than One Hundred Thousand Dalasi (D100, 000. 00) and not more than Five Hundred Thousand Dalasi (D500, 000.00) or both.

(2) The court shall take into particular account the defendant's profits attributable to the infringement when fixing the amount of the fine and may increase up to double the upper limit of the penalties specified in subsection (1), where the defendant has been convicted for a new act of infringement committed within five (5) years of a previous conviction for an infringement.

(3) The court may apply any measures and remedies referred to under this Act.

(4) The Court may also order the forfeiture of property used to facilitate the offense, including but not limited to –

- (a) real property where the infringing activity took place,
- (b) vehicles used to transport infringing goods,
- (c) intangible such as licenses, and

(d) equipment and devices used to execute the infringement.

(5) Any person who knowingly makes a false representation of a material fact in the application for intellectual property rights registration or in any written statement filed in connection with the application shall be guilty of an offence and liable to a fine not less than Twenty-Five Thousand Dalasi (D25, 000.00) and any person who knowingly makes such a false representation on more than one occasion shall be punishable by a fine of not less than Fifty Thousand Dalasi (D50 000. 00) or imprisonment for a period of not more than two (2) year or to both, for each occurrence of the false representation.

(6) Any person who, with fraudulent intent, removes or alters any notice of copyright and other areas pertaining to intellectual property rights appearing on a copy of a work or on a product in which under this Act shall be guilty of an offence and liable to a fine of not more than Hundred Thousand Dalasi (D100, 000.00) or twice the value of the defendant's profits attributable to the infringement, whichever is greater.

PART XVIII - INTELLECTUAL PROPERTY TRIBUNAL

218. Establishment of the Intellectual Property Tribunal

(1) There shall be an Intellectual Property Tribunal under the auspices of GIPO.

(2) The Tribunal shall have the jurisdiction to hear and determine any intellectual matters and its decision shall be binding on all the parties.

219. Composition of the Tribunal

(1) The Tribunal shall consist of the Registrar General who shall serve as the Chair and four other members selected by the Registrar General

amongst the National Intellectual Property Council based on their experiences or any other members as the Registrar General may determine.

(2) The Tribunal shall sit at such times as it may appoint.

(3) The Tribunal shall be assisted by a secretary.

(4) There shall be paid to the Chairman and the members of the Tribunal such allowance to cover for any expenses members may incur.

220. Powers of the Tribunal

(1) The Tribunal shall have powers to make any reasoned decisions concerning any intellectual property right entitlement and infringement.

(2) Parties shall have the right to be represented by a legal practitioner for any, matter before the Tribunal.

(3) The Tribunal shall exercise any of the powers which could have been exercised by the Registrar General in the proceedings in connection with which the appeal is brought.

(4) Make such orders as to costs as it may deem fit.

221. Appeals

(1) Any party to the proceedings before the Tribunal may appeal any decision of the Tribunal before the Court which may –

- (a) confirm, set aside or vary the order or decision in question; or
- (b) Remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the Court may deem fit;

222. Assessors

The Chairman of the Tribunal may appoint any person with expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Tribunal that such knowledge is required for the proper determination of the case.

223. Regulations, Rules and procedures of the Tribunal

The Minister shall make Regulations for this Act and rules regulating the practice and procedures of the Tribunal.

224. Reference to the Tribunal by the Registrar General

(1) When any matter to be determined by the Registrar General under this Act appears to him or her to involve a point of law or to be of unusual importance or complexity, he or she may, after giving notice to the parties refer the matter to the Tribunal for a general direction and shall thereafter in relation to such matter, act in accordance with the general direction of the Tribunal or any direction substituted thereafter on appeal to the Court.

(2) Where any matter has been referred to the Tribunal in terms of subsection (1), the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in such matter and may appear or be represented by a Legal Practitioner where they elect to do so.

225. Offences

It shall be an offence for any person to –

- (a) have in his or her possession or control in the course of trade, any counterfeit good;
- (b) manufacture, produce or make in the course of trade, any counterfeit good;
- (c) sell, hire out, barter or exchange, or offer or expose for sale, hiring out, barter or exchange any counterfeit good;
- (d) expose or exhibit for the purposes of trade any counterfeit good;
- (e) distribute counterfeit goods for purposes of trade or any other purpose;
- (f) import into, transit through, tranship within or export from The Gambia, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods;
- (g) have in his or her possession or control in the course of trade any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand, tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive;
- (h) aids or abets or conspires in the commission of any offence under this Act;

- (i) import into or transit through The Gambia any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, or

PART XIX - MISCELLANEOUS

226. General Power of the Registrar General

The Registrar General reserve the right to exercise his or her discretion on any matter concerning the registration, renewal, record, fees, non-use, compulsory license, non-voluntary license and any other matter concerning any intellectual property right. The rational for the exercise of such discretion shall be reasonable, documented and all parties duly notified in writing.

227. Saving and transition Clause

Notwithstanding the repeal of the Industrial Property Act 2007, Industrial Property Act (Amendment) Act 2015 and the Copyright Act 2004 all industrial property rights and copyright and related rights registered under the named laws shall remain in force for the unexpired portion of the period of protection provided thereunder subject to the payment of the prescribed fees.

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Hon. Dawda A. Jallow

Attorney General and Minister of Justice