

# MADAGASCAR

## **Decree No. 92-994 on the Creation and Organization of the Malagasy Industrial Property Office (OMAPI)**

**(of December 2, 1992)\***

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### **Title I**

#### **Legal Nature and Tasks of OMAPI**

**1.** There is hereby set up a “Malagasy Industrial Property Office,” abbreviated as OMAPI and hereinafter referred to as “the Office,” under the technical supervision of the Minister responsible for industry and the financial supervision of the Minister responsible for finance.

**2.** The Office is a public establishment of an industrial and commercial nature enjoying legal personality, administrative and financial autonomy and technical independence in the execution of its tasks.

**3.** The administration of the Office shall not be subject to the rules of public accounting, but shall be governed by the provisions of this Decree.

**4.** The headquarters of the Office shall be located in Antananarivo. Agencies may be set up in other localities by a joint order of the Ministers responsible for technical supervision and financial supervision.

**5.** The aim of the Office shall be to administer industrial property in Madagascar, as referred to in Article 2 of Ordinance No. 89-019 of July 31, 1989, and to promote inventive activity. Its duties shall include:

— receipt and examination of applications for patents for invention and inventors’ certificates, their registration, issue of patents and inventors’ certificates and their publication;

— receipt and examination of applications for trademarks and service marks, their registration and their publication;

— receipt and examination of applications for industrial designs, their registration and their publication;

— receipt and examination of applications for trade names, their registration and their publication;

- receipt and registration of all acts relating to industrial property rights, licensing, contracts and assignment of such rights;
- application of the provisions relating to industrial property, its protection, industrial awards, appellations of origin and indications of source;
- application of the international treaties with respect to industrial property to which Madagascar is party;
- control and registration of technology transfer.

6. For the execution of its tasks, the Office shall be entitled to carry out any industrial, commercial or financial operation in relation to its duties defined in Article 5 of this Decree.

## **Title II Structure**

7. The Office shall have the following organs:

- the Administrative Council,
- the Directorate General.

### *Chapter I Administrative Council*

8. The Administrative Council is the organ that administers the Office. Its responsibilities shall include:

(1) adopting the program of activities of the Office and ensuring it is implemented after verification by the authority responsible for technical supervision of its compliance with the sectorial policy of the department;

(2) establishing

— the general staff regulations of the Office in accordance with the provisions of the Code of Labor,

— the organism and internal regulations of the Office,

— the allowances to be paid to the members of the Administrative Council;

(3) appointing, on a proposal by the Director General, the senior staff of the Office;

(4) adopting the budget of the Office;

(5) taking decisions on:

— any proposal for the construction and purchase of real estate,

— office equipment programs,

— any loan entered into by the Office,

— any disposal of the Office's movable and fixed assets and any mortgage or pledging of its assets;

(6) examining and approving the financial accounts and balance sheet at the end of the financial period;

(7) taking decisions on participation by the Office in other companies;

**9.** The Administrative Council may delegate to the Director General of the Office all or some of its powers.

**10.** The Administrative Council shall comprise the following members:

- a representative of the Ministry responsible for industry;
- a representative of the Ministry responsible for finance;
- a representative of the Ministry responsible for trade;
- a representative of the Ministry responsible for scientific research;
- a representative of the Ministry responsible for justice;
- three representatives of the economic operators.

**11.** The representative of the Ministry responsible for industry shall preside the Administrative Council.

**12.** The members of the Administrative Council shall be appointed by order of the Minister responsible for industry on a proposal by the Ministries and bodies concerned for a renewable term of office of three years.

**13.** The Administrative Council shall meet at least twice a year and as frequently as circumstances require at the request of either the Chairman, of an absolute majority of the members or of the Director General.

**14.** Save for an emergency, in which case the Chairman may act by means of circular, the Administrative Council shall take its decisions in Council sitting.

**15.—(1)** The deliberations of the Administrative Council shall be valid only if an absolute majority of its members are present.

(2) Its decisions shall be taken on an absolute majority of the members present at the meeting. In the event of equal voting, the vote of the Chairman shall be decisive.

**16.** The Administrative Council may only deliberate validly on matters entered on the agenda. Ten days at least before the meeting, the items entered on the agenda shall be communicated to all members of the Council.

**17.** The Director General shall attend the sittings of the Administrative Council in a consultative capacity. The secretariat of the Council shall be provided by the Directorate General.

**18.** The Administrative Council may call upon other persons to participate in its meetings in relation to specific questions. However, such persons may only have a consultative role and may not participate in the deliberations.

*Chapter II*  
*Directorate General*

**19.** The Office shall be directed and administered by a Director General appointed by order in Council of Ministers on a proposal by the Minister responsible for industry.

**20.**—(1) The Director General shall be generally responsible for achieving the aims of the Office in compliance with the directives given by the Administrative Council. He shall be responsible, amongst other things, for:

- carrying out the program of activities and executing the decisions of the Administrative Council;
- representing the Office in court and with respect to other parties;
- organizing the services of the Office and defining their tasks;
- preparing and executing the budget of the Office;
- drawing up the financial accounts and the report on the technical execution of the program of activities at the end of each period;
- drawing up and concluding contracts, conventions and agreements in the name of and on behalf of the Office.

(2) The Director General shall also enjoy those powers delegated to him by the Administrative Council.

**Title III**  
**Financial and Accounting Organization**

**21.** The financial year of the Office shall begin on January 1 and shall end on December 31.

**22.** The Office shall possess an autonomous budget executed by the Director General of the Office, the administration of which shall be subject to the rules of commercial accounting and the applicable general accounting plan.

**23.** A sliding account of forecast results over three years, an annual account of forecast results, an annual forecast treasury account and the annual forecast of income and expenditure shall be drawn up by the Director General and submitted to the Administrative Council for approval.

**24.**—(1) The annual account of forecast results, the annual forecast treasury account together with the annual forecast of income and expenditure shall be communicated for approval to the supervisory Ministries one month before the opening of the financial period for which they have been drawn up.

(2) These accounts and statements shall be deemed accepted if they have not been approved by December 31 of the current year.

**25.** The funds of the Office shall be deposited in bank or postal accounts. The Director General shall be responsible for administering such accounts.

**Title IV**  
**Resources of the Office and Their Verification**

- 26.** The resources of the Office shall include, in particular:
- the revenue from all authorized levies with respect to industrial property;
  - all receipts that may be obtained by the Office in return for services rendered;
  - the proceeds from the sale of publications;
  - income from assets and the proceeds of their sale;
  - subsidies from the State, local authorities and private bodies;
  - various endowments, particularly within the framework of conventions and agreements;
  - funds obtained through authorized loans;
  - dividends from holdings of the Office;
  - all other resources, in particular from donations, legacies, gifts and competition funds;
  - and in general, all revenue related to the activities of the Office.

- 27.** The outlay of the Office shall be constituted in particular by:
- expenditure on the running and equipment of the Office;
  - expenditure involved in participation by Madagascar in international industrial property treaties;
  - the refund of loans;
  - and in general, all expenditure related to the activities of the Office.

**28.**—(1) The services provided by the Office shall be paid for in accordance with the tariffs shown in a general schedule drawn up by the Director General and approved by the Administrative Council.

(2) Failing tariffs, the fees shall be fixed at the real and total production costs, taking into consideration all overheads incurred plus a profit margin deemed adequate with respect to the competitive situation of the Office.

(3) Services of an exceptional nature or importance and that are not included in the general schedule shall be subject to the conclusion of contracts or agreements between the Office and the persons enjoying those services.

**29.**—(1) The Office shall be subject to verification by the Audit Chamber of the Supreme Court.

(2) Independently of internal checks and audits which the Director General may carry out for his own purposes, the accounts of the Office shall be subject to an annual audit carried out by an independent auditing firm designated by the Administrative Council. The audit report shall be communicated to the technical and financial supervisory authorities for their signature and approval.

(3) The provisions of this Article shall not preclude verification by the Inspectorate General of the State or any other controls which the Administrative Council or the financial supervisory authority feel it necessary to carry out, at any time, with respect to the financial management of the Office.

**30.**—(1) Within the six months following the closing of each financial period, the Director General of the Office shall submit to the Administrative Council for approval:

- a report on the technical execution of the program of activities;
- the financial accounts;
- the audit report.

(2) Approval by the Administrative Council shall only constitute final discharge if the audit report has been signed without objection by the technical and financial supervisory authorities.

## **Title V** **Miscellaneous**

**31.** The public buildings made available to the Office with full rights of possession shall be administered in accordance with the regulations on real estate applicable to the property of the State. In particular, the proceeds from any sale shall accrue to the State, except for any added value of the buildings which may be repaid to the Office.

**32.** The Minister for Industry and Crafts, the Minister for Finance and the Minister for the Budget and the Plan shall be responsible, each where he is concerned, for the implementation of this Decree that shall be published in the Official Gazette of the Republic.

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\* *Official French title:* Décret n° 92-994 portant création et organisation de l'Office Malgache de la Propriété Industrielle (OMAPI).

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*Note:* Translation by the International Bureau of WIPO.

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