

OFFICIAL GAZETTE OF BOLIVIA

SUPREME DECREE No. 28152

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CARLOS D. MESA GISBERT **CONSTITUTIONAL PRESIDENT OF THE REPUBLIC**

WHEREAS:

In the framework of Law No. 1788 of September 16, 1997 - Organization of the Executive Branch Act – LOPE, the National Intellectual Property Service (SENAPI) was created, as a decentralized body of the Ministry of Economic Development, responsible for administering the intellectual property rules in Bolivia.

Supreme Decree No. 25159 of September 4, 1998, establishes the organizational structure and operational rules of SENAPI, defining it as a decentralized public law body of the Minister of Economic Development with national jurisdiction and its own administrative structure, hierarchically subordinate to the Minister of Economic Development and operationally subordinate to the Vice-Minister of Industry and Internal Trade.

Under Law No. 2446 of March 19, 2003, Organization of the Executive Branch Act, a new classification of public sector institutions has been established, according to the greater or lesser degree of management independence, and it is therefore vital to adapt the structure of SENAPI to this new legal and institutional framework.

The National Government, for the purposes of strengthening and institutionally reforming SENAPI, enacted Supreme Decree No. 27938 of December 20, 2004.

The object of Supreme Decree No. 27938 is to establish the organization and functioning of SENAPI, in the framework of Law No. 2446 (LOPE), its statutory provisions and the international and integration agreements to which Bolivia is a party.

Article 4 of the above-mentioned Supreme Decree stipulates that SENAPI administers all elements of the intellectual property system in a decentralized and comprehensive manner, by means of strict compliance with legal intellectual property regimes, monitoring of their enforcement, and effective protection of the exclusive rights in terms of industrial property, copyright and neighboring rights, the breeding of new plant varieties and access to and use of genetic resources, thus making it the competent national office with regard to international conventions and regional agreements signed and acceded to by Bolivia, as well as common intellectual property regimes and rules that have been adopted in the framework of the Andean integration process.

Supreme Decree No. 27732 of September 15, 2004, on Adjustments to the Regulations under the Organization of the Executive Branch Act, lists the functions of the Vice-Ministries that make up the structure of the Ministry of Rural and Agricultural Affairs as including the promotion of relations with productive farmer, settler, union, business and cooperative organizations, non-governmental organizations and other similar bodies engaged in activities in the agricultural sector, as well as the promotion of policies to encourage agricultural productive diversification.

Before the entry into force of Supreme Decree No. 27938, the Ministry of Rural and Agricultural Affairs (MACA), as instructed by Supreme Decree No. 11341 of February 8, 1974, regulated by means of Ministerial Resolution No. 433/86 of December 12, 1986, constituted the competent national authority in matters relating to rights in new plant varieties.

On August 9, 1996, the then National Department of Agriculture, as the competent national authority, pursuant to the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), signed by Bolivia, which requires each of the signatory countries to recognize the intellectual property rights in plant varieties; and pursuant to the provisions of the Second

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Transitional Provision of Decision 345 of the Andean Community of Nations, former Cartagena Agreement, regulates the protection of plant varieties, according to Secretarial Resolution No. 064/96; through National Law No. 1968 of March 24, 1999, Bolivia acceded to the International Union for the Protection of New Varieties of Plants (UPOV), headquartered in Switzerland.

Until the entry into force of Supreme Decree No. 27938, the *sui generis* protection regime for plant varieties was the responsibility of the Ministry of Rural and Agricultural Affairs, designating the National Seeds Program and Regional Seeds Offices as the competent national authority in this area; having analyzed this resolution, UPOV accepted Bolivia as a member country with international recognition.

The Plant Variety Protection System, managed in this way from 1996 (entry into force of Secretarial Resolution No. 064/96) to date, has functioned adequately, achieving the expected results, exercising effective control and monitoring of protected varieties, guaranteeing the right of the breeder, thus promoting the constant launch of new varieties onto the market, benefiting the seed users, who have permanent access to the best varieties for increasing their yield.

The National Seeds Program, which comes under the Ministry of Rural and Agricultural Affairs, through Regional Seeds Offices, exercises control and monitoring of all seed produced, marketed, processed and imported, including protected varieties, and it has an established structure that generates credibility and confidence in the system.

The Ministry of Rural and Agricultural Affairs receives the comments made by various national sectors related to the area of agriculture researchers and seed users, affected by the impact of the issuance of Supreme Decree No. 27938.

With a view to amending the provisions and responsibilities conferred upon SENAPI, the National Government considers it appropriate to amend the Supreme Decree that regulates its organization and functioning.

In this sense, it is appropriate to fast track the issue of this Decree, in the framework of Chapter IX of Supreme Decree No. 27230 of October 31, 2003, in view of the fact that this subject was approved by the Economic Cabinet on May 1, 2005, according to Note UDAPE/STC/073-L/2005, issued by the Technical Secretariat of the National Economic Policy Council (CONAPE).

IN CABINET COUNCIL,

DECREES:

CHAPTER I

OBJECT

ARTICLE 1. (OBJECT). The object of this Supreme Decree shall be to amend, adjust and supplement Supreme Decree No. 27938 of December 20, 2004, in the framework of the existing legislation relating to Intellectual Property.

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CHAPTER II

INSTITUTIONAL FRAMEWORK

ARTICLE 2. (INSTITUTIONAL NATURE). Article 2 of Supreme Decree No. 27938 of December 20, 2004, is amended as follows:

“ARTICLE 2. (INSTITUTIONAL NATURE). The National Intellectual Property Service (SENAPI) is a decentralized public institution, with national jurisdiction; it has independence in administrative, legal and technical management, and is subordinate to the Ministry of Economic Development.”

ARTICLE 3. (MISSION). Article 4 of Supreme Decree No. 27938 is amended as follows:

“ARTICLE 4. (MISSION). SENAPI administers all elements of the intellectual property regime in a decentralized and comprehensive manner, by means of strict compliance with legal intellectual property regimes, monitoring of their enforcement, and effective protection of the exclusive rights in terms of industrial property, copyright and related rights, thus making it the competent national office with regard to international treaties and regional

agreements signed and acceded to by Bolivia, as well as common intellectual property regimes and rules that have been adopted in the framework of the Andean integration process.”

CHAPTER III

FUNCTIONS AND RESPONSIBILITIES

ARTICLE 4. FUNCTIONS AND RESPONSIBILITIES). Subparagraph (a) of Article 9 of Supreme Decree No. 27938 is amended as follows:

“(a) to administer the integrated intellectual property regime, made up of the rules of industrial property, copyright and related rights, with the internationally recognized scope afforded to these matters.”

CHAPTER IV

ORGANIZATIONAL AND OPERATIONAL STRUCTURE

ARTICLE 5. (EXECUTIVE DIRECTOR GENERAL OF SENAPI)

I. Subparagraph (f) of paragraph IV of Article 13 of Supreme Decree No. 27938 is amended as follows:

“(f) to propose to the Minister of Economic Development, through the Vice-Minister of Industry, Trade and Exports, draft legal regulations within his/her remit”.

II. Subparagraphs (k) and (m) of Paragraph IV of Article 13 of Supreme Decree No. 27938 are repealed.

CHAPTER V

TECHNICAL AND OPERATIONAL LEVEL

ARTICLE 6. (JOINT RESPONSIBILITIES).

I. Subparagraph (e) of Paragraph I of Article 17 of Supreme Decree No. 27938 is amended as follows:

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“(e) to exercise full jurisdiction to hear and resolve intellectual property applications and registrations, in their respective areas of management. In the first instance, they shall act to hear and resolve appeals for reconsideration”.

II. Subparagraph (g) of Paragraph I of Article 17 of Supreme Decree No. 27938 is repealed.

III. Paragraph II of Article 17 of Supreme Decree No. 27938 is amended as follows:

“II. Technical Directors must have professional training and proven experience in the area within their remit.”

ARTICLE 7. (DIRECTOR OF INDUSTRIAL PROPERTY).

I. Subparagraph (a) of Article 18 of Supreme Decree No. 27938 is amended as follows:

“(a) to exercise the powers established for the competent body by the corresponding laws, supreme decrees, resolutions and decisions on industrial property.”

II. The following subparagraph is incorporated into Article 18 of Supreme Decree No. 27938:

“(j) to hear and substantiate proceedings of opposition, invalidation, cancellation and lapse and others brought in his/her Directorate.”

ARTICLE 8. (DIRECTOR OF COPYRIGHT AND RELATED RIGHTS).

I. The legal term in Article 19 of Supreme Decree No. 27938 is amended as follows:

“ARTICLE 19. (DIRECTOR OF COPYRIGHT AND RELATED RIGHTS). The Director of Copyright and Related Rights shall have the following responsibilities:”

II. Subparagraph (b) of Article 19 of Supreme Decree No. 27938 is amended as follows:

“(b) by delegation of the Executive Director General, to represent the National Intellectual Property Service in dealings with national and international agencies in matters within his/her remit.”

III. Subparagraph (h) is incorporated into Article 19 of Supreme Decree No. 27938 as follows:

“(h) to grant registrations for declarative purposes, as well as holding and maintaining registers of authors and legal deposit.”

CHAPTER VI

SUPPORT LEVEL

ARTICLE 9. (LEGAL DIRECTORATE).

I. Article 21 of Supreme Decree No. 27938 is amended as follows:

“ARTICLE 20. (LEGAL DIRECTORATE). The functions of the Legal Directorate of SENAPI are as follows:

(a) to provide specialized legal advice to SENAPI.

(b) to support the legislation development work for the legal regimes under the jurisdiction of SENAPI.

(c) to coordinate and oversee the legal management and functioning of SENAPI.

(d) to draft resolutions for appeals to a higher authority lodged with SENAPI, and issue a reasoned report on their soundness and merit. The authority hearing the above-mentioned

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appeal may resolve it in a reasoned manner, in a different way to that suggested by the Legal Director.

(e) to intervene in legal proceedings where SENAPI is a plaintiff or defendant.

(f) to produce draft amendments or updates for legal provisions relating to these matters.

(g) to act as secretariat for the Technical Council.”

II. The Legal Directorate shall also hear all proceedings for infringement and unfair competition brought by right holders.

III. The Legal Director shall be selected and appointed by the Executive Director General in accordance with the Civil Service Statute and the Basic Rules on Personnel Administration, and shall have professional training and proven experience in the area within his/her remit.

IV. Paragraph II of Article 21 of Supreme Decree No. 27938 is repealed.

CHAPTER VII HUMAN RESOURCES

ARTICLE 10. (HUMAN RESOURCES REGIME). Paragraph III of Article 25 of Supreme Decree No. 27938 is amended as follows:

“III. SENAPI may select, accredit and hire specialists or specialized entities in the various spheres of science and technology, so that they may act as external examiners of applications for intellectual property rights, carrying out substantive analyses of patentability and registrability, the cost of which shall be covered by applicants in accordance with the regulations. For this purpose, the Technical Directorates shall hold an accreditation bank of experts authorized by SENAPI.”

CHAPTER VIII LEGISLATIVE REGIME

ARTICLE 11. (LEGAL REGIME). Paragraph I of Article 26 of Supreme Decree No. 27938 is amended as follows:

“I. The legal regime applicable by SENAPI shall be made up of the rules of the national legal system, international treaties and agreements signed or acceded to by Bolivia on such matters and common regimes adopted in relation thereto within the legal system of the Andean Community. This legal framework shall be the source that establishes and supports the administrative jurisdiction and remit of SENAPI.”

CHAPTER IX PROCEDURAL REGIME

ARTICLE 12. (PROCEDURES).

I. Paragraph I of Article 27 of Supreme Decree No. 27938 is amended as follows:

“I. The formation of administrative acts within SENAPI shall be subject to the principles, rules, requirements, stages and resources included in Law No. 2341, Administrative Procedure Act, legal and administrative provisions in force, and in a residuary way to the Code of Civil Procedure.”

II. Paragraphs II and III of Article 27 of Supreme Decree No. 27938 are repealed.

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CHAPTER X INTER-AGENCY COORDINATION

ARTICLE 13. (ADMINISTRATION OF THE SUI GENERIS REGIME ON THE BREEDING OF NEW PLANT VARIETIES).

I. The sui generis protection regime for breeding of plant varieties shall be the responsibility of the Ministry of Rural and Agricultural Affairs (MACA), in accordance with the international agreements and standards on the subject, to which Bolivia is a signatory or may accede to, provided that these do not contravene national legislation.

II. For the purposes of efficient administration of the Regime for the Breeding of New Plant Varieties, and given the need for specific regulations, Ministerial Resolution No. 40/2001 of April 2, 2001, is approved as the Regulations for the Protection of New Varieties of Plants which are an indivisible part of this Supreme Decree.

III. The Ministry of Rural and Agricultural Affairs, through the National Seeds Program, shall periodically communicate and provide SENAPI with all information relating to new titles and certificates awarded for plant varieties, as well as those that were cancelled or lapsed, for the purposes of standardizing information at the national level.

CHAPTER XI TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 14. (STATUTORY RULES). Paragraph II of Article 29 of Supreme Decree N° 27938 is amended as follows:

“II. Within a period of 90 days from the entry into force of this Supreme Decree, SENAPI shall process the approval of the regulations for the Common Regime on Industrial Property (Decision 486) and update the Regulations under Law No. 1322 – Copyright Act – in accordance with the Common Regime on Copyright and Neighboring Rights (Decision 351).”

ARTICLE 15. (VALIDITY OF RULES).

I. All the Articles of Supreme Decree No. 27938 of December 20, 2004, not explicitly amended by this Supreme Decree, shall remain in force in the form in which they are drafted.

II. Article 6 of Supreme Decree No. 27938 is repealed.

III. All the provisions that contradict the present Supreme Decree are repealed and abolished. The Ministers of State in their respective Offices shall be responsible for the implementation and enforcement of the present Supreme Decree.

Done at the Palace of Government in the city of La Paz, on the seventeenth day of the month of May of the year two thousand and five.

SIGNED BY CARLOS D. MESA GISBERT, Juan Ignacio Siles del Valle, Jorge Gumucio Granier, José Antonio Galindo Neder, Saúl Lara Torrico, Gonzalo Arredondo Millán, Luis Carlos Jemio Mollinedo, Erwin Aguilera Antunez, Wálter Kreidler Guillaux, René Gómez García Palao, Guillermo Torres Orias, María Soledad Quiroga Trigo, Graciela Rosario Quiroga Morales, Audalia Zurita Zelada, Víctor Gabriel Barrios Arancibia, Jorge Espinoza Morales, Gloria Ardaya Salinas, Pedro Ticona Cruz.