

**Decree No. 50/2003
of December 24, 2003**

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The Government approved the Industrial Property Code of Mozambique through Decree No. 18/99 of May 4, 1999, thereby enacting positive law in Mozambique on the protection of marks, patents, industrial designs, utility models and other industrial property rights. The same Decree gave the Central Department of Industrial Property the power to administer these rights temporarily, while preparations are being made for a special body to be set up by the Council of Ministers.

With the growing importance of industrial property in Mozambique, there is an urgent need to create such a body, with the capacity to act with the necessary administrative and financial autonomy concerning the administration of the whole system guiding the creation, granting, maintenance, termination and transfer of industrial property rights.

In this context, pursuant to Article 153(l)(e) of the Constitution of the Republic, the Council of Ministers hereby decrees as follows:

Article 1. The Industrial Property Institute, known by the acronym IPI, shall be established. It shall be governed by the statutes appended hereto, which shall form an integral part of the present Decree.

Article 2. The IPI shall be a public institution endowed with independent legal personality and administrative and financial autonomy.

Article 3. The IPI shall be national in scope and shall come under the supervision of the Minister for Industry and Trade

Article 4. The IPI shall be responsible for enforcing the rules governing industrial property rights, taking into consideration the public interest and the technological and economic development of Mozambique.

Article 5. In discharging these responsibilities, the IPI shall be competent:

- a) to propose special policies on industrial property and to monitor the implementation of the measures arising from these policies;

¹ Translator's Note: Official Gazette (Bulletin of the Republic).

- b) to submit proposals for the development and improvement of the legislation on industrial property and to see that it is complied with;
- c) to oversee the granting and protection of industrial property rights, with a view to boosting fair competition;
- d) to keep an up-to-date register of the rights allocated and any alterations thereto, thereby ensuring the continued existence of certified information and the evidence necessary for resolving industrial property disputes;
- e) pursuant to the law, to publish the deeds, decisions and other relevant documents relating to industrial property;
- f) to promote the disclosure of technological information with a view to stimulating a spirit of creativity and innovation, as well as to adopt measures that will encourage the transfer of technologies and the use of patents, by mobilizing a range of partners in public and private-sector teaching and research institutes, civil society and technological development and innovation fund-holders.

Article 6. The human, material and financial resources allocated to the Department of Industrial Property shall be transferred to the IPI.

Article 7. The staff of the IPI shall be approved pursuant to the applicable legislation and shall be subject to the General Statute of State Officials.

Article 8. The establishment of the structure defined in the Organizational Statute and the transfer of personnel from the Department of Industrial Property to the staff of the IPI shall take place within ninety days of the date on which the present Decree enters into force.

Article 9. The Minister with supervisory authority shall approve the regulations of the IPI within ninety days of the date of publication of the present Decree.

Approved by the Council of Ministers, December 2, 2003.

Let it be published
The Prime Minister,
Pascoal Manuel Mocumbi

Organizational Statute of the Industrial Property Institute

CHAPTER I

Nature and responsibilities

Article 1

Nature

1. The Industrial Property Institute, known by the acronym IPI, shall be a public institution endowed with independent legal personality and administrative and financial autonomy.
2. The IPI shall be regulated by the provisions of the present statute and other legislation applicable to legal persons governed by public law.
3. The IPI shall operate under the supervision of the Minister for Industry and Trade.

Article 2

Headquarters

The IPI shall have its headquarters in Maputo and, where justified and with the authorization of the Minister responsible, after consultation with the Minister for Planning and Finance, may, in the exercise of its activities, open or shut down offices or other forms of representation in any other part of Mozambique.

Article 3

Duties

The IPI shall be national in scope and shall have the following duties:

- a) the enforcement of the rules governing industrial property rights, bearing in mind the public interest and the technological and economic development of Mozambique;
- b) the promotion of the activities necessary for the granting and protection of industrial property rights and contributing to efforts in terms of fair competition.

Article 4

Competences

In discharging these duties, the IPI shall be competent to:

- a) contribute to the definition of specific policies on industrial property and to monitor the implementation of the measures arising from these policies;
- b) submit proposals for the improvement and development of industrial property legislation and to ensure that it is complied with;
- c) process applications for invention patents, utility models, industrial designs and the registration of marks, establishment names and signs, appellations of origin and geographical indications, and logotypes, and to classify them;

- d) keep an up-to-date register of the rights granted and any alterations thereto, thereby ensuring the continued existence of certified information and the evidence necessary for resolving industrial property disputes;
- e) publish, pursuant to the law, the acts, decisions and other relevant documents relating to industrial property;
- f) disseminate technological and industrial information with a view to stimulating a spirit of creativity and innovation, and to adopt that will encourage the transfer of technology and the use of patents, by mobilizing a range of partners in public and private-sector teaching and research institutes, civil society and development and innovation fund-holders, in order to maximize access to the public information filed with the IPI.

CHAPTER II

Organization and Operation

Section 1

Bodies and Operation

Article 5

Bodies

1. The bodies of the IPI shall be as follows:
 - a) the Director-General;
 - b) the Governing Board;
 - c) the Supervisory Board.
2. The IPI shall have the following structure:
 - a) Central Services Directorate of Marks and Patents;
 - b) Central Services Directorate of Information;
 - c) Central Services Directorate of Organization and Management;
 - d) Research Department;
 - e) Legal Department.
3. Each Directorate shall be run by a Central Services Director who shall be appointed by the Minister responsible.
4. The Departments shall be run by Central Department Heads appointed by the Minister responsible.

Article 6

Director-General

The Director-General shall be appointed by the Minister responsible.

Article 7

Competences of the Director-General

1. In addition being responsible for implementing the measures arising from his competences, the Director-General of the IPI shall have the powers conferred on him by the Industrial Property Code of Mozambique, in particular he shall be competent:

- a) to decide on the overall direction to be taken by management, to direct the industrial activity of the IPI and to ensure that the Institute carries out its duties;
- b) to decide on the granting, refusal, renewal, revocation and cancellation of patents, marks and other deposits and registrations of industrial property and alterations thereto, signing the relevant acts and certificates relating to said industrial property rights;
- c) to represent the IPI both in and out of court;
- d) to propose the approval of the budget of the IPI;
- e) to manage the human and financial resources, property and general support services of the IPI;
- f) to convene and chair the meetings of the Governing Board;
- g) to promote the IPI's international relations and to ensure the participation of Mozambique and its representation at relevant regional and international events;
- h) to ensure that the IPI is represented on committees and working groups and in other activities of Mozambican and international bodies;
- i) to propose the approval of the internal regulations of the IPI;
- j) to create working groups or structures for projects designed to carry out activities that must not be carried out by one individual organizational unit, and to establish their terms of reference, composition and mode of operation;
- k) to engage in the activities inherent in the management of the IPI.

2. Where the Director-General is absent or unavailable, his substitute shall be a Director appointed in accordance with the conditions to be stipulated in the internal regulations of the IPI.

Section II

Governing Board

Article 8

Composition

1. The Governing Board shall be the consultative body of the IPI, pronouncing on issues brought before it pursuant to this Statute and to the internal regulations. It shall have the following composition:

- a) the Director-General of the IPI, as chair;
- b) the Directors of Services.

2. Other staff with recognized technical and professional expertise may be called on by the Director-General to take part in the sessions of the Governing Board, depending on the issues under consideration.

Article 9

Competences

The Governing Board shall be competent:

- a) to analyze the implementation of the administrative and management policies on industrial property in the context of decisions taken by the State and the Government, and to propose, to the Minister responsible, actions leading to the correct implementation of these decisions; .
- b) to assess the annual and multi-annual activity plans and programs and their respective implementation reports;
- c) to propose the setting up or shutting down of IPI structures;
- d) to issue opinions on any matters relating to financial or property management that may be brought before it;
- e) to issue an opinion on the approval of the internal regulations of the IPI;
- f) to issue opinions on other matters inherent in the running of the IPI.

Article 10

Operation of the Governing Board

The Governing Board shall meet in ordinary session once a month and in extraordinary session whenever it is convened by the Director-General.

Section III

Supervisory Board

Article 11

Composition

1. The Supervisory Board shall consist of three members – the chair and two voting members – appointed for a term of three years, through a joint order of the Minister for Industry and Trade and the Minister for Planning and Finance.
2. When the Supervisory Board is being constituted, the chair and one voting member must be nominated by the Minister for Industry and Trade and the other member shall be nominated by the Minister for Planning and Finance.
3. The duties of the members of the Supervisory Board shall be discharged alongside other responsibilities, without prejudice to the incompatibilities provided for by the law, and shall be remunerated pursuant to the terms to be laid down in a joint order issued by the Minister for Industry and Trade and the Minister for Planning and Finance.

Article 12

Competences of the Supervisory Board

The Supervisory Board shall be competent:

- a) to supervise the management of and ensure compliance with the rules governing the activities of the IPI;
- b) to issue opinions on the budget and statement of accounts;
- c) to examine the accounts and audit the assets.

Article 13

Operation of the Supervisory Board

1. The Supervisory Board shall meet in ordinary session on a quarterly basis and in extraordinary session when convened by the chair.
2. The Supervisory Board may be assisted by experts appointed or contracted for this purpose, or by enterprises specialized in auditing work.
3. The members of the Supervisory Board shall conduct their activities conscientiously and impartially and shall have a duty of confidentiality in relation to any facts that come to their attention in the course of their duties or because of them;
4. Minutes shall be taken at all meetings and shall be set down in special minute books.

Section IV

Structure

Subsection I

Central Services Directorate for Marks and Patents

Article 14

Competences

The Central Services Directorate of Marks and Patents shall act in the sphere of industrial property rights with the aim of ensuring the protection of distinctive commercial signs, the granting and protection of rights to invention patents and the deposit of utility models and industrial designs. In this regard, it shall be empowered to do the following:

- a) oversee the receipt and processing of applications for the national registration of distinctive commercial signs, in particular trade marks and service marks, awards, appellations of origin, establishment names and signs, and applications for the international registration of marks and appellations of origin;
- b) formally examine and analyze applications for the protection of distinctive commercial signs and patents, assessing their compliance with the legislation and the criteria stipulated;

- c) perform acts relating to the granting, refusal, maintenance, alteration and extension of registrations of distinctive commercial signs and record them in the files;
- d) prepare affidavits, certificates and deeds, and other documents proving registration;
- e) with the international secretariat provided for under the Madrid Agreement, maintain the circulation of information and documentation required for the international protection of marks and appellations of origin;
- f) propose actions to prevent or punish unfair competition or counterfeiting in relation to distinctive commercial signs, draft opinions and reports, and provide any information necessary;
- g) oversee the receipt, deposit and registration of patent applications;
- h) classify documents relating to patents and utility models in accordance with the international patent classification and documents relating to industrial designs, in accordance with the classifications applicable;
- i) oversee the granting and management of rights to patents and deposits through the preparation of the relevant title deeds and the processing of the entries resulting from the acts maintaining, altering or canceling them;
- j) prepare affidavits, certificates and other documents requested in relation to patents and deposits, with the exception of search certificates;
- k) prepare information intended for publication in the Industrial Property Bulletin;
- l) conduct a technical examination of applications for the registration of marks and patents in order to verify eligibility for registration and patenting;
- m) organize and keep up-to-date the information systems on prior art searches in relation to applications for the registration of marks and conduct searches concerning the handling of the respective procedures;
- n) process searches for conflicting prior registrations and prepare search certificates;
- o) examine, monitor and supervise the international phase of patent applications and separate international patents deposited in accordance with the Patent Cooperation Treaty;
- p) study technical proposals for projects, agreements and treaties on patents and marks.

Subsection 11

Central Services Directorate of Organization and Management

Article 15

Competences

The Central Services Directorate of Organization and Management shall promote the study and adoption of measures to improve the functioning of the IPI with the aim of ensuring the management, organization and administration of human and financial resources and property. It shall also be responsible for the following:

- a) promoting the drafting of staff management instruments and indicators;
- b) overseeing the administrative procedures relating to staff recruitment and movements and the acts inherent in the legal regime governing them;
- c) studying and proposing measures to train and motivate staff;
- d) proposing and supporting the implementation of measures relating to the organization and simplification of work routines and methods;
- e) promoting staff-training actions;
- f) organizing and keeping the staff register and recording and monitoring attendance;
- g) overseeing the receipt, recording, classification, distribution and dispatch of correspondence;
- h) promoting the systematic improvement of budget management, introducing cost control techniques and helping to draw up the budgets of the IPI;
- i) preparing draft budgets and ensuring that they are implemented;
- j) checking, classifying and processing documents relating to receipts and expenditure and entering them in the accounts;
- k) developing financial management instruments and indicators in accordance with the principles of public service accounting;
- l) overseeing the movement of financial flows, drawing up the respective monthly balance sheets;
- m) overseeing the management of the assets of the IPI and keeping the inventory of its movable and immovable assets in good order.

Subsection III

Central Services Directorate of Information

ARTICLE 16

Competences

The IPI's Central Services Directorate of Information shall be responsible for disseminating and promoting the potential of industrial property among economic agents, organizing, processing and maintaining the technical information on the sector and promoting the computerization of the activities of the IPI. In carrying out these activities, it shall be empowered to do the following:

- a) organize and maintain a specialized library on industrial property and ensure public access to the IPI's information and documentary resources;
- b) process and promote the selective dissemination of the technological information contained in patents and in other industrial property documents;
- c) promote the creation of sources of technological information aimed at enterprises and carry out actions to raise awareness of the industrial property system, in such a way as to stimulate creativity and innovation in production and marketing processes;

- d) oversee the production of IPI publications and microfilming and reprography, as well as to promote the publication of the Industrial Property Bulletin, including subscriptions to journals;
- e) manage public relations for the IPI and the provision of information to users;
- f) keep up-to-date information on the new information technologies and propose the acquisition of information technology (IT) equipment and products;
- g) promote the development and improvement of software and other suitable IT applications in the fields in which the IPI works, in particular with regard to bibliographical information and the management of processes relating to patents, marks, registrations and deposits;
- h) oversee the maintenance of the IPI's IT equipment, in accordance with the applicable technical standards;
- i) carry out the security, verification and maintenance procedures necessary for the smooth running of existing applications and ensure the correction of anomalies or breakdowns;
- j) support users and manage the distribution of the IPI's resources and IT network in accordance with the needs of the services;
- k) promote participation in national and international information networks with a view to setting up and using document databases in the sphere of industrial property.

Subsection IV
Research Department
Article 17
Competences

The Research Department shall provide advisory services to the directors and bodies of the IPI in the exercise of their competences and the fulfillment of their goals and duties, in particular in the sphere of industrial property development policy and planning. In order to carry out these activities, it shall be empowered to do as follows:

- a) provide advice to the directors and bodies of the IPI on the performance of their duties and the fulfillment of their goals and functions;
- b) submit proposals leading to the definition of industrial property management policies;
- c) propose investment priorities in line with the development strategies defined;
- d) study and propose regulations concerning the functioning of the IPI;
- e) propose the creation of special funds to ensure the development of industrial property;
- f) prepare reports and work plans;
- g) prepare regular audit reports on the activities of the IPI and evaluate progress made concerning the work planned.

Subsection V
Legal Department
Article 18
Competences

The Legal Department shall be competent to:

- a) provide legal advice to the Director-General of the IPI in the exercise of his duties and ensure the legality of the actions taken by the IPI in the context of the granting and refusal of industrial property rights;
- b) issue opinions on relevant legal regulations;
- c) in coordination with the office-holders of the bodies of the IPI, draw up regulations, draft legislation, regulations, statutes, grounds for acceding to or ratifying agreements, and/or protocols on industrial property;
- d) take part in the negotiation of agreements, protocols and other legal instruments in coordination with the Director-General;
- e) represent the Director-General of the IPI in court in relation to any litigation or administrative disputes that may arise from the actions of the IPI;
- f) study and issue opinions on the legal regimes for the various forms of industrial property;
- g) investigate the legislative measures concerning intellectual property, and in particular industrial property;
- h) compile and keep an up-to-date database on intellectual property legislation, in particular legislation on industrial property;
- i) cooperate with the judicial and other competent bodies with regard to the development of measures to prevent or punish unfair competition and counterfeiting in the sphere of the usurpation of rights and the exclusive use of patents and distinctive commercial signs, drafting opinions and reports and supplying any necessary information.

CHAPTER III
Financial and Administrative Management
Article 19
Legal regime

In the context of financial and administrative management, the IPI shall be governed by the provisions of this Statute and other applicable legislation.

Article 20
Legally-binding acts in respect of the IPI

The IPI shall be bound by the signature of the Director-General.

Article 21

Acts and contracts

1. Deeds and contracts signed by the IPI, together with their revocation, rectification or amendment, may be certified through private documents.
2. In the case of deeds subject to registration, private documents must contain recognition of the signatures.
3. Documents through which the IPI formalizes any legal transactions, as well as documents it has issued in conformity with the contents of the financial records of the IPI, may be enforced against those shown by them to be debtors of the IPI, irrespective of any other formalities required by law.

Article 22

Property

The property of the IPI shall consist of all the goods, rights and other assets it acquires in the discharge of its duties through purchase, alienation or donation.

Article 23

Management tools

1. The management tools of the IPI shall consist of the following:
 - a) work and financial plans, both annual and multi-annual;
 - b) annual budgets;
 - c) annual activity reports and annual accounts.
2. The accounts of the IPI must include an analytical component that ensures appropriate budgetary control.
3. The IPI shall submit its management tools to the Minister responsible for approval.

Article 24

Revenue and expenditure

1. The following shall constitute the IPI's own revenue:
 - a) the income from fees paid during the deposit and registration of patents, utility models, industrial designs, marks, establishment names and emblems, logotypes, appellations of origin, geographical indications and awards, and other amounts of a pecuniary nature that may be assigned to it;
 - b) the proceeds from the sale of services or publications;
 - c) any other income that may be allocated to it by law or contract or for any other reason;
 - d) other amounts resulting from the alienation of its own assets.

2. The following shall constitute other revenue of the IPI:

- a) funding allocations from the State Budget;
- b) funding allocations, along with equity and subsidies bestowed upon it by any, public or private entities, whether national or international;
- c) gifts and grants made by individuals or collective bodies, whether Mozambican or foreign.

3. The expenditure of the IPI shall consist of the following:

- a) its operating costs;
- b) purchase and maintenance costs and other costs entailed in the performance of its duties.

Article 25

Allocation of funds and reserves

In allocating any financial surplus, the following reserves shall be set up as a minimum, with the procedures for their use being approved by the Governing Board:

- a) the Research Fund;
- b) the Investment Fund;
- c) the Fund for annual contributions to regional and international organizations.