

## Industrial Property Code

Decree-Law no. 97/99/M

of December 13, 1999

In the modern world, industrial property is considered a fundamental factor in the promotion of economic development.

Indeed, it contributes decisively to the motivation of inventive activity only if, given the considerable resources that the mobilization of technological investigation implies, protection by the industrial property system can guarantee appropriate economic compensation for the investments made in the quest for new products and processes.

Conversely, industrial property is a factor that favours the transfer of technology, in that the owners of technological knowledge in other countries will be far more open to transferring that knowledge if Macao has an appropriate system to protect their exclusivity rights to that technology.

The introduction of an autonomous industrial property system will also benefit companies in Macao in that they will begin increasingly to have access to a considerable amount of technical information that will accumulate in the Industrial Property Register once patent applications in Macao have been published or patents have been extended from outside the Territory for consultation by the public in general and by investigators and interested economic agents in particular.

The technical documentation contained in the patents certainly constitutes an important factor in making new companies aware of the state of the art in their technological area, in order that they may better prepare for a global market where they will have to face ever stiffer competition.

But it is also a source of technical updating or adaptation for existing companies, in other words, a source of innovation that can be ignored by such companies, only on pain of stagnation or obsolescence.

Furthermore, there can be no question as to the importance of trademarks and other distinctive signs. They help guarantee the identification of the product with the producer, and that identification ensures a certain guarantee of quality or origin and

consequently they help ensure the survival of the qualities and characteristics of the product. These distinctive signs are in themselves, therefore, a very relevant factor in motivating companies in distinguishing themselves for their quality and ensuring the safety of the consumer.

In addition to the economic advantages briefly referred to, there is the fact that Macao, as member of the World Trade Organization, and as results from the Agreement on Trade-Related Aspects of Intellectual Property Rights, is bound to introduce into its legislation the appropriate legal mechanisms to protect the following industrial property rights: patents, including the protection of new plant species; industrial designs and models; trademarks, including services marks; geographical indications, including appellations of origin; and the configuration topography of integrated circuits.

Current industrial property legislation in Macao comprises only an independent trademark protection system, as embodied in Ordinance-Decree N° 56/95/M, of 6 November 1995.

The remaining rights merely enjoy derived protection that has to be initiated and processed through the National Institute of Industrial Property of Portugal, in application of the Industrial Property Code, adopted by Decree-Law no.16/95, of 24 January 1995 and published in the Official Bulletin no.36, Series I, of 4 September 1995. And mention should be made of the lack of protection resulting from the fact that the said Code does not refer to topographies of semiconductor products or bio-technological inventions in the plant domain.

It is therefore necessary to revise the applicable legislation, not only by "localizing" the rights system that is protected merely by the extension of the legislation of the [Portuguese] Republic but also by plugging existing gaps and consequently ensuring full compliance with the international commitments assumed by the Territory.

This being so, Having heeded the Advisory Council;

The Governor hereby decrees, pursuant to Article 13(1) of the Constitution of Macao, that the following be enacted in the Territory of Macao:

Article 1  
(Adoption of the Industrial Property Code)

The Industrial Property Code is adopted and published together with the present Statute and forms an integral part thereof.

Article 2  
(Industrial property rights under the previous law)

1. Industrial property rights granted under the Industrial Property Code, adopted by Decree-Law no.16/95 of 24 January 1995 for application in Macao, shall remain valid in the Territory from the time the relevant legal obligations have been met and for their full duration, and shall enjoy no greater legal guarantees than those accorded under the Legal System to any equivalent or similar rights bestowed by Macao.

2. When they are not subject to a time limit, the rights referred to in the previous sub-paragraph shall be guaranteed, on the same conditions, until the end of the current period of protection, where after the respective renewals shall be effected with the Directorate of Economic Services, herein after referred to in short as the DES.

Article 3  
(Processes stemming from the National Institute of Industrial Property)

1. The DES shall take all necessary steps with respect to processes stemming from the National Institute of Industrial Property, once the fees required for the documents in question have been paid.

2. Should it be determined that the fees due have not yet been paid, the steps will be taken only if the applicant makes the respective payment to the DES, after having been notified to that effect.

3. The DES shall officially have notice concerning the forfeiture of rights for failure to pay fees published in the Official Bulletin if such publication has not yet been effected by the National Institute of Industrial Property.

4. Non-payment of fees owing to the DES within 60 days of the date of the publication referred in the previous paragraph shall result in the forfeiture of the industrial property rights in question.

Article 4  
(Watch Committee)

1. The Governor shall appoint a Committee comprising legal experts, entrepreneurs and technical experts to supervise the application of the Code for the first 5 years it is in force.
2. The function of the Watch Committee shall be to receive any petitions aimed at improving the Code and to propose to the Governor any measures it deems convenient to that end.

Article 5  
(Amendments to the Code)

Future amendments to the subject matter of the Industrial Property Code shall form an integral part thereof and shall be added in an appropriate place in this Code, by substituting the amended articles and making the deletions and additions necessary.

Article 6  
(Repeal of prior legislation)

All legislation counter to the provisions and terms of the Industrial Property Code is hereby repealed and, specifically, the following Statutes:

- a) The Industrial Property Code, adopted by Decree-Law no.16/95, of 24 January 1995, and published in the Official Bulletin no.36, Series I, of 4 September 1995;
- b) Decree-Law no.56/95/M, of 6 November 1995;
- c) Administrative Rule no.306/95/M, of 4 December 1995.

Article 7  
(Entry into effect)

The present Statute shall enter into effect on the date of publication in the Official Bulletin of the ruling referred to in Article 37 of the Code.

Adopted on 13 December 1999.

To be published.

The Governor, Vasco Rocha Vieira.

# THE INDUSTRIAL PROPERTY CODE

## PART I

### GENERAL PROVISIONS

#### CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### (Object)

The present Statute shall govern the allocation of industrial property rights to inventions and other creations and the distinctive signs therein referred to and shall, in particular, serve to protect creativity, technological development, fair competition and consumers' interests.

#### Article 2

##### (Subjective scope)

1. The present Statute shall apply to:

a) All individuals holding a Macao Resident's Identity Card;

b) All bodies corporate registered in Macao and constituted according to the Law of the Territory;

c) All individuals or bodies corporate, nationals of the countries or territories being members of the World Trade Organization, hereinafter referred to as the WTO, and the International Union for the Protection of Industrial Property, hereinafter referred to as the Union, in accordance with the terms of the Paris Convention of 20 March 1883 and revisions thereof, regardless of place of domicile or establishment, save according to the special provisions as to competence and procedure.

2. Nationals of any countries of the WTO or of the Union who are resident or have an industrial or commercial establishment, in fact and not as a matter of form, in any of the countries or territories of the WTO or of the Union shall be considered nationals

of the WTO or of the Union.

3. With regard to any other persons not covered by the previous paragraphs, the provisions of international agreements between Macao and the respective countries or territories shall apply and, in the absence of such, the principle of reciprocity shall apply.

4. The existence of reciprocity shall be recognized by ruling of the Governor, to be published in the Official Bulletin, after consultation with the Directorate of the Justice Services.

Article 3  
(Objective scope)

Industrial property includes all sectors of economic activity, including agricultural, forestry, livestock and fishing activities, the extracting and processing industries, trade and services, as well as all manufactured or natural products.

Article 4  
(Territorial scope)

The rights conferred under the terms of the present Statute shall cover the whole Territory.

Article 5  
(Content of industrial property rights)

Industrial property rights shall confer on the respective holder full and exclusive enjoyment, use and disposal of the inventions, creations and distinctive signs, within the limits, conditions and restrictions determined by Law.

Article 6  
(Proof of industrial property rights)

1. The proof of industrial property rights, referred to in the present Statute, shall be provided by means of the corresponding certificates which shall contain the elements necessary for the perfect identification of the right at issue.

2. Industrial property right certificates issued by international organizations whose effects extend to Macao shall be equivalent to the certificates referred to in the foregoing paragraph.

3. On request, holders of various industrial property rights may obtain:

a) Certificates whose content is similar to that of the certificate they hold;

b) Certificates, conferring protection on industrial property rights in the Territory, issued by international organizations and whose effects extend to Macao;

c) Certificates bearing witness to the filing of applications.

4. The models of the certificates referred to in paragraph 1 above shall be approved by an order of the Governor and be published in the Official Bulletin.

#### Article 7

(Temporary protection for compensation purposes)

1. Application for the granting of an industrial property right shall provisionally confer on the applicant, as from the date of the respective publication in the Official Bulletin, the protection that would be conferred by the granting of that right, simply for the purpose of calculating any compensation due.

2. The same temporary protection shall also be ensured, even before the date of the publication of the application, in relation to any persons to whom the applicant has disclosed knowledge of the presentation of the application and revealed details of the procedure.

3. No legal decision may be handed down in relation to acts proposed on the basis of the protection provided under the present article until the patent or registration has been finally granted or refused.

#### Article 8

(Jurisdiction)

The jurisdiction to grant industrial property rights shall lie with the Director of the Department of Economic Services, herein referred to as the Director of the DES.



Article 9  
(General grounds for refusal)

1. The following shall constitute grounds for refusing to grant industrial property rights:

- a) The object is not suitable to be protected;
- b) Violation of rules of public order or good mores;
- c) Recognition that the applicant intends to practice unfair competition, or that this is possible irrespective of his intention;
- d) Violation of the rules that define to whom the right belongs;
- e) Failure to submit documents required under the terms of the present Statute or of the respective regulations;
- f) Failure to comply with the procedures or formalities for the granting of the industrial property right;
- g) Failure to pay of the fees due.

2. In the cases provided for in sub-paragraphs (e) to (g) of the previous paragraph, the cases shall not be submitted for decision without firstly notifying the applicant in writing and setting a deadline within which he may rectify the situation.

3. Where circumstances are discovered that could constitute grounds for annulling the requested certificate, instead of refusal it may be decided wholly or partially to grant it should the party concerned so request.

Article 10  
(Publication of acts and decisions)

1. The Department of Economic Services, herein referred to as the DES, shall ensure the publication in Series II of the Official Bulletin of the following act and decisions:

- a) Notice of applications for the various types of industrial property rights;
  - b) Notice of complaints, of opposition, or the filing of nullity or cancellation and other suits ;
  - c) Notifications of rulings;
  - d) Granting and refusal of industrial property rights, including extensions of foreign patents;
  - e) Declarations of public offer to exploit inventions, as well as their respective withdrawal or forfeiture;
  - f) Renewals and revalidations of industrial property rights;
  - g) Assignments of industrial property rights;
  - h) Declarations of waiver of industrial property rights;
  - i) Applications for declaration of forfeiture of industrial property rights, as well as declarations of forfeiture;
  - j) Legal decisions handed down in appeal cases or which constitute jurisprudence on industrial property.
2. Publication in the Official Bulletin shall serve directly to notify both parties and, save any provision to the contrary, it shall mark the beginning of the periods for appeals and other purposes.
3. Notwithstanding the provisions of the preceding paragraph, if the parties were notified in writing, the period shall be that set in the written notification and shall, in general, run from the date thereof
4. The parties directly involved, or any other interested parties, may directly apply to the DES to be provided with a statement of the decision on the applications and the relative grounds therefor, even before publication of the corresponding notice in the Official Bulletin.

## Article 11

(Assignment of industrial property rights - nature and forms)

1. Save express legal limitation, industrial property rights may be assigned, total or partially, free of charge or for a consideration.
2. Assignment inter vivos shall be effected in writing failing which the assignment shall be null and void.
3. The provision in the previous paragraphs shall apply to rights deriving from applications for the granting of industrial property rights.

## Article 12

(Contractual licences)

1. Save express legal limitation, industrial property rights may, with or without consideration, be licensed for exploitation in whole or part and, when for a limited duration, for all or part of that duration.
2. The provision in the previous paragraph shall apply to rights deriving from industrial property right applications, but a refusal to grant such rights shall imply the forfeiture of the licence.
3. The exploitation contract licence shall be in writing.

## Article 13

(Privileges and limitations of the licensee)

1. Save stipulation to the contrary, the licensee shall, for all legal purposes, enjoy the privileges conferred on the title-holder to which the exploitation licence was issued, with the exceptions set forth in the following paragraphs.
2. The exploitation licence shall be deemed non-exclusive.
3. An exclusive exploitation licence shall be understood to be that in which the owner of the industrial property right forswears the right, for the full currency of the licence, to grant any other exploitation licences for the rights to which the licence refers.

4. Unless otherwise stipulated in the respective contract:

- a) The granting of an exclusive exploitation licence shall not preclude the owner from also directly exploiting the industrial property right covered by the licence;
- b) The right obtained through the exploitation licence may not be ceded without the written consent of the industrial property right owner;
- c) No exploitation sub-licences may be granted without the written authorization of the of industrial property right owner;

#### Article 14

(Garnishment, attachment and pledge)

Save express legal limitation, industrial property rights are subject to garnishment and attachment and they may be given in pledge.

### CHAPTER II

#### PRIORITY RIGHT

#### Article 15

(Priority claim)

1. Except for the cases foreseen in the present Statute, industrial property rights shall be granted to the first party to present the application in due and proper form accompanied by all the documents required for that purpose.
2. If the applications be sent by mail, the mail should be sent registered or in some equivalent manner and priority shall be awarded according to the date of registration.
3. In the case of two applications for the same right being simultaneous or having identical priority, the matter shall not be pursued until the applicants have previously solved the question of priority by agreement or through the competent civil court.
4. If the application was not in the first instance accompanied by all the required documents, priority shall be granted from the day and time at which the last missing document is presented.

5. If the object of the application is altered in relation to the initial notice published in the Official Bulletin, a new notice will have to be published and the priority of the alteration shall be counted from the date on which that was requested.

Article 16  
(Priority right)

1. Anyone having regularly filed an application for the granting of an industrial property right as envisaged in the present Statute, or any similar right, and who has so done in any of the countries or territories members of the WTO or of the Union, or in any intergovernmental organism with jurisdiction to grant rights the effects of which extend to Macao, or successor of any such person, shall, on filing the application in Macao, enjoy the priority right established in the Paris Convention for the Protection of Industrial Property.

2. Any application, being a regularly filed application, formulated pursuant to the terms of the domestic law of any country or territory member of the WTO or of the Union, or of bilateral or multilateral treaties between countries or territories members of the WTO or of the Union shall be recognized as creating a priority right.

3. A regular application shall be understood to be any filing that is adequate to establish the date on which the application was filed in the country or territory concerned, whatever may be the subsequent fate of the application.

4. In consequence of the provision in the previous paragraph, any subsequent filing in Macao, before the expiry of the priority period, shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing or the publication or exploitation of the object of the filing.

Article 17  
(First application)

1. A subsequent application concerning the same subject as a prior first application shall be considered the first application of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said prior application has been withdrawn, abandoned or refused, without having been laid open to public scrutiny and without leaving any rights outstanding and if,

moreover, it has not served as a basis for claiming a priority right.

2. In the case foreseen in the previous paragraph, the prior application may not thereafter serve as a basis for claiming a right of priority.

3. Anyone wishing to take advantage of the priority of a prior filing shall accompany the application filed in Macao by a declaration indicating the date and number of such filing and the country or territory in which it was made.

4. In a case where an application claims several priorities, the period shall be determined from the date of the oldest priority.

#### Article 18

##### (Proof of priority right)

1. The DES may request parties claiming the right of priority to file a copy of the first filing, duly certified by the filing authority, as well as certification of the date of filing and, if necessary, a translation into one of the official languages.

2. The requirement referred to in the previous paragraph may be met at any time, but the applicant may meet it within a period of 3 months from the date of the filing.

3. The copy of the application shall be exempt from legalization and may be filed free of charge within the period referred to in the previous paragraph.

4. When, for any reason, the right of the initial applicant has passed to a successor, proof shall be required of that succession when filing the patent application or registration in Macao.

5. Failure to comply with the provisions of the present article shall incur forfeiture of the priority right claimed.

### CHAPTER III

#### ADMINISTRATIVE PROCEDURES

Article 19  
(Entitlement to file)

Any party having an interest in a legal act shall be entitled to file before the DES.

Article 20  
(Entitlement to take action)

1. Legal action may be taken only by:

a) An individual interested in or owning an industrial property right, or by an agent especially empowered for the purpose by virtue of being established or domiciled in the Territory;

b) A body corporate interested in or owning an industrial property right and having its registered office in the Territory, through its director, manager or employee duly accredited for the purpose;

c) An official industrial property agent authorized or accredited in the Territory;

d) An appointed lawyer.

2. When there is an appointed agent, notices shall be addressed directly to him.

3. If there are more than one appointed agent, and unless otherwise indicated by the applicant or holder of the industrial property right, notices shall be addressed to the last to have been involved in the proceedings in writing or, if this criterion should not be applicable, to any one of them indifferently.

4. In the case of irregularities or omission in the performance of a given act, the representative shall be notified directly and required to comply with the legal conditions demanded within a non-extendible period of 1 month, without loss of the priorities to which he is entitled. Failure to comply shall result in the act being considered ineffective.

## Article 21

(Applicant not domiciled, registered or established in the Territory)

1. When the application for the granting of industrial property rights is submitted or sent by a party not domiciled or registered or established in the Territory, the DES shall notify that party, instructing it to retain an agent within a period of 1 month, pursuant to the terms of the previous article, if it has not already done so.
2. Failure to retain an agent in the set period shall result in refusal of the application.

## Article 22

(Access to the processes)

1. Once the process has reached the publication stage, any interested party may request the documents referring thereto as well as photocopies or ordinary copies of drawings, photographs, plans and models filed with the patent application or registration, provided that this does not prejudice third-party rights.
2. In any process, the publication stage shall be deemed reached when the application is published in the Official Bulletin.
3. The applicants and their respective agents shall, pursuant to the terms of the previous article, have access to the proceedings before publication of the application, save as determined in the following sub-paragraphs.
4. The DES can, even before the publication of the application, disclose to third parties and render public:
  - a) The application number;
  - b) The filing date of the application and, if so demanded, the priority right, the priority date, the country or territory in question and the application number on which that right is based;
  - c) The name of the individual or body corporate that filed the application;
  - d) The title or short title that synthesizes the subject or subjects for which protection is being sought or the purpose it is meant to serve.



5. Access to the proceedings is permitted, even before publication of the application and regardless of whether or not the applicant agrees:

a) To anyone who proves to be entitled, subject to respecting the request not to disclose the inventor's or creator's name, if this is apparent from the documents attached;

b) In the course of publication of a divisible application pursuant to the terms of Article 91(6).

#### Article 23

(Printed forms and formal documentary requirements)

1. Applications for the granting of industrial property rights shall be set out on the appropriate printed forms, according to models to be approved in a ruling by the Governor, to be published in the Official Bulletin.

2. The ruling referred in the previous paragraph can:

a) Establish the compulsory use of printed forms for other acts or procedures in addition to those provided for in the present Statute;

b) Determine the conditions in which the printed forms are substituted when computer procedures are used.

3. The printed forms referred to in the present article are available free of charge from the DES at the offices open to the public.

4. The DES may, by notice published in the Official Bulletin, set formal requirements to be met with respect to the documents and other items to be appended to the applications.

#### Article 24

(Rectification of application)

1. If, upon initial examination, it appears that the application for the granting of industrial

property rights was incorrectly formulated, the applicant shall be notified and required to file it in accordance with the indicated conditions, notwithstanding the provisions of article 120(3).

2. Until the decision to grant or refuse the right is handed down, the applicant also may, of his own initiative, reformulate the application requesting the granting of a right different from that initially requested.

3. Once a refusal has been handed down, the applicant, during the appeal period or, if this is interrupted, until a final decision is reached, may assign the rights deriving from the application, limit the application itself or file any additional documents or declarations.

4. In the case referred to in the previous paragraph, any other interested party may also contribute documents or declarations to the file with a view to a possible court appeal.

5. In the cases foreseen in paragraphs 1 and 2, the application shall be re-published in the Official Bulletin, and the applicant shall be accorded the priorities to which he was entitled.

6. Other formal rectifications may be authorized up to the moment of the decision, provided that they are requested with sufficient grounds and are properly published.

#### Article 25 (Rectification)

Whenever, before the publication of the notice in the Official Bulletin, the existence of any irregularity or inadequacy is found, the applicant shall be notified thereof so that, within 1 month, he may make the necessary rectifications.

#### Article 26 (Recognition of signatures)

Signatures on documents not submitted by an appointed lawyer or a person entered in the register of qualified agents shall be legally certified.

Article 27  
(Notifications)

1. The DES shall immediately notify parties involved in the process of any complaints, oppositions, interpretations, expiry requests and other procedural items contributed to the proceedings.
2. Notices of complaints, oppositions and expiry requests shall be published in the Official Bulletin for information purposes.

Article 28  
(Copies of the expositions)

Any complaints and other similar procedural items shall be accompanied by as many copies containing reproductions of all the documents that accompanied the original, as there are parties involved in the proceedings, as well as an additional copy to be kept on file and subsequently used as a basis for revising the proceedings, should that be necessary.

Article 29  
(Compilation and return of documents)

1. The documents shall be appended to the brief in which the facts referred to are alleged.
2. If it can be demonstrated that was is impossible to obtain them in good time, documents submitted after the deadline may still be appended to the proceedings, on the basis of a founded ruling and notification thereof to the opposite party.
3. Even if submitted in good time, the inclusion of the following will always be refused:
  - a) Impertinent or unnecessary documents, including the useless repetition of allegations already produced;
  - b) Any documents written in disrespectful or improper terms.
4. The parties or their respective agents shall be notified to remove items refused, that

are untimely or for the reasons given in the previous paragraph, within 5 working days, failing which they will be filed and excluded from the proceedings.

Article 30  
(Inspections)

1. An interested party may, with clearly stated reasons, request the DES to conduct an inspection of any establishment or other place, in order to support or to explain allegations produced in the process.

2. This request shall not be granted without hearing the other interested party which shall be notified for this purpose within 3 working days from when the DES received the request to conduct the inspection.

3. The cost of the inspection shall be financed by the requesting party.

4. The party that requested the measure may freely renounce it up to the day before it is scheduled.

5. The sums paid shall be returned to the requesting party should it suddenly forswear or refuse the inspection request.

6. Refusal by any of the parties to a proceeding to co-operate with a request from the DES that they clarify the situation shall be freely appreciated in the decision, notwithstanding the fact that the onus of proof will fall on the counter-party if the requesting party that bears the onus of proof by inspection is thus deprived of the possibility of obtaining that proof..

7. An inspection may also be conducted on the initiative of the DES, whenever this appears indispensable for the proper clarification of the subjects raised in the proceedings.

Article 31  
(Unofficial amendment of the decision)

1. If, before the publication of a ruling, it is recognized that it should be amended, the proceedings shall be referred to a superior ruling, with information on the facts that have come to light and which mitigate in favour of an amendment to the decision

handed down.

2. By a superior ruling is understood that issued by the hierarchical superior to the authority that effectively handed down the decision to be amended.

#### Article 32

(Alteration of unessential elements)

1. Any alteration or correction that does not affect the essential and characteristic elements of the patent or the registration may be authorized in the proceedings themselves provided they are well founded and duly published.

2. No request for an amendment or correction as foreseen in the present article can be received if any forfeiture proceedings are pending in relation thereto.

3. The amendments or corrections referred to in paragraph 1 above shall be duly recorded in the respective documents.

#### Article 33

(Documents appended to other proceedings)

1. With the exception of powers-of-attorney that are always appended to each proceeding even when the applicant is represented by the same agent, the documents filed to provide information on the applications may be appended to just one of the proceedings and just referred to in the others.

2. In the case of appeal, the appellant shall, at his own cost, by means of certified copies, complete the files for all proceedings in which such documents have been mentioned [but not appended].

3. Failure to meet the conditions set in the previous paragraphs shall be mentioned in the official letter referring the proceedings to judgment, the deadline for which cannot be exceeded for that reason.

#### Article 34

(Delivery of the title-deeds)

1. The industrial property right title-deeds shall be delivered to the interested parties

only after the end of the appeal period or, if this is interrupted, after the final court decision is known.

2. The title-deeds shall be delivered to the title-holder or his agent, against receipt.

Article 35  
(Counting deadlines)

1. Unless otherwise stipulated, the deadlines set in the present Statute shall be continuous.

2. The maturity of annuity payment, renewal and revalidation deadlines shall be is communicated to the title-holders in advance, merely for the sake of informative.

Article 36  
(Full restitution)

1. An applicant or industrial property title-holder that, through no fault of his own and despite all the vigilance demanded by circumstances, has been unable to respect a deadline which could incur the refusal or affect the validity of that right, shall have his rights restored provided that, cumulatively:

a) He submits a written and duly founded application within 2 months of the date of cessation of the hindrance;

b) He performs the omitted act within the period referred to in the previous paragraph, and pays the fee due in respect of the said act.

2. The application referred in the previous sub-paragraph is admitted only within a maximum of 1 year from the date of the unobserved deadline.

CHAPTER IV

FEES

Article 37  
(Fees due)

1. Fees shall be due for the various acts contemplated in the present Statute as determined by a ruling of the Governor, to be published in the Official Bulletin.
2. Each separate act of issue of an element to complement a requests for the granting of a right shall incur the payment of the fee foreseen for that purpose.

Article 38  
(Forms of payment)

1. The payments shall be made in cash, by cheque or postal order together with the applications for the acts provided for in notices to be published by the DES in the Official Bulletin.
2. Except as provided in the previous paragraph, payment of the application transmittal fee may be made within 8 working days of the transmission to the DES.

Article 39  
(Calculation of periodic fees)

1. Annual fees relating to patents, the registration of semiconductor product topographies and the relative five-yearly fees for the registration of drawings and models shall be calculated from the dates of the respective applications.
2. Annual fees relating to complementary protection certificates shall be calculated from the day following the expiry of the validity of the respective patent.
3. Periodic fees for all other registrations shall be calculated from the date of the respective granting.
4. Whenever, due to a court decision or the application of transitory provisions, the date of commencement of validity of patents or registrations does not coincide with the date resulting from the application of the previous paragraphs, the respective annual or periodic fees shall be calculated from the date of commencement of validity.

Article 40  
(Payment period)

1. Fees in respect of the first two annuities due in respect of patents and registrations of semiconductor product topographies and the first five-year payment due for the registration of designs or models shall be deemed included in the application fees, except when article 39(4) applies.
2. Subsequent annual and five-yearly fees shall be paid within the 6 months preceding their respective expiry, even if the rights have still not been granted.
3. The first annual fee relative to complementary protection certificates shall be paid within the last 6 months of validity of the respective patent and the subsequent annual fee shall be paid within the last 6 months preceding their respective expiry.
4. When the period of validity of the complementary protection certificate is less than 6 months, no annual fee need be paid.
5. Fees relative to other registrations not covered by paragraph 1 above shall be paid:
  - a) Together with those for the respective title-right, after the date of grant up to a maximum period of six months after the date of publication of the grant in the Official Bulletin;
  - b) In the final 6 months of respective validity, in the case of fees for the renewal of a registration.

Article 41  
(Surcharge and revalidation)

1. The fees mentioned in the previous article may be paid, with a surcharge, up to a maximum of 6 months after expiry of the validity of the right, failing which the industrial property rights shall lapse.
2. The revalidation of any patent or registration that has lapsed due to failure to pay the fees may be requested within 1 year of the date of expiry of validity.
3. The revalidation referred to in the previous paragraph can be authorized only on



payment of triple the fee owing and notwithstanding third-party rights.

Article 42  
(Reduction of fees)

1. When applicants can prove that they do not have sufficient income to bear such expenses, the fees due in respect of applications for patents and registrations of semiconductor product topographies and models and designs and for the maintenance of such rights may be reduced in accordance with terms to be set by a ruling of the Governor, to be published in the Official Bulletin.
2. The ruling referred in the previous paragraph shall also set the periods for which such fee exemptions or reductions shall apply to patent applicants or holders who have called for public tenders for exploitation of the invention.

Article 43  
(Refunding of fees)

1. The fees referred to in the previous articles shall not be refunded to the parties except when it can be proven that they were improperly paid.
2. The refund referred in the final part of the previous sub-paragraph shall be determined by a ruling of the Director of the DES, on the request of the interested party.

Article 44  
(Suspension of payment of fees)

1. If legal action concerning any industrial property right is pending or if seizure or attachment could be declared in respect thereof, the said right shall not be declared forfeit for default in the payment of periodic fees that may have fallen due.
2. Once any of the decisions referred in the previous paragraph have become res judicata, the DES shall have the fact published in the Official Bulletin and all fees owing shall fall due for payment without any surcharge within 1 year of the date of publication.
3. If on expiry of the deadline set in the previous sub-paragraph, the outstanding fees

have not been paid, the respective industrial property right shall lapse.

4. As soon as the legal action has ended or the seizure or attachment has been lifted, the court registrar shall ex officio or at the request of the party, officially inform the DES for the purpose provided in paragraph 2 above.

#### Article 45

(Rights belonging to the Territory)

Industrial property rights belonging to the Territory shall be subject to the formalities and duties stipulated in respect of an application, the grant and the respective renewals and revalidations thereof, when exploited or used by companies of any kind.

#### Article 46

(Use of the fees)

Of the fees collected under the terms of the present Statute, 40% shall constitute revenue of the Territory, and 60% shall go to the Industrial Development and Marketing Fund.

### CHAPTER V

#### EXTINCTION OF INDUSTRIAL PROPERTY RIGHTS

#### Article 47

(General causes of nullity)

Industrial property rights shall be total or partially null and void when:

- a) The subject matter cannot be protected;
- b) The subject matter violates the rules of public order or of good mores;
- c) The procedures or formalities essential for the granting of the industrial property right were not performed.

Article 48  
(General causes of annulment)

1. The industrial property rights shall be total or partially annulled if they violate the provisions that define to whom the industrial property right belongs and, in general, if their granting infringes the rights of third parties based on priority or other legal title.
2. If the legal conditions are met, the interested party may, instead of annulment, request the total or partial reversion of the title to him.
3. Unless otherwise provided, annulment suits should be filed before the General Court (Tribunal de Competência Genérica) within 1 year of the appellant learning of the fact on which the suit is based.
4. The right to request the annulment of a title obtained in bad faith shall not be subject to the statute of limitations.

Article 49  
(Procedure for a declaration of nullity or annulment)

1. A declaration of nullity or annulment can result only from a court decision.
2. Action shall be taken by the Public Prosecution Service or by any interested party against the registered title-holder and notice shall also be served on anyone who, on the date of the publication of the notice of action, has applied to the DES to register rights derived there from.
3. The Court Registrar shall inform the DES that a suit has been filed and when the case will be heard, sending it a typewritten copy or a copy on a medium deemed appropriate for the purpose of the present Statute.

Article 50  
(Effects of the declaration of nullity or annulment)

The declaration of nullity shall not prejudice effects arising from the fulfilment of commitments, court decisions in res judicata or transactions, even if they have not been ratified, or as a result of other similar acts.

Article 51  
(General causes of forfeiture)

1. Industrial property rights shall be forfeited:

a) on expiry of the period of validity;

b) in default of payment of fees;

c) if waived by the title-holder.

2. The causes of forfeiture envisaged in sub-paragraphs (a) and (b) above shall apply automatically regardless of publication.

3. The general cause of forfeiture envisaged in sub-paragraph (c) above and the other specific causes of forfeiture envisaged in the present Statute shall not take effect automatically but may be invoked by any interested party in court or out.

4. Any interested party may also require the registration of forfeiture for reasons that apply automatically, if that has not been done.

Article 52  
(Applications for a declaration of forfeiture)

1. Applications for declarations of forfeiture shall be submitted to the DES.

2. Save in cases where the title-holder waives the right, the title-holder shall be notified of the application for a declaration of forfeiture in order to have the opportunity, if so desired, to respond within 2 months.

3. On the request of the interested party, presented in good time, the period referred to in the previous paragraph may be extended by 1 additional month.

4. Further extensions for like periods can be granted only if no express opposition is raised by the other party and if justified by cogent reasons.

5. Once the response period has elapsed, the DES shall, within 1 month, decide on the declaration of forfeiture of the patent or registration.

Article 53  
(Renunciation)

1. The title-holder may renounce his applications for the granting of industrial property rights as well as any industrial property rights he may own, by so requesting the DES in writing.
2. The renunciation may be partial when the nature of the industrial property right so permits.
3. If the renunciation application is not signed by the interested party, the respective legal representative shall file a power-of-attorney with special powers.
4. Renunciation shall not prejudice duly registered third-party rights provided that the respective title-holders, after due notification, substitute the holder of the main right for the purpose of preserving the rights to the extent necessary for safeguarding those rights.
5. Once the renunciation of the application has been confirmed, the rights inherent therein shall also be forfeited.

PART II

INDUSTRIAL PROPERTY REGISTRATION

Article 54  
(Jurisdiction and purpose)

1. The Industrial Property Register shall be kept on computer by the DES in order at any time to be able to provide information on industrial property rights granted, as well as on any act amending or nullifying them.
2. No details of the application for the granting of an industrial property right shall be entered in the Register prior to publication, except on the express authorization or request of the applicant, and without prejudice to the provisions of article 22.

Article 55  
(Register of approved agents)

The Industrial Property Register shall be supplemented by a Register of Agents for the purpose of ensuring that the public know of the persons referred to in the final part of article 20 (1(b)) and of any limitations on their respective powers, as well as of the Macao industrial property agents authorized by the DES, and of the official property agents of other countries that are accredited to function in the Territory under the terms of the applicable law.

Article 56  
(Elements relevant to the registration of rights granted)

1. The registration of industrial property rights granted shall include:
  - a) The type of right at issue;
  - b) The name or style of the title-holder or holders;
  - c) The number allocated to the title;
  - d) The date of commencement of validity;
  - e) The title or short title that synthesizes the subject matter of the invention or the topography and a description of the respective subject matter;
  - f) The reproduction of the subject of the design, model, trademark or emblem registered.
2. The Director of the DES may determine the inclusion of other elements in the registration beyond those referred to in the previous paragraph, provided that the limitations or prohibitions applicable to disclosure to the general public be safeguarded.

Article 57  
(Facts subject to registration)

1. The following items are subject to registration by being written on the title and

mentioned in the respective granting register:

- a) The transmission of industrial property rights;
- b) The granting of exploitation licences;
- c) Declaration of public calls for tender to exploit inventions, as well as their respective withdrawal or forfeiture;
- d) The constitution of rights of warranty or usufruct, as well as seizure and attachment;
- e) Lawsuits for nullity or annulment of rights;
- f) Amendments of acts performed under article 32;
- g) Any other facts or decisions that modify or extinguish industrial property rights.

2. The facts referred to in paragraph 1 above may be raised by the parties or their successors at any time but shall produce effects in relation to third parties only after having been registered.

#### Article 58

##### (Initial steps and formalities)

1. The registration shall be effected on application by any of the interested parties accompanied the documents bearing out the facts to be registered.
2. If the registration of the assignment be requested by the assignor, the assignee shall also sign the document giving proof thereof or shall expressly declare acceptance of the assignment.
3. After the registration has been effected, the certificate shall be returned to the requesting party and the request and supporting documents shall be appended to the respective file.
4. The DES may, ex officio, have the obligatory granting of exploitation licences registered, as well as the legal actions referred to article 57(1(e)).

Article 59  
(Access to the registers)

The registers referred to in articles 54 and 55 shall be public and anybody may by name request a certificate of registrations effected, documents filed and of decisions published, as well as indication of the date on which any of the publications mentioned in the present Statute were issued.

PART III

TYPES OF INDUSTRIAL PROPERTY RIGHTS

CHAPTER I

INVENTIONS

SECTION I

GENERAL PROVISIONS

SUB-SECTION I

OBJECT OF PROTECTION

Article 60  
(Subject matter of protection)

Only inventions meeting the patentability requirements set forth in the present sub-section can be protected under the present Statute, by the granting of a patent certificate.

Article 61  
(Patentability requirements)

Any inventions, in any area of technology, pertaining to products or processes for obtaining products, substances or compositions, even if they involve a product composed of biological matter or that contains biological matter or a process that



permits the production, processing or use of biological matter, shall be patentable provided that such inventions:

- a) Be novel;
- b) Involve an inventive step; and
- c) Be industrially applicable.

#### Article 62

(Exceptions and limitations to patentability)

1. The following shall not be patentable:

- a) Discoveries, as well as scientific theories and mathematical methods;
- b) Materials or substances already existing naturally and nuclear matter;
- c) Aesthetic creations;
- d) Schemes, rules and methods for performing mental acts, playing games or doing business as well as computer programs, as such;
- e) Presentation of information.

2. Likewise, the following cannot be patented:

- a) Inventions whose commercial exploitation would be illegal, contrary to public order, public health or morality;
- b) Methods for the surgical or therapeutic treatment of the human or animal body and methods of diagnosis applied to the human or animal body, excluding products, substances or compositions used in any of those methods;
- c) Plant varieties or breeds of animal, as well as essentially biological processes for the production of plants or animals.

3. Pursuant to sub-paragraph 2(a) above, the following are specifically not patentable:

a) The human body, in the various stages of its formation and development, as well as the simple discovery of one of its elements, including the sequence or partial sequence of a gene;

b) Human cloning processes;

c) Human germinal genetic identity modification processes;

d) The use of human embryos for industrial or commercial purposes;

e) Processes for the modification of the genetic identity of animals that can cause them suffering without any substantial medical benefit to mankind or animal kind, as well as the animals obtained by those processes.

4. The provision in paragraph 1 excludes patentability only when the object for which the patent is requested is limited to the elements mentioned therein as such.

5. For the purposes of sub-paragraph 2(a), patentability of the invention cannot be excluded by the simple fact that the commercial exploitation thereof is prohibited by Law or regulation.

#### Article 63

##### (Special cases of patentability)

1. The provisions of the previous article shall not exclude the patentability of:

a) A substance or composition included in the prior art which is used in the working of one of the methods mentioned in paragraph 2(b) of the same article, provided that its use for any of the methods mentioned therein is not included in the prior art;

b) Any isolated element of the human body or produced in some other way by a technical

process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element;

c) An invention whose object is plant or animal matter if its technical feasibility is not

limited to a certain plant variety or animal species;

d) A biological substance isolated from its natural environment or produced on the basis of a technical process, even if it pre-exists in the natural state;

e) An invention, the object of which is a microbiological or other technical process or products obtained by such processes.

2. For the purposes sub-paragraph 1(b) above, the industrial application of a sequence or of a partial sequence of a gene must be concretely stipulated in the patent application.

#### Article 64

(Biological processes and biological matter-definitions)

For the purposes of articles 62 and 63:

a) An essentially biological process for obtaining plant or animal matter shall be understood as any process that consists entirely of natural phenomena such as crossing or selection;

b) A microbiological process shall be understood as any process that uses microbiological matter, that involves the manipulation of microbiological matter or that produces microbiological matter;

c) Biological matter shall be understood as any matter that contains genetic information and can reproduce itself or be reproduced in a biological system.

#### Article 65

(Prior art)

1. An invention shall be considered novel when it is not known in the prior art.

2. Prior art comprises everything that, inside the Territory or outside it, has been made accessible to the public before the date of the patent application, by description, use or any other means.

3. Prior art shall also be considered to include the content of patent applications filed

at a date prior to that on which the patent in question is applied for and which produce effects in the Territory and is not yet published.

Article 66  
(Inventive step)

An invention is considered to involve an inventive step if, for a person skilled in the art, the result is not obvious from the prior art.

Article 67  
(Industrial application)

An invention is considered industrially applicable if its subject matter can be manufactured or used in any type of industrial or commercial activity.

Article 68  
(Non-opposable disclosures)

1. The following shall not prejudice the novelty of the invention:

a) Disclosures to scientific societies, professional technical associations, or for the purpose of competitions, exhibitions and trade fairs in Macao or abroad which are official or officially recognized, if the application for the granting of the respective patent be filed in the Territory within 12 months;

b) Disclosures resulting from obvious abuse of the inventor or his successor in any capacity, or if improperly published by the DES.

2. The provision of sub-paragraph 1(a) above shall apply only if the applicant proves, within 3 months from the filing date of the patent application, that the invention was effectively disclosed in the conditions envisaged in the paragraph in question.

SUB-SECTION II

PATENT ENTITLEMENT

Article 69  
(Patent right)

1. The patent entitlement shall lie with the inventor or his/her successor in any capacity, except where otherwise provided for inventions discovered while fulfilling a contract of employment.
2. If the invention was discovered by two or more persons, any one of them shall be entitled to apply for the patent in the name of all of them.

Article 70  
(Invention discovered in the context of an employment contract)

1. Anyone discovering an invention during the fulfilment of an employment contract shall inform the company of the fact within the following deadlines:
  - a) 2 months from the completion of the invention;
  - b) 1 month from the filing of the patent application with the DES, if this was done within the period referred to in the previous sub-paragraph;
  - c) 1 month from the filing of the patent application with the DES, in the cases foreseen in the following paragraph.
2. Inventions for which the patent is filed within 1 year of the date on which the inventor leaves the company shall be presumed to have been discovered during the fulfilment of the employment contract.
3. The non-performance of the obligation referred in paragraph 1 above shall incur third-party liability, in general, and, if the employment contract has not terminated, a liability under labour law.
4. The company and the inventor shall refrain from any act of disclosure likely to prejudice the acquisition of the patent entitlement.

## Article 71

### (Attribution of entitlement to the invention)

1. The entitlement to the invention referred to in the previous article shall lie with the company if the invention forms part of its area of activity and if it was discovered in the process of:

a) an employment contract containing a clause that explicitly provides for the performance of an inventive activity and that effectively corresponds to the functions attributed to the employee;

b) Studies or research that the worker was explicitly requested to conduct.

2. Entitlement to the invention shall also lie with the company, even though the invention does not fall within its area of activity, if the employee has used knowledge, technical means or data supplied by the company.

3. In situations not provided for in the previous paragraphs, entitlement to the invention shall lie with the employee.

## Article 72

### (Inventor's remuneration)

1. In the cases provided for in article 71(1) and (2), the inventor shall be entitled to remuneration in keeping with the relevance of the invention, if the inventive activity is not especially remunerated under the terms of the employment contract or in a written document.

2. The company shall lose the right to the patent, in favour of the inventor, if the remuneration due the inventor is not fully paid to him within the deadline established by the parties.

3. In the absence of agreement on the amount of remuneration, the subject shall be settled by arbitration.

4. All relevant circumstances shall be considered in determining the amount of remuneration, and more especially:

- a) the financial value of the invention and its contribution to the growth or recovery of the company;
- b) the personal effort made by the inventor and the assistance that he received from other employees in discovering the invention;
- c) the financial capacity and size of the company;
- d) The wage and other benefits that the company pays the inventor.

#### Article 73

(Inadmissibility of prior renouncement)

The rights accorded the inventor under the preceding articles may not be renounced in advance.

#### Article 74

(Most favoured regime)

The regime established in the employment contract shall take precedence over the provisions of articles 70 to 72 if the contract contains a regime globally more favourable to the inventor.

#### Article 75

(Right of the inventor to be named)

1. If the patent application is not filed in the name of the inventor, he shall be entitled to be mentioned as such in the application and on the patent certificate.
2. The name of the inventor need not be mentioned as such in the publications arising from the application if he so requests in writing.

#### Article 76

(Application to public entities)

Unless otherwise stipulated, the provisions of the present sub-section shall within the Territory, apply in relation to its employees, agents and other servants in any capacity.

## SUB-SECTION III

### THE PATENT PROCEDURE

#### Article 77

##### (The form of request)

1. The patent request shall be written in the official language of the Territory indicating the name or style of the applicant, his/its nationality and domicile or place of residence, and shall be accompanied by the following items in triplicate:

a) The title or short title briefly synthesizing the subject matter of the invention;

b) A description of the subject matter of the invention;

c) Claims of what is considered novel and what characterizes the invention;

d) Mention of the priority right, if appropriate, pursuant to article 17(3).

2. The description shall indicate, briefly and clearly, without reservations or omissions, everything that constitutes the subject matter of the invention, containing a detailed explanation of, at least, one way of realizing the invention, in such a way that a person skilled in the art could realize it.

3. The claims shall define the subject matter of the requested protection and shall be clear, concise, written correctly, based on the description and, when appropriate, contain:

a) A preamble mentioning the subject matter of the invention and such technical features of the invention as are necessary for the definition of the claimed subject matter but which, in combination, are part of prior art;

b) A characterizing portion, preceded by the expression «characterized by» and stating the technical features which, in combination with the features stated in the previous sub-paragraph, define the extent of the requested protection.

4. Any fantasy expressions used to designate the invention shall form no part of the claim.



Article 78  
(Description of biotechnical inventions)

Should an invention claim to refer to biological matter that is not accessible to the public and that cannot be described on the patent form in such a manner as to permit its realization by a person skilled in the art, or to involve the use of matter of that type, the description alone shall be considered enough for the purpose of obtaining the patent, if:

- a) The biological matter has, by the date of submission of the patent request, been deposited in a recognized depositary institution, on the conditions to be defined in a ruling by the Governor, and published in the Official Bulletin;
- b) The patent request includes the relevant information of which the applicant disposes concerning the characteristics of the deposited biological matter;
- c) The patent request mentions the depositary institution and the deposit number.

Article 79  
(Additional elements of the request)

1. The elements referred in article 77 and, if appropriate, in the preceding article, should be supplemented by the following documents:

- a) A summary of the invention;
- b) Drawings necessary for the perfect understanding of the description;
- c) The name and country or territory of the inventor's place of residence;
- d) Proof of payment of the request submission fee.

2. If appropriate, the following shall also be submitted:

- a) Documents proving the claimed priority right;
- b) The declaration by which the inventor opposes the disclosure of his identity;

c) A summary declaration on the facts that justify title to the patent, when the applicant was not the inventor or the only inventor;

d) Any translations that may be necessary, specifically in the light of the regulations referred to in article 85(3).

3. The drawings should comprise strictly illustrations in such numbers as are necessary to the understanding of the invention.

4. The abstract of the invention, to be published in the Official Bulletin, shall merely serve the purpose of providing technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought and it shall consist in a brief exposé of what is referred to in the description, claims and drawings and should preferably not contain more than 150 words or 400 characters.

#### Article 80

##### (Unity of request and invention)

1. No more than one patent may be requested in the same application and only one patent may be requested for an invention.

2. A plurality of inventions inter-related amongst themselves in such a way as to constitute a single general inventive concept shall be considered a single invention.

3. Under the terms of the previous paragraph, it is permitted to include in the same request, specifically:

a) An independent claim for a product, an independent claim for a process especially evolved for the manufacture of that product and, moreover, an independent claim for a process especially evolved for a use of that product;

b) An independent claim for a process and an independent claim for a device or mechanism evolved especially to perform that process;

c) An independent claim for a product, an independent claim for a process and an independent claim for a device or mechanism especially devised to execute that

process.

Article 81  
(Multiple priorities)

1. Multiple priorities can be claimed for a patent request, provided that the priorities come from different countries or territories, the deadlines relating to the priority being calculated from the date of the oldest priority.

2. Where appropriate, multiple priorities may be cited for a same claim.

3. When one or more priorities are claimed for the patent request, the priority right shall include only those elements of the patent request contained in the request or requests whose priority is claimed.

4. If some of the elements of the invention for which priority is claimed are not included

among the claims formulated in the previous request, it shall suffice, in order that the priority may be considered, that all the documents of the previous request accurately reveal the elements referred to.

Article 82  
(Examination as to form)

1. Once the request has been received, the DES shall proceed to its formal examination, within a period of 2 months, to verify that it contains all of the elements required in accordance with articles 77 to 79.

2. If the request does not contain some of the elements required, or if they are in any way irregular, the applicant shall have 2 months from his being notified to that effect by the DES in which to make the necessary rectification or, should he not be so notified, a maximum of 4 months from the filing of the request, either deadline being extended by a further 2 months, if so requested with good reason.

3. The date that establishes the priority of the presentation, for the purposes of article 15, shall be that on which the elements referred to in articles 77 and 78 are submitted complete and the DES shall then, if the applicant so requests, issue the relevant

submission certificate.

4. During the formal examination phase foreseen in the present article, the fact that the request does not respect the requirements set forth in article 80 shall not prevent its being received.

5. Failure to send the notification referred to in paragraph 2 above, as well as its non-reception, shall not, for the purpose of granting the patent, relieve the applicant from making good the indicated irregularities within the legal deadline.

6. If, within the deadline applicable under paragraph 2, it is found that the inadequacies or irregularities in the request were not rectified, the request will be refused and a notice to that effect will be published in the Official Bulletin, in which case there shall be no need to publish the notice foreseen in the following article.

#### Article 83

(Notice of disclosure to the public)

1. Once 18 months have elapsed from the date of submission of the request or, if a priority right was claimed, from the claimed date, the DES shall have the disclosure notice published in the Official Bulletin and the request proceedings shall be available to the public from that date.

2. The proceedings may be published before the end of the deadline referred to in the previous sub-paragraph, should the applicant so request, and once:

a) at least 2 months have elapsed from the submission of the patent request;

b) the request is not pending regularization, as envisaged in article 82.;

c) the early request fee has been paid.

#### Article 84

(Objections)

1. From the publication of the disclosure notice until the date when the patent is awarded, any third-party may approach the DES in writing with objections to the patentability of the invention in respect of which the request was filed.

2. The objections shall be transmitted to the applicant, which may respond within 4 months of the notification of such objections.

#### Article 85

##### (Examination report and designated entities)

1. The invention examination report, to be prepared by one of the designated entities, shall look into the claims in their latest formulation and, when appropriate, the drawings included with them for the purpose of specifying the elements of prior art that should be taken into consideration in determining the novelty of the invention, as well as appreciating inventive step.

2. The designated entities are the European Patent Institute and any others specified by a ruling of the Governor and published in the Official Bulletin.

3. The ruling referred in the previous paragraph may include or determine the publication of procedural standards with a view to the proper performance of co-operation agreements concluded with the designated entities, and more specifically with respect to the languages to be used in the documents and/or to the translations that should be submitted by the applicants.

#### Article 86

##### (Examination of the invention)

1. On pain of having the patent request refused, the applicant shall, within 7 years of the date of filing of the main request or of the several requests provide the DES with:

a) A request that an examination report be conducted by one of the designated entities;

b) An examination report conducted by one of the designated entities, if the object of such report is the invention for which the granting of a patent in Macao is being requested;

c) One or more examination reports conducted by one of the designated entities, if such report or reports concern one or more similar patents or industrial property certificate requests whose priority is being claimed for the Macao patent application, or that claim the same priorities as does the Macao patent application, or else that

claim the priority of the Macao patent application.

2. In the case envisaged in the sub-paragraph 1(c) above, the applicant should include an authenticated copy of the patent requests or similar industrial property certificates referred to and the DES shall be entitled to demand a translation into one of the official languages of the Territory.

3. The designated entity shall prepare the examination report on that part of the patent application relating to the main object of the claims and to those parts of the patent application for which additional examination fees have been paid in the set deadlines.

4. The parts of the application for which the additional examination fees have not been paid within the set deadlines shall be considered to have been withdrawn, if they do not form part of a divisible application.

5. The request for the preparation of an examination report shall specify the parts of the patent request to which the documents mentioned in sub-paragraph 1(b) or (c) above refer.

6. The applicant shall be relieved of submitting the elements referred in the previous paragraphs if the patent request has been filed by a third party pursuant to the following article.

#### Article 87

(Examination report request filed by a third party)

1. Starting from the date of disclosure to the public of the patent application proceeding, anyone may request the preparation of the examination report referred to in the previous article, if the applicant has not done so within 7 years from the date of submission of the patent application.

2. The applicant shall be notified of a request by a third party under the terms of the previous paragraph, and shall receive a copy of the examination report whereupon he may avail himself of the facility provided for in article 89.

## Article 88

### (Rejection of an examination report request)

The request for the conduct of an examination report shall be rejected when:

- a) It is not accompanied by proof of payment of the examination fee;
- b) It does not meet other requirements stipulated in the present Statute;
- c) The patent application is in the process of rectification, as provided in article 82.

## Article 89

### (Amendments to claims, description or drawings)

1. The applicant shall be entitled to make amendments to the claims, description and drawings:

- a) Once only up to the filing of the request for the conduct of the examination report or up to the reception by the DES of the documents referred to in article 86(1(b) and (c);
- b) Once only after the filing with the DES of the documents referred to in article 86(1(b) and (c) or following reception of the examination report;
- c) Once only where a divisible application is filed.

2. A patent application cannot be amended in such a way that its subject matter exceeds the content of the application as originally submitted.

3. The right to amend provided for in the present article shall include the right to adapt the title of the invention and the abstract, as well as to submit a short comment.

4. The amendment right accorded under sub-paragraph 1(b) shall be exercised within 4 months following the occurrence of the facts referred to.

5. The amendment right accorded under sub-paragraph 1(c) may be exercised within 4 months following the presentation of a divisible application provided that it does not exceed the deadline referred to in the previous paragraph.

6. Each amendment shall be subject to the payment of the fee set for the purpose.

#### Article 90

(Rectification subsequent to the examination report)

1. If the designated entity does not follow up on the examination report because certain sectors of the art have been temporarily excluded from their search activities, or should it decide not to proceed with the search in the concrete case, the DES shall notify the applicant of such decision, that notification substituting the examination report for the purpose of granting the patent.

2. The DES shall also notify the applicant of the impossibility of producing the examination report when the designated entity considers that:

a) the description, the claims or the drawings do not meet the established requirements, so that no substantial search can be conducted;

b) The subject matter of the patent application does not fall within the concept of an invention or of a patentable matter, or that it is not obliged, for other reasons, to proceed with the search.

3. In the case referred in the previous paragraph, the applicant shall have 4 months from notification to correct the deficiencies of the patent application, pursuant to article 89, and to repeat the request for an examination report.

4. If, following upon the renewal of the examination report request, the designated entity considers

that it is unable to modify its conclusions regarding the patent application as corrected,

the applicant may justifiably contest that decision.

5. The contestation referred in the previous paragraph shall not be admitted if the nonpatentability of the invention has been demonstrated or if the contestation was not presented within the deadline set for that effect by the DES or, where no such deadline was set, by the end of the period referred to in article 86(1).



6. If, from the documents referred to in article 86(1(b) and (c)) it can be concluded as indicated in sub-paragraph 2 above, or should those conclusions not meet the requirements established in the present Statute or in the respective regulations, the DES shall notify the applicant of this fact, and the applicant shall have 4 months in which to rectify the documents or to request that the examination report be established.

7. Examination report requests submitted under the terms of paragraphs 3 and 6 shall be refused if they are submitted after the expiry of the deadline referred to in article 86(1).

#### Article 91 (Divisible applications)

1. The applicant shall have the option of irreversibly dividing his application and submitting it as one or more divisible applications, to which shall be correspondingly limited the protection conferred by the initial application, if he himself or the designated entity considers that the patent application does not meet the requirement of unity of invention referred to in article 80.

2. The option referred to in the previous paragraph cannot be exercised during the period between the examination report request and the reception of that report by the applicant.

3. The limitation of the protection conferred on the initial application is effected by the deletion of one or more claims, sentences in the description or drawings or, exceptionally, in the form of an amendment to the claims, to the description or to the drawings, pursuant to article 89.

4. The divisible applications can be submitted only if they fall within the scope of the initial application submitted and shall, in that case, benefit from the priority date allocated to the initial application and the corresponding priority right.

5. The presentation of a divisible application shall require payment of the fees due for the presentation of a patent application, as well as of the annuities that fall due after the date of presentation of the initial application, according to the rates applicable at the time of the presentation of the divisible application.

6. Once a divisible application has been published, anyone may consult the initial application proceedings even before they are published and even without the consent of the applicant.

#### Article 92

(Divisible application following upon legal action)

When a patent has been granted disregarding the requirement of unity of invention and this omission has been legally confirmed in response to a suit brought by a third party, the patentholder shall, on pain of finally losing the rights not directly relating to the main subject matter of the patent, submit one or more divisible applications.

#### Article 93

(Deadline and content of the divisible application)

1. The divisible application may be submitted only within a deadline of 4 months from:

- a) The performance of the acts envisaged in article 89(1(b));
- b) A court decision, in the case envisaged in the previous article.

2. An examination report request shall be submitted for each divisible application within 7 years of the date of the submission of the initial application.

3. If the divisible application be submitted after the deadline set in the previous paragraph, it should thenceforth be accompanied by the examination report request, on pain of being refused.

#### Article 94

(Access to deposited biological material and substitution thereof)

1. Access to deposited biological material shall be ensured by provision of a sample:

- a) Until the first publication of the patent application, only to people who have access to the proceedings;

b) Between the first publication of the application and the granting of the patent, to anybody who so requests or, at the request of the depositor, only to an independent expert;

c) After the granting of the patent, and even if the patent lapses because it becomes invalid or is forfeited, to anybody who so requests.

2. The sample shall be delivered only if the person requesting it undertakes, for the duration of the patent:

a) Not to provide third parties with any sample of the deposited biological material or of any material derived therefrom;

b) Not to use any sample of the deposited material or any matter derived therefrom, except for experimental purposes, save in the case of an express waiver by the applicant or the patentholder of that commitment.

3. Should the patent application be refused or withdrawn, access to the deposited material may, at the request of the depositor, be limited to an independent expert for 20 years from the date of filing the patent application and, in this case, the provision of the previous paragraph shall apply.

4. The applications of the depositor referred to in sub-paragraph 1(b) and in the previous paragraph may be presented only until the date on which the technical preparations for publication of the patent applications are considered completed.

#### Article 95 (New deposit)

1. When the biological material deposited pursuant to the provisions in the preceding article ceases to be available at the recognized depositary institution, a new deposit of the material shall be permitted on the conditions envisaged in the Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for Purposes of Patent Procedure.

2. Any new deposit shall be accompanied by a declaration, signed by the depositor, certifying that the biological material forming the new deposit is identical to that initially deposited.

Article 96  
(Withdrawal of application)

The applicant may withdraw the patent application at any time by submitting such a request in writing together with a declaration confirming that he has informed the inventor of the fact, in cases where the inventor is not the applicant, as well as any person or persons to whom a licence has in the meantime been granted, which licence has not yet been registered with the DES, or, if appropriate, indicating that such confirmation is not applicable.

Article 97  
(Partial granting)

1. If it is just a case of removing drawings, sentences from the abstract or from the description or altering the title or short title of the invention then, in keeping with the notification, the DES may proceed with such amendments and have a notice published to that effect provided that the applicant raises no express opposition within 1 month of the said notification.
  
2. The publication in the Official Bulletin of the notice referred to in the previous paragraph, with a transcription of the abstract, shall mention the alterations made.

Article 98  
(Reasons for refusing the patent)

The patent shall be refused when any of the general grounds for refusal to grant industrial

property rights is found to obtain, but the applicant may be refused a patent on the basis of article 9(1) only if the non-patentability is obvious from the terms of the examination report or if it was not possible to reach any conclusion on the patentability because the elements accompanying the application did not permit the patent to be granted because of their inadequacy, irregularity, contradiction or confusion.

#### Article 99

(Notification of grant or refusal of patent)

The granting or refusal of the patent shall be notified pursuant to article 20(2) and (3) and shall be published in the Official Bulletin.

#### Article 100

(Publication of the pamphlet)

Once the deadline set in article 34(1) has elapsed, the patent pamphlet can be published.

### SUB-SECTION IV

#### EFFECTS OF THE PATENT

#### Article 101

(Scope of protection)

1. The scope of protection conferred by the patent shall be determined by the content of the claims, the description and the drawings serving for interpretation purposes.
2. If the subject matter of the patent concerns a process, the rights conferred by that patent shall include the products directly obtained by the patented process.
3. The protection conferred by a patent relating to a biological material endowed by the invention with certain properties shall extend to any biological material obtained from the said biological material by reproduction or multiplication, in identical or different form, and endowed with those same properties.
4. The protection conferred by a patent relating to a process for producing a biological material endowed by the invention with certain properties, shall extend to biological material directly obtained by that process and any other biological material obtained from the directly obtained biological material, by reproduction or multiplication, in identical or differentiated form, and endowed with those same properties.
5. The protection conferred by a patent relating to a product that contains genetic information or that consists in genetic information, shall extend to any material,

subject to the provisions of article 62(3(a)), in which the product is incorporate and in which its function is contained and exercised.

6. Notwithstanding the provisions of paragraphs 3 to 5, the sale or any other form of commercialization by the patent-holder, or with his consent, to a farmer, of plant reproduction material, or breeding animals or other animal reproduction material, shall imply that the farmer has permission to use the protected animals, the animal reproduction material or the product of his harvest in order himself to proceed to reproduce or multiply animal or plant species exclusively for the purpose of his own agricultural exploitation.

7. Unless otherwise agreed by the parties, the permission referred to in the previous paragraph shall not entitle the farmer to exercise any reproductive activity for commercial purposes or as part of a commercial activity.

#### Article 102

(Inversion of the onus of proof)

1. If the subject matter of a patent is a process for the manufacture of a new product, the same product manufactured by a third party shall, unless proven to the contrary, be deemed to be manufactured by the patented process.

2. When taking evidence, the court shall take account of the legitimate interest of the party bearing the burden of proof in preserving his trade secret.

#### Article 103

(Duration)

1. The duration of the patent shall be 20 years from the date of the respective application.

2. Notwithstanding the provision for temporary protection, the exclusivity deriving from the patent pursuant to article 5 shall be effective only from the date of the granting of the respective certificate.

## Article 104

(Rights conferred by the patent)

1. Upon becoming valid, the patent shall confer on its holder:

- a) The exclusive right to exploit the invention in the Territory;
- b) The right to oppose any acts that constitute a breach of his patent, and specifically to prevent third parties, without his consent, from manufacturing, offering, storing, marketing or using a product covered by the patent, or importing or owning the same for any of the mentioned purposes.

2. The rights conferred by the patent may not exceed the scope defined for the claims.

3. The patent shall be granted with no guarantee as to the accuracy of the descriptions and its validity may not be presumed by virtue of the fact that the respective certificate was granted.

## Article 105

(Limitation on the rights conferred by the patent)

The rights conferred by the patent shall not include:

- a) The preparation of medicines made up on the spot and for individual cases by dispensing chemists on a medical prescription, nor acts relative to medicines so prepared;
- b) Acts performed exclusively for test or experimental purposes, including experiments in preparation for the administrative processes necessary for the approval of products by the relevant official bodies, because the industrial or commercial exploitation of those products cannot begin before checking whether the patent protecting them has lapsed;
- c) The use on board ships of other countries or territories members of the WTO or the Union of the subject matter of the patented invention in the body of the ship, in the machinery, in the masting, equipment and other accessories, when they temporarily or accidentally enter the waters of the Territory, inasmuch as the said invention is used exclusively for the needs of the ship;

d) The use of the subject matter of the patented invention either in the construction or operation of air or land transport vehicles of other countries or territories members of the WTO or the Union or of accessories on those vehicles, when they temporarily or accidentally enter in the Territory;

e) The acts envisaged in article 27 of the Convention of 7 December 1944 relative to International Civil Aviation, if these acts concern aircrafts of another State but to which the provisions of the said article apply;

f) The acts performed in the context of private use, having no commercial purpose.

#### Article 106

##### (Non-contravention of the patent)

1. The rights conferred by the patent shall not be deemed to have been conveyed by anyone who, in good faith, in the Territory and before the date of application or of priority, when claimed:

a) Came to know of the invention by his own means; and

b) Used it or made effective and serious preparations with a view to such use.

2. Anyone benefiting from the assumption of non-contravention shall bare the onus of proof of the situations foreseen in the previous paragraph.

3. Prior use or the preparations for such use, based on the disclosures referred to in article

68(1(a)) shall not detract from good faith.

4. In the cases envisaged in paragraph 1, the beneficiary shall be entitled to continue or to begin use of the invention, to the extent of his prior knowledge, for the purposes of his own enterprise, but may transmit it only together with the commercial establishment in which the invention is used.



## SUB-SECTION V

### USE OF THE PATENT

#### Article 107

(Indication of the patent)

During the validity of the patent, the patent-holder may, on the products, use the word "patented", "patent N°." or "Pat. N°.", in Portuguese or also in Chinese.

#### Article 108

(Loss and expropriation of the patent)

1. Anyone can be legally deprived of a patent who has to meet commitments contracted with another or who has had it expropriated for a public purpose.
2. Any patent can, on payment of compensation, be expropriated to be used for the public good if the need to disclose the invention or to make it available for use by public entities so demands.
3. The terms of the Statute of Expropriation for the Public Good, pursuant to Decree-Law no. 43/97/M, of October 20 1997 shall apply mutatis mutandis.

#### Article 109

(Mandatory licences - admissibility)

By ruling of the Governor, mandatory non-exclusive licences can be granted for a certain patent in any of the following cases:

- a) No or inadequate exploitation of the patented invention;
- b) Interdependence of patents;
- c) For reasons of public interest.

## Article 110

### (Mandatory licences - general rules)

1. Mandatory licences can be granted only when the potential licensee has made efforts to obtain a contractual licence from the patent-holder on acceptable commercial terms and such efforts have not been successful within a reasonable period.
2. While a mandatory licence is in force, the patent-holder cannot be compelled to grant another licence before the mandatory licence has been cancelled.
3. The holder of the patent for which a mandatory licence is issued shall be entitled to:
  - a) An appropriate remuneration in each concrete case, bearing in mind the economic value of the licence;
  - b) Request the judicial revision of the decision to grant or refuse such remuneration.
4. Mandatory licences may be assigned only with the part of the company or of the establishment that exploits them.
5. The title-holder of a patent in respect of which a mandatory licence has been issued shall, when granting the licence, provide the licensee with all the elements of a technical nature of which he is aware at that moment and that are necessary for the exploitation of the invention.

## Article 111

### (Mandatory licences issued in the case of no or inadequate exploitation of the patent)

1. If a patent is not or is inadequately exploited, there shall lie grounds to apply for a mandatory licence if the patent-holder, without good or legal reason, by 4 years from the date of the patent application or 3 years from the date of the granting, whichever the longer:
  - a) Has not begun exploitation or made effective preparations to that end, nor granted licences for the patented invention in the Territory or in any other country or territory member of WTO;

b) Has not exploited the invention in such a way that the results satisfy the market requirements in the Territory.

2. Another ground for requesting a mandatory licence shall be the patent-holder's failing, without good legal reason, to exploit the invention, either in Macao or in any other country or territory member of WTO, during 3 consecutive years.

3. Good reasons shall be deemed to be objective difficulties of a technical or legal nature, independent of the will and situation of the patent-holder, that make it impossible to exploit or sufficiently exploit the invention, but not economic or financial difficulties.

#### Article 112

##### (Interdependent licences)

1. When the exploitation of an invention protected by a patent is not possible without damaging the rights conferred by a prior patent, the mandatory licence may be granted only if the subsequent invention represents a notable technical progress over the prior invention.

2. Once the mandatory licence has been granted, either of the licence-holders shall be entitled to request a mandatory licence on the patent of the other.

#### Article 113

##### (Public interest)

1. A mandatory licence for the exploitation of an invention can be granted in the public interest.

2. Public interest is deemed to obtain when the beginning, the increase or the generalization of the exploitation of the invention or the improvement of the conditions in which the invention is exploited are of primordial importance for public health or safety.

#### Article 114

##### (Application for mandatory licences)

1. Application for the granting of a mandatory licence shall be filed with the DES,

accompanied by the necessary elements proving the respective grounds.

2. Applications for mandatory licences shall be examined in the order in which they are filed with the DES.

3. Once the DES has received the application for a mandatory licence, it shall notify the patentholder in order that, within 2 months, he/it may state what he/it wishes to do, submitting the respective proof.

4. The DES shall then have 2 months to analyze the arguments advanced by the parties and the guarantees offered by the applicant for the mandatory licence that it will exploit the invention, to prepare the corresponding opinion and to submit the proceedings for the Governor's decision, which shall be handed down within 1 month.

5. When the mandatory licence application is based on the public interests referred to in the previous article, the process shall be submitted to the Governor's appreciation only after having obtained the opinion of the Science, Technology and Innovation Committee and, if applicable, of the Health Services of Macao or of the Directorate of the Macao Security Services, and after the title-holder has had a chance to take a stand on the tenor of those opinions.

6. The deadlines for the issue of the opinions and the patent-holder's answer, under the terms of the previous paragraph, shall be set by the DES at 1 to 3 months.

7. If the application is deferred, the DES shall appoint an expert and notify both parties in order that, within 1 month, they name their experts, it then being up to the three experts, within 2 months, to agree on the conditions of the mandatory licence and the remuneration to be paid to the patent-holder.

#### Article 115

##### (Cancellation and reappraisal of the mandatory licence)

1. The mandatory licence can be cancelled if:

a) The licensee does not abide by the conditions imposed on granting or the purposes for which it was granted;

b) The circumstances on which the granting was based no longer obtain and are

unlikely to be repeated.

2. The initiative to introduce proceedings to cancel the licence shall lie with the DES, with the patent-holder and, where applicable, with the other licensees.

3. The patent-holder shall be entitled, with good reason, to request the reappreciation of the conditions and circumstances under which the mandatory licence was granted.

#### Article 116

(Notification and appeal with respect to the granting, refusal or cancellation of licence)

1. The DES shall notify the parties of the granting and respective exploitation conditions, as well as of the refusal or cancellation of the licence.

2. Appeal to the competent civil court shall, within 3 months of the date of the notification, lie against the decision by the Governor to grant, refuse or revoke the mandatory licence, or just against the conditions on which it was granted.

3. The granting shall take effect only after the decision has become final and has been registered by the DES and after proof of payment of the fees due have been produced, as if it were an ordinary licence.

4. An extract of the registration referred to in the previous paragraph shall be published in the Official Bulletin.

#### Article 117

(Public tender for the exploitation of an invention)

1. A patent-holder, as indeed a patent applicant that has already complied with the obligation referred to in article 86(1) but has still not granted an exclusive licence to exploit the invention, may submit to the DES a written declaration by which he makes the exploitation of the invention available to third parties as non-exclusive licensees, gratuitously or for appropriate consideration.

2. If no agreement can be reached on the initial amount of the consideration, or on the terms according to which it should be altered if it has proven manifestly inadequate, it shall, if the parties so desire, be set by arbitration or by the court.

3. The party making the declaration may withdraw it at any time by submitting an application to the DES, but this cannot be used against persons whose agreement to exploit the invention has already been communicated to the applicant or patent-holder.

4. The declaration shall lapse on the right to the patent being recognized by a court decision as belonging to someone other than the party making the declaration.

5. Until such time as the declaration has been withdrawn or declared lapsed, the DES shall refuse entry in the register of any exclusive licences relating to the invention in question.

6. The DES shall not charge any fee for the publication of the public declaration of tender, nor for notices of the withdrawal or lapse thereof.

7. Until such time as the declaration has been withdrawn or declared lapsed, any fees that may be due for the patents or patent applications subject to public tender for exploitation shall be reduced or subject to exemption pursuant to the terms set in the ruling referred to article 42(2).

## SUB-SECTION VI

### EXPIRY OF THE PATENT

#### Article 118

#### (Nullity of patents)

Besides the general causes of nullity of industrial property rights foreseen in article 47, the following shall also constitute grounds for nullity of patents:

a) The fact that the title or short title given to the invention includes different subject matter;

b) The fact that the subject matter is not described in such a way as to allow the execution of the invention by a person skilled in the art;

c) The extension of the subject matter of the patent beyond the content of the initial application.

Article 119  
(Partial nullity or cancellation)

1. One or more claims may be declared null or cancelled, but a claim cannot be decreed partially nullified or cancelled.
2. If a patent is declared nullified or partially nullified, it shall remain in force in its remaining parts whenever they can constitute subject matter of an independent patent.

SECTION II

UTILITY MODELS

Article 120  
(Subject of protection)

1. Under the present Statute, only inventions that so alter a subject matter as to give it a configuration, structure, mechanism or disposition that increases its utility or improves the advantage that can be derived therefrom can be protected as utility models,.
2. Inventions whose protection is applied for as a utility model shall meet the patentability requirements foreseen in the previous section, with the exception of those which are not compatible with their nature as referred to in the previous paragraph.
3. The applicant shall have the option, simultaneously or successively, of applying for an invention patent or a utility model for an invention that can be protected as a utility model.
4. The utility model shall cease to be effective once an invention patent has been granted for the same invention.

Article 121  
(Duration and renewal)

1. The duration of the utility model shall be 6 years from the date of submission of the

application and shall be renewable for two additional periods of 2 years each.

2. The renewal request shall be submitted in the last 6 months of the current validity period.

3. The duration of the utility model cannot exceed 10 years from the date of presentation of the respective request.

#### Article 122

##### (Indication of the utility model)

During the term of the patent, its holder may, on the products use the expressions referred to in article 107 or else the expressions, "Utility model No." or "Utility Mod. No.", in Portuguese or the equivalent in Chinese.

#### Article 123

##### (Fees due for the utility model)

1. The fees due in respect of a utility model granting and revalidation procedure shall be those due for the corresponding acts in respect of an invention patent reduced by 40%.

2. The fees due for the renewal of a utility model shall be set in the ruling referred to in article 37(1).

#### Article 124

##### (Redemption)

In all matters not contrary to the provisions of the present section, the provisions of the previous section shall apply to utility models, mutatis mutandis, and the examination report request or the documents in the stead thereof shall be submitted within 4 years of the date of the request.

### SECTION III

## THE COMPLEMENTARY CERTIFICATE FOR THE PROTECTION OF MEDICINES AND PHYTO-PHARMACEUTICAL PRODUCTS



Article 125  
(Certificate request)

1. The application for a complementary protection certificate for medicines and for phytopharmaceutical products, hereinafter briefly called the complementary certificate, shall be made in writing in the official language of the Territory indicating the name or corporate style of the applicant, his/its nationality and domicile or location and shall be accompanied by the following items:

- a) The patent number and the title of the invention protected by that patent;
- b) The number and date of the first authorization to place the product on the market in Macao.

2. The application shall be accompanied by a copy of the first authorization to place the product on the market in Macao in order to identify the product, and which shall include the number and the date of the authorization as well as a summary of the characteristics of the product.

Article 126  
(Examination and publication of the request)

1. Once the application has been submitted to the DES, the respective formal examination is conducted in order to ensure that it was submitted within the deadline and that it meets the conditions set forth in the previous article.

2. If the application for a complementary certificate and the product in respect of which the application is being filed meet the conditions foreseen in the applicable law and those set in the present Statute, the DES will grant the complementary certificate and have the application published in the Official Bulletin.

3. If the application for a complementary certificate does not meet the conditions referred to in the previous paragraph, the DES will notify the applicant, requiring it within 2 months to rectify the irregularities or inadequacies found.

4. When, from the answer given by the applicant, the DES sees that the application for a complementary certificate meets the required conditions, it will have the application for the complementary certificate and the respective granting published in the Official

Bulletin.

5. If the applicant does not comply with the notification mentioned in paragraph 3, the application will be refused and the application will be published in the Official Bulletin together with the refusal notice.

6. Notwithstanding the provisions of paragraph 3, the complementary certificate will be refused if the application or the product to which it refers does not meet the conditions foreseen in the present Statute and in any other applicable legislation and the application will be published in the Official Bulletin together with the refusal notice.

7. The publication shall comprise, at least, the following indications:

a) The name and domicile or location of the applicant;

b) The patent number;

c) The title of the invention;

d) The number and date of the authorization to place the product on the market in Macao, as well as identification of the product in respect of which the authorization was issued;

e) The period of validity of the complementary certificate or the refusal notice, as appropriate.

#### Article 127

(Duration of the complementary certificate)

The duration of the complementary certificate may not exceed by more than 7 years the term of the patent in respect of which is granted.

#### Article 128

(Extinction of the complementary certificate)

The complementary certificate shall be declared null or expired, partially null or cancelled to the extent that the patent in respect of which it was issued be so declared.

## SECTION IV

### EXTENSION OF PATENTS GRANTED ABROAD

#### SUB-SECTION I

#### EUROPEAN PATENTS

##### Article 129

(Extension of European applications and patents)

1. The applicant for a European patent and the holder of a European patent, processed according to the rules of the European Patent Convention, signed in Munich on 5 October 1963, may request the extension of the application or of the patent to Macao.
2. The DES shall publish extension applications in the Official Bulletin as soon as received from the European Patent Office, but never until 18 months have elapsed from the date the patent request was filed or, if a priority right be invoked, from the date of the first relevant application.
3. The extension applications may be freely withdrawn.

##### Article 130

(Effects of the European patent application)

1. A regularly formulated European patent application shall in the Territory have the same legal effects as a Macao patent application, including with respect to priority rights.
2. The European patent shall be guaranteed the temporary protection foreseen in article 7 from the date the DES makes accessible to the public a translation of the respective claims in one of the official languages of the Territory, accompanied by a copy of the drawings.
3. The DES shall, after the party concerned has submitted the items referred to in the previous paragraph, proceed to publish the extension notice in the Official Bulletin.

4. From the date of publication of the notice referred to in the previous paragraph, anyone may take cognizance of the text of the translation and obtain reproductions thereof.

#### Article 131

##### (Effects of the European patent)

1. A European patent extended to Macao shall have the same legal effects as a patent granted in Macao starting from the date of granting by the European Patent Office, provided that the formalities foreseen in the present article are observed.

2. Within 3 months following the publication of the notice of the granting of the patent in the European Patent Bulletin, the patent- holder shall provide the DES with a translation, in one of the official languages of the Territory, of the title or short title briefly describing the subject matter of the invention, the description of the subject matter of the invention and the claims and shall pay the relative fee for publication in the Official Bulletin.

3. If, during the course of the opposition phase, any modification is found in the elements referred to in the previous paragraph, the patent-holder shall, within 3 months from the date of the corresponding publication in the European Patent Bulletin:

a) Provide the DES with the translation of such modifications in one of the official languages of the Territory;

b) Pay the relevant fee for publication in the Official Bulletin.

4. The DES shall then, as soon as possible, publish the extension notice in the Official Bulletin together with the translations submitted in compliance with paragraphs 2 and 3.

5. The patent extension application shall be declared null and void if the necessary translations are not provided or the fees due not paid within the set deadline.

6. If the European patent be declared null, partially null or cancelled by the European Patent Office, in accordance with the applicable procedures, the respective extension to Macao shall also be invalidated.

## Article 132

(Original text and translations)

1. If the applicant or the holder of a European patent has neither domicile nor registered office in Macao, the translations of the texts shall be done under the responsibility of an authorized or accredited official agent or an agent registered with the DES.
2. When a translation has been submitted in one of the official languages of the Territory in accordance with the terms of the preceding articles, that translation shall be considered authentic if the European application or patent, in the translated text, provides a lesser degree of protection than that conferred by the same application or patent in the language used in the proceedings.
3. If the translation published in the Official Bulletin is republished because of some error therein, anyone who, in good faith, may have exploited the invention or made serious preparations to that end without violating the claims in the patent application or patent being corrected, may benefit from the provisions of article 106..
4. The revision of the translation shall become effective only from the moment in which it is made accessible to the public by the DES and the respective fee has been paid.

## Article 133

(Prohibition of dual protection)

1. A Macao patent the subject matter of which is an invention for which a European patent has already been granted to the same inventor, or with his consent, with the same date of filing or priority, shall cease to have effect as from:
  - a) The date on which the time limit for filing oppositions against the European patent expires, provide no opposition has been filed;
  - b) The termination of opposition proceedings, if the European patent is upheld.
2. If the Macao patent is granted after either of the dates indicated in sub-paragraphs (a) and (b) of the previous paragraph, it shall not take effect and the relevant notice

shall be published in the Official Bulletin.

3. The subsequent termination of the European patent shall not affect the provisions of the previous paragraphs.

#### Article 134

(Extension and renewal fees)

1. The extension of a patent application or of a patent under the terms of the present section shall be subject to the payment of an extension fee to be paid to the European Patent Office in the deadlines and on the terms set in the European Patent Convention.

2. For all the European patents extended to Macao, the renewal fees applicable to Macao patents shall be due within the deadlines set in the present Statute.

### SUB-SECTION II

#### OTHER PATENTS

#### Article 135

(Redemption)

The provisions of the previous sub-section shall apply accordingly to patent applications filed with other designated entities in respect of article 85, as well as to the patents granted by those entities.

### CHAPTER II

#### SEMICONDUCTOR TOPOGRAPHY PRODUCTS

#### SECTION I

#### SUBJECT MATTER OF PROTECTION

#### Article 136

(Subject matter of protection)

1. Under the present Statute only the topographies of semiconductor products

resulting from the intellectual effort of the creator and not known in the semiconductors industry can be protected by the granting of a topography registration certificate.

2. Likewise, topographies that comprise elements known in the semiconductor industry and the combination of whose elements taken together meet the conditions envisaged in the previous sub-paragraph shall also enjoy legal protection.

3. The protection shall cover only the configuration of electronic circuits, to the exclusion of any idea, process, system, technique or codified information incorporate into the topography.

#### Article 137

##### (Definition of semiconductor product)

For the purposes of the protection conferred by the present Statute, a semiconductor product shall be understood as being the final or intermediate form of any product that, cumulatively:

- a) Consists of a material body that includes a layer of semiconductor material;
- b) Possesses one or more layers composed of conductive, insulating or semiconducting material, the layers being disposed in accordance with a predetermined three-dimensional model;
- c) Is designed to carry out an electronic function either alone or together with other functions.

#### Article 138

##### (Definition of semiconductor product topography)

The topography of a semiconductor product is the group of related images, either fixed or codified, represented by the three-dimensional layout of the layers of which the product is composed, and in which each image has the layout or part of the layout of a surface of the same product, in any phase of its manufacture.

## SECTION II

### OTHER PROVISIONS

#### Article 139

(Temporary limitations on the exercise of the right)

The right to register a semiconductor product topography cannot be exercised if:

- a) 2 years have already elapsed since the first commercial exploitation of the topography anywhere;
- b) 15 years have already elapsed since the topography was fixed or codified for the first time, if it was never exploited.

#### Article 140

(Additional elements of the application)

In addition to the other elements required, the applicant to register a topography shall also indicate in the application:

- a) The date on which the topography was fixed or codified for the first time;
- b) Whether the topography has already been commercially exploited and, if so, the date on which that exploitation began.

#### Article 141

(Grounds for refusing to register a topography)

1. A topography registration application shall be refused when:

- a) Any of the general grounds for refusing the granting of industrial property rights is found as referred to in article 9(1);
- b) The application is not filed in good time, in breach of the deadlines set in article 139.

2. The grounds for refusal referred to in article 9(1) may be used against the applicant



only if it is apparent from the examination report that the topography cannot be registered, or if it was not possible to reach any conclusion on whether it could be registered because the items filed with the application did not permit any conclusion to be reached because they were inadequate, irregular, contradictory or confused.

#### Article 142

##### (Duration)

The registration shall last 10 years from the date of the respective application or from the date on which the topography was exploited for the first time anywhere, whichever the sooner.

#### Article 143

##### (Rights conferred by registration)

1. The registration of the topography shall confer on the holder the right to make exclusive use of the topography throughout the Territory by producing, manufacturing, selling or exploiting it or the items in which it is applied, together with the obligation to do so effectively and in keeping with the needs of the market.

2. The registration of the topography shall furthermore confer on the holder the right to authorize or to prohibit any of the following acts:

a) The reproduction of the protected topography;

b) The import, sale or distribution in any other form for commercial purposes of a protected topography, of a semiconductor product into which is incorporated a protected topography, or an article into which is incorporated a semiconductor product of that type, to the extent and only to the extent that it continues to include a topography reproduced illegally.

#### Article 144

##### (Limitation on the rights conferred by the registration)

1. The rights conferred by the registration of the topography shall not include:

a) The private reproduction of a topography for non-commercial purposes;

- b) Reproduction for the purpose of analysis, evaluation or teaching;
- c) The creation of a different topography, starting from the analysis or evaluation referred to in the previous sub-paragraph, that could in turn benefit from the protection foreseen in the present Statute;
- d) The performance of any of the acts referred to in article 143(2), in relation to a semiconductor product in which is incorporate an illegally reproduced topography or any article in which is incorporate a semiconductor product of that type, if the person that performed or ordered the performance of those acts neither knew nor should have known on acquiring the semiconductor product or the article into which that semiconductor product was incorporated, that the said article incorporated an illegally reproduced topography.
2. Once the person referred to in sub-paragraph 1(d) has received enough information to indicate that the topography was reproduced illegally, that person can perform any of the acts in question in relation to the products in his possession or ordered up to that moment, but must pay the holder of the registration an amount equivalent to an appropriate royalty such as could be demanded under the protection of a licence freely negotiated in relation to a topography of that type.

#### Article 145

(Indication of the registration)

During the validity of the registration, the holder may mark semiconductor products manufactured by the use of protected topographies with a capital letter "T", in one of the following forms:

#### Article 146

(Mandatory exploitation licence)

The provisions of articles 109 to 116 shall apply to the topographies of semiconductor products only when the mandatory licences have a public, non-commercial purpose.

#### Article 147

(Nullity of the topography registration)

In addition to the general causes of nullity of industrial property rights foreseen in

article 47, semiconductor product topographies registrations may also be declared null and void because:

- a) The title or short title given to the invention includes different subject matter;
- b) The subject matter is not described in such a way as to permit the execution of the topography by a person skilled in the art;
- c) The subject matter of the registration extends beyond the content of the initial application.

Article 148  
(Partial nullity or cancellation)

1. One or more claims may be declared null or cancelled, but a claim cannot be decreed partially nullified or cancelled.
2. If a topography registration is declared nullified or partially nullified, it shall remain in force in its remaining parts whenever they can constitute subject matter of an independent topography registration.

Article 149  
(Referral)

Provided that they are not incompatible with the nature of semiconductor product topographies, the provisions of section I of the previous chapter shall apply thereto, with the special considerations set forth in the present chapter.

CHAPTER III

INDUSTRIAL MODELS AND DESIGNS

SECTION I

SUBJECT MATTER OF PROTECTION

## Article 150

(Subject matter of protection)

Subject matter that may be protected under the present Statute, by the registration of an industrial model or design shall be limited to creations whose appearance represents a product in whole or in part by virtue of such characteristics as lines, contours, colours, forms, textures and/or the materials used in the product itself and/or its ornamentation and which meet the requirements set forth in the present section.

## Article 151

(Product definition)

1. For the purposes of the previous article, a product shall be considered any industrial or crafted article, including, inter alia, the components for assembling a complex product, the packing, the presentation elements, the graphic symbols and the typographic characters, but excluding computer programs.

2. By complex product shall be understood any article composed of multiple components which can be removed therefrom for the purpose of stripping it and inserted into it for the purpose of reassembling it.

## Article 152

(Requirements for registration)

1. Industrial models and designs may be registered which:

a) Are novel;

b) Are unique.

2. The innovative nature of the industrial model or design shall not be diminished if, although not entirely novel, it involves novel combinations of known elements or a different layout of already used elements, that endow the respective subject matter with a unique character.

### Article 153

#### (Novelty)

1. The industrial model or design shall be considered novel if, prior to the respective registration or priority application, no identical industrial model or design was published within or outside the Territory.
2. Industrial models or designs that differ only in insignificant details shall be considered identical.

### Article 154

#### (Unique character)

1. An industrial model or design shall be considered to be unique in character if the global impression that it gives to the informed user differs from the global impression caused that user by any industrial model or design published prior to the date of the registration application or claimed priority.
2. In appreciating the uniqueness of the character, account shall be taken of the degree of freedom that the creator had to create the industrial model or design.

### Article 155

#### (Industrial models or designs incorporated into components)

1. An industrial model or design applied to or incorporated into a product that constitutes a component of a complex product shall be considered novel and unique in character:
  - a) If it can reasonably be considered that even after being incorporated into the complex product, it will continue to be visible during the normal use of the complex product; and
  - b) To the extent that the visible characteristics of that component itself meets the requirements of novelty and uniqueness of character.
2. For the purposes of the provision in sub-paragraph (a) above, normal use shall be understood as any use different from conservation, maintenance or repair.

## Article 156

### (Exceptions to and limitations on registration)

#### 1. Registration shall not protect:

a) The visible characteristics of a product resulting exclusively from its technical function; and

b) The visible characteristics of a product that must necessarily be reproduced in its exact form and dimensions so that the product into which the industrial model or design is to be incorporated, or in which it is applied, be it mechanically connected to the other product, or be it inserted within, around or against that other product, can both perform their function.

2. Notwithstanding the provision of sub-paragraph (b) above and provided that the requirements of innovation and uniqueness have been met, the registration of an industrial model or design is possible if its purpose is to permit a multiple assembly of interchangeable products or their interconnection to form a modular system.

## Article 157

### (Disclosure)

1. For the purposes of articles 153 and 155, an industrial model or design shall be considered to have been disclosed if it has been published, presented in an exhibition, used in trade or made known in any other way, except if these facts could not reasonably have come to the knowledge of persons operating in Macao and skilled in the art in question in the course of their normal activity, before the date of filing of the registration application or priority claim.

2. The industrial model or design shall, however, not be considered disclosed by the simple fact of being made know to a third party in explicit or implicit confidence.

## Article 158

### (Non-opposable disclosures)

1. For the purposes of articles 153 and 155, no account shall be taken of any disclosure if the industrial model or design for which registration is sought was disclosed:

a) By the creator, by his successor or by a third party, as the result of information they provided or measures they took;

b) At an official or officially recognized international exhibition under the terms of the Convention relating to International Exhibitions, signed in Paris on 22 November 1928, at Portuguese or official international courses, exhibitions and fairs, or those officially recognized in any of the countries or territories members of WTO or of the Union during the 12 months preceding the date of filing of the registration application or, where a priority is being claimed, on the priority date;

c) As the result of an abuse of the creator or his successor.

2. Proof of the non-opposability of the disclosure, pursuant to sub-paragraphs (a) and (b) above, shall be brought by the applicant within 3 months from the date of filing of the registration application.

## SECTION II

### RIGHT TO REGISTER INDUSTRIAL MODELS AND DESIGNS

#### Article 159 (Right to register)

1. The right to register shall lie with the creator or his successors in any capacity.

2. Notwithstanding the provisions governing copyright, the provisions of articles 70 to 76 shall apply to the registration of industrial models or designs.

## SECTION III

### THE REGISTRATION PROCEDURE FOR INDUSTRIAL MODELS AND DESIGNS

#### Article 160 (Form of application)

1. The application to register an industrial model or design shall be filed in writing in

an official language of the Territory, indicating the name or commercial style of the applicant, his/its nationality and domicile or location and shall be accompanied by the following items, in triplicate:

- a) The title or short title designating the industrial model or design that it is wished to register or the purpose for which it is intended, as appropriate;
- b) The name and country or territory in which the creator resides;
- c) A photolithograph or any other medium that may be demanded by the DES, bearing a reproduction of the object whose industrial model or design it is wished to register;
- d) The priority right claim, if applicable, pursuant to article 17(3).

2. Fantasy expressions used to designate the industrial model or design shall not constitute subject matter for protection.

#### Article 161

(Complementary elements of the application)

1. The application for the registration of industrial models or designs should be accompanied by the following items:

- a) A description of the innovative characteristic attributed to the subject matter whose industrial model or design it is wished to register;
- b) Drawings or photographs of the said subject matter;

2. If appropriate, the registration application shall further be accompanied by:

- a) The request for stay of publication of the application;
- b) The document proving authorization of the holder's copyright when the industrial model or design was reproduced from a work of art not in the public domain or, in general, of the copyright of the actual author, if he is not the applicant;
- c) The documents proving the priority right claimed.



3. The description of the novel characteristics attributed to the subject matter whose industrial model or design it is wished to register shall be written on the applicant's own printed paper, containing a detailed explanation of the geometric or ornamental aspect of the subject matter and should preferably not contain more than 150 words or 400 characters.
4. The DES can request or the applicant may of his own initiative submit the actual subject matter or other perspective photographs that help to form a more exact idea of the industrial model or design.
5. In applications for the registration of a design, when a combination of colours is claimed, the drawings or pictures shall show the colours claimed.
6. The stay of the publication referred to in sub-paragraph 2(a) shall not exceed 30 months from the filing date of the application or claimed priority.

#### Article 162

(Unity of application and of registration of industrial model or design)

1. The same application cannot request more than one registration and each industrial model or design shall form the subject matter of a separate registration.
2. Industrial models or designs that constitute the various indispensable parts to form a whole shall be included in a single registration.

#### Article 163

(Multiple applications)

1. Notwithstanding the provisions of the previous article, industrial models or designs that possess the same preponderant distinctive characteristics may be included in a single registration, up to a maximum of 10, in such a way as to constitute a group of interrelated objects for the purpose of their use or application.
2. In the case referred to in the previous paragraph, the group shall constitute an indissociable whole, resulting in a single registration that cannot be separately or partially assigned.
3. The drawings or photographs of the industrial models or designs referred to in

paragraph 1 above shall be numbered sequentially, in accordance with the total number of objects that it is wished to include in the same application.

#### Article 164

(Examination as to form)

1. Once the application has been received, the DES will proceed to its formal examination within 1 month, to verify that it complies with the requirements of articles 160 to 163.
2. If the application lacks any of the required items, or should any of them not be in order, the applicant shall rectify that situation within 2 months from the notification that the DES will send it to that effect or, where no such notification is given, within a maximum of 3 months from the filing of the application, both of which deadlines may be extended by 1 additional month, on a founded request.
3. Article 82(3) to (6) shall apply accordingly.
4. If the applicant fails to rectify the irregularities referred to within the set deadline, the application shall be refused and the respective notice published in the Official Bulletin.

#### Article 165

(Notice of public disclosure)

1. Once 12 months have elapsed from the date of filing the application or, if a priority right was claimed, from the claimed date, the DES will have the disclosure notice published in the Official Bulletin and the application proceedings shall be available to the public from that date.
2. The proceedings may be published before the end of the period referred to in the previous paragraph, if the applicant so requests, and provided that:
  - a) At least 2 months have elapsed since the filing of the registration application;
  - b) The application is not pending rectification, as indicated in the previous article;
  - c) The early publication fee has been paid.

Article 166  
(Opposition)

1. Starting from the publication of the disclosure notice, and up to the date the registration is granted, any third party may approach the DES, in writing, opposing the registration of the industrial model or design in respect of which the application was filed.
2. The oppositions shall be transmitted to the applicant, who may respond within 2 months from the notification of such opposition.

Article 167  
(Examination report and designated entities)

1. The examination report on the industrial model or design, to be compiled by one of the designated entities, shall be based on a reproduction of the subject matter whose industrial model or design it is wished to register, or pictures or drawings thereof or the subject matter itself, if appropriate, and its purpose shall be to appreciate whether it meets the requirements for registration.
2. Article 85(2) and (3) shall apply accordingly.

Article 168  
(Examination of the industrial model or design)

The provisions of article 86 shall apply accordingly to industrial models and designs, except for the deadline by which some of the elements should be submitted as referred to in paragraph 1 thereof, which shall be 30 months.

Article 169  
(Request for examination report by third parties)

1. Starting from the date of public disclosure of the registration application proceedings, anyone may request the conduct of the examination report referred to in the previous article, if the applicant has not yet done so, up to 30 months from the date of filing of the registration application.
2. Article 87(2) shall apply accordingly.

## Article 170

(Rejection of the examination request and amendments - renunciation)

The provisions of articles 88 and 89 shall, mutatis mutandis, apply to industrial models and designs.

## Article 171

(Rectification following the examination report)

1. If the designated entity does not follow up on the examination report, the DES shall transmit this decision to the applicant and this notification shall substitute the examination report for purpose of granting the registration.

2. The DES shall also inform the applicant of the impossibility of producing the examination report when the designated entity considers that:

a) The description, drawings, photographs and other similar elements do not meet the established requirements, so that it cannot conduct a substantial search;

b) The subject matter of the registration application is such as not to fall within the category of an industrial model or design capable of being registered, or that it is not obliged, for other reasons, to proceed with the search.

3. In the case referred to in the previous paragraph, the applicant shall have a 2 month deadline in which to rectify the deficiencies in the registration application, and to reapply for the examination report.

4. If, after reapplying for the examination report, the designated entity reiterates that it is not able to change its conclusion with respect to the registration application that has been rectified, the applicant may submit a founded objection.

5. The objection referred to in the previous paragraph shall not be admitted if it has been shown that the industrial model or design could not be registered or if it is not submitted in the deadline set for the purpose by the DES or, where no such deadline was set, by the end of the period referred to article 169(1).

## Article 172

(Divisible applications, multiple priorities and withdrawal of application - renunciation)

The provisions of articles 91 to 93 and 96 shall apply, mutatis mutandis to industrial models and designs.

## Article 173

(Grounds for refusing to register a de sign or model)

The registration of a design or model shall be refused when:

- a) Any of the general grounds for refusal to grant industrial property rights obtains pursuant to article 9(1);
- b) A distinctive sign is used where there exist legal provisions conferring the right to prohibit the use thereof in the industrial model or design;
- c) The industrial model or design constitutes an unauthorized use of a work protected by copyright;
- d) The industrial model or design constitutes an improper use of any of the elements enumerated in article 6ter of the Paris Convention for the Protection of Industrial Property, or of any other badges, emblems and hallmarks not included in that Convention but that are of particular public interest to the Territory.

## Article 174

(Partial granting)

1. If it is just a question of deleting sentences from the description, altering the title or short title, or removing some of the subject matter from the application itself to comply with the notification, the DES may effect such amendments and have the application granting notice published in the Official Bulletin if the applicant does not expressly raise any opposition within 1 month of the said notification.
2. The publication of the notice mentioned in the previous paragraph, with the transcription of the abstract shall indicate the amendments made.

Article 175  
(Notification of granting or refusal of registration)

The granting or refusal of the registration shall be notified pursuant to article 20(2) and (3) and published in the Official Bulletin.

SECTION IV

THE EFFECTS OF REGISTRATION OF INDUSTRIAL MODELS AND DESIGNS

Article 176  
(Duration)

1. The duration of the registration shall be 5 years from the date of the application, renewable for like periods up to the 25 year limit.
2. Renewals as referred to in the previous paragraph shall be requested during the last 6 months of validity of the registration.

Article 177  
(Rights conferred by registration)

1. Once valid, the registration of an industrial model or design shall confer on its holder the exclusive right to use the model or design and to prohibit its use by third parties without his consent.
2. The use referred to in the previous paragraph shall include, especially, the offering, placing on the market, import, export or use of a product into which that industrial model or design is incorporated, or to which it is applied, as well as the storage of that product for the same ends.
3. The validity of the registration shall not be presumed from the act the granting the respective certificate.

## Article 178

(Limitation on the rights conferred by the registration)

The rights conferred by the registration shall not include:

- a) Acts for experimental purposes;
- b) Acts of reproduction for reference or for educational purposes, provided that they are compatible with fair trading practices, do not unduly prejudice the normal exploitation of the industrial model or design and mention the source;
- c) Equipment on board ships and aircraft registered in another country or territory, when they transit temporarily through the Territory;
- d) The import of spare parts and accessories for repairing the ships and aircraft referred to in the previous sub-paragraph, as well as the performance of such repairs;
- e) Acts performed in the private sphere, with no commercial purpose.

## Article 179

(Relationship with copyrights)

The effects of the registration of the industrial model or design shall not prejudice the protection conferred by copyright law from the date on which the industrial model or design was created or defined in any form.

## SECTION V

### THE USE OF DRAWINGS AND MODELS

## Article 180

(Indication of the industrial model or design)

During the validity of the registration its holder may, on the products, use the expression "design or model No.", or the abbreviations " D M No.", in Portuguese or else the equivalent Chinese expression (...).

#### Article 181

##### (Inalterability of the designs or models)

1. For as long as the registration remains in effect, the designs or models shall be considered inalterable.
2. The enlargement or reduction of the scale shall not affect the inalterability of the designs or models.

#### Article 182

##### (Alterations of details of drawings or models)

1. One or more new registrations may be made of amendments made by the holder of the registration to the drawings or models that merely alter details of little importance.
2. The registration or registrations referred to in the previous paragraph shall be annotated on the initial certificate and on all the registration certificates acquired under the same provision.
3. Drawings and models modified under the terms of the present article shall fall into the public domain on termination of the validity of the respective registration.

### SECTION VI

#### EXPIRY OF REGISTRATION OF INDUSTRIAL MODELS AND DESIGNS

#### Article 183

##### (Nullity of the registration of industrial models or designs)

Besides the general causes of nullity of industrial property rights foreseen in article 47, a further cause of nullity of the registration of an industrial model or design shall be the fact that it is identical to a previous design or model, disclosed after the date of the registration or priority application, and which is protected from a prior date.

#### Article 184

##### (Nullity of the registration of designs or models)

Registrations of designs or models may be cancelled in the cases foreseen in article 48



and, moreover, when:

- a) A distinctive sign is used in a subsequent design or model and the provisions regulating that sign confer the right to prohibit such use;
- b) The industrial model or design constitutes an unauthorized use of a work protected by copyrights;
- c) The industrial model or design constitutes an improper use of any of the elements enumerated in article 6ter of the Paris Convention for the Protection of Industrial Property, or of other badges, emblems and hallmarks not included in article 6ter of the said Convention that are of particular public interest in Macao.

#### Article 185

(Design or model registration refused, declared null or cancelled)

1. If the registration of an industrial model or design has been refused under article 9(1(a)) or article 173(b), or declared null or cancelled, it can nevertheless still be registered, or the respective right maintained in an altered form, provided that:

- a) Its identity be maintained; and
  - b) The necessary alterations be made in such a way as to meet the requirements of the present chapter.
2. The registration or maintenance in an altered form referred to in the previous paragraph may include the registration application accompanied by a declaration whereby the holder partially renounces the right to the industrial model or design, or the annotation in the respective proceedings of a court decision whereby the partial nullity of the right to the industrial model or design is declared.

### SECTION VII

#### PRIOR PROTECTION OF INDUSTRIAL MODELS AND DESIGNS

## Article 186

(Subject matter of the application for prior protection)

An application for prior protection may be filed in respect of industrial models or designs of textile or clothing, as well as those of any other industries specified by an administrative ruling.

## Article 187

(Deposit of samples or reproductions)

1. The application for prior protection referred to in the previous article shall be preceded by the lodging of the respective samples or reproductions.
2. The DES may conclude protocols with suitable entities for the purposes envisaged in the previous paragraph.
3. The prior protection application shall be filed with the DES within 15 days of such lodging, it being possible to extend this deadline, for an equal period, for a justified reason worthy of consideration.

## Article 188

(Secrecy and archiving)

1. The samples or reproductions referred to in the previous article shall be kept secret during the period of validity of prior protection and archived beyond that period of validity.
2. In case of conflict as regards priorities in requests of previous protection, account shall be taken of the date on which the sample was deposited.

## Article 189

(Form of application for prior protection)

1. The application for prior protection for an industrial model or design shall be filed in writing in an official language of the Territory, indicating the name or commercial style of the applicant, his/its nationality and domicile or location, and shall be accompanied by the following elements:

- a) The number of samples or reproductions to be registered, up to a maximum of 50;
  - b) The title or short title that synthesizes the subject matter or matters for which protection is being claimed or the purpose of such subject matter;
  - c) The name and country or territory of residence of the creator's.
2. Fantasy expressions used to designate the industrial model or design shall not be subject matter subject to protection.

#### Article 190

(Proof of deposit of samples)

The application for prior protection shall be accompanied by a certificate issued by the entities referred to in article 187(2), which identifies the applicant, indicates the date of reception of the samples or reproductions and the number allocated to the deposit.

#### Article 191

(Duration of prior protection)

Prior protection shall obtain for 3 months from the date the respective application reaches the DES.

#### Article 192

(Rights conferred)

Prior protection shall confer a priority right for the purposes of any registration application pursuant to the terms of articles 160 et seq.

#### Article 193

(Lapse of prior protection)

Prior protection shall lapse in the period foreseen in article 191 or when application is filed to register any of the models or designs covered by that prior protection, under the terms of articles 160 et seq.

Article 194  
(Conversion of the prior protection application)

During the prior protection period, the applicant may at any time begin the registration process provided for in article[s] 160 [et seq] for the same designs or models for which the prior protection application was made.

Article 195  
(Registration application for administrative acts or court action)

If the applicant for prior protection intends to intervene in the administrative proceedings against the granting of registration or if he intends to take legal action on the industrial model or design, he shall file with the DES for a registration and examination application pursuant to articles 167 and 168.

Article 196  
(Fees)

1. A fee, set for the purpose, shall be due in respect of each application for prior protection and according to the number of samples or reproductions that it contains.
2. Failure to pay the fees referred to in the previous sub-paragraph shall render the prior protection application irreceivable.

CHAPTER IV

TRADEMARKS

SECTION I

SUBJECT MATTER OF PROTECTION

Article 197  
(Subject matter of the trademark)

The present Statute can afford protection as a trademark only to a sign or group of signs which are capable of being represented graphically, namely words, including personal names, designs, letters, numerals, sounds, the shape of the product or its

packaging, and which are capable of distinguishing the products or services of one company from those of other companies.

Article 198  
(Linguistic requirements)

1. Wording contained in trademarks shall be written in Portuguese, Chinese or English, and may combine elements of these different languages.
2. The trademarks of products destined solely for export can be written in any language, but their use in Macao shall determine when they lapse.
3. The compulsory nature of the use of Portuguese, Chinese or English shall not apply to applications for the registration of international marks, under the terms of the respective regulation, and to marks whose applicant is not domiciled, headquartered or established in the Territory.

Article 199  
(Exceptions and limitations to protection)

1. Protection may not be afforded:
  - a) Signs that consist exclusively in the shape resulting from the nature of the product itself, the shape of the product necessary for obtaining a technical result or the shape that gives the product its own substantial value;
  - b) Signs or indications that may be used commercially to designate the kind, quality, quantity, purpose, value, geographical origin or time of production of the product or of the rendering of the service, or other characteristics thereof;
  - c) Signs or indications that have become customary in current language or in bona fide and established commercial practices;
  - d) Colours, except where they are combined together or used with graphics, wording or other elements in a particular and distinctive manner.
2. The generic elements mentioned in sub-paragraphs (b) and (c) of the preceding paragraph that constitute part of a trademark shall not be for the exclusive use of the

applicant, unless the signs have acquired distinctive character in commercial practice.

3. On the request of the applicant or claimant, the DES shall, in handing down its ruling, indicate which of the constituent elements of the trademark are not for the exclusive use of the applicant.

#### Article 200 (Collective trademark)

1. Notwithstanding the provisions of the previous article, trademarks may be protected as a collective trademark, according to the conditions pertaining to association marks or certification marks.

2. The registration of a collective trademark shall give its holder the right to control the marketing of the respective products or services, on the terms stipulated by law or in the statutes.

3. For the purpose of the present Statute, the following shall apply:

a) Association Mark: a specific sign belonging to an association of individuals and/or bodies corporate, whose members use or have the intention of using the sign for products or services;

b) Certification Mark: a specific sign belonging to a corporate entity that controls the products or services or establishes the regulations with which they must comply and that is to be used on the products or services subjected to that control or for which the regulations were established.

4. The provisions of the present Statute relating to product and service marks shall apply *mutatis mutandis* to collective marks.

## SECTION II

### THE RIGHT TO REGISTER A TRADEMARK

Article 201  
(Right to registration)

The right to register a trademark shall lie with anyone who has a legitimate interest in so doing, and specifically:

- a) Businesses, to identify the products which they produce;
- b) Merchants, to identify the products in which they trade;
- c) Farmers and producers, to identify their products of their activities;
- d) Artists, to identify the products of their art, occupation or profession;
- e) Service providers, to identify their respective activities.

Article 202  
(Free or unregistered trademark)

1. Anyone using a free or unregistered trademark for a period not exceeding 6 months shall, for that period, enjoy a priority right to have it registered and may lodge a complaint against an application filed by somebody else during the said period.
2. The veracity of the documents submitted to prove that priority right shall be freely appreciated, except if they are legally authenticated documents.

Article 203  
(Right to register collective marks)

1. The right to register collective marks shall lie with:
  - a) Bodies corporate which have been legally allocated or recognized as possessing a certification mark and which can apply it to products or services having certain specific qualities;
  - b) Bodies corporate which protect, control or certify economic activities, for identifying the products of those activities or which originate from certain regions, in accordance with their purposes and the terms of their respective articles of association

or the statutes.

2. The bodies corporate referred to in sub-paragraph 1(b) above shall have provisions inserted in their respective articles of association or in their statutes, designating them as being entitled to use the mark, indicating the conditions in which it should be used and the rights and obligations of the interested parties in the case of usurpation or infringement.

3. The management of the entity that owns the collective mark shall, within 1 month of any amendment to the articles of association or statutes that govern the status of the trademark, inform the DES of the change.

### SECTION III

#### THE TRADEMARK REGISTRATION PROCEDURE

##### Article 204

(Unity of application and registration of the trademark)

No more than one registration may be filed in the same application and each trademark to be used on the same products or services can be registered only once.

##### Article 205

(Registration for products and services)

Trademarks may be registered for products or services, it being up to the DES to indicate the respective classes in agreement with the classification provided by law.

##### Article 206

(Forms of application)

The trademark registration application shall be filed in writing in the official language of the Territory, indicating the name or commercial style of the applicant, his/its nationality and domicile or location, and identifying the trademark whose registration is required, accompanied by the following items, in triplicate:

a) The products or services covered by the trademark, grouped in accordance with the classes of the classification of products and services and designated in precise terms,



preferably the terms appearing in the aforementioned alphabetical classification;

b) An indication as to whether the application concerns a product, service, association or certification mark;

c) An indication as to whether the application concerns a three-dimensional or sound trademark

and, in the latter case, a graphic representation in musical notation of the sounds that enter into the composition of the trademark;

d) An example of the trademark, appended in the area reserved for that purpose on the applicant's own printed paper;

e) Two photolithographs for the typographic reproduction of the trademark, of maximum dimensions 6 cm x 6 cm and minimum dimensions of 1.5 cm x 1.5 cm;

f) Three copies of the trademark with the written indication of the colours, in case these are demanded as constituent element;

g) Mention of the priority right, if applicable, according to article 17(3).

#### Article 207

##### (Additional elements of the application)

1. Where appropriate, the registration application shall be accompanied by the following elements:

a) Documents proving the priority right claim;

b) Documents proving the use of a free or unregistered trademark, where the applicant wants

to claim priority based on the use of a free or unregistered trademark;

c) Authorization of the proprietor of a foreign registered trademark for whom the applicant is acting as agent or representative in the Territory;

d) Authorization of any person whose name, corporate style, name or emblem of establishment, picture, painting or any other expressions or representations appear in the trademark, or, if such a person is already deceased, of their heirs or relatives to the fourth degree;

e) Authorization to include in the trademark any flags, coats-of-arms, escutcheons, symbols, arms or other emblems of the Territory, municipal districts or other public or private entities, within the Territory or outside, as well as badges, stamps and official hallmarks, indicating any inspection and warranty, private emblems or denomination of the Red Cross or of any other bodies of a similar nature;

f) Authorization to include in the trademark monuments in the Territory, or the respective designation, representation or imitation thereof;

g) Authorization to include in the trademark signs of high symbolic value, namely religious symbols;

h) Decorations or other distinctions referred to or reproduced in the trademark;

i) Certificate from the competent registrar proving the right to include in the trademark the name or any reference to a specific rural or urban property and the proprietor's authorization, to that effect, if the applicant is not the proprietor;

j) Authorization from the owner of previously registered marks or other industrial property rights with which the subject matter of the trademark being applied for could be confused, as well as from the holders of exclusive licences, if such exist, and their contracts do not waive their respective consent;

k) [Translator's note: The Portuguese alphabet has no letter K.]

l) Legal, statutory or regulatory provisions governing the use of a collective mark.

2. When the trademark contains writing in little-known characters, the applicant shall submit a transliteration and translation of that writing.

Article 208  
(Priority right)

1. Should the list of products or services for which registration is being applied in Macao contain products or services different from those comprising the registration application underlying the priority, the applicant shall be notified in order that, within the inalterable deadline of 1 month, he may replace the list of products or services.
2. Failure to replace the list referred to in the previous paragraph shall result in loss of priority and, for the purpose of local registration, the date of the submission of the application in Macao and list contained therein shall be considered for the purpose of the application.

Article 209  
(Examination as to form)

1. Once the DES has received the application, it shall, within 1 month, proceed to its formal examination to ensure that it contains all the elements required pursuant to articles 206 and 207 and shall classify the products and services.
2. If the application lacks any of the required elements, or should they not be in order, this shall be rectified by the applicant within 2 months of its being so notified by the DES or, if not so notified, within a maximum of 3 months from the filing of the application, either of which deadline may be extended by 1 more month, in response to a founded request.
3. If products or services classified in different classes are included in the same class, the notification referred to in paragraph 2 shall inform the applicant that he must limit the application to the class or classes indicated or, failing that, pay an additional fee.
4. The date that establishes the priority of filing, for the purpose of article 15, is that on which all the elements referred to in article 206 have been submitted and, should the applicant so request, the DES shall issue the appropriate submission certificate.
5. Failure to send the notification referred to in paragraph 2, as well its non-reception, shall not, for the effects of granting of the trademark, release the applicant from rectifying the defects in the application within the legal deadline.

6. If, by the end of the deadline set pursuant to paragraph 2, it is found that the defects or irregularities in the application have not been rectified, the applications shall be refused and a notice to that effect will be published in the Official Bulletin.

#### Article 210

##### (Publication of the registration application)

Once the application has been shown to be complete, or after it has been duly rectified pursuant to the previous article, the DES shall have the appropriate notice published in the Official Bulletin, indicating the elements necessary for the complete identification of the applicant and of the subject matter including, as appropriate:

- a) The typographic reproduction of the trademark and indication of the classes and products or services that it is to cover, with express reference to the colours if these are part of the claim;
- b) The graphic representation in musical notation of any sounds entering into the composition of the trademark.

#### Article 211

##### (Complaint and response)

1. Complaints shall be filed within 2 months of the date of the publication of the application in the Official Bulletin.
2. The applicant may answer complaints and other procedural submissions in the response that is to be filed within 1 month of the respective notification.
3. At the request of the interested party, submitted within the deadlines set in the preceding paragraphs, the submission of additional arguments may be authorized whenever this is shown to be necessary for the better clarification of the proceedings and when the complexity of the subject matter so justifies.
4. The additional arguments referred to in the previous paragraph shall, when authorized, be submitted within the deadline set by the DES or, where no such deadline is set, within a maximum of 1 month from the end of the periods referred to in paragraphs 1 and 2.

5. At the request of the interested party and with the agreement of the opposing part, the consideration of the case may be suspended for a period of no more than 6 months.

6. Unofficially the DES, on its own initiative or at the request of the interested party, may suspend consideration of the case for as long as it takes to investigate any pre-judicial proceedings that could affect the decision on the matter.

7. There shall lie no independent recourse against the ruling of non-receipt of complaint or response but the claimant may appeal the ruling that grants the right to the trademark, pursuant to the terms of Section IV of the present Statute.

#### Article 212

##### (Examination and study of the proceedings)

1. Once the period for the presentation of complaints has expired and, if applicable, the discussion is over, the DES shall proceed to the examination and study the proceedings.

2. The examination shall consist in the appreciation of the allegations of the parties and, primarily and obligatorily, in the examination of the requested trademark and its comparison with the trademark or marks registered for the same product or service, or for identical or similar products or services, after which the report is prepared and submitted for a ruling, which can be to grant or refuse.

3. The examination of the trademark should always, with respect to the elements of which it is composed, be examined for any possible confusion of the Portuguese, Chinese, English or other characters and sounds, separately or in combination.

#### Article 213

##### (Decision)

1. The registration shall be granted if no grounds are discovered to refuse and if the complaints, if any, are considered unfounded.

2. The ruling granting or refusing the registration shall be handed down in a maximum of 6 months from the date of the publication in the Official Bulletin of the application notice.

Article 214  
(Grounds for refusal of registration)

1. Registration of the trademark shall be refused if:

- a) Any of the general grounds for refusing to grant industrial property rights is found pursuant to article 9(1);
- b) An essential part of the trademark constitutes a reproduction, imitation or translation of another that is well-known in Macao, if applied to identical or similar products or services and with which it can be confused, or if those products could establish a connection with the proprietor of the well-known trademark;
- c) The trademark, although meant for products or services with no connection, constitutes a reproduction, imitation or translation of a previous trademark that enjoys prestige in Macao, and whenever the use of the subsequent trademark tries to derive improper advantage or prestige from the distinctive character the trademark or could harm such character or prestige.

2. The registration application shall also be refused whenever the trademark or any of its elements contains:

- a) Signs that are likely to mislead the public, namely with respect to the nature, qualities, usefulness or geographical origin of the product or service for which the trademark is to be used;
- b) Reproduction or imitation, in all or part, of a trademark previously registered by someone else, for identical or similar products or services, that could mislead or confuse the consumer, or that incurs a risk of association with the registered trademark;
- c) Fancy medals or designs liable to be confused with official decorations or with the medals and awards conferred at official meetings and exhibitions;
- d) Arms or heraldic insignia, medals, decorations, epithets, titles and honorary distinctions to which the applicant is not entitled, if disrespect or discredit is brought upon a similar sign;

e) The style, name or emblem of an establishment, or any characteristic part thereof that does not belong to the applicant or that the applicant is not authorized to use, if it is liable to mislead or confuse the consumer;

f) Signs that constitute a breach of copyrights or industrial property rights.

3. The fact that the trademark comprises exclusively signs or indications referred to article 199(1(b) and (c)) shall not constitute grounds for refusal if it has acquired a distinctive character.

4. A party interested in the refusal of the registration of the trademark referred to in subparagraph 1(b) may intervene in the respective proceedings only if it can prove that it has already applied for the respective registration in Macao or if it does so simultaneously with the refusal request.

5. A party interested in the refusal of the registration of the trademark referred to subparagraph 1(c) may intervene in the respective process only if it already proves that it has already applied for the respective registration in Macao of the products or services that conferred prestige upon it, or it does so simultaneously with the complaint.

#### Article 215

##### (Reproduction or imitation of the trademark)

1. The registered trademark shall be deemed to have been reproduced or imitated in whole or part by some other party when, cumulatively:

a) The registered trademark has priority;

b) They are both meant to designate identical or similar products or services;

c) They are so graphically, nominatively, figuratively or phonetically similar to another trademark as to easily mislead or confuse the consumer or as to involve a risk of being associated with a previously registered trademark, so that the consumer cannot distinguish between them save by dint of attentive examination or comparison.

2. The use of a certain fancy denomination forming part of some other previously

registered trademark, or only of the external appearance of the package or wrappings of the products of that brand, and having the respective layout of colours and wording, medals and awards so that illiterate people are not able to distinguish between these products and others which bear them and do legitimately possess the marks used, shall be considered to be the reproduction or partial imitation of a trademark.

Article 216  
(Partial refusal)

When the grounds for refusing the registration of a trademark concern just some of the products or services for which the application was filed, the refusal of the registration shall just be limited to those products or services.

SECTION IV

EFFECTS OF REGISTRATION OF TRADEMARK

Article 217  
(Legal presumption of registration)

The registration of a trademark implies a mere legal presumption of innovation or of distinction from another previously registered.

Article 218  
(Duration and renewal of registration)

1. The duration of registration shall be 7 years counted from the date of the respective granting, indefinitely renewable for like periods.
2. The renewal application shall be submitted within the last 6 months of the current validity period, accompanied by the original of the registration certificate.

Article 219  
(Rights conferred by the registration)

1. The registration of the trademark confers upon the holder the right to prevent a third party, in his economic activity and without the consent of the holder, from using, any sign identical to or likely to be confused with that trademark for products or



services identical or similar to those for which that trademark was registered, or which, consequent upon the identity or similarity of the signs or the similarity of the products or services, creates, in the mind of the consumer, a risk of confusion that includes the risk of an association between the sign and the trademark.

2. The registration of the trademark shall cover the use thereof in documents, printed matter, computer pages, advertising and documents relative to the entrepreneurial activity of the titleholder.

#### Article 220

(Limits on the rights conferred by registration)

The right conferred by the registration of the trademark shall not, provided that use is made according to the standards and honest practice applicable in industrial and commercial matters, permit the holder to prevent third parties, in their economic activity, from using:

a) their own name and address;

b) Indications relative to the nature, quality, amount, purpose, value, geographical origin or time of production of the product or service or to other characteristics of the products or services;

c) The registered trademark, whenever that be necessary to indicate the origin of a product or service, namely in respect of accessories or spare parts.

#### Article 221

(Preclusion of action by virtue of tolerance)

1. A holder of a registered trademark who, being aware of the fact, has tolerated the use of a subsequently registered trademark for a period of 3 consecutive years following its registration shall lose the right based on his previously registered trademark, to request the annulment of the registration of the subsequent trademark or to oppose its use in relation to the products or services for which the subsequent trademark has been used, except if the registration of the subsequent trademark was made in bad faith.

2. The 3-year period foreseen in the previous paragraph shall be counted and lapse

from the moment in which the holder becomes aware of the fact.

3. The holder of the subsequently registered trademark shall have no right to oppose the previous right, even if that right can no longer be invoked against the subsequent trademark.

#### Article 222

(Relationship with social styles and company names)

1. The registration of a trademark shall provide grounds for the annulment of company names liable to be confused therewith, provided that the requests for the authorization or alteration thereof be subsequent to the respective registration requests.

2. Acts of annulment of the acts resulting from the previous paragraph, shall be acceptable only within a period of 5 years from the date of publication in the Official Bulletin of the constitution or alteration of the style of the body corporate, except where proposed by the Department of Justice.

### SECTION V

#### USE OF THE TRADEMARK

#### Article 223

(Optional use of the trademark)

Notwithstanding the provision governing for forfeiture of the right to the trademark, the use

thereof shall be optional, except where the products or services on which the registered trademark is used are declared obligatory by some legal provision.

#### Article 224

(Inalterability of the trademark)

1. The trademark shall remain unalterable, any change in its component parts being subject to a new registration.

2. By way of exception to the provision of the previous paragraph, simple modifications that in no way detract from the identity of the trademark and affect only its proportions, the material from which it was minted, recorded or reproduced and also the colour shall be permitted unless such features were expressly demanded as one of the characteristics of the trademark.

3. Similarly, the inclusion or removal of the express indication of the product or service that the trademark is meant to adorn, or any alteration to the holder of the trademark, whether its name or social style or its registered office or place of establishment, shall not detract from the identity of the trademark.

#### Article 225

(Indication of registration)

During the term of the registration the holder of the trademark registration shall be entitled to add the acronym «M.R.», «R» or simply (r), to designate « Marca Registada », being "Registered Mark" in Portuguese, or the equivalent expression in Chinese (...), or else the English expressions «Registered Trademark» or «TM».

#### Article 226

(Use of certification trademark)

When affixed to the product in any way, the certification mark shall be complemented, if necessary, by the indication that it does not apply to all phases of the manufacturing process.

#### Article 227

(Assignment of the trademark)

1. The assignment of the establishment shall presuppose the assignment of the registration application or ownership of the trademark, unless otherwise stipulated.

2. The registration application or ownership of the registered trademark are assignable, independently of the establishment, provided that this cannot mislead the public as to the origin of the product or the service or the characteristics essential for its appreciation.

3. When the assignment of the products or services is but partial, a copy shall be

requested of the documents serving as the basis for the independent registration, including the right to ownership.

4. In the case of partial assignment, the new applications shall conserve the priorities to which they are entitled.

5. If the trademark includes the individual name or corporate style of the holder of, or applicant for, the respective registration, or of someone whom the holder or applicant represents, an express clause shall be necessary for its assignment.

#### Article 228

(Limitations on assignment)

Marks registered in favour of bodies protecting or controlling economic activities shall not be assignable, except where specially provided for by Law, Statutes or internal regulations.

### SECTION VI

#### TERMINATION OF TRADEMARK REGISTRATION

#### Article 229

(Nullity of the trademark registration)

The registration shall be subject to the provisions of article 47, but the respective nullity shall not be declared, although the trademark be constituted by signs as stipulated in article 199(1(b) and (c)), if the trademark has acquired a distinctive character.

#### Article 230

(Annulment of the trademark registration)

1. Mark registrations may be nullified in the cases provided for in article 48 and, moreover, when the title was granted:

a) Without the presentation of substantiating documents and the required authorizations;

b) In breach of the provisions of article 214(1(b) and (c)) and (2).

2. Any party interested in the annulment of a trademark in order to protect well-known trademarks may intervene in the proceedings only on proving that the respective registration has already been requested in Macao or by simultaneously filing the annulment request.

3. Any party interested in the annulment of a trademark in order to protect prestige marks may intervene in the process only by proving that the respective registration has already been requested in Macao for the products or services that conferred such prestige or by simultaneously filing the annulment request.

4. The trademark registration cannot be annulled if the previous trademark with which it is held to be in opposition does not satisfy the condition of serious use.

5. Annulment of a trademark based on a breach of the provisions of article 214(1(b) and (c)) may be applied for only up to 5 years from the date of registration.

#### Article 231

##### (Forfeiture of trademark registration)

1. The trademark registration shall be forfeit:

a) In the cases provided for in article 51(1);

b) For lack of serious use for 3 consecutive years, unless for justifiable reason;

c) If it suffers alteration that detracts from its identity.

2. The registration of the trademark shall expire also if, after the date on which it was effected:

a) The trademark has changed in the usual designation in the trade of the product or service for which it was registered, as a consequence of the activity or inactivity of the holder;

b) The trademark, with time, could mislead the public, namely with respect to the nature, quality and geographical origin of those products or services, if it continues to

be used by the holder of the trademark or a third party with the holder's consent, for the products or services for which it was registered;

c) The trademark was used in Macao in cases in which it was registered for export only.

3. The registration of a collective mark shall be declared forfeit:

a) If the body corporate in favour of which the trademark was registered ceases to exist except in cases of merger or split;

b) If the body corporate in favour of which the trademark was registered consents to its being used in way contrary to its general purpose or to the provisions of its articles of association.

4. When reasons exist for the forfeiture of registration of a trademark merely with respect to some of the products or services for which it was taken out, the forfeiture shall affect only such products or services.

5. Notwithstanding the provisions of article 51(2) and (4), the grounds for forfeiture specified in the present article may be cited by any interested party, in court or out.

#### Article 232

##### (Serious use of trademarks)

1. Serious use of trademarks is considered:

a) The use, under the terms of the present Statute, by the holder of the registration or his properly registered licensee of the trademark such as it was registered or not differing therefrom other than in details that do not alter its distinctive character.

b) The use of the trademark, as defined in the previous sub-paragraph, for products or services for export only;

c) The use of the trademark by a third party, provided that this is under the supervision of the title-holder and for the purpose of maintaining the registration.

2. The serious use of an association mark shall be gauged according those that make

use thereof with the title-holder's consent.

3. The serious use of a certification mark shall be gauged according to the persons qualified to use it.

4. The beginning or resumption of serious use within the 3 months immediately prior to the submission of a forfeiture request, starting from the end of an uninterrupted period of 3 years of non- use, shall not be considered if the measures for the beginning or resumption of the use are taken only after the holder learns that a forfeiture request is to be filed.

5. It shall be incumbent on the holder of the registration or his licensee, if such exist, to prove the use of the trademark, failing which the trademark shall be deemed not used.

## CHAPTER V

### NAMES AND EMBLEMS OF ESTABLISHMENTS

#### SECTION I

##### SUBJECT MATTER OF PROTECTION

###### Article 233

(Subject matter of protection)

Protection under the present Statute, by means of a title to a name and emblem of establishment, can be conferred only on the distinctive signs of an establishment wherein business is conducted in accordance with the provisions of the present section.

###### Article 234

(Establishment emblem)

1. For the purpose of the present it Statute, an establishment emblem shall be deemed to be any external sign composed of illustrations or drawings, alone or combined with the name of the establishment, or with other words or mottos.

2. The decoration of the facades and of that part of shops, stores or factories exposed to the public, as well as the colours of a flag, may constitute an emblem that perfectly individualizes the respective establishment.

#### Article 235

(Exceptions to protection - renunciation)

The provisions of article 199 shall apply, *mutatis mutandis*, to the name and emblem of an establishment.

#### Article 236

(Non-prohibited constituent elements)

The respective registration shall not be hindered by the fact that the requested name or emblem contain:

- a) Any fancy or specific designations;
- b) Historical names, with the exception of those the use of which would be detrimental or offensive to the esteem in which such names are generally held;
- c) The name of the property or premises of the establishment, when this is admissible or accompanied by a distinctive element;
- d) The name or distinctive elements of the company name and the pseudonym or nicknames of the proprietor;
- e) The branch of activity of the establishment, provided that is accompanied by distinctive elements.

#### Article 237

(Forbidden or conditional constituent elements)

1. The following may not form part of the name or emblem of an establishment:

- a) Names, designations, illustrations or drawings that are reproductions or imitations of names or emblems of establishments already registered by somebody else;



b) Constituent elements of a trademark or industrial model or design, protected by another, for products manufactured or sold or services rendered in the establishment for which the name or emblem is intended;

c) Words or phrases in a foreign language other than simple geographical designations, unless the establishment belongs to nationals of the respective country;

d) Designations indicating a nationality or having any other like sense, except if the establishment belongs to an individual or body corporate of that nationality or having an actual establishment in the country or territory in question.

2. Authorization for the use of name or insignia and other such elements shall be considered assignable by legal succession, unless expressly restricted.

3. The provision of sub-paragraph 1(a) shall not prevent two or more persons with identical surnames from including them in the name or emblem of their respective establishments, as long as they are perfectly distinguishable.

## SECTION II

### RIGHT TO THE NAME AND EMBLEM

#### Article 238

(Right to the name and emblem)

Anyone with a legitimate interest and more specifically farmers, livestock-breeders, industrialists, merchants and other entrepreneurs, domiciled or established in the Territory, shall be entitled to adopt a name and an emblem to designate their establishment and make its known pursuant to the terms of the following provisions.

## SECTION III

### REGISTRATION OF THE NAME AND EMBLEM OF AN ESTABLISHMENT

#### Article 239

(Form of application)

1. The application to register the name or emblem of an establishment shall be

submitted in writing in the official language of the Territory indicating the name or corporate style of the applicant, his/its nationality and domicile or place of establishment, and identifying the name and/or emblem whose registration is requested.

2. The date of the delivery of the application is that relevant for the purpose of priority.

#### Article 240

##### (Complementary elements of the application)

1. The registration application shall further include the following elements:

a) A document proving that the applicant owns the establishment actually and not fictitiously and, more specifically, the industrial or administrative licence, or some identical type of document, or the property registration certificate or some other documentary proof, in the case of article 236(c), save if there be just reason preventing the presentation of that document;

b) A declaration by the applicant that for the same establishment there does not exist any previous registration of name and emblem of establishment.

2. When applicable, the application should also be accompanied by the following elements:

a) Proof of consent for or the legitimacy of use of a personal name that does not belong to the applicant;

b) Proof of consent or of legitimacy of use of a corporate style, or just a characteristic part thereof, if it does not belong to the applicant and is likely to mislead or confuse the consumer;

c) Proof of consent for the use of the expression "formerly warehouse", "formerly company", "formerly factory" and other similar expressions when, in the application reference is made to establishments whose name or emblem are registered in the name of somebody else;

d) Proof of consent for the use of the expression "former employee", "former master",

"former manager" and other similar expressions, referring to another individual or body corporate;

e) Proof of the legitimacy of use of indications of relationship and of the expressions "heir", "successor", "representative" or "agent" and the like;

f) Such authorizations and elements of proof as are referred to in article 207, when the situations there foreseen for the trademarks obtain in relation to the name or emblem requested;

g) Proof of the exceptional admissibility of the constituent elements referred to in article 236(1(c) and (d)).

3. If the application concerns the emblem, it shall also be accompanied by:

a) Two graphic representations of the emblem, whenever possible as a photocopy or drawing, printed or pasted in the space provided for that purpose on the form;

b) A photolithograph, or some other medium to be defined by the DES, showing a reproduction of the sign of the emblem that it is wished to register.

#### Article 241

(Unity of application and registration of the name and emblem)

1. An application may refer to only one name and emblem and any given establishment can have only one name and emblem registered.

2. If the registration of more than one name or emblem be applied for in relation to the same establishment, the DES will instruct the applicant to choose just one of them and to drop the others.

3. If more than one name or emblem are registered in relation to the same establishment, the DES will instruct the holder to choose just one of them and to drop the others.

4. In the absence of any response to the notifications referred to in sub-paragraphs 2 and 3, only the first request or registration will be considered, the remaining requests being refused or declared forfeit, as applicable.

Article 242  
(Examination as to form)

1. Once the DES has received the application, it shall proceed to its formal examination within 1 month, to ensure that it is properly accompanied by all of the items required under article 240.

2. If the application is lacking some of the required items, or should they not be in order, they shall be rectified by the applicant within 2 months of the notification that the DES will send

him to that effect or, failing such notification, in a maximum of 3 months from the filing of the application, both extended by 1 additional month, if so requested for good reason.

3. Failure to send of the notification referred to paragraph 2, as well as its non-reception, shall not dispense the applicant, for the purpose of granting the name and emblem, from rectifying the shortcomings of the application within the legal period.

4. If, by the end of the applicable period pursuant to paragraph 2, it is found that the inadequacies or irregularities of the application have not been rectified, the application shall be refused and a notice to that effect published in the Official Bulletin.

Article 243  
(Publication of the application)

The DES shall have the application published in the Official Bulletin, in order that an objection may be raised by anyone who feels prejudiced by the possible granting of the registration.

Article 244  
(Subsequent formalities)

The provisions of article 211 to 213 shall, mutatis mutandis, apply to the application to register a name and emblem of establishment.

## SECTION IV

### EFFECTS OF REGISTRATION OF NAME AND EMBLEM

#### Article 245

(Duration of registration)

The duration of registration shall be 10 years from the date of the respective granting, infinitely renewable for like periods.

#### Article 246

(Rights conferred by the registration)

1. Notwithstanding the protection derived from other legal provisions, the registration of the name or emblem under this Statute shall confer on the holder the right to prevent third parties, without his consent, from using any identical sign or one likely to be confused with it in their establishments.
2. The registration shall moreover confer the right to prevent the use of any sign that contains the name or the emblem registered.
3. The registration of the name and emblem of the establishment shall mere imply a legal presumption of the requirements for its granting.

#### Article 247

(Relationship with corporate styles and company names)

The provisions of article 222 shall apply, mutatis mutandis, to the registration of the name and emblem of an establishment

## SECTION V

### USE OF THE NAME AND EMBLEM

#### Article 248

##### (Indication of the name or emblem)

During the term of the registration, the proprietor of the name or emblem shall be entitled to add thereto the designation "Nome registado" (Registered Name) or "Insignia registada" (Registered Emblem) or simply "NR" or "LR", in Portuguese, or else the equivalent expression in Chinese (....).

#### Article 249

##### (Inalterability of the name or the emblem)

1. The name and emblem shall remain unaltered, any change in their component elements being subject to a new registration.
2. The inalterability of emblems shall be understood, *mutatis mutandis*, in accordance with the rules established in article 224(2) and (3).

#### Article 250

##### (Assignment)

1. The rights deriving from the registration application or the registration of names and emblems of establishments may be assigned, be it for a consideration or not, with the establishment, or part of the establishment to which they belong and in accordance with the legal formalities required for the assignment of the establishment itself.
2. Notwithstanding the provision of the following paragraph, the assignment of the establishment shall include that of the respective name and emblem that may continue as registered, except where the assignor reserves them for another establishment, present or future.
3. If the name or emblem of establishment includes the name of the individual or body corporate that owns or has applied for the respective registration, or of someone the holder or applicant represents, an express clause shall be necessary for its assignment.

### SECTION VI

#### ANNULMENT OF REGISTRATION OF NAME AND EMBLEM

## Article 251

### (Annulment of name or emblem registration)

The provision of article 47 shall apply to the registration of a name or emblem but the respective nullity shall not be declared, even though the name or emblem be constituted by signs as stipulated in article 199(1(b) and (c)), if they have acquired a distinctive character.

## Article 252

### (Annulability of the name and emblem registration)

1. The name and emblem registrations may be annulled in the cases foreseen in article 48 and, moreover, when the title was granted without presentation of the elements of proof and authorizations required under article 240.
2. The registration of the emblem shall also be annulable if it was granted in breach of the provisions of article 214(1(b) and (c)) and (2)..
3. Article 230(2) to (5) shall apply, mutatis mutandis, to the case referred to in the previous paragraph.

## Article 253

### (Forfeiture of the name and emblem registration)

1. The name and emblem registration shall be forfeit:
  - a) In the cases foreseen in article 51(1);
  - b) If the respective establishment is closed or goes into liquidation;
  - c) If the registered emblem or name is not used for 5 consecutive years, except for good reason;
  - d) If it is modified in such a way as to prejudice its identity.
2. If it be found that there exist two or more registrations in relation to the same establishment, the DES will notify the holder of the registrations requiring it to choose one name and emblem and shall declare the others forfeit.

## CHAPTER VI

### DESIGNATION OF ORIGIN AND GEOGRAPHICAL INDICATIONS

#### Article 254

##### (Object of protection)

1. Under the present Statute, only the following can be protected by an designation of origin:

a) The name of a region, a specific locality or a country or territory that is used to designate or identify a product originating from that region, specific locality or country or territory, whose quality or characteristics are essentially or exclusively due to the geographical environment, including natural and human factors, and whose production, transformation and creation are conducted in the demarcated geographical area;

b) Certain traditional designations, be they geographical or not, which designate a product originating from a region or specific locality and that satisfy the conditions foreseen in the previous sub-paragraph.

2. Under the present Statute, only a geographical indication, the name of a region, specific locality or, in exceptional cases, country or territory can be protected that is used to designate or to identify a product originating from that region, specific locality or country or territory or, whose reputation, specific quality or other characteristic can be attributed to that geographical origin and whose production and/or transformation and/or creation is conducted in the demarcated geographical area.

3. Designations of origin and geographical indications, when registered, shall constitute the common property of the residents or persons who are actually and seriously established in the region in question and may be used indiscriminately by persons who, in that region, exploit any characteristic area of production when duly authorized by the holder of the registration to do so.

4. The exercise of this right shall not depend on the extent of the exploitation nor on the nature of the products, and the designation of origin or geographical indication shall consequently apply to any products characteristic of and originating from the



locality, region or territory, provided that the demarcations and other traditional and usual or properly regulated conditions are observed.

Article 255  
(Registration application)

1. The application for registration of a designation of origin or a geographical indication shall be filed, in writing, in the official language of the Territory, indicating the name of the individuals or bodies corporate, public or private, that are entitled to acquire the registration and shall be accompanied by the following information:

- a) The name of the product or products on which it is intended to use the designation of origin or geographical indication;
- b) The traditional or regulated conditions for the use of the designation of origin or the geographical indication and the limits of the respective locality or region.

2. The registration certificate shall, in the pertinent part, bear the text of the registration process of the name and emblem of the establishment.

Article 256  
(Grounds for refusing the registration of designations of origin)

Requests for the registration of designations of origin or geographical indications shall be refused if:

- a) Any of the general grounds for refusing to grant of industrial property rights obtains pursuant to article 9(1);
- b) It constitutes a reproduction or imitation of a previously registered designation of origin or geographical indication;
- c) It is liable to mislead the public, namely as to the nature, quality and geographical origin of the respective product;
- d) It constitutes an breach of industrial property rights or of a copyright.

Article 257  
(Duration of registration)

Designations of origin and geographical indications shall be unlimited in duration and their ownership shall be protected by the application of the provisions foreseen in the present Statute or in special legislation, as well as by those governing false indications of origin, independently of registration and of the fact that they do or do not form part of a registered trademark.

Article 258  
(Indication of registration)

During the term of the registration, products on which the respective use is authorized may bear the mentions "Denominação de origem registada" (Registered designation of origin) or "DOR", "Indicação geográfica registada" (Registered geographical indication) or "IGR", in Portuguese, or else the equivalent expressions in Chinese (....).

Article 259  
(Rights conferred by the registration)

1. The registration of the designation of origin or of the geographical indication shall confer the right to prevent:

a) Use, by a third party, in the designation or presentation of a product, of any means that indicate or suggest that the product in question originates from a geographical area different from the true place of origin;

b) Any use that constitutes an act of unfair competition, within the terms of article 10bis of the Paris Convention, in its Stockholm revision of 14 July 1967;

c) Use by anyone who is not authorized by the holder of the registration.

2. The constituent words of a legally defined, protected and monitored designation of origin or geographical indication may not appear, in any form, in designations, tags, labels, advertisements or any other documents concerning products that do not originate from the respective demarcated regions.

3. The prohibition referred to in the previous paragraph shall be applicable even if the true origin of the products is mentioned or if the words constituting the designations or indications are accompanied by qualifiers such as "kind", "type", "quality" or the like and it shall be extended to the use of any expression, display or graphic combination liable to confuse the public.

4. Similarly prohibited shall be the use of designations of origin or geographical indications of prestige in Macao, for products bearing no identity or likeness, whenever the ir use seeks, for no valid reason, to derive improper advantage from the distinctive character or the prestige of the previously registered designation of origin or the geographical indication or stands to harm them.

5. The provisions of the previous paragraphs shall not prevent a seller from affixing its name, address or trademark to products from a region, country or territory different from that in which the same products are sold, provided that the trademark of the producer or manufacturer be maintained on such products.

6. The registration of a designation of origin or geographical indication shall imply a mere legal presumption of the requirements of its granting.

#### Article 260

(Relationship with corporate styles and company names)

The provisions of article 222 shall apply, mutatis mutandis, to the registration of appellations of origin or geographical indications.

#### Article 261

(Annulability of registration of designations of origin or geographical indications)

Registrations of designations of origin or geographical indication may be cancelled in the cases envisaged in article 48(1) and, moreover, if:

- a) They constitute a reproduction or imitation of a previously registered designation of origin or geographical indication;
- b) They are likely to mislead the public, namely with respect to the nature, quality and geographical origin of the respective product;

c) They are in breach of industrial property rights.

#### Article 262

(Forfeiture of registration of designations of origin or geographical indications)

1. The registration of a designation of origin or a geographical indication shall lapse:

a) In the cases envisaged in article 51(1);

b) At the request of any interested part when, by virtue of bona fide, traditional and established commercial practices, the designation of origin or the geographical indication, becomes a simple generic designation for a manufacturing system or a certain type of product.

2. Wine products, medicinal mineral waters and other products whose geographical denomination of origin is subject to special protection and monitoring legislation in the respective country or territory shall form an exception to the provision in the previous paragraph.

### CHAPTER VII

#### AWARDS

#### Article 263

(Subject matter of protection)

The present Statute can confer protection on the registration of an award only for:

a) Decorations of merit conferred by the Territory or by other countries or territories;

b) Medals, diplomas and prizes in money or of any other nature obtained at official exhibitions, fairs and competitions, or officially recognized by the Territory or by other countries or territories;

c) Diplomas and certificates of analysis or commendation issued by laboratories and other public services of the Territory or by organisms qualified for such purposes;

d) Titles of supplier to official bodies and other entities or official establishment, of

the Territory or of other countries or territories;

e) Any other prizes or demonstrations of preference of an official character.

Article 264  
(Right to the registration)

The right to register an award shall lie with to the proprietor of the company to which the official prizes or demonstrations of preference referred to in the previous article have been attributed.

Article 265  
(Registration application)

The application for the registration of awards shall be submitted, in writing, in one of the official languages of the Territory, indicating the name or corporate style of the applicant, his/its nationality and domicile or place of establishment, and shall be accompanied by the following items, in triplicate:

- a) The awards to be registered, the bodies that conferred them and the respective dates;
- b) The products or services in respect of which the awards were conferred;
- c) The name of the establishment to which the award is linked, in all or in part, when applicable.

Article 266  
(Items to accompany the application)

1. The registration application shall be accompanied by:

- a) The originals or certified photocopies of the diplomas or titles;
- b) A duly legalized copy of the official publication in which the award was conferred or published, or simply the part thereof necessary and sufficient to identify it.

2. The DES may demand a translation into one of the official languages of the

Territory of diplomas or other documents couched in other languages.

3. The registration of awards including references to names or emblems of establishment shall be conditional on the prior registration of such names or emblems.

#### Article 267

(Grounds for refusing the registration of awards)

The application for the registration of awards shall be refused if:

- a) Any of the general grounds for refusing the granting of industrial property rights obtains according to article 9(1);
- b) It is proven that they have been applied to products or services other than those on which they were conferred;
- c) The proprietorship thereof has been assigned without the establishment or the respective part thereof, if applicable;
- d) It has been shown that the award has been revoked or cancelled.

#### Article 268

(Effects of registration)

The registration of awards shall guarantee the veracity and authenticity of the right to having been granted them and it ensures the holders their exclusive use for an indefinite period.

#### Article 269

(Restitution of documents)

1. On expiry of the deadline for appealing against the granting or refusal of registration, the diplomas or other documents contained in the file shall be returned to the applicant upon request and shall be substituted in the file by certified photocopies.
2. Documents shall be returned to applicants in return for a receipt which shall be placed in the file.

Article 270  
(Indication of awards)

The use of awards legitimately obtained shall be permitted without registration, but only after registration can a reference to or a copy of them be accompanied by the designation "Recompensa Registada" (Registered Award" or of the abbreviations "R.R.", "RR" or «RR», in Portuguese, or else by the equivalent expression in Chinese (...).

Article 271  
(Assignment)

The assignment of ownership of awards shall be conducted in accordance with the legal formalities required for the assignment of the company to which they relate and the provisions of article 250(2) shall apply mutatis mutandis.

Article 272  
(Conditions under which mention may be made of the awards)

The awards may not be applied to products or services different from those on which they were conferred.

Article 273  
(Annulability of award registrations)

Award registrations may be annulled in the cases provided for in article 48(1) and, moreover, when the right to the award is cancelled.

Article 274  
(Forfeiture of the registration of awards)

1. The award registrations shall be forfeit:
  - a) In the cases envisaged in article 51(1);
  - b) If the granting of the reward be revoked or cancelled by the entitled party.
2. Forfeiture of the registration shall terminate the right to make exclusive use of the

award.

## PART IV

### LEGAL RECOURSE

#### Article 275 (Legal recourse)

Recourse shall lie to the Common Court of Justice against decisions:

- a) Whereby industrial property rights are granted or refused;
- b) Relating to assignments, licences, declarations of forfeiture or any other decisions that affect, modify or terminate industrial property rights.

#### Article 276 (Right to appeal)

The applicant or owner of the industrial property right at issue, the claimants, as well as the successors of both and, in general, anyone directly and effectively prejudiced by the said decisions shall be legally entitled to file an appeal against decisions of the DES.

#### Article 277 (Deadline for appeal)

The appeal should be lodged within 1 month of the date of publication of the decision in the Official Bulletin or of the date of the certified copy of the decision, whichever the sooner and if requested by the appellant.

#### Article 278 (Response-referral of proceedings)

1. Once the action has been filed, a copy of the appeal petition and of the respective documents shall be sent to the DES, in order that the entity that handed down the contested decision may respond or in case it be advisable to submit or have submitted to the court the file on which the original decision was based.



2. If it is found that the file contains sufficient information to enlighten the court, the DES shall submit it together with a referral notice within 15 days.

3. Should this not be the case, the referral notice shall contain a reply to the allegation in the petition and shall be sent, with the file, within 1 month.

4. When, for any justified reason, the deadline in the previous paragraph cannot be observed, the DES shall, in good time, apply to the court for such extension as seems necessary.

#### Article 279

(Citation by the opposing party)

1. If there exists an opposing party, that party shall be notified by the court to reply within 1 month should it so wish.

2. Notification of the opposing party shall always indicate that that party is obliged to participate in the hearings through an appointed lawyer.

3. A decision wholly or partially revoking or amending a previous decision shall substitute that decision in the precise terms in which it was stated.

4. The DES shall never be considered to be an opposing party.

#### Article 280

(Request for technical expertise)

If the appeal contains a technical problem requiring further information or if the court deems it appropriate, it may at any time request the attendance, on a day and at a time it shall designate, of the DES technician or technicians on whose opinion the appealed decision was based, in order that they may orally provide any explanations needed.

#### Article 281

(Representation of the DES)

The Director of the DES may produce allegations and exercise any other procedural powers corresponding to those of the other appellees, including that of refuting the

decisions handed down in the contentious appeal, either through an appointed lawyer or a legally qualified person acting as legal counsel for that purpose.

#### Article 282

(Appeal against the court decision)

The decision handed down may be appealed by the process civil of law.

#### Article 283

(Publication of the final decision)

Once the decision has been handed down, the court registrar shall send the DES a typewritten copy or a version on a medium considered appropriate for the purpose of registration and, if

appropriate, for the purposes envisaged in article 10(1(j)).

### PART V

#### MONITORING AND PENALTIES

##### CHAPTER I

##### GENERAL PROVISIONS

#### Article 284

(Timing of supervision)

Goods and services shall be monitored to ensure the defence of industrial property rights at all phases and in all sectors of the production process, including in the public sector.

#### Article 285

(Competent bodies)

1. The monitoring referred to in the previous article shall be conducted by the DES through the Inspectorate of Economic Activities without prejudice to the powers vested by law in the criminal police and other entities, specifically the Marine and

Fiscal Police.

2. The DES may, in the performance of its monitoring functions, call on the assistance and intervention of other entities.

#### Article 286

(Seizure at points of entry)

1. The Marine and Fiscal Police may, as a precautionary measure, seize any products or goods at the point of import or export which, in any obvious way contain any form of false indications or denominations of origin, trademarks or names illicitly used or applied or that indicate the commission of any infringement provided for in the present Statute.

2. The owner or consignee of the seized products shall be notified in the most expedient manner and required to provide the necessary explanations and he shall, notwithstanding any liabilities he has already incurred, be permitted to rectify the situation of the item that has been placed under precautionary seizure.

3. Seizure may also be exercised on request, submitted on the spot or in advance, by anyone who demonstrates a legitimate interest in so doing.

4. The seizure shall lapse if, within 10 working days of the holder of the industrial property rights having been notified thereof, the Public Prosecution Service or the injured party has not filed a court suit for confirmation of the findings.

5. The period referred to in the previous paragraph may be extended by equal periods in duly justified cases.

#### Article 287

(Unspecified precautionary measures)

In addition to the provisions of article 286(3), provisional measures may be ordered pursuant to the terms of the Statute of Civil Procedure of Macao for common provisional procedures, in cases in which any of the violations foreseen in the present Statute are found to obtain.

Article 288  
(Commitment to inform)

1. Whenever an authority or an agent of an authority notes any breach of the provisions in the present Statute it/he shall draw up or have drawn up a report which shall be forwarded to the DES.
2. In the case of suspicion of criminal practices, the report shall simply be forwarded to the Public Prosecution Service within 5 days.

CHAPTER II

UNLAWFUL ACTS

SECTION I

TYPES OF UNLAWFUL ACTS

Article 289  
(Violation of the exclusivity of a patent or of the topography of semiconductor products)

Obtaining illicit benefit for oneself or for a third party within the context of an entrepreneurial activity without the consent of the holder of the industrial property right shall be punishable by a prison sentence of up to 2 years or by a fine accumulating for from 60 to 120 days in the following cases:

- a) Manufacturing artefacts or products protected by a patent or semiconductor product topography;
- b) Use or application of methods or processes protected by a patent or by a semiconductor product topography;
- c) Importing or distributing products obtained by any of the means referred to in the foregoing paragraphs.

## Article 290

(Violation of exclusive rights relating to designs or models)

Obtaining illicit benefit for oneself or for a third party within the context of an entrepreneurial activity without the consent of the holder of the industrial property right shall be punishable by a prison sentence of up to 2 years or by a fine accumulating for from 60 to 120 days in the following cases:

- a) Reproducing or imitating totally or in part the characteristics of a registered design or model;
- b) Exploiting a registered design or model;
- c) Importing or distributing designs or models obtained by any of the means referred to in the foregoing paragraphs.

## Article 291

(Counterfeiting, imitation and illegal use of trademark)

Obtaining illicit benefit for oneself or for a third party within the context of an entrepreneurial activity without the consent of the holder of the industrial property right shall be punishable by a prison sentence of up to 3 years or by a fine accumulating for from 90 to 180 days in the following cases:

- a) Counterfeiting, totally or partially, or in any way reproducing a registered trademark by any means;
- b) Imitating a registered trademark in whole or in any of its characteristic parts;
- c) Using false or mock marks;
- d) Using, counterfeiting or imitating well-known trademarks whose registration has already been applied for in Macao;
- e) Using trademarks, even though in products or services bearing no identity or likeness,

which are a translation, the same as or similar to previous trademarks whose

registration has been applied for and which enjoy prestige in Macao, whenever the use of the subsequent trademark seeks, without fair reason, to derive improper advantage from the distinctive character or the prestige of the previous trademark or can in any way damage it.

f) Using, in their products, services, establishment or company, a registered trademark belonging to somebody else.

#### Article 292

(Sale, circulation or concealment of products or goods)

Anyone selling, circulating or concealing products counterfeited by any of the means and in the conditions referred to in articles 289 to 291 and being aware of that situation shall be subject to a prison sentence of up to 6 months or a fine accumulating for from 30 to 90 days.

#### Article 293

(Violation and illegal use of designations of origin or geographical indications)

Seeking to obtain illicit benefit for oneself or for a third party within the context of an entrepreneurial activity shall be punishable by a prison sentence of up to 2 years or by a fine accumulating for from 60 to 120 days in the following cases:

a) Reproducing or imitating, totally or partially, a designation of origin or a protected geographical indication;

b) Using on products signs that constitute a reproduction or imitation of designations of origin or geographical indications without being duly entitled to use such designations or indications, even though they may indicate the true origin of the products or the designation or be used either in translation or accompanied by expressions such as "like", "type", "style", "imitation", "rival of", "superior to" or similar.

#### Article 294

(Industrial property rights obtained in bad faith)

1. Anyone who, in bad faith, obtains for himself or for a third party an industrial property title in respect of a right he does not own shall, under the applicable

provisions of the present Statute be liable to a prison sentence of up to 6 months or a fine accumulating for from 60 to 90 days.

2. In deciding on the sentence for the violation, the court shall unofficially cancel the title at issue or, when applicable, order that it be assigned to the person to whom it legitimately belongs, should that person so request.

3. The request for the assignment of the title referred to in the previous paragraph may be filed with the court independently of the criminal proceedings resulting from the violation.

## SECTION II

### OTHER PROVISIONS

#### Article 295

(Monitoring and apprehension)

1. The Criminal Police shall unofficially conduct such monitoring and preventive inspections as be appropriate, independently of the opening of the inquiry.

2. The legal authorities shall order that an expertise be conducted on items held under precautionary seizure whenever this appears necessary in order to determine whether such items are or are not manufactured or marketed by the holder of the right or by some duly authorized party.

#### Article 296

(Fate of seize items)

1. The Territory shall confiscate:

a) Items involved in a criminal breach of the present Statute;

b) The materials or instruments predominantly used for the commission of that crime.

2. Items declared confiscated under sub-paragraph 1(a) above shall be total or partially destroyed whenever it is not possible to eliminate that part thereof that bears the distinctive sign or is in violation of the offended right and, although such

elimination may be possible, provided that the title-holder does not give express consent to such items being returned to the market or otherwise disposed of.

#### Article 297

(Assistants)

Besides the people on whom the Law of Penal Procedure confers the right to act in respect of offences committed under the present Statute, other persons may be co-opted as assistants in investigating crimes herein foreseen, namely:

- a) Legally constituted employers' associations;
- b) Legally constituted consumers' councils and consumers' associations.

#### Article 298

(Referral and subsidiary right)

The offences foreseen in the present chapter shall be subject to the provisions of articles 2 to 6, 9 to 16 and 18 of Law no.6/96/M, of 15 July 1996, and, subsidiarily, the Macao Penal Statute and Macao Statute of Penal Procedure.

### CHAPTER III

#### ADMINISTRATIVE OFFENCES

#### SECTION I

#### TYPES OF ADMINISTRATIVE OFFENCES

#### Article 299

(Illegal reference to or use of awards)

A fine of 20 000.00 to 250 000.00 patacas or of 50 000.00 to 500 000.00 patacas, depending on whether the perpetrator be an individual or a body corporate, shall be incurred by anyone who, in the performance of an entrepreneurial activity:

- a) Mentions or refers to an award registered on behalf of somebody else, when that reference or mention is for the purpose of obtaining an illicit benefit for him/itself or



for a third party;

b) Uses or falsely entitles himself the holder of an award that never existed;

c) Uses drawings or any imitative indications of awards registered in the name of some other person in correspondence or advertising, on signs, facades or shop windows of the establishment or in any other way without the title-holder's consent.

#### Article 300

(Violation of name and emblem rights)

A fine of from 20 000.00 to 250 000.00 patacas or of 50 000.00 to 500 000.00 patacas, depending on whether the perpetrator be an individual or a body corporate, shall be incurred by anyone who, in the performance of an entrepreneurial activity and without the title-holder's consent, uses in his/its establishment, in announcements, correspondence, products or services or in any other form, a name or emblem that is a reproduction or that constitutes an imitation of the name or of emblem already registered by somebody else.

#### Article 301

(Use of illicit marks)

1. A fine of from 20 000.00 to 250 000.00 patacas or of 50 000.00 to 500 000.00 patacas, depending on whether the perpetrator be an individual or a body corporate, shall be incurred by anyone who, in the performance of an entrepreneurial activity :

a) Improperly uses in his/its trademark, any of the signs indicated in the article 207(1(d) to (i)) and in article 214(2(b) and (c));

b) Uses trademarks with false indications on the origin or the nature of the products;

c) Sells or makes available for sale products or goods with the marks forbidden by the previous paragraphs.

2. Products or items bearing marks prohibited by the previous paragraph may be apprehended at the request of the Public Prosecution Service and declared confiscated in favour of the Territory.

## Article 302

(Improper use of name or emblem of establishment)

A fine of from 20 000.00 to 250 000.00 patacas or of 50 000.00 to 500 000.00 patacas, depending on whether the perpetrator be an individual or a body corporate, shall be incurred by anyone who, in the performance of an entrepreneurial activity improperly uses in the name or emblem of his/its establishment, whether registered or not, any of the signs referred to in article 236(1(b)) and article 240(2(a) to (f)).

## Article 303

(Mention or improper use of private rights)

A fine of from 20 000.00 to 250 000.00 patacas or of 50 000.00 to 500 000.00 patacas, depending on whether the perpetrator be an individual or a body corporate, shall be incurred by anyone who:

- a) Claims to be the owner of some industrial property right foreseen in the present Statute, without that right belonging to him/it, or when it has been declared null or void, if he/it was already aware of that declaration;
- b) Uses or applies the indications of the patent or of registration without being entitled so to do;
- c) Being the owner of an industrial property right, uses it for products or services different from those protected by the corresponding title.

## Article 304

(Lack of mandatory trademark)

A fine of from 5 000.00 to 50 000.00 patacas or of 10 000.00 to 100 000.00 patacas, depending on whether the perpetrator be an individual or a body corporate, shall be incurred by anyone who manufactures, markets or imports products or renders services without a trademark when such a trademark is mandatory for those products or services.

## SECTION II

### SUNDRY PROVISIONS

#### Article 305

##### (Perpetrators and responsible parties)

1. Anyone who, personally or through another, directly participates in the performance or, in collusion or together with another or others, commits the act and also anyone who feloniously induces another to commit the act, shall, once the act has been committed or the commission of the act has commenced be subject to penalty as a perpetrator of the act.
2. Anyone whether an individual or a body corporate, although improperly constituted, and associations having no legal status may be held responsible, jointly or not, for committing the administrative offences envisaged in the present chapter.
3. Bodies corporate, although improperly constituted, and associations with no legal status shall be held responsible for administrative offences committed by the members of their respective organs and by the holders of administrative positions, directors or managers in the exercise of their functions, as well as for offences committed by representatives of the body corporate in acts performed in the name and interest of that body.
4. The responsibility foreseen in the previous paragraph shall not apply when the agent acted against the orders or express instructions of the persons entitled to issue the orders.
5. The legal invalidity and the inapplicability of the acts on which are based the relationship between the individual agent and the body corporate shall not detract from the terms of paragraph 3.
6. The responsibility of the body corporate shall not exclude the individual responsibility of the members of the respective organs, and of those who in those organs exercises the functions of director, manager or administrator or who represent the body legally or voluntarily.

## Article 306

### (Determination of administrative penalties)

In determining the administrative penalty to apply, account shall be taken especially of:

- a) The gravity of the offence, the fault, powers and financial situation of the agent in question;
- b) Whether the administrative offence would have resulted in very high profits, gauged according to the criteria of the Macao Penal Code.

## Article 307

### (Reduction or waiver of penalties)

1. The administrative penalties foreseen in the present chapter may be reduced or waived when circumstances exist prior or subsequent to the offence, or contemporary therewith, that attenuate the gravity of the offence, the agent's fault or the need for the penalty.
2. For the purpose of the provision of the previous paragraph, account shall be taken, *inter alia*, of the occasional nature of the offence and the extent to which the agent assisted in the discovery of the truth.

## Article 308

### (Repeated offences)

1. Article 70 of the Macao Penal Code shall apply to repeated offenders.
2. For the purpose of the previous paragraph, a repeated offender shall be anyone who commits an identical administrative offence within 1 year of the decision that ultimately determined the penalty.

## Article 309

### (Notices)

1. Notice of the administrative decision concerning the penalty shall be served on the offender personally or by registered letter, telegram or telefax, depending on the

possibilities and the method most appropriate, at his registered office, office or domicile.

2. Notice served by registered letter shall be deemed served on the third working day following the registration, when served in the Territory.

3. Should any of the forms of notification referred to in paragraph 1 above prove impossible, the director of the DES shall determine how to substitute that form by that which appears most appropriate to the concrete case:

a) By a court order published for 30 days in the Official Bulletin, and by 2 proclamations, one to be posted at the DES and other in the last place of residence or professional domicile of the perpetrator, if known.

b) By the publication of announcements in two of the most widely read newspapers of the Territory, one in Portuguese and the other in Chinese.

4. The notices served on parties residing or located outside the Territory shall, in determining the periods, enjoy the extensions provided for in article 72 of the Macao Code of Administrative Procedure.

#### Article 310

(Power to investigate and penalize)

1. Procedural investigations into the administrative offences foreseen in the present chapter shall fall within the purview of the DES.

2. The application of the administrative penalties shall fall within the jurisdiction of the director of the DES.

#### Article 311

(Payment of fines)

1. Administrative fines shall be paid within 15 days from the date of notification of the penalty decision.

2. The payment of the administrative fines shall not release the perpetrator from payment of any consumption tax or charges due.

3. If the administrative fine is not voluntarily paid within the period set in paragraph 1 above, it shall be forcibly collected by the competent entity, pursuant to the debt-collection procedure using the executive payment order as enforcement warrant, except where the fines can be wholly paid from the product of the sale, by any legally permitted form, of the goods and objects seized under the terms of the present Statute.

4. Appeal against the application of administrative penalties shall lie to the Macao Administrative Tribunal.

#### Article 312

##### (Liability for payment of fines)

1. Liability for the payment of fines shall lie with the perpetrator of the administrative offence.

2. The Administration may, in cases involving multiple perpetrators, demand payment of the totality of the administrative fines by any one of them, that party then having the right to claim their shares from the others.

3. Bodies corporate, although improperly constituted, and associations with no legal personality shall be held jointly and severally liable for payment of the fine to which their administrators, directors, managers, employees or representatives have been sentenced for committing the administrative offences envisaged by the present Statute.

4. The administrators, directors or managers of bodies, although improperly constituted, and of associations with no legal personality which, although in a position so to do, fail to impede the commission of the administrative offence, shall answer jointly and severally for the payment of the fines to which they are sentenced even though, on the date of the sentence such bodies or associations may have been dissolved or liquidated.

5. If the fine be applied to an association with no legal personality, the common assets of that association shall cover the fine and, should that not suffice, the assets of each of the partners and associates jointly and severally.

Article 313  
(Prescription)

1. The procedure for administrative offences envisaged in the present Statute shall lapse 2 years following the commission of the offence.
2. Administrative fines shall lapse 4 years after the date on which the decision on the penalty becomes final.
3. The periods of prescription applicable to the procedure and the fines and the terms according to which they shall be interrupted or suspended shall be governed by the provisions of article 111 to 113, 117 and 118 of the Macao Penal Code.

Article 314  
(Destination of fines)

The product of the administrative fines applied under the present chapter shall accrue to the Territory.