

# THE OFFICIAL GAZETTE

## DECREE No. 15 of 2018 The National Intellectual Property and Quality Services' By-laws (SENAPIQ-STP)

Whereas the National Industrial Property Service, created by Decree-Law Nr. 11 dated December 31, 2003 is the sole entity liable to industrial property activities;

For certification and geographical indication marks, it is necessary to create Sao Tomean regulation to comply with international and regional standards;

Considering also the need to create a By-laws which includes the new National Industrial Property Service in order to permit the Standardization, Certification, Metrology and Accreditation Services to ensure uniformity to the National Quality System in Sao Tome and Principe, as well as the Copyright and Related Rights Service under the protocol signed between the Minister of Education, Culture and Formation and the Minister of Planning and Development, at time , which bestows to the National Industrial Property Service the power to register such Intellectual property modalities;

Therefore the National Industrial Property Service with proven experience in international standards on Industrial Property matters might extend such experience to Copyright and Related Rights, Standardization, Certification, Metrology and Accreditation;

Pursuant to powers ascribed under Article 111, line(c) of the National Constitution, the Government of Democratic Republic of Sao Tome and Principe decrees the following:

### Chapter I General Provisions

#### Article 1 Object and Scope

The created National Industrial Property Service is approved under the name of National Intellectual Property and Quality Service of São Tomé and Príncipe, with the abbreviation SENAPIQ-STP.

#### Article 2 Constitution and Nature

1. The National Intellectual Property and Quality Service is the sole public entity within the territory of Sao Tome and Principe which accounts for Industrial Property, Copyright and Related Rights matters and management of the National Quality System (SNQ) Standardization, Certification, Accreditation and Metrology activities as well.

2. SENAPIQ-STP is an entity of public nature, with administrative, financial, technical and asset autonomy under supervision of the Minister in charge for Intellectual Property on

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economic financial and culture matters of mandatory consultation to the Ministers of Finance and Culture.

### Article 3 Definitions

Pursuant to this Decree-law the terms ascribed shall mean as follows:

- a) "Accreditation" means the procedure through which the SENAPIQ-STP formally recognizes technical competences of an entity to carry out a specific task in accordance with international, regional or national standards, based on the guidelines issued by the international accreditation entities to which São Tomé and Príncipe is affiliated.
- b) "Certification" means the procedure through which an accredited third party provides a guarantee, in written format, that a product, process, service or system is in conformity with specific requirements.
- c) "Central Laboratory of Metrology" means a number of laboratory units that support scientific and applied metrology works.
- d) "Metrology Museum" means the Metrology's functional area liable to guarantee the preservation and dissemination of public metrological assets with historical interest.
- e) "National Quality System (SNQ)" means the structure which comprises, in an integrated form, the institutions that jointly promote quality in S. Tomé and Príncipe and ensure coordination of the three subsystems, such as standardization, qualification and metrology envisaging country's sustainable development and improvements on the quality of life in the whole society .
- f) "SNQ Management" means the instrument which ensures planning, implementation and evaluation of the activities to be undertaken under the SNQ.
- g) "Sector Standardization Bodies (ONS)" means public or private entities, to which SENAPIQ-STP might delegate technical standardization tasks in specific activity sectors.
- h) "Quality" means a number of requirements and characteristics of an entity or product for determining its compatibility to society's needs and expectations.
- i) "Metrology subsystem" means a SNQ's subsystem which guarantees accuracy and precision to the measurements made, ensuring their comparability and follow up, within and outside the country, as well as the achievement, maintenance and development of measurement unit standards.

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j) "Standardization subsystem" means a SNQ `s subsystem which is part of standard-setting activities and other regulatory documents at national, regional and international level.

k) "Qualification subsystem" means a SNQ `s subsystem covering accreditation, certification, others skills recognition and conformity assessment activities under the SNQ.

l) "Copyright" is a number of prerogatives bestowed to every intellectual creator on his\her literary, artistic or scientific work, allowing him\her to own, enjoy, use and benefit from such works.

m) "Related Rights" are numbers of prerogatives granted to every artists or performers over their creations allowing them to own, enjoy, use and benefit from such creations.

### **Article 4** **Accountabilities**

1. The general accountabilities of SENAPIQ-STP are:

a) To make propositions leading to design of policies on Industrial Property, Copyright and Related Rights, Standardization, Certification, Accreditation and Metrology as well as the implementation of an effective policy in these areas;

b) To design and propose the sector plan in these fields;

b) To Promote, in cooperation with sector`s competent bodies, the planning and programming of needed interventions for the implementation of planned policies, as well as to propose appropriate legislative measures;

d) To ensure the attribution and protection of Industrial Property, Copyright and Related Rights envisaging to strengthen fair competition and combating misleading, piracy and counterfeiting, by cooperating with national and international entities on crimes against Intellectual Property matters.

e) To undertake and monitor the reinforcement of norms, guidelines and orientations that regulate Industrial Property Rights, Copyright and Related Rights, by taking into account the social interest and country`s technological, economic and cultural development ;

f) To make propositions to the Government on improvement and development of the Industrial Property, Copyright, and Related Rights legislation and to ensure compliance thereto;

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g) To cooperate with international organizations and entities specialized in Intellectual Property matters to which São Tomé and Príncipe is affiliated by ensuring the country's participation in their meetings and activities, particularly, in the management of conventions, treaties, agreements, protocols and regulations, through creation of network with the governmental body in charge for foreign affairs;

h) To promote intergovernmental and international cooperation especially in the fields of research, examination and documentation;

i) To implement a system of fees which facilitates the collection of revenues to permit self-funding of the needed services' appropriate functioning and management of raised funds;

j) To publish, in legally established terms, the acts, decisions and other relevant rules regarding Intellectual Property, Standardization, Creation, Accreditation, Metrology, among others;

k) To provide in-service training to its technical staffs and others.

2. With respect to Industrial Property, SENAPIQ-STP accounts for:

a) Addressing applications for protection of industrial inventions, designs and models and provision of information on existing techniques from published patent documents;

b) To protect and regulate, effectively, trademarks, trade names, geographical indications, indications of origin and prevent unfair competition.

3. Regarding Copyright, the SENAPIQ-STP accounts for:

a) Fostering and processing Copyright and Related Rights registration;

b) Designing strategies and policies for cooperation, financing, development and promotion of Copyright and Related Rights.

4. Concerning Standardization, Certification, Accreditation and Metrology, the SENAPIQ-STP is liable to:

a) Promote the conceptual and organizational development of the National Quality System, as well as the respective Standardization, Qualification and Metrology subsystems seeking to integrate all relevant components in order to improve the quality of products, processes and services;

b) Recognize, singularly or jointly with sector's standardization public entities, the competence of private or joint entities to perform sector standardization tasks;

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- c) Promote the design of norms to check suspension periods, public surveys, its approval and ratification and undertake the respective edition and sale;
- d) Coordinate and follow up the norms elaboration works developed by legally competent or renowned entities in sector standardization matters and undertake the ratification of the respective standardizations` draft projects;
- e) Coordinate international standardization works delegated to São Tomé and Príncipe;
- f) Establish the national conformity trademarks;
- g) Certify the conformity of products and services with the standards and authorize the use of the national applicable trademarks;
- h) Undertake the accreditation of public or private Entities for the purpose of its intervention in the National Qualification Subsystem envisaging the certification of products, processes, services and quality systems and the performance of technical inspection and audit tasks;
- i) Carry out legal, applied and scientific metrology activities;
- j) Recognize the national measurement standards and primary metrology laboratories;
- k) Undertake the maintenance and updating of the national metrology standards;
- l) Ensure the implementation, cooperation and inventory of hierarchical chains` measurement standards and promote the establishment of accredited metrological laboratories` networking;
- m)Collect, process and disclose relevant information for the harmonious development of the National Quality System by ensuring information sharing between São Tomé and Príncipe and international entities in this matter;
- n) Ensure the participation of São Tomé and Príncipe into international organizations of standardization, certification and metrology, such as, the International Organization of Standardization (ISO), among others;
- o) Promote and develop formation and support interventions in the field of standardization, accreditation, certification and metrology;
- p) Promote the development and technical equipment of entities in the field of quality;

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q) Ensure the preservation of weights and measures and related metrological assets with historical interest.

5. The SENAPIQ-STP shall also undertake all other duties liable to it by law or regulation.

## **Chapter II Structure and Liabilities**

### **Section I Bodies and Competencies**

#### **Article 5 Bodies**

SENAPIQ-STP comprises the following bodies:

- a) SENAPIQ-STP's Director
- b) Technical Council
- c) Executive Director;
- d) Audit Council

#### **Article 6 The Director**

1. The Director of SENAPIQ-STP is a governing body nominated under dispatch by the Minister in charge for Intellectual Property and is liable to the following accountabilities:

- a) Prepare and submit to the tutelary Minister for approval, by February 28 of each year, the report on the activities and accounts from the previous year;
- b) Prepare and submit to the tutelary Minister, for approval by November 30 of the previous year, the Budget and Work Plan for the following year;
- c) Ensure full accomplishment of SENAPIQ-STP' duties;
- d) Ensure the accomplishment of all regulations related to Intellectual Property, Standardization, Certification, Accreditation and Metrology;
- e) Cooperate with similar international entities envisaging the enhancement of knowledge in this field;
- f) Publish ownership titles requests and applications for Certifications of various forms on Intellectual Property protection;
- g) Grant or deny applications for registration of diverse Intellectual Property modalities;

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h) Grant certifications and ownership titles for protection on diverse Intellectual Property modalities;

i) Ensure the appropriate operation of the SENAPIQ-STP Departments;

j) Carry out other needed interventions pursuant to the SENAPIQ-STP tasks.

k) Make contracts for Consultant services with third parties, according to the SENAPIQ-STP demands, in amounts to be agreed between the Director and the Consultant.

### **Article 7**

#### **The Technical Council**

1. The technical council is the technical consultative body of the SENAPIQ-STP.

2. The Technical Council shall be liable to the following responsibilities:

a) To ensure the implementation of international conventions;

b) To provide technical advice to the SENAPIQ-STP on technical matters requiring profound interventions;

c) To advise the SENAPIQ-STP on disputes, litigation and other issues of diverse nature;

d) To ensure connection between the SENAPIQ-STP and the Courts, if needed.

### **Article 8**

#### **Constitution of the Technical Council**

1. The Technical Council is composed of a Chairman who, by cumulative function, is the Director of the SENAPIQ-STP, by the Executive Director of the SENAPIQ-STP and two Vocals.

2. One of the Technical Council's Vocals must be a Jurist, servicing the SENAPIQ-STP, and the other Vocal must be a competent Technical Officer in the matter, designated by the Chairman of the Technical Council.

### **Article 9**

#### **Functioning of the Technical Council**

1. The Technical Council shall ordinarily meet every three months and extraordinarily whenever the Chairman or the majority of its members so request.

2. The decisions of the Technical Council shall be made by a simple majority of votes.

3. The decisions of the Technical Council shall be written in Acts to be edited by one of its Vocals upon duly supported vote statements.

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## Article 10

### The Technical Council's Accountabilities

The members of the Technical Council shall answer, civil and criminally, for acts or omissions committed pursuant to their duties under the existing national laws.

## Article 11

### Executive Director of the SENAPIQ-STP

The Executive Director is nominated under dispatch by the Director of the SENAPIQ-STP being liable to the following tasks:

- a) To ensure everyday's management of SENAPIQ-STP activities;
- b) To make relevant propositions on relevant procedures and needed instructions for successful approach of trade mark registration processes;
- c) To undertake the statistics of trademark, patents, industrial designs and model, trade names, indications of origin and appellations of origin registrations;
- d) To check the classification of goods and services;
- e) To undertake the assessment of files and their examination;
- f) To coordinate all needed means so that the goals set forth under the creation of SENAPIQ-STP can be achieved;
- g) To supervise the works and good management of Departments;
- h) To design the Annual Work Plan and the SENAPIQ-STP staff training Plan and submit it to the Director for approval.

## Article 12

### The Audit Council

1. The Audit Council is the supervision body to SENAPIQ-STP activities and accounts for the following tasks:

- a) To audit, if the context so requires, the registration and monitor the SENAPIQ-STP's economic and financial status;
- b) To provide an opinion on the Budgetary Plan, Accounts Management and the Annual Reports.

2. The Audit Council, whenever the context so requires, can be assisted by third parties, specifically appointed recruited by the Director of the SENAPIQ-STP.



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## **Article13**

### **Constitution of the Audit Council**

The Audit Council is constituted of a Chairman nominated by the acting Minister of Finance and two Vocals appointed by the Minister in charge for Intellectual Property matters.

## **Article14**

### **Operation of the Audit Council**

1. The Audit Council shall meet, in a quarterly basis, and extraordinarily, if requested by its Chairman or the majority of its members.
2. The Audit Council's resolutions shall be taken by unanimity.
3. The decisions made shall be recorded in duly signed acts, being also acceptable substantiated vote statements.

## **Article15**

### **Remuneration of the Audit Council Members**

1. Members of the Audit Council are entitled to receive remuneration as an allowance for attending to the meetings pursuant to their duties.
2. The amount of such remuneration referred above in paragraph 1 shall be set by the Director, in agreement with the Executive Director of the SENAPIQ-STP, and shall require the approval of the Minister in charge.

## **Section II**

### **Departments and Liabilities**

## **Article 16**

### **Departments**

1. The SENAPIQ-STP comprises the following Departments:
  - a) Industrial Property and Certification Department;
  - b) Copyright and Related Rights Department;
  - c) Normalization and Metrology Department;
  - d) Administrative, Financial and Accreditation Department.
2. The organization chart of SENAPIQ-STP is attached, and constitutes an integral part of this Decree.

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## Article 17

### The Industrial Property and Certification Department

1. The Industrial Property and Certification Department is in charge for management of exclusive industrial property rights of national, regional and international protection through the implementation of actions related to the grant and protection of patents, utility models, trademarks, shop`s name and insignia, logotypes compensations, designations of origin and geographical indications, industrial designs, and other interventions in the framework of SENAPIQ-STP liabilities in the field of certification, such as :

- a) To undertake a formal and substantive examination of applications for protection of diverse industrial property modalities and their classification;
- b) To carry out other interventions regarding grant, maintenance, modification and extinction of industrial property rights, by making the respective endorsements;
- c) To manage the historical asset of industrial property rights;
- d) To ensure the needed documentation networking for regional and international protection of the industrial property modalities implied therein;
- e) To prepare grant certifications or registration and other rights testifying support documents proving the rights;
- f) To take the needed steps in the framework of cooperation with the competent authorities in order to carry out preventive or repressive measures, particularly, in the field of infractions to industrial property and unfair competition;
- g) To ensure an efficient approach to the diverse stakeholders of the national innovation system, particularly, to the economic stakeholders, in strengthening country`s innovation and competitiveness by building specific capacities in the field of industrial property;
- h) To elaborate certification programs, taking into account public or private entities` demands;
- i) To ensure the conformity certification of products, services and quality systems with standards and other technical documents;
- j) To ensure the management of national conformity marks;
- k) To provide technical assistance to corporate and laboratories on the preparation of their respective quality manuals;
- l) To guarantee international relation in the field of certification;

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m) To incentive the management of certification systems.

2. The Industrial Property and Certification Department comprises:

a) Patents Unit;

b) Marks and Certification Unit.

3. The Patents Unit referred above shall be liable to accountabilities referred to in lines a), b), c), d), e), f) and g) of Nr. 1 of this Article.

4. The Marks and Certification Unit accounts for tasks under lines a), b), c), d), e), e), f), g), h), i), j), k), l), and m) of Nr. 1 of this Article.

### Article 18

#### Department of Copyright and Related Rights

1. The Department of Copyright and Related Rights is in charge for guaranteeing the protection and exploration of copyright and related rights` assets, such as:

a) To ensure the national registration of works, computer programs, databases and Related Rights;

b) To undertake, with regards to works, computer programs, databases and Related Rights, the certification of authorship;

c) To carry out intervention seeking Copyright and Related Rights` moral and asset protection;

d) To ensure the exploration and protection of registered works, computer programs, databases and related rights and their compensations to authors, artists, performers, sound and video producers and broadcasting organizations;

e) To design certifications, registration grants and ownership titles, as well as other support documents likely to testify it;

f) To cooperate with the competent entities in the execution of preventive or repressive measures, in the field of infractions to Copyright and Related Rights, by issuing opinions, reports and providing the needed information;

g) To organize and keep updated information systems on existing Copyright and Related Rights;

h) To examine, control and monitor the use of registered works, computer programs, databases and Related Rights;

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j) To study technical propositions for projects, agreements and treaties that concern the area of Copyright and Related Rights and others, providing for their adequate approach by a competent opinion;

k) Develop strategies and policies for cooperation, financing, development and promotion of Copyright and Related Rights.

2. The Department of Copyright and Related Rights comprises:

- a) The Registration Unit;
- b) Studies and Planning Unit.

3 - The Registration Unit shall be liable to powers ascribed under lines a), b), c), d) and e) of Nr. 1 of this Article.

4 - The Studies and Planning Unit shall account for powers referred to in lines f), g), h) i) and j) of Nr. 1 of this Article.

### Article 19

#### Department of Standardization and Metrology

1. The Department of Standardization and Metrology shall be in charge for carrying out the SENAPIQ – STP activities in the field of standardization and metrology, in particular:

- a) To promote interventions on norms rationalization activities;
- b) To design, in cooperation with the National Authorities in charge for sector standardization matters (NSS) or fields outside its jurisdiction, jointly with the Standardization Technical Committees, the design of the annual standardization plan and the corresponding programming to be submitted to the National Quality Council;
- c) To Promote the establishment of new Technical Standards Committees, in a permanent basis or ad hoc;
- d) To coordinate and support the functioning of the Standardization Technical Committees established in the framework of the SENAPIQ-STP;
- e) To implement needed interventions seeking the approval of bills of law, in areas not covered by National Authorities liable to sector standardization tasks;
- f) To promote interventions leading to the ratification and publication of norms;
- g) To ensure connection with national entities responsible for sector standardization duties;

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- h) To promote the adoption of international norms as domestic standards in accordance with the methodology set forth by the National Quality Council;
- i) To ensure the implementation of international standards designing works assigned to Sao Tome and Principe by the International Standardization organizations;
- j) To ensure connection with international standardization organizations and the needed support for national participation in such Entities;
- k) To define the applicable methodologies and criteria to examination of quality's measurement instruments, when provided by law;
- l) To promote and coordinate the reinforcement of metrological control regulations;
- m) To supervise the Central Laboratory of Metrology;
- n) To guarantee the preservation and dissemination of the public metrological asset with historical interest through the Metrology museum;
- o) To build capacities among metrological control staff;
- p) To ensure legal standard system updating, taking into account the recommendations of the General Conference of Weights and Measures.

2. The Department of Standardization and Metrology comprises the following:

- a) Standardization Unit;
- b) Metrology Unit.

3. The Standardization Unit shall be liable to obligations pursuant to lines a), b), c), d), e), f), g), h), i), and j) of Nr 1 of this Article on standardization of the quality system.

4. The Legal Metrology Unit shall be responsible for the development of the National Metrology Subsystem, regarding legislative requirements in this field, and shall account for tasks referred to in lines k), l), m), n), o) and p) of Nr 1 of this Article.

### Article 20

#### Administration, Finance and Accreditation Department

1. The Administration, Finance and Accreditation Department is liable to:

- a) Ensure the procedures related to the constitution, modification and termination of SENAPIQ-STP staffs' legal bond;
- b) Organize and keep updated the staff registration and files;

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- c) Ensure the operations of staffs attendance and seniority registration and monitoring as well as carrying out the interventions on social benefits to which they are entitled;
- d) Oversee the auxiliary personnel;
- e) Prepare the needed elements for the elaboration of the Budgetary Plan;
- f) Ensure the execution of budgets and to record the profits and costs;
- g) Collect revenues and pay the authorized expenditures;
- h) Monitor the cash flows and produce monthly balance sheets;
- i) Organize the annual account management and the needed elements for the preparation of the respective report;
- j) Undertake needed procurement procedures for the normal operation of services and assure managerial works;
- K) Manage the assets and keep organized the respective files;
- l) Assure the management of vehicles;
- m) Ensure the reception, registration, classification, delivery and issuance of correspondence as well as organize and keep updated the SENAPIQ-STP's archive;
- n) Ensuring reprography services;
- o) Ensure international relations in accreditation field;
- p) Ensure Accreditation General Services;
- q) Undertake the disclosure of the Intellectual Property Bulletin and other publications pursuant to quality.

2. The Administration, Finance and Accreditation Department comprises the following units:

- a) The Budget and Accounting Unit, which accounts for activities ascribed under lines e), f), g), h) and i) of the previous Nr of this Article;
- b) The Asset and General Administration Unit, with the powers referred to in lines a), b), c), d), j), k) l), m) and n) and q) of the previous Nr of this Article;

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c) The Accreditation Unit is liable to competences ascribed under lines o) and p) of the previous Nr of this Article.

## Chapter III Operation of the SENAPIQ-STP

### Article 21 Incorporation

1. The SENAPIQ-STP is located at Industry Directorate Facility until the acquisition of its own facility.
2. To the above end, an adequate facility capable to accommodate all SENAPIQ-STP services shall be acquired notwithstanding the normal functioning of the Industry Directorate.
3. The SENAPIQ-STP assets shall be subject to an inventory and constitute the SENAPIQ-STP 's exclusive asset.
4. The Industry Directorate staffs shall integrate, as the context so requires, the SENAPIQ-STP staffs, notwithstanding the above referred ones.
5. Other complementary staff needed for the operation of the SENAPIQ-STP shall be recruited by public bid, on the terms of the Public Services' By-laws, under testified prove of capacity, in form and substance, satisfactory to the SENAPIQ-STP Director.

### Article 22 Cooperation with the Central Laboratory of Metrology

1. The SENAPIQ-STP shall carry out its tasks in cooperation with the Central Metrology Laboratory which is in charge for the creation of the National Metrology Subsystem on the national metrological standards, including the following:
  - a) Ensuring coordination and creation of the national measurement standards and preservation of those ascribed to the SENAPIQ-STP;
  - b) Ensuring the needed accuracy to measurements for the development of the industrial metrology, by coordinating and checking the hierarchical standard chains;
  - c) Organizing national participation in international exercises comparing different standards;
  - d) Coordinate the execution of national benchmarking exercises;
  - e) Participate in the accreditation of Metrological Laboratories.

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## Article 23

### Cooperation with Other Entities

1. The SENAPIQ -STP, apart from the articulating tasks with the entities integrating the structures of the National Quality System, shall also promote needed connections and networks with national and foreign entities for development of its activities.
2. Under dispatch of the Tutelary Minister, specific forms of association and participation of public and private entities in the National Quality System can be established.
3. The SENAPIQ-STP might, under due authorization of the Minister in charge for Intellectual Property matters, provide contributions and participate in management of non-profit entities in objectives assigned to the Service.
4. The SENAPIQ-STP shall also subscribe contributions from public or private entities, national or foreign, in terms to be defined in a joint dispatch by the Minister of Finance and the Minister of Intellectual Property.

## Article 24

### Participation in Exhibitions and Meetings

The SENAPIQ-STP shall organize, sponsor or participate in fairs, exhibitions, seminars, congresses or other activities pursuant to its tasks.

## Article 25

### Publication works Sale and Consultant Services

The SENAPIQ-STP may sell publication works, as well as carry out works and services assigned to it by other entities using the existing table of prices which can be updated upon dispatch of the Minister in charge for Intellectual Property matters.

## Chapter IV

### Ultimate Provisions

## Article 26

### Misunderstandings and Omissions

Misunderstandings and omissions emerging from the interpretation and application of this Decree shall be settled under dispatch of the Minister in charge for Intellectual Property.

## Article 27

### Internal Regulation

Within 60 days period from the publication of this Decree, the Director of SENAPIQ-STP shall submit the Internal Regulations on Copyright and Related Rights and Standardization, Certification, Metrology and Accreditation matters as well as the other aspects set forth herein for approval under a Governmental Decree.



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## Article 28 Revocation

All contradictory provisions to this Decree shall be revoked.

## Article 29 Effectiveness

This Decree shall enter into force as the date of its publication.

Reviewed and approved by the 83<sup>rd</sup> Council of Ministers in S. Tomé these 15 days of May of 2018 by *the Prime Minister and Head of Government, Dr. Patrice Emery Trovoada; by the Minister of Presidency of the Ministers Council and by the minister of Parliamentary Affairs, Dr. Afonso da Graça Varela da Silva; the Minister of Finance, Trade and Blue Economy, Dr. Américo d' Oliveira dos Ramos.*

Promulgated by:

The President of the Democratic Republic of Sao Tome and Principe Republic:

Evaristo do Espírito Santo Carvalho.