

THE NEW INDUSTRIAL PROPERTY CODE



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The new Industrial Property Code (*Código da Propriedade Industrial* – “CPI”) was approved by Decree no. 47/2015 of 31 December and it repeals Decree no. 4/2006 of 12 April. This is the third CPI in the history of the legal rules on industrial property in Mozambique since the post-independence period.

The background to the approval of the new CPI is, essentially, a perspective of modernisation, simplification and efficiency, as the preamble to the new code makes clear. Among the standout innovations of the new CPI are (i) the organisation of scattered legislation into a single instrument (ii) the introduction of new categories of industrial property rights, (iii) a reduction in the time taken for processes in the Industrial Property Institute (IPI), and (iv) the introduction of a system of registration of rights on a regional level.

An effective system of industrial property has the potential to foster scientific, technological and socio-economic development which can, in turn, attract investment, enhance consumer protection and fair trade, and improve access to knowledge.

I. THE ORGANISATION OF SCATTERED LEGISLATION INTO A SINGLE INSTRUMENT

The previous CPI referred to designations of origin and geographical indications as one category of industrial property rights, within the definition of distinctive trade signs. However, the legal framework for this category was established by the Designations of Origin and Geographical Indications Regulation, approved by Decree no. 21/2009 of 3 June. In parallel with this, Decree no. 20/2009 of 3 June introduced amendments to subparagraphs m) and n) of article 1 of article 119 of CPI.

The new CPI sets out the rules on designations of origin and geographical indications in Chapter V, articles 163 to 186. In truth, there has been no substantive change as the legislature went no further than to incorporate the Designations of Origin and Geographical Indications Regulation, approved by Decree no. 21/2009 of 3 June (with no changes), and the amendments to subparagraphs m) and n) of article 1 of article 119 of previous CPI, into the new CPI.

II. THE INTRODUCTION OF NEW CATEGORIES OF INDUSTRIAL PROPERTY RIGHTS

The principle of “legal types” prevails in the area of intellectual property. This means legal protection is only available for categories of rights expressly listed in the applicable legislation. There is, therefore, and innovation in the inclusion of the name of the establishment as a new category of industrial property rights, particularly in the context of distinctive trade signs.

In general terms, the name of the establishment is nothing more than the designation made up of names of people, invented or specific names, or any other names that identify and individualise the physical space where the economic activity is carried on. The name of the establishment is intended to be the name that serves to identify the place of manufacture, processing, storing or sale of products and provision of services.

The procedures for constitution, modification and cancellation of the name of an establishment follow the same dynamic as that of the commercial name and insignia of the establishment. Any person with an interest may apply for registration of the name of the establishment, including farmers, breeders, industrialists and merchants who are domiciled in Mozambique. Once registered, the holder of the name of the establishment has the right to prevent its unlawful use by third parties during the period it is in force – 10 years.

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III. THE REDUCTION IN THE TIME TAKEN FOR PROCESSES IN THE INDUSTRIAL PROPERTY INSTITUTE (IPI)

The waiting times for processes in the Industrial Property Institute (IPI) have been identified as one of the weaknesses, given that response capacity has been relatively lacking in terms of strictly meeting deadlines. An important aspect of this is the reduction in the periods to do certain acts, above all, in the process to register trademarks¹. Article 130(1) of the CPI provides that the deadline to file an opposition to the registration of a trademark is 30 (thirty) days from the publication of the application in the Industrial Property Bulletin (*Boletim da Propriedade Industrial* – “BPI”).

This reduces the time to file an opposition by half, as the old rules allowed a period of 60 (sixty) days from the date of publication of the application in the BPI. In truth, this reduction in the period has the potential to bring greater dynamism to the processing of applications. However, it represents a challenge to the various economic agents operating the market. This is because there has been a reduction in the time to react in the event of a registration application that clashes with the legitimate interests of any interested party.

IV. THE INTRODUCTION OF A SYSTEM OF REGISTRATION OF RIGHTS ON A REGIONAL LEVEL

A trademark is a distinctive trade signs. In turn, trade has the tendency to cross borders and this means that, rather than just registering on a national level, economic agents may choose some form of international registration. International registration of a trademark was already possible under the old rules on the basis of the Madrid System, administered by the World Intellectual Property Organization (WIPO). The new CPI introduces regional registration that can be carried out on the platform of the Banjul Protocol, administered by the African Regional Industrial Property Organization (ARIPO).

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The introduction of regional registration of trademarks gains particular importance because of the fact that some countries are not party to the Madrid System but are signatories to the Banjul Protocol. This broadens the scope of options to expand the registration of trademarks.

With the possibility of regional registration of a trademark, economic agents domiciled in Mozambique can make an application through the IPI to request registration of their trademark in the various countries of the ARIPO that are parties to the Banjul Protocol. For this purpose, the IPI plays the role of receiving office. One of the advantages of this system is the possibility to make an application for regional registration of a trademark using a single form, in a single language, with payment of a single fee.

Other important innovations in the new CPI relate to the broadening and enhancement of the guarantees people have to challenge orders of the Director-General of the IPI. Those with standing to bring challenges, that is, people whose application for registration, opposition or response to an opposition has been rejected or dismissed, enjoy the following guarantees: (i) complaints, (ii) administrative appeals and (iii) litigious appeals.

¹ According to the IPI, trademarks have been the category of industrial property rights that see the greatest demand. As a consequence, they have also been subject to the greatest number of complaints about waiting times.

Any complaint must be addressed to the Director-General of the IPI, who must make a decision within 30 (thirty) days of the filing of the complaint. In turn, any administrative appeal must be addressed to the Minister responsible for the industrial property sector within 30 (thirty) of the date of publication or of the notification of the order. The response must be issued in the form of an order within 30 (thirty) days, with a note that the order does not suspend the process. Finally, any litigious appeal must be addressed to the Administrative Court, bearing in mind the Administrative Litigation Procedure Rules (*Regime do Processo Administrativo Contencioso*).

When it comes to the supervision of industrial property rights, the new CPI gives powers to the National Inspectorate of Economic Activities (*Inspecção Nacional das Actividades Económicas - INAE*). The CPI stresses the cooperation between the INAE and the IPI, as it places emphasis on the joint brigade responsible for investigating infringements.

Another important point is the fact that the Industrial Property Bulletin (BPI) is to be published on a monthly basis, whereas it was only previously published every two months.

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