

# INTELLECTUAL PROPERTY HANDBOOK



The logo for Pioneer Law Associates features the word "PIONEER" in a large, bold, black sans-serif font. A stylized graphic element, consisting of a blue square with a white diagonal line, is positioned between the "O" and "E". Below "PIONEER", the words "LAW ASSOCIATES" are written in a smaller, black, all-caps sans-serif font.

# PIONEER

## LAW ASSOCIATES

*Pioneer Law Associates ("**Pioneer Law**") was founded in 1982 by four lawyers recognized for professional specialization in their respective practice areas, and with a vision to create institutional set up to provide expert legal services in the areas of commercial, civil and criminal laws. Since the concept of institutional legal practice with specialization in multiple practice areas was a new one at that time, Pioneer Law pioneered a new trend and hence the name "**Pioneer**". Since then, Pioneer Law has evolved as a full-service law firm and is recognized as a leading commercial law firm in Nepal. Pioneer Law continues to be a pioneer as a full-service law firm with highly regarded specialization in commercial laws.*

*We also strongly believe in knowledge sharing and disseminating our knowledge to the legal fraternity and stakeholders, through academic presentations and publications. We hope that the IP Handbook will be helpful to provide some background to the current law and practice in this area.*

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# 1. TRADEMARK

*A trademark is any word, symbol, or picture or a combination thereof used by any firm, company or individual in its products or services to distinguish them with the product or services of others.*



## 1.1. Relevant Laws and Authorities

- 1.1.1. In Nepal, the protection and enforcement of Trademark is regulated by Patent Design and Trademark Act, 1965 (2022) ("PDTA") (annexed in Schedule I).
- 1.1.2. Department of Industry ("**DOI**") is the appropriate authority to register and administer trademark.
- 1.1.3. Nepal follows the International Classification of Goods and Services for the purpose of trademark registration ("**Nice Classification**"). The International Classification Under the Nice Agreement comprises:
  - a List of Classes, accompanied by explanatory notes; the list comprises 34 classes of goods and eight classes of services (annexed in Schedule II);
  - an Alphabetical List of Goods and Services ("the Alphabetical List"), giving the class in which, each product or service is classified.
- 1.1.4. Nepal does not have a system of multi-class application; therefore, separate applications must be filed for separate classes.

## 1.2. Trademark Registration Requirement

- 1.2.1. Nepal follows Registration based Protection system and thus it is important to register a trademark to obtain protection. The PDTA Section 16 provides that anyone can accrue rights over a trademark used or to be used in respect of their business or commercial transactions, by registering the trademark in the DOI.
- 1.2.2. Additionally, Section 21B of the PDTA strictly requires that foreign trademarks need to be registered in Nepal in order to obtain protection.
- 1.2.3. Protection based on Use: The PDTA does not explicitly guarantee protection of a trademark based on use and reputation. However, in some instances, the DOI has protected few trademarks despite lack of registration on the grounds of well-known-ness of such trademarks. (Please refer to the Topic on Well-known Trademarks).

## 1.3. Registrability of a Trademark

- 1.3.1. Pursuant to Proviso clause of Section 18 (1), a trademark may not be registered or cancelled if already registered (Section 18(3)), if the trademark:
  - i. hurts the goodwill and reputation of any individual or institution, or
  - ii. effects on the public conduct or morality or national interest, or
  - iii. undermines the reputation of the trademark of any other person, or
  - iv. has already been registered in the name of another person or entity.
- 1.3.2. Additionally, although not expressly provided in the PDTA, being a member to Paris Convention for the Protection of Industrial Property (annexed in Schedule III), trademarks bearing Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations, including State Flags (as per Article 6ter) are also not registrable.
- 1.3.3. Similarly, a mark must not be descriptive or suggestive of a product or service and must also not be Generic, to be eligible for registration. Sometimes, a trademark having geographical indication may also not registrable as a trademark.

## 1.4. Registration of a Foreign Trademark

- 1.4.1. Foreign trademarks are registered entirely on the basis of Foreign Trademark Registration ("**Base Registration**"). Therefore, in case of a foreign entity, if a trademark has not been applied or registered any country outside Nepal, DOI will not entertain their request of application in Nepal.

### 1.4.2. Required Documents:

- i. Application in the format prescribed by the PDTA;
- ii. Home/Foreign Registration Certificate, duly notarized by Notary Public;
- iii. Power of Attorney (POA) duly notarized by Notary Public;
- iv. Label in 8x8 cm. in 4 sets, in case of a logo/label mark;
- v. Home/Foreign Registration Application, if the trademark is pending registration (for initial filing only);
- vi. Notarized document substantiating date of first use of Nepal, if the trademark is already in use in Nepal.

### 1.4.3. Additional Information Required for application:

- i. Date of First Use of the trademark in Nepal;
- ii. Special Meaning or Description of Origin of the trademark;
- iii. Elements in trademark having and not having exclusive rights.

### 1.4.4. Priority Claim:

- I. A foreign applicant has the right to claim priority in respect of a trademark, for which the foreign filing has been made not more than 6 months prior. A priority claim is an allowance based on Article 4 of the Paris Convention for the Protection of Industrial Property. It enables the owner of a filed trademark to file subsequent trademark applications in any of the Convention's signatory countries using the effective date of your first application as long as you file the subsequent applications within six months of your original trademark application.
- II. Section 21C of the PDTA allows recognition of priority right as per the Paris Convention for the Protection of Industrial Property 1883.

## 1.5. Registration of a Local Trademark

- 1.5.1. Any legally established and operating local entity can apply for registration of a trademark in the relevant class in line of their objectives.
- 1.5.2. Important groundwork before applying a trademark is identifying the class under which the proposed goods or services fall. Nice Classification should be assessed in line with the Company and/or Industry objective of the applicant.
- 1.5.3. Additionally, before applying for a trademark, it is essential to first conduct a search of possible names for the trademark, in the relevant class section, to avoid duplication and possible rejection or objection in the future.

### 1.5.4. Required Documents:

- i. Application in the format prescribed by the PDTA (in Nepali language);
- ii. Incorporation Documents (Memorandum of Association or Article of Association);
- iii. Industry Registration Certificate (Essential in case of trademark relating to goods);
- iv. Company Registration Certificate;
- v. PAN Registration Certificate;
- vi. Power of Attorney (POA) (in Nepali language);
- vii. Label in 8x8 cm. in 4 sets, in case of a logo/label mark;
- viii. In case of service mark, approval from the concerned authority to carry out such service (if relevant).

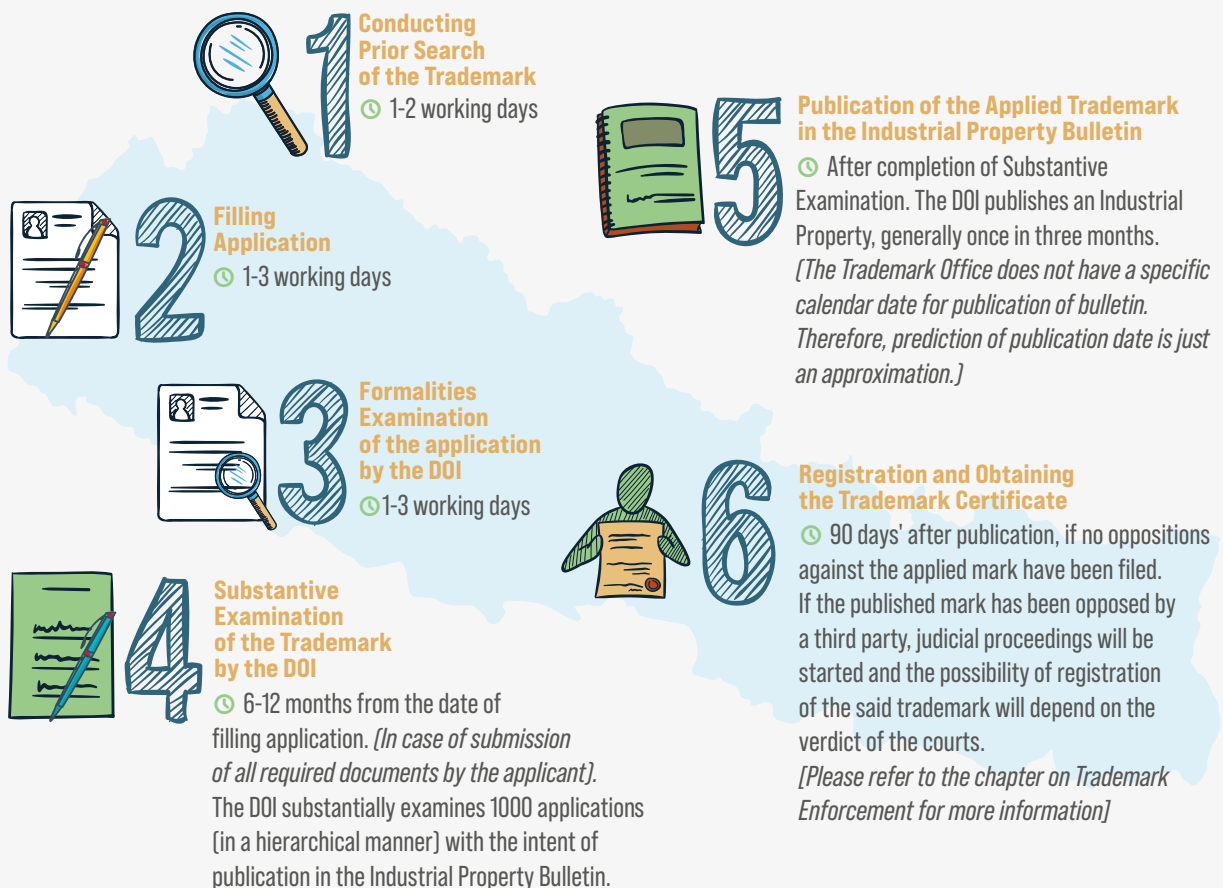
### 1.5.5. Additional Information Required for application:

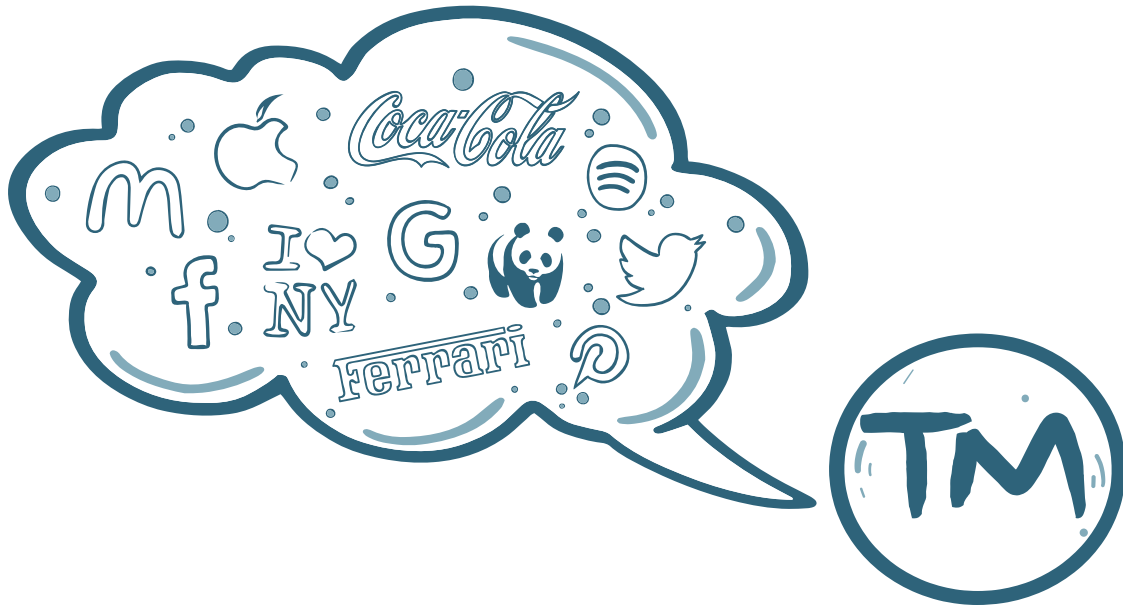
- i. Goods or services for which the applicant seeks protection;
- ii. Class under which the applicant seeks to register the trademark (As per Nice Classification);
- iii. Date of first Use of the trademark (If the trademark has already been brought to use);
- iv. Description of origin, or special meaning of the proposed mark;
- v. Elements in trademark having and not having exclusive rights.



## 1.6. Time Taken for Registration

1.6.1. It generally takes about 9-16 months from filing date to get registration certificate if all the required documents have been submitted along with the application and if no opposition on the trademark is raised by the DOI or any other third party.





## 1.7. Term of Protection

- 1.7.1. A trademark once registered is valid for an initial term of 7 years from the date of registration. The term may be renewed indefinitely for a term of seven years' each.
- 1.8. The trademark must be renewed within 35 days of expiry by paying the prescribed government fee. However, grace period of 6 (six) months is provided from the date of lapse of the initial 35 days after expiry to renew a trademark, by paying additional government fee.

## 1.9. Unauthorized Use of Trademark

- 1.9.1. Section 19 of the PDTA lists out what constitutes unauthorized use and sets out the punishment for such unauthorized use.
- 1.9.2. The following acts are unauthorized use of a trademark:
- Copying or using or causing to use in the name of the others, the trademark registered in the name of any person, without transforming the ownership or obtaining written permission;
  - Using a trademark that has been cancelled by the DOI for being in contravention of the Proviso clause of Section 18(1) of the PDTA;
  - Using a trademark as a registered trademark, without registration in the DOI or use of the ® symbol without valid registration as per Trademark Operational Guidelines 2015 (2072).
- 1.9.3. The same Section 19 refers to applicable punishment in case of any of the above-mentioned unauthorized use of a trademark.
- Fine up to Nepalese Rupees One Lakh as per the gravity of the offence;
  - Confiscation of all goods, materials relating to the unauthorized use.
- 1.9.4. Section 25 of the PDTA also provisions for Compensation. In case a person whose trademark has been registered under this Act, suffers any loss as a result of violation by any other person, the DOI has the authority to order the offender to compensate the amount to the owner.

## 1.10. Well-Known Trademark

- 1.10.1. Well-known Trademark can be defined as a mark which has become so well known to the substantial segment of the public which uses such goods or receives such services, that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first mentioned goods or services.
- 1.10.2. Nepal currently does not have clear provisions dealing with well-known trademark. However, in interpretation of Proviso clause of Section 18(1) of the PDTA, which states that where the proposed trademark is likely to hurt the reputation of the trademark of the other, such proposed trademark may not be registered, it might be understood that the concept of protection of well-known trademarks against passing off is somewhat adopted.
- 1.10.3. The DOI and High Court in a few cases has protected Well-known marks against infringement. Although there are no clear standards for determination of a well-known mark, the DOI has prepared a vague set of determinants in a letter addressed to the High Court in a trademark related dispute. As per the same, the factors, inter alia, which contribute to the determination of a well-known mark are as follows:
- The scope of the goods/service covered by the trademark and the identity among the consumers,
  - The period of trademark use & geographical coverage,
  - Geographical coverage of promotional advertisements and associated costs,
  - Geographical coverage of trademark registration and duration of protection,
  - Steps taken by the owner to protect the trademark,
  - The creator and true owner of the trademark, user of the trademark and continuity of the trademark use, and
  - Recognition of the trademark as being well-known by courts or Intellectual Property Office of some other country or listing by famous magazines or broadcasting media.

## 2. PATENT

*Patent is a monopoly right conferred by that statute on an inventor to exploit his invention for a limited period of time. Patent can be granted to any invention if it fulfils the criteria of patentability; new/novel, inventive step and capable of industrial application.*

### 2.1. Relevant Laws and Authorities

- 2.1.1. In Nepal, the protection and enforcement of Patent is regulated by Patent, Designs, Trademarks Act, 1965(2022) ("PDTA"). A Patent registered in any foreign country can be registered in Nepal in the name of person, firms and companies based on the foreign registration ('Base Registration').
- 2.1.2. Department of Industry ("DOI") is the appropriate authority to register and administer patent rights.

### 2.2. Protection of Patent under PDTA

- 2.2.1. Section 2(a) defines patent as any useful invention relating to a new method or process or manufacture, operation or transmission of any material or a combination of materials, or that made on the basis of a new theory or formula.
- 2.2.2. A patent has to be registered in Nepal for obtaining protection. Section 3 of the PDTA provides that, a person desirous of obtaining a right over any patent is required to register such patent in his/her name.
- 2.2.3. Additionally, Section 21B of the PDTA strictly requires that foreign patents must be registered in Nepal in order to obtain protection.

### 2.3. Conditions for Patentability

- 2.3.1. Section 6 of PDTA provides circumstances in which patent cannot be registered which are as follows:
  - a. If the patent is already registered in the name of any other person,
  - b. If in case the applicant him/herself is not the inventor of the patent sought to be so registered nor has acquired the rights over it from the original inventor,
  - c. In case the patent sought to be registered is likely to adversely affect public health, conduct or morality or the national interest, or
  - d. In case the registration of the patent will constitute a contravention of existing law of Nepal.

### 2.4. Process of Registration of Patents

- 2.4.1. A person desirous of obtaining a patent has to file an application before the DOI along with all the necessary information and documents supporting the claims of the patent applicant.

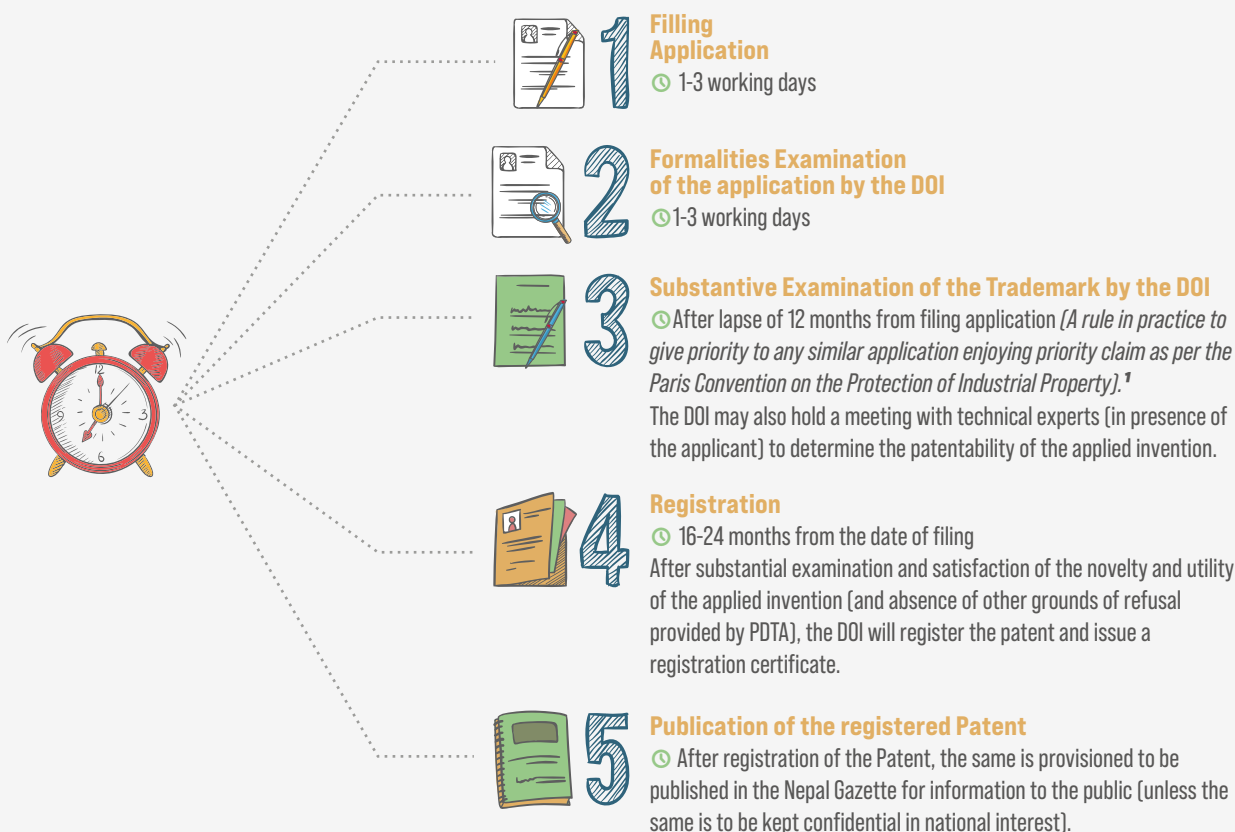
#### 2.4.2. Documents required:

The Documents as mentioned below documents are required to be submitted for the registration of patent along with the application. The DOI may require specific documents to be notarized:

- a. Application for the registration of Patent in the prescribed format;
- b. Power of attorney, duly notarized by Notary Public;
- c. Name, address, occupation of the person or the company of inventor of the patent;
- d. If the applicant is not the inventor of the patent, the document giving right to the applicant by the inventor;
- e. The method of using or operating or making of such patent;
- f. If such patent is based on any specific principal of formula, such principal or formula;
- g. Patent Specification along with patent description, drawings and patent claim; Foreign Patent Registration Certificate and Patent Filing Details, duly notarized by Notary Public (in case of a foreign patent);
- h. In case of foreign applicant, Foreign Patent Application, duly notarized by Notary Public (in case of priority claim within 12 months of filing application outside Nepal);
- i. Identification documents of the patent applicant, in case of a local patent;
- j. Additional document may be requested by the DOI.

- 2.4.3. Priority Claim: A foreign applicant has the right to claim priority in respect of a patent, for which the foreign filing has been made not more than 12 months' prior under the Paris Convention.

- 2.4.4. Time taken for registration: It may take at least 1 to 2 years (may be more time) to issue the registration certificate of Patent after the application (with complete documents and fee) has been submitted to the DOI.



<sup>1</sup> The priority under the Paris Convention is a right of a person who has filed a patent application in a country of the Union of the Paris Convention (the first country). Such a person may enjoy a benefit for his/her patent application in another country of the Union (the second country), for the purpose of determination of novelty, inventive step, etc., to be treated as filed on the filing date of the application in the first country.

## 2.5. Term of Protection

- 2.5.1. The title of the patentee to the patent is valid only for a period of seven years from the date of registration.
- 2.5.2. The registration can be renewed twice for a period of seven years at a time (Total 21 Years).
- 2.5.3. The patent has to be renewed within 35 days of expiry by paying the prescribed government fee. However, grace period of 6 (six) months is provided from the date of lapse of the initial 35 days after expiry to renew a patent, by paying additional government fee.

## 2.6. Unauthorized Use of Patent

- 2.6.1. Section 3 of the PDTA prohibits any third party from copying or using or causing to use in the name of the others, the patent registered in the name of any person, without transforming the ownership or obtaining written permission.
- 2.6.2. As per Section 11 of PDTA, any person, who makes unauthorized use of another's patent may be fined as per gravity of offense by the order of the DOI and the goods or commodities related to the offense will be confiscated:
  - a. A fine of up to Five Hundred Thousand Rupees for committing the offense;
  - b. A fine of up to Two Hundred and Fifty Thousand Rupees for attempting to commit or incitement of the offense.
- 2.6.3. Section 25 of the PDTA also provisions for Compensation. In case a person whose patent has been registered under this Act, suffers any loss as a result of violation by any other person, the DOI has the authority to order the offender to compensate the amount to the owner.

## 2.7. Publication of Registered Patent

- 2.7.1. As per Section 7A of the PDTA, registered patents, other than those which must be kept secret in the national interest, should be published in the Nepal Gazette for the information of the public.
- 2.7.2. Anyone is free to inspect or copy the particulars, maps, or drawings of a patent published in the gazette upon payment of the fees prescribed by the DOI.
- 2.7.3. In case anyone has any objection to such a registered patent, one may file a complaint with the DOI within a period of 35 days from the date of seeing or copying the patent information.

# 3. INDUSTRIAL DESIGN

*An industrial design is generally the ornamental or aesthetic aspects of a product. It may consist of three-dimensional features, such as the shape or configuration of an article, or of two-dimensional features, such as images, pictures, drawings, and so on that rely on patterns, lines, or colors.*

## 3.1. Relevant Laws and Authorities

- 3.1.1. In Nepal, the protection and enforcement of Industrial Design is regulated by PDTA. A Design registered in any foreign country can be registered in Nepal in the name of person, firms and companies based on the foreign registration ('Base Registration').
- 3.1.2. Department of Industry ("DOI") is the appropriate authority to register and administer patent rights.

## 3.2. Protection of Design under PDTA

- 3.2.1. Section 2(b) simply defines design as the form or shape of any material manufactured in any manner.
- 3.2.2. A design has to be registered in Nepal for obtaining protection. Section 12 of the PDTA provides that, a person desirous of obtaining a right over any design is required to register such design in his/her name.
- 3.2.3. Additionally, Section 21B of the PDTA strictly requires that foreign designs must be registered in Nepal in order to obtain protection.

## 3.3. Eligibility for Registration of Design

- 3.3.1. Section 14 of PDTA provides circumstances in which a design cannot be registered, which are as follows:
  - i. if the design hurts the prestige of any individual or institution;
  - ii. if the design adversely affects the public conduct or morality;
  - iii. if the design undermines the national interest;
  - iv. if the design has already been registered in the name of any other person.

## 3.4. Process of Registration of Designs

- 3.4.1. A person desirous to register the design of any article manufactured or caused to be manufactured under, can submit an application in the prescribed format along with four copies of such design and maps, and drawings and particulars thereof.

### 3.4.2. Documents Required:

- a. Application in the prescribed format;
- b. Document disclosing the following information:
  - ii. Measurement, map of the Design (Four copies);
  - iii. Description of claim proving novelty of design;
  - iv. Identification Details of the owner
- c. Specimen of design if possible;
- d. Drawings with definitions and 3D view of the design;
- e. Duly notarized Foreign Design Registration Certificate (in case of foreign applicant);
- f. Duly notarized Foreign Design Registration Application of any other countries (in case of claiming priority);
- g. Duly notarized Power of Attorney;
- h. Any other information/documents that might be relevant to the Design.

- 3.4.3. Priority Claim: A foreign applicant has the right to claim priority in respect of a design, for which the foreign filing has been made not more than 6 months' prior under the Paris Convention.

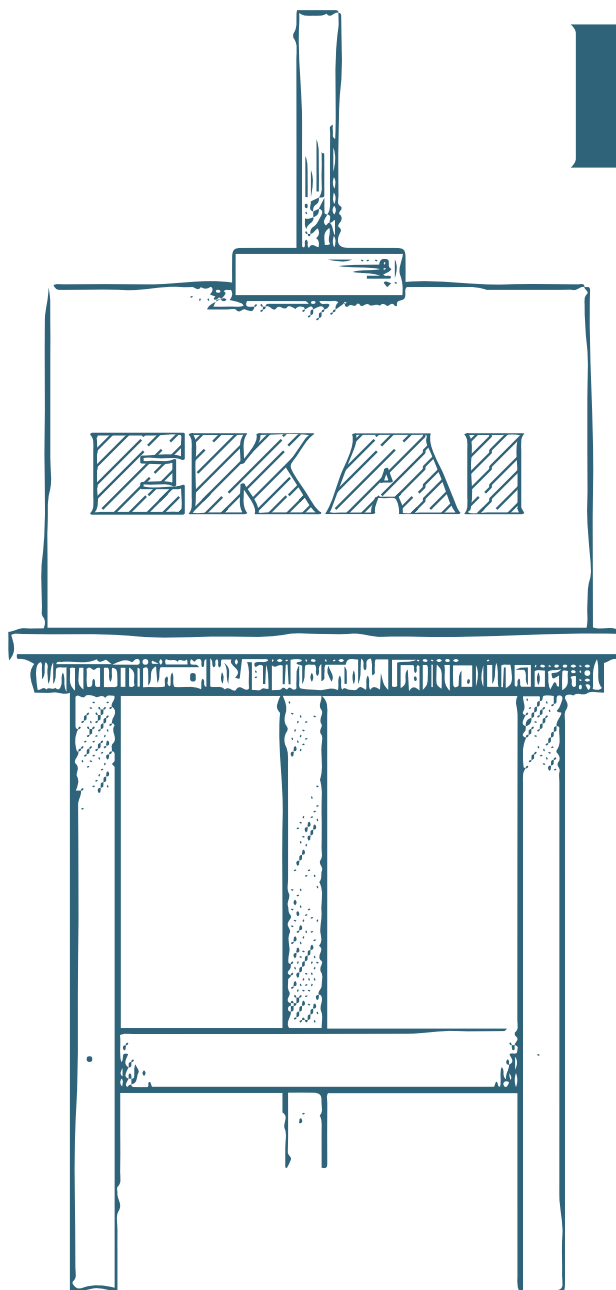
### 3.4.4. Time taken for registration

It may take at least 8 to 20 months (may be more time) to issue the registration certificate of Design after the application (with complete documents and fee) has been submitted to the DOI.



### 3.5. Term of Protection

- 3.5.1. The title of the design owner in the registered design is valid only for a period of five years from the date of registration.
- 3.5.2. The registration can be renewed twice for a period of five years at a time (Total 15 Years).
- 3.5.3. The design has to be renewed within 35 days of expiry by paying the prescribed government fee. However, grace period of 6 (six) months is provided from the date of lapse of the initial 35 days after expiry to renew a design, by paying additional government fee.



# IKEA

### 3.6. Unauthorized Use of Design

- 3.6.1. Section 12 and 15 of the PDTA prohibits any third party from copying or using or causing to use in the name of the others, the design registered in the name of any person, without transforming the ownership or obtaining written permission. It also prohibits use of a cancelled design (by the order of the DOI).
- 3.6.2. As per Section 15 of PDTA, any person, who makes unauthorized use of another's registered design may be fined up to Fifty Thousand Rupees as per gravity of offense by the order of the DOI and the goods or commodities related to the offense will be confiscated.
- 3.6.3. Section 25 of the PDTA also provisions for Compensation. In case a person whose design has been registered under this Act, suffers any loss as a result of violation by any other person, the DOI has the authority to order the offender to compensate the amount to the owner.

### 3.7. Publication of Registered Design

- 3.7.1. As per Section 21A of the PDTA, registered designs may be published for the information of the public.
- 3.7.2. In case anyone has any objection to such a registered design, one may file a complaint with the DOI within a period of 35 days from the date of publication.



## 4. ASSIGNMENT OF INDUSTRIAL PROPERTY

*Industrial Property (Patent, Design and Trademark) is transferable from one owner to another like any tangible property. An Assignment of Intellectual Property Rights grants the buyer ownership and consequently the right to use the intellectual property. PDTA governs the assignment of Industrial Property and Section 21D of the PDTA requires the Assignment or transfer to be in written to be valid.*

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4.1. The parties to assignment (Assignor and Assignee) both have to file a joint application before the DOI, stating the willingness to assign and obtain the trademark, accompanied by the prescribed fees.

4.2. Recordal of assignment is mandatory for enforcement of rights by the new owner against the Industrial property so transferred. Following assignment, the ownership of the industrial property rights and obligations will be transferred to the Assignee, relinquishing all the rights and liabilities of the previous owner i.e. the Assignor.

4.3. Documents required to record the assignment before the DOI:

**4.3.1. Documents required in case of Foreign parties:**

- a. Joint Application for Recordal of Assignment from the Assignor and Assignee (duly notarized);
- b. Industrial Property Assignment Agreement (Duly notarized);
- c. Original Registration Certificate;
- d. Joint Power of Attorney from both the Assignor and Assignee (duly notarized);

**4.3.2. Documents required in case of Local parties:**

- a. Joint application for Recordal of Assignment from the Assignor and Assignee Assignment Agreement (in Nepalese language);
- b. Identification verification letter (Sanakhat patra) duly signed by the authorized representatives of the local party (in Nepalese language) before the officials in the DOI; Affidavit for relinquishment of title (Hak Chodpatra) (in Nepalese language);
- c. Original Registration Certificate;
- d. Industrial Property Assignment Agreement;
- e. Board minute of the parties showing intent to sell/buy the industrial property;
- f. Power of attorney allowing a specific person to carry out the recordal on behalf of the parties (in Nepalese language).

## 4.4. Essentials of an Assignment Agreement

4.4.1. In an Assignment agreement, there are two parties involved i.e. the “Assignor” who transfers the industrial property rights, and the “Assignee” who buys the industrial property rights.

4.4.2. The essentials of a basic standard Assignment agreement are as follows:

I. **Identification of the Parties -**

The party transferring (“assigning”) ownership interest is termed the Assignor while the party receiving it is known as the Assignee.

II. **Recitals** to define the background of the assignment and provide relevant information about the parties, including a statement of intent to transfer rights in industrial property.

III. **Definitions** to define relevant terms used throughout the contract in order to avoid confusion and ensure that these terms will have the same meaning to the parties of the agreement.

IV. **Assignment of Industrial property** which includes:

- a complete and concise description of the property being transferred;
- details, including any relevant applications or registrations for intellectual property protection and “goodwill” (business reputation) sold with the property [“Goodwill” is the intangible value of an asset, reflecting the commercial value of said asset (e.g. trademark reputation and distinctiveness among customers).

V. **Obligations of the Parties -**

It is important to clearly define:

- the obligations of the parties in order to avoid any subsequent conflict with regards to the extent of these obligations;
- the exact definition and extent of the parties’ obligations depend on the type of intellectual property transferred;
- the main obligation of the Assignor is to transfer the ownership of the intellectual property assets and the main obligation of the Assignee is to pay a lump sum (royalties) agreed;
- other obligations are those related to the Assignor’s rights to the industrial property transferred.



VI. **Liability and warranties provisions -**

relates to the assignor’s right and authority to enter into such an agreement; such as the guarantee that the assignor is the exclusive owner of all rights, title and interest in the Industrial property and that the Property is valid and subsisting; that the Industrial property transferred does not infringe the rights of third parties.

VII. **Indemnification** detailing each party’s future obligations, if in case the transferred industrial property is found to infringe on a third party’s rights.

VIII. **Payment provisions**

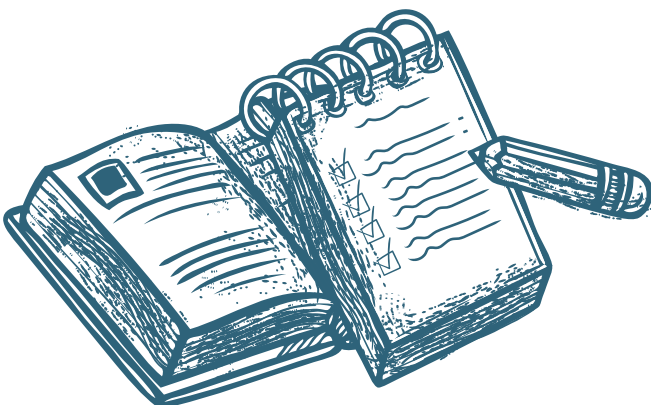
agreed price and other commercial terms.

IX. **Effective Date of Assignment** identifies the effective date of the assignment.

X. **Applicable law and jurisdiction** which national law will apply if a conflict arises; identification of a competent court or an arbitration/mediation body to which a dispute could be referred is also important.

XI. **Other Common Boilerplate clauses**

XII. **Annex** detailing the description of the Industrial Property transferred.



# 5. COPYRIGHT

*Copyright is a right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing them.*



## 5.1. Relevant Laws and Authorities

- 5.1.1. Copyright Act 2002 (2059) ("**Copyright Act**") (annexed in Schedule IV) and Copyright Rules 2004 (2061) (Copyright Rules) (annexed in Schedule V) are the main legislation governing the Copyright in Nepal.
- 5.1.2. Nepal Copyright Registrar's Office ("**NCRO**") is the main authority which registers and administers copyright in Nepal. The District Court is empowered to settle the disputes relating to Copyright in Nepal.

## 5.2. Subject matter of Copyright Laws

- 5.2.1. Article 2(a) of the Copyright Act provides the categories of work eligible for protection under the Act. Any work presented originally and intellectually in the field of literature, art and science and in other field are eligible for protection which are as mentioned:
  - i. **Artistic work:** Fine Arts, Architectural design, painting, work of sculpture, work of woodcarving, lithography, and other work relating to architecture, photographic work, map plan and work of applied art.
  - ii. **Musical works:** Musical notion with or without words and Audio-visual works
  - iii. **Dramatic work:** Drama, dramatic-music, dumb show and a work prepares to perform in such manner.
  - iv. **Computer Programs**

## 5.3. Rights protected under Nepalese Copyright Laws

- 5.3.1. **Economic right:** Economic right, inter alia, includes the right to reproduce the work, translate the work, revise or amend the work, make arrangement and other transformation in the work, sell, distribute or rent the original and copy of the work for the general public, communicate the work to the general public.
- 5.3.2. **Moral right:** The author holds moral rights to be cited with his/her name or pseudonym over his/her work and right to prevent mutilating of his/her work which effect the reputation and goodwill and the right to amend or revise his/her work.
- 5.3.3. **Related Right:** Copyright Act has also recognized the related rights which includes right of performer, recording producer and broadcasting organization.

## 5.4. Term period of protection of Copyright

The term period for protection of copyright are listed below:

- i. Economic and moral rights available to the author are protected throughout the life of the author and next fifty years of death.
- ii. Joint authorships are protected for the period of fifty years computed from the year of death of the last surviving author.

## 5.5. Copyright Registration

5.5.1. Copyright protection in Nepal is based on principle of automatic protection. Section 5 of the Copyright Act provides that no compulsory registration is required for the protection of copyright in Nepal, but one may register the copyright and other related rights voluntarily.

### 5.5.2. Documents Required for the registration:

- a. Application of copyright registration;
- b. Copyright registration Certificate if Copyright registered in foreign country (if any);
- c. Two copies of the Work;
- d. Power of Attorney (POA);
- e. Document of Incorporation of the Company (in case of a company);
- f. Citizenship certificate of the creator/owner (in case of individual);
- g. Agreement with designer (it should be notarized by notary public), other documents such as production, reproduction, sale distribution and rent, if any;
- h. The document disclosing the detail information regarding the Work (abstract/meaning of the work).

### 5.5.3. Additional Information Required for registration:

- a. Date of incorporation of the applicant's company/firm
- b. Registration Number of company/firms
- c. Date of completion of the work
- d. Country and date where the work was published for the first time

### 5.5.4. Time taken for Registration

It will take about 5-12 months for a Copyright to be registered.

## 5.6. Fair Use of Copyrighted Materials under Copyright Act

- 5.6.1. Private Use: The reproduction of "some part" of a published work for private use is allowed under Article 16 (1). However, reproductions consisting of a "substantial amount" of the work are subject by law to the condition that they do not prejudice the economic rights of the author or copyright owner.
- 5.6.2. Teaching and Illustration: The Copyright Act contains an exception for the use of works in teaching, subject to the condition that such uses do not undermine the economic rights of the author or copyright owner. The permitted uses, as laid down in Article 18(1), extend to the reproduction of short excerpts from any published works, by way of illustrations, writings (publication) or audio-visual recordings.
- 5.6.3. Library and Archival Use: Public libraries and archives which supply materials to individuals for research and private studies without any profit motive can, under Article 19, reproduce a single copy of any work in their possession that has been lost or damaged or old or where such work cannot be acquired.
- 5.6.4. Reproduction for Information Purposes: Article 20 of the Copyright Act allows reproduction, the broadcasting and the communication to the public of a work for the purposes of public dissemination.
- 5.6.5. Public Exhibition: Article 23 of Copyright Act contains a provision by which anyone is free to make a public exhibition of the original or a copy of a work, without the authorization of the author or copyright owner. Such exhibition must take place without the use of cinematography, slides, television, screens, or any other mechanical devices.
- 5.6.6. Reproduction of Computer Programs: Article 21 permits the free reproduction of a single copy of a computer program in the case where such reproduction is necessary in order to utilize the program or for the purpose of a back-up copy, or in the case where a lawfully acquired computer program has been lost or destroyed or rendered unusable.



## 5.7. Copyright Infringement

5.7.1. As per Section 25 of the Copyright Act, anyone who carries out the following act is considered to have infringed the right protected under the Copyright Act:

- a. To reproduce, sell and distribute copies of a work or sound recording or publicly communicate or rent them with commercial or any other motive with or without deriving economic benefits without authorization of the author or the copyright owner or by infringing the terms contained in the agreement or license notwithstanding that such authorization has been obtained,
- b. To do advertisement or publicize by copying a work belonging to another person with a motive of taking advantage of the reputation gained by that work,
- c. To make work of another subject or nature by changing the form and language of a work belonging to another person with a motive of deriving economic benefit,
- d. To make an attempt to take benefit by adapting any work directly or indirectly with intention of making the viewer, listener or reader believe it to be another work through advertisement or by any other means,
- e. To import, produce or rent any equipment or device prepared with intention of circumventing any device designed to discourage the unauthorized reproduction,
- f. To produce or import, with intent to sell, any equipment facilitating unauthorized reception of a program broadcast by encrypting it in a code language,
- g. To import, sell, distribute and use a mechanical device prepared with a sole object of infringing the copyright, except those mentioned in Clauses (e) and (f).

5.7.2. As per Section 26 of the Copyright Act, importation of copies of work or sound recording, either made in a foreign country or sourced otherwise, into Nepal for business purpose is not permitted if preparation of such copies would be considered illegal if they were prepared in Nepal. If anyone does so, such a person may be punished with a fine of a sum from ten thousand to one hundred thousand rupees according to the gravity of the offense, and such copies will be seized; and compensation for the loss caused to the copyright owner from such importation will also be realized from the importer and provided to the copyright owner.

5.7.3. **Punishment:** In cases where any person infringes Section 25, such a person shall be punished with a fine of a sum from ten thousand to one hundred thousand rupees or with imprisonment for a term not exceeding six months or both and with a fine of a sum from twenty thousand to two hundred thousand rupees or with imprisonment for a term not exceeding one year or with both for each instance from the second time. The materials so published or reproduced or distributed or devices used to reproduce such materials shall be seized.

5.7.4. **Compensation:** As per Section 27(1), Compensation for the loss caused to the copyright owner by the infringer of the protected right shall also be realized and provided to the copyright owner.

5.7.5. In cases where any person infringes any other matter contained in Copyright Act or the Rules framed under the Act, such a person may be punished with a fine of a sum from five thousand to fifty thousand rupees according to the gravity of the offense.

5.7.6. The civil and criminal remedies that be sought under the Copyright Act are dealt here below:

### I. Civil Remedies:

#### A. Temporary and Permanent Injunction to Restrain others from using the Product related to the Copyright

- b. Pursuant to Section 36 of the Copyright Act, in cases where, in the course of trying and settling a complaint pursuant to the said Act, the District Court, at the request of the concerned party, thinks it reasonable to stop any activity infringing copyright, it may order the concerned person or body to stop such activity.
- c. Copyright Rules makes similar provision relating to the power of Custom Officer to restrict importation of goods in violation of copyright.

#### B. To claim damages or an account for profit

- a. Pursuant to Section 27(2) of the Copyright Act, Compensation for the loss caused to the copyright owner by the infringer of the protected right is also realized and provided to the copyright owner.

### II. Criminal Actions:

#### A. Conducting Raids and Seizure of the Infringing Goods or Labels, Advertising and Printing Materials, etc.

- a. Pursuant to section 32 of the Copyright Act, in cases where any person doubts that any one has published or reproduced or is about to publish or reproduce any work or sound recording contrary to the provisions of the said Act then such person can lodge a complaint before the police.
- b. The police have to make necessary arrangements for preventing the copies of such work or sound recording from being sold and distributed and may, in cases where required, search the copies of such work or sound recording and seize the same pursuant to the law in force.

#### B. Penalty for infringement and Penalty amount up to NRS 10,000 to 100,000 or Imprisonment for the term up to 6 (six) months or both including Seizure of Infringing Materials

- a. Pursuant to section 27(1) of the Copyright Act, in cases where any person infringes copyright under the said Act, such a person is punished
  - with a fine of a sum from ten thousand to one hundred thousand rupees or with imprisonment for a term not exceeding six months or both, for the first instance and,
  - with a fine of a sum from twenty thousand to two hundred thousand rupees or with imprisonment for a term not exceeding one year or both for each instance from the second time.
 The materials so published or reproduced or distributed or devices used to reproduce such materials are also seized.
- b. Section 29 of the Copyright Act provides that, in cases where any person infringes any other matter contained in said Act or the Copyright Rules, such a person is punished with a fine of a sum from five thousand to fifty thousand rupees according to the gravity of the offense.

# 6. TECHNOLOGY TRANSFER

## 6.1. Definition of Technology Transfer

6.1.1. Technology transfer is the transfer of technology between an industry registered in Nepal and the foreign investor, through an agreement. Technology transfer generally includes the following:

- Patent, design, trademark, goodwill, technological specificity, formula, process;
- User's license, technological know-how sharing or use of technological knowledge (franchise);
- Provision of foreign technical adviser, management and marketing service or other technological skill or knowledge.

## 6.2. Relevant Law and Authorities

6.2.1. The relevant laws dealing with matters related to foreign investment are: (a) Foreign Investment and Technology Transfer Act 2019 (2075) ("**FITTA**") (annexed in Schedule VI); and (b) Foreign Exchange (Regulation) Act 1962 (2019) ("**FERA**").

6.2.2. Department of Industries ("**DOI**") and Nepal Rastra Bank ("**NRB**") are the main regulatory bodies with regards to Technology transfer.

## 6.3. Scope of Technology Transfer

6.3.1. There is no concept of "**Negative list**" in Technology Transfer as it is allowed in all the industrial sectors.

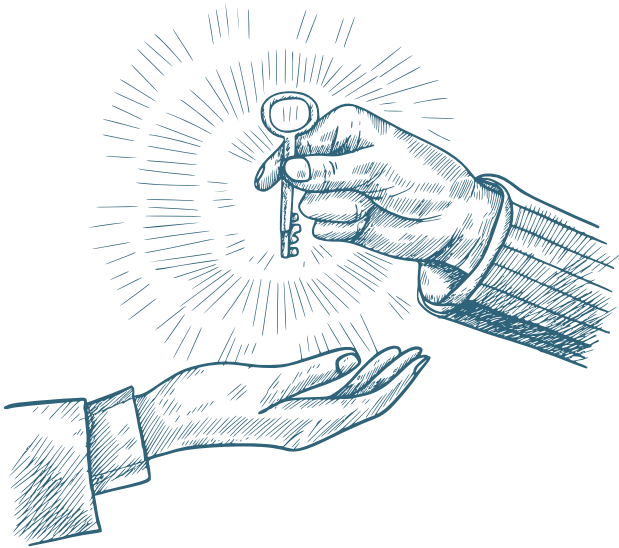
6.3.2. The terms of technology transfer should be in accordance to agreement related Technology Transfer. Such agreement has to be approved from the approving authority for foreign investment i.e. DOI.

6.3.3. Approval of NRB is essential for repatriation of royalty/ license fee. The FITTA provides that NRB has to be notified once the approving authority (DOI) has approved the Technology Transfer. Additionally, an approval of NRB is an added requirement under FERA and NRB Circular.

## 6.4. Documents Required for Technology Transfer

S.N.	Documents Required	Notary Requirement
1.	Application as prescribed [1 copy]	No
2.	Technology Transfer Agreement [2 original copies]	No
3.	a. Industry Registration Certificate of Local Party [Certified]	Or Notary
	b. Certified Copy of Project Report [1 copy, not applicable for TTA Renewal]	No
4	Board Resolution of the Concerned Company receiving the Transfer of Technology and POA granting authority to the TTA signatory [1 copy]	No
5.	a. Copy of Passport of Foreign Party "Provider" in case of an individual transferring technology [1 copy]	Yes
	b. Bio-data of Foreign Party "Provider" in case of an individual transferring technology [1 copy, self-certified]	No
	c. Copy of Technical Know-How of Foreign Party "Provider" in case of an individual transferring technology [1 copy, Certified]	No
6.	In case the Provider is a Foreign Company: a. Decision in Relation to the Transfer of Technology and Decision Regarding the Grant of Authority to the Authorized Signatory Authorized to Sign the TTA [1 copy]	No
	b. Copy of Certificate of Incorporation of Company [1 copy, Certified]	Or Notary
	c. MOA, AOA of the Company, English Translation if Required [1 copy, Certified]	Or Notary
	d. Company Profile [Self-Certified]	No
7.	Documents Substantiating the Details of the Authorized Signatory	No





## 6.5. Franchising

- 6.5.1. Pursuant to Section 2(f) (2) of FITTA franchising falls under the concept of Technology Transfer.
- 6.5.2. The Nepalese legislation does not specifically provide the definition of franchising. However, in general sense there are two parties involved in franchising i.e. "franchisor" who is the provider of the franchise and "franchisee" who is the receiver of the franchise.
- 6.5.3. Franchising is a relationship in which the franchisor provides a licensed privilege for a business in return for a consideration from the franchisee.
- 6.5.4. The most common form of franchising is Business Format Franchising which includes the product service and trademark as well as the entire business concept from marketing strategy plan, operational standards, systems and formats, training, quality control, guidance and supervision.

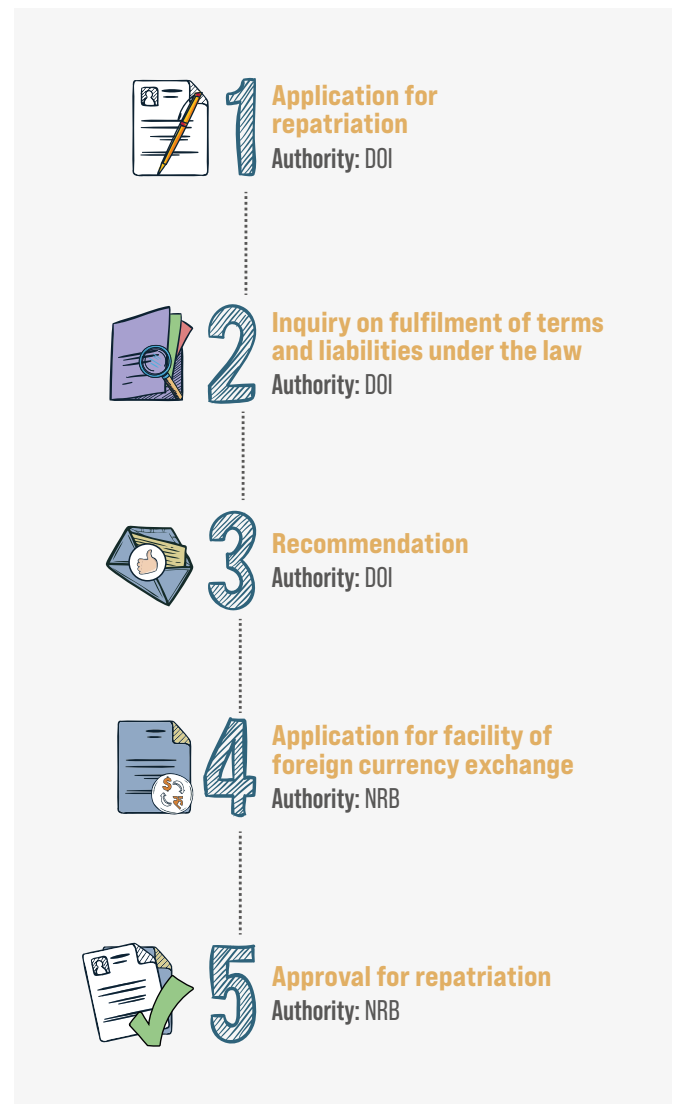
## 6.6. Foreign Trademark Registration in Nepal

- 6.6.1. The pre-condition for franchising of foreign trademarks in Nepal is that the trademark should have a local registration i.e. it should be registered in Nepal. A trademark not registered in Nepal cannot be licensed via franchising to a third party.
- 6.6.2. Likewise, there should not be any variation in trademark to be licensed and the locally registered trademark which means that the trademark to be licensed should be a replica of the locally registered trademark.
- 6.6.3. In case and after the trademark is registered in Nepal, the franchise agreement between the Franchisor and the Franchisee should be submitted in the DOI for the approval.
- 6.6.4. The process of franchise cannot be completed until and unless the franchise agreement along with the required documents gets approved by the DOI.

## 6.7. Repatriation

- 6.7.1. Pursuant to Section 20 of FITTA the franchisor can repatriate money. The FITTA provides that a foreign investor can repatriate all forms of investment in accordance to prevailing laws and after paying all the taxes. Foreign investor can repatriate the amount in the same currency of investment or in other convertible foreign currency after getting it approved from the NRB.

### 6.7.2. Steps for repatriation:



- 6.7.3. Following documents will be required at the time of requesting for repatriation. The DOI may ask for submission of additional documents.

- i. Application form (by the concerned industry)
- ii. Decision of Board of Directors
- iii. Approved Technology Transfer Agreement
- iv. Shareholder's Book endorsed by Office of the Company Registrar
- v. Proof of Investment through banking channel
- vi. Audit Report
- vii. Tax Clearance Certificate

## 6.8. Cap on Royalty Fee

- 6.8.1. The amount exceeding royalty as affixed in technology transfer agreement cannot be repatriated. The law provides that amount of royalty or net profit for use of technology cannot be more than prescribed percentage except for 100% export liquor industry. Generally, the Government authorities consider the rate of royalty or service fee on a case to case basis.

## 6.9. Term of Franchising

- 6.9.1. There is not any specific law governing term period of licensing via franchising of foreign trademark in Nepal. In general practice DOI approves for the term period of 5 years. After the expiry of term period renewal of licensing can be done with the approval of DOI.

## 6.10. Permanent Establishment

- 6.10.1. The Income Tax Act 2002 defines and elucidates about Permanent Establishment in Nepal. Section 2 (as) of the Income Tax Act defines 'Permanent Establishment' as one or more places within a country where a person furnishes (whether through employees or otherwise) technical, professional or consultancy services in a partial or absolute manner for a period or period aggregating more than 90 days within any 12 months period. In this milieu, Technology Transfer can fall under the scope of Permanent Establishment.
- 6.10.2. However, with regards to an Indian Company the definition of Permanent Establishment is slightly varied. According to the Double Tax Avoidance Agreement (DTAA) 'Permanent Establishment' includes delivering services by an enterprise through employees or other personnel where the activities continue within the country for a period or periods aggregating more than 183 days in any twelve months period. As per Section 68 (1) of the Income Tax Act the responsibility of tax payment of a permanent establishment of a non-resident in Nepal lies in such establishment.
- 6.10.3. In accordance with the Income Tax Act the tax will be charged on the income repatriated by the Permanent Establishment in Nepal to the concerned foreign country. Similarly, the income repatriated by the non-resident from the Permanent Establishment in Nepal should be equal to the dividend distributed in that specific income year.

## 6.11. Essentials of a Franchise Agreement

- 6.11.1. In a normal franchise agreement there are at least two parties involved i.e. the "Franchisor" who lends the trademark or other intellectual property right, business system and the "Franchisee" who pays the royalty and other initial fee for the right to run the business under the Franchisor's name and business system.
- 6.11.2. Essentials of a basic standard franchise agreement are as follows:
- Territory of the Franchise
  - Subject Matter of Franchise
  - Intellectual property rights Licensing and Protection
  - Obligation of the Franchisor
  - Obligation of the Franchisee

- Consideration/Royalty Fee Advertising Obligations
- Duration of the Franchise
- Termination
- Renewal possibility and procedure
- Indemnification
- Dispute Settlement
- Jurisdiction/Governing Law

## 6.12. Licensing and Franchising

- 6.12.1. In normal perspective 'Franchising' and 'Licensing' might be considered as interchangeable terms. However, both the terms are related but not interchangeable. Licensing is a relationship between the "Licensee" and the "Licensor" that is limited to use of a trademark or technology. Licensing is a process of transferring certain rights related to the use of trademark of company for manufacturing, distributing, advertising etc. to other entity. The owner and the sub-licensor transfer the right over the trademark in exclusive and non-exclusive basis to the licensee and sub-licensee. Licensing of trademark can take place in two different forms; one where the licensor is the true owner of the trademark; other, where the licensor is not the true owner of the trademark, nevertheless, has the right to sub-license the license it has obtained from the true owner.
- 6.12.2. Franchising on the other hand is a relationship between the "Franchisor" and "Franchisee" that goes beyond the scope of licensing a brand or trademark and involves where primary business related with the brand should operate in accordance with the stipulated system/design and procedure of the Franchisor. As in Licensing, a Franchising can also involve a sub-franchisee as per the agreement concluded between the Franchisor and Franchisee.
- 6.12.3. The main differences between Franchising and Licensing therefore lies in the business operation. Licensing includes a kind of consideration for instance, licensing fee for using the Licensor's trademark and the Licensee can exercise the freedom to operate the business in their own way.
- 6.12.4. However, in Franchising the Franchisor does not only include control over the Intellectual Property but also retains control over the operation and provisions the Franchisee with the know-how to operate and run the business. The Franchisor trains the franchisee to ensure that it is equipped to effectively comply the business system.
- 6.12.5. The most common model of Franchising is the Business Format Model which uses an inclusive system for conducting the business using elements such as business planning, management system, location, appearance, image and quality of goods to ensure standardization, consistency and uniformity between the business conducted by the Franchisor and Franchisee.



# 7. TRADEMARK ENFORCEMENT

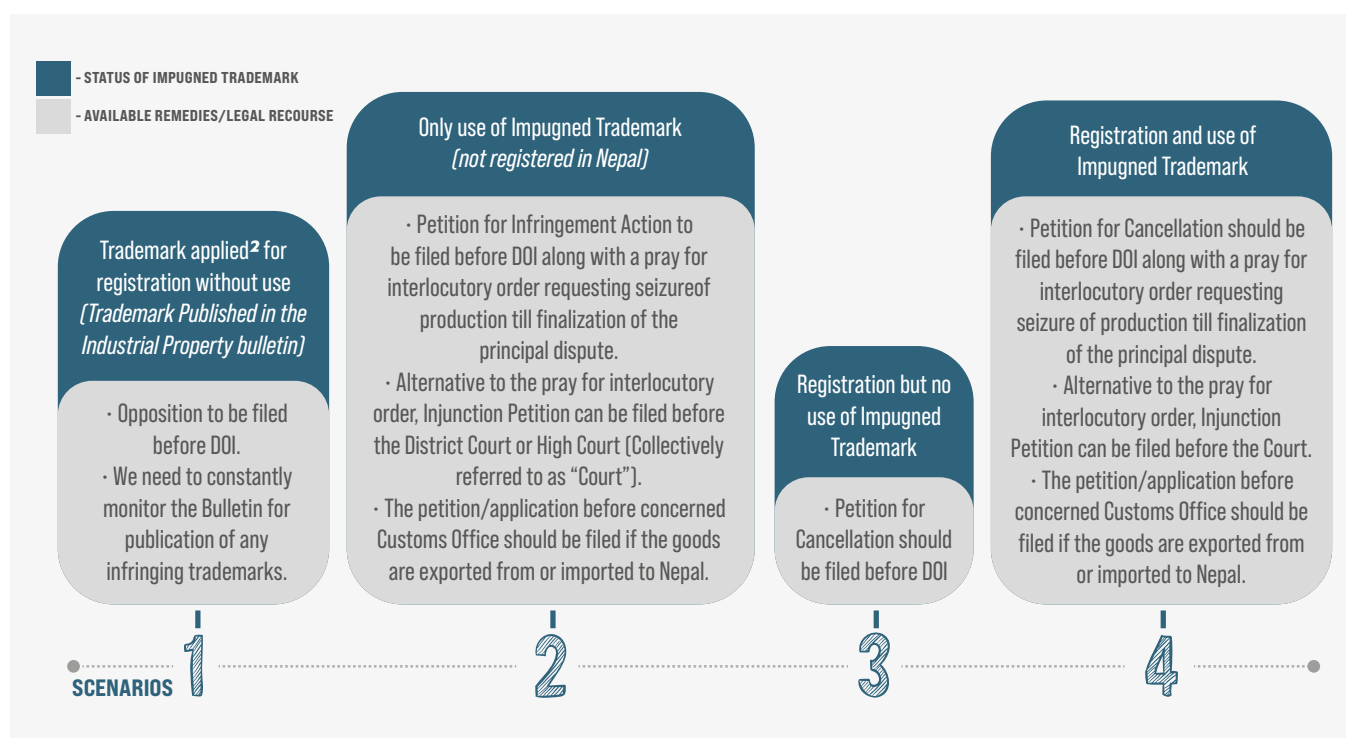
## 7.1. Relevant Law and Authorities

- 7.1.1. Patent, Design and Trademark Act, 1965 (2022) ("**PDTA**") is the main legislation governing the trademark, among other things, in Nepal. Beside the PDTA there are other legislations that deal with, to some extent, the matter relating to intellectual property rights in Nepal. Such other legislations include (a) the Custom Act, 2007 (2064) ("**Custom Act**"), (b) the Black Marketing and Some Other Social Offences and Punishment Act, 1975 (2032) ("**Black Marketing Act**"), and (c) Export and Import Control Act, 1957 (2013) ("**Export and Import Act**").
- 7.1.2. Department of Industry ("**DOI**") is the authority which registers and administers industrial properties (i.e. Patent, Design and Trademark) in Nepal. DOI also works as the quasi-judicial body for the settlement of dispute related to industrial property. Custom Act provides right to Custom Office to stop the import and export to the goods infringing intellectual property rights including trademark.

7.2. The legal recourse on trademark issue depends on the nature of infringement or the stage of infringement.

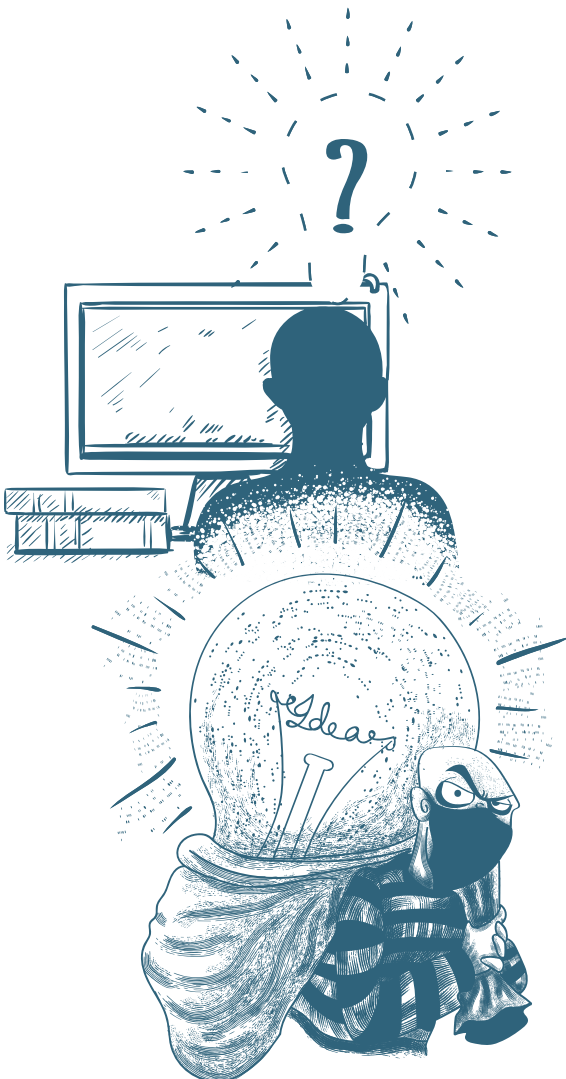
7.3. The following table gives brief assessment of available remedies in line with the nature of infringement by other goods/services bearing identical or similar trademark.

**2** The term Trademark Applied denotes trademark applied for the registration of trademark.



7.4. Thus, the remedy available for the trademark infringement can be classified broadly as (a) filing petition for opposition (“**Opposition**”); (b) filing cancellation petition (“**Cancellation**”); (c) filing petition to prevent use along with demanding confiscation of goods and damage (“**Infringement Action**”); (d) filing injunction petition (“**Injunctive Relief**”); (e) restraining the export or import of goods (“**Customs Restriction**”) and (f) Remedy of Passing off (“**Passing Off**”).

7.5. The Black-Marketing Act also deals with the counterfeit products. The situation under which the remedies can be invoked, the timeline and the procedure is briefly outlined in the following paragraphs.



## 7.6. Opposition

- 7.6.1. Section 18(1) of PDTA deals with Opposition. The Opposition can be filed against the trademark which has been applied for registration and published in the Industrial Property Bulletin (“IP Bulletin”).
- 7.6.2. Proviso to Section 18 (1) of the PDTA provides the grounds for rejection of trademark application. The grounds for rejection include if the applied mark (i) hurts the goodwill and reputation of any individual or institution, or (ii) effects on the public conduct or morality or national interest, or (iii) undermines the reputation of the trademark of any other person, or (iv) has already been registered in the name of another person or entity.
- 7.6.3. The remedy under Opposition is limited to oppose the registration of the mark applied for registration. Section 18 (1) of the PDTA does not envisage that the complainant can seek other remedies under the Opposition.
- 7.6.4. The process and procedures for opposition is as follows:

- a. The Opposition petition should be filed before the DOI;
- b. The petition should be filed within 90 days from the date of publication of impugned mark in the IP Bulletin along with the evidences substantiating the contention of opposition;
- c. Once Opposition is filed, DOI serves notice to the opponent giving seven (7) days to file written reply (statement of defense) which can be extended for 15 days (the time for filing written reply triggers once the notice is served to the opponent);
- d. The DOI then puts the matter for hearing upon receiving the written reply from the opponent or expiry of the time for submission of the written reply;
- e. Each party to the dispute can postpone the hearing for two (2) times;
- f. After subsequent hearing, the DOI gives the decision, which is appealable in the High Court within 35 days of obtaining the written decision. The time limit for appeal can be extended by 15 days pursuant to Summary Procedure Act, 1972 (2028) (“Summary Procedure Act”).
- g. If the High court upholds the decision of the DOI, then the case is not appealable in Higher Court i.e. Supreme Court, however, it can be petitioned for a review in the Supreme Court; If the High Court reverses the decision of the DOI, then such decision is appealable in the Supreme Court within 35 days, with possible extension of 15 days.

- 7.6.5. DOI does not have specific calendar date for hearing the trademark disputes thus, the hearing is fixed as per its workloads. Generally, DOI takes at least 6-18 months to dispose an Opposition Petition.

## 7.7. Cancellation

- 7.7.1. The petition for Cancellation can be filed against the impugned registered trademark. The petition can be filed against any trademark the registration of which is liable to be cancelled it not being eligible for registration as per the proviso clause of Section 18(1) of PDTA.
- 7.7.2. Proviso to Section 18 (1) of the PDTA also provides the grounds for cancellation of trademark registration. A trademark may be challenged for cancellation if such trademark is likely to infringe the reputation of other trademark or is like that of the registered trademark, among other things. Section 18 (3) of the PDTA authorizes DOI to cancel the registration of the trademark if there has been any circumstance discussed above exists.
- 7.7.3. Again, the remedy under the Cancellation petition will be limited to cancel the registration of the registered trademark. The petitioner cannot pray for confiscation of goods in the said petition. However, if any person uses the trademark the registration of which has been cancelled by the DOI then the goods bearing such trademark can be confiscated and damage can be claimed.
- 7.7.4. The process and procedures for Cancellation is as follows:

- a. The Cancellation petition must be filed before DOI;
- b. The petition should be filed within 35 days from the date of publication of the registered trademark (the DOI publishes the registered mark in the Industrial Property Journal ("IP Journal"), however the same has not been published for multiple years);
- c. Once the petition is filed, DOI serves notice to the opponent giving seven (7) days to file written reply (statement of defense) which can be extended for 15 days (the time for filing written reply triggers once the notice is served to the opponent);
- d. The DOI puts the matter for hearing upon receiving the written reply from the opponent or expiry of the time for submission of the written reply;
- e. Each party to the dispute can postpone the hearing for two (2) times.
- f. The rest of the procedures applicable to the Pre-opposition petition as discussed above also applies to the Cancellation Action.

- 7.7.5. DOI does not have specific calendar date for hearing the trademark disputes thus, the hearing is fixed as per its workloads. Generally, DOI takes at least 6-18 months to dispose a cancellation Petition.

## 7.8. Infringement Action

- 7.8.1. The Infringement Action can be taken if any trademark is used which is identical/confusingly like that of the registered trademark. Section 16(2) of PDTA prevents the unauthorized use of the registered trademark.
- 7.8.2. The use of the mark cancelled or use of the mark as a registered mark without its registration or unauthorized use of the registered trademark is punishable under Section 19 and 25 of the PDTA.



- 7.8.3. The owner of the registered mark can seek (a) the order to restrain the use of the trademark identical or similar to that of the registered trademark, (b) confiscation of the goods that infringes the registered trademark, (c) imposition of fine to the infringer(s), and (d) damage for the loss of the infringement.
- 7.8.4. Section 19 of PDTA authorizes the DOI to impose fine up to Rupees One Hundred Thousand to the infringer and confiscate the goods involving the infringement of the registered trademark.
- 7.8.5. Section 25 of the PDTA provides damage pursuant to which the registered owner can claim damage of the actual loss suffered from the infringement. Till date, there has been no practice of providing damage and the mechanism for calculation of damages is still not in position. However, we can calculate damages by tallying the Government fee for initiating infringement action, lawyers' fee and other legal charges and, actual loss suffered, which can be estimated from the sales or profit (account of profits) earned by the opponent.
- 7.8.6. The PDTA does not provide any specific timeline for initiating Infringement Action. However, the Infringement Action should be initiated immediately upon the knowledge of the infringement to minimize the damage to the registered trademark. The rest of the procedures applicable to the Cancellation as discussed above also applies to the Infringement Action.
- 7.8.7. DOI does not have specific calendar date for hearing the trademark disputes thus, the hearing is fixed as per its workloads. Generally, DOI takes at least 6-18 months to dispose the Petition.
- 7.8.8. Alongside the infringement petition, we can pray for interim relief in the form of interlocutory order requesting the DOI to cease all the production and distribution of infringing products. The DOI generally asks the infringer to restrain the unauthorized use of the registered trademark under the Infringement Action. In some instances, the DOI has confiscated the goods that infringe the registered trademark. However, there are rare instances of awarding damage from the person who infringe the trademark or imposition of fine to such person.

## 7.9. Injunctive Relief

- 7.9.1. The PDTA does not provide interim relief or injunctive relief during the litigation proceedings if such is not requested. Therefore, alternative to the pray for interlocutory order before the DOI, a separate injunctive petition can be filed to restrain the opponent from using the disputed mark during the litigation period. The injunctive petition can be filed before the concerned District Court or High Court.
- 7.9.2. The District Court or High Court can issue injunctive order to restrain the likely encroachment of legal right of a person under The Civil Code of Nepal, 2017 (2074) and Section 7 of the Judicial Administration Act, 2016 (2073). The petitioner can also pray for interim order until the final disposal of the injunctive petition.
- 7.9.3. The Injunctive Relief has been granted by then Court of Appeal, Patan (now High Court Patan) in a few cases involving trademark disputes in the recent past. The interim order and finally the Injunctive Relief were granted by the Court in favour of the foreign trademark owner whose trademark has been registered in Nepal.
- 7.9.4. The procedure to obtain injunctive relief is as follows:

- a. The petition for the Injunctive Relief may be filed to the concerned District Court or High Court (collectively "Court").
- b. The Court puts the matter for hearing in the next day or the day after for ex-parte hearing. In the ex-parte hearing the Court will decide whether (i) to issue so cause notice to the respondent, and/or (ii) to issue stay order, if it has been requested.
- c. If interim order is sought, the Court may (i) issue ex-parte interim order, or (ii) call the opponent for stay hearing with or without granting status quo order or (iii) reject the request.
- d. The party to the petition who is not satisfied with the decision of the court relating to interim order may file a petition to the court that hears appeal of such court. The decision of the court hearing appeal shall be final.
- e. If the Court decides to issue show cause notice in the ex-parte hearing, the court serves the notice to the respondent.
- f. The respondent will have 15 days' initial time to submit the written reply to the Court from the date of receipt of show cause notice which may be extended for further 15 days.
- g. The Court puts the matter for final hearing upon receiving the written reply of the respondent or expiry of time for the written reply.
- h. Generally, the court may take around 3-7 months to decide the injunctive petition.



- 7.9.5. DOI does not have specific calendar date for hearing the trademark disputes thus, the hearing is fixed as per its workloads. Generally, DOI takes at least 6-18 months to dispose a cancellation Petition.

## 7.10. Customs Restriction

- 7.10.1. There are two legislations (a) Customs Act, and (b) Export and Import Act dealing with the Customs Restrictions. The process of the Customs Restriction under each of these laws varies.
- 7.10.2. The Customs Restriction, under the Customs Act, can be invoked in case any goods infringing intellectual property rights including trademark is exported from or imported to Nepal. The aggrieved party can file an application to the concerned customs officer along with evidence substantiating the claim (such as trademark registration certificate, invoices etc. to establish ownership and the information of the import/export) to restrain the export of import such goods. The customs officer withholds the goods and writes to the concerned authority (in the case of trademark to DOI) to decide on the matter. The goods are released or handed over to the concerned authority as per its decision. Section 68 of the Customs Act provides for such remedy.

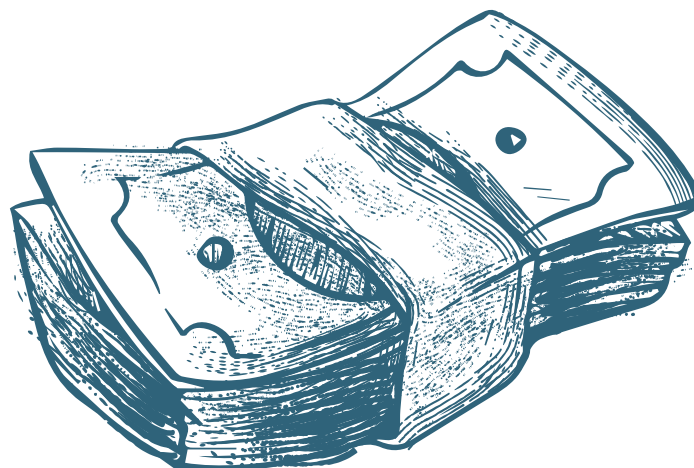
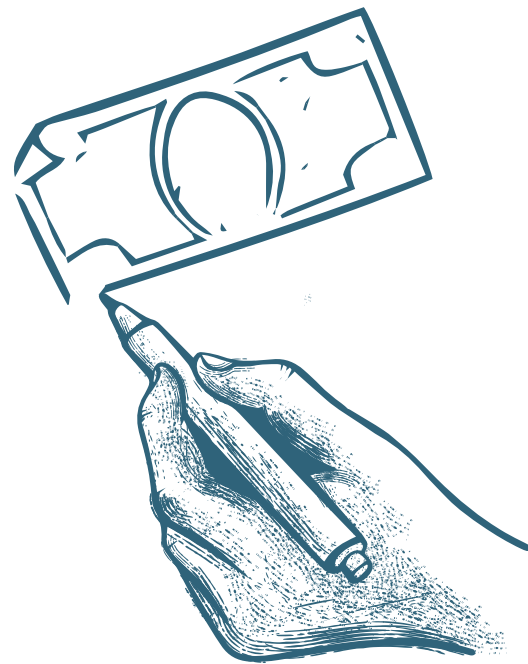
- 7.10.3. The Customs Act does not provide specific timeline to file application before the customs officer. The application should be filed prior to the clearance of goods from the customs office as the purpose of the application is to withhold the goods at the customs point and restrict its import or export. The Customs Restriction has not been used in practice so far thus, its effectiveness is yet to be tested. The application for Customs Restriction may be filed concurrently to the Infringement Action if the applicant has knowledge of the importation or exportation of the goods infringing the trademark.
- 7.10.4. The Export and Import Act also provides for the mechanism to prevent the export or import of the goods that infringe intellectual property rights including the trademark. The restriction under the Export and Import Act is imposed as per the discretion of the Government of Nepal. Therefore, the Export and Import Act cannot be invoked by the trademark owner for restricting the import or export of infringing goods.
- 7.12.4. The Black-Marketing Act prohibits the sale and distribution of goods misleading general public. Section 6, prohibits, among others, sale and distribution of the goods as if it is genuine i.e. prohibits sale and distribution by misrepresentation.
- 7.12.5. Any person committing such offence is subject to the imprisonment up to the term of 9 months or fine up to Rs. 200,000 or the both.
- 7.12.6. The deciding authority for cases under Black Marketing Act is the CDO. For procedural matters, CDO relies on Special Court Act, 2002 (2059).
- 7.12.7. **Limitation to initiate action:** As per Section 14(3) of the Black-Marketing Act, the case under this Act must be initiated within 90 days from the commission of act or knowledge of such commission.

## 7.11. Passing Off

- 7.11.1. In Nepalese context, the concept of passing off has not been explicitly recognized. However, in interpretation of Section 18(1) of the PDTA, which states that where the proposed trademark is likely to hurt the reputation of the trademark of the other, such proposed trademark may not be registered, it is understood that the concept of passing off is somewhat adopted. Considering this provision, we can say that a trademark not registered in Nepal may be protected under the remedy of passing off action.

## 7.12. Counterfeiting

- 7.12.1. Black Marketing and Some Other Social Offences and Punishment Act, 1975 (2032) ("Black Marketing Act") (annexed in Schedule VII) is the main legislation governing Black marketing and counterfeiting in Nepal.
- 7.12.2. The cases under Black Marketing Act are state cases and are initiated through First Information Report (FIR) before the concerned Police Office.
- 7.12.3. The Chief District Officer ("**CDO**") is the Concerned Authority to adjudge the case under Black Marketing Act.





# LANDMARK CASES ON TRADEMARKS IN NEPAL

S.N.	CASES	AUTHORITY/ DECISION NO.	KEYWORDS
<i>SUPREME COURT</i>			
1.	Sun Fitting Pvt. Ltd v. Sandeep Industries	Supreme Court Decision no.- 1384	First-to-file, prior use
2.	Tejram Dharampal v. Gadapati Tobacco (RAJ NIWAS case)	Supreme Court Decision no.- 1092	Paris Convention, TRIPS, Home Registration, Well-known
3.	Sumi Distillery Pvt. Ltd. v. Guinness United Distillery Vintners Amsterdam Bv	Supreme Court Decision no.- 8577	Well-known marks
4.	Noor Pratap Rana v. M/s. Basnet Footwear	Supreme Court Decision no.-7536	Phonetical, visual similarity, prefix/suffix
5.	Dhurchandra Parakha v. HMG, Secretary of Ministry of Industry and Commerce	Supreme Court Decision no.-158	Similarity of trademarks/ Deceptive similarity
6.	Kissan Dhanawat Proprietor of Mayur Food Industries v. Kwaliti Biscuits Industries et al	Supreme Court Not Reported	Descriptive words
7.	Madan Prasad Lamsal v. Repsona Publications	Supreme Court Decision no.- 8686	Registration of marks, prior use not sufficient
8.	Suresh Chandra Gupta, Proprietor of M/s Kalika Soap Industries v. M/s. Bijay Soap Industries et al-	Supreme Court Decision no.z-2007	Invented word, Distinctiveness of trademarks
<i>HIGH COURT</i>			
1.	Amrit Distilleries v. Facebook Inc.	High Court, Patan	Well-known marks, cross-class protection, unfair trade practices
2.	Prem Mehendi Center v. Habib Kala Kokila Hennas	High Court, Patan	Well-known marks
3.	Perfect Blends (Nepal) Pvt. Ltd. v. VISA International Service Association	High Court, Patan	TRIPS, well-known mark, international exception
<i>DEPARTMENT OF INDUSTRY</i>			
1.	Pizza Hut U.S.A v. Pizza Hut Restaurant Pvt. Ltd.	Department of Industry	Similarity of marks
2.	Sujal Foods Pvt. Ltd v. ITC LTD. India	Department of Industry	Generic word, well-known mark, first-to-file
3.	Reckitt Benckiser (India) Ltd v. Utsav Detergent Cosmetic Udyog	Department of Industry	Unreasonable Delay
4.	Bagmati Rubber Industries Pvt. Ltd v. Jayshree Company Pvt. Ltd	Department of Industry	Similarity of marks
5.	T. P. Pharmaceutical Co. Ltd v. S.S. and Sons Pvt. Ltd.	Department of Industry	Generic Word

# KEYWORDS

## **DECEPTIVE SIMILARITY:**

A mark which resembles another mark in such extent to be likely to deceive or cause confusion in the minds of an average consumer is said to be as deceptively similar. The whole of the mark need not be copied to cause deceptive similarity, it is enough if the mark used or proposed to be used is identical with the mark of another.

## **DESCRIPTIVE WORDS:**

Descriptive words are ordinarily not registrable. A trademark is descriptive if it imparts information directly. Words like 'best', 'superior', etc. are descriptive words. Descriptive words are different from suggested words. If a word stands for some ideas which requires some imagination to connect it with the goods, it is a suggestive word. Suggestive words may be registrable.

## **DISTINCTIVENESS:**

Some quality in the trademark which earmarks the goods so marked as distinct from those of other producers of such goods. The mark must be distinctive. It must show the source or goods to the customer.

## **GENERIC WORD:**

The words which is common and belong to the public at large are called as generic words. Such words are considered as public property and cannot be registered. However, in case the generic word has attained as a mark of a party, the distinctiveness is entitled to recognition and may be registrable.

## **INVENTED WORD:**

To be an Invented word, a word must be newly coined. It must not convey any meaning, or, at any rate, any obvious meaning to an average consumer.

## **PRIOR USE:**

Prior Use means the use of the trademark/mark from an earlier date. The use must of the mark should have caused the proprietor to gain considerable reputation in the market for it to be used as a defines.

## **WELL-KNOWN MARK:**

A well-known mark is a mark widely known to the relevant general public who consumers, manufacturing and business circles and persons are involved in the sale of such goods or service carrying such a trademark. Means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods and services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services.

# SUPREME COURT

*Sun Fitting Pvt. Ltd -Petitioner*

v.

*Saroj Kumar Dahal on behalf of Sandeep Industries – Respondent*

*(Decided on 2075, Decision No: 10304)*

*(Nepal Law Reporter, 2020 (2076), Volume 61, Number 7, Page 1401)*

**Case: Trademark Registration**

*Keywords- First-to-file, prior use*

## FACTS:

The Petitioner had applied for the registration of the mark 'Sun' in Class 6 vide application number 027223 before the DOI on 2063/02/17. The DOI published the mark in the IP Bulletin calling for opposition. The Respondent opposed the registration of the mark on the grounds that it was the prior user of the mark as the mark was used in India by the Respondent since 1979 and the mark has acquired considerable reputation to be termed as a well-known mark. The Respondent also contended that it had applied for the registration of the mark Sun in class 6 on 2063/06/12 and that the mark should be registered in its name. The DOI refused the opposition and decided that the trademark would be registered in the name of the Petitioner stating that the laws of Nepal give priority to a prior application based on the 'first-to-file' rule. The Respondent appealed against the decision of the DOI before the Court of Appeal, Patan contending that the mark 'SUN' should be registered in its name. The Court of Appeal quashed the decision of the DOI stating the decision lacked judicial scrutiny and the matter was remanded back to the DOI for further inquiry.

Thereafter, the Petitioner filed the writ petition with the Supreme Court requesting to quash the decision made by the Court of Appeal, Patan.

## HELD:

The Supreme Court decided in favour of the Respondent and held that:

1. The objective of registering a trademark is to make it easier for a consumer to differentiate one good from another based on the standard and quality of the product.
2. Proper procedure should be followed, enough examination must be conducted, and all the factors should be taken into consideration, while deciding the case of opposition of trademark registration.
3. A mark cannot be registered and granted protection merely based on the 'first-to-file' rule, if it may cause harm to the reputation of another mark. The mark of the Respondent had gained considerable reputation due to its continuous use in India and Nepal and thus must be protected.

## PRINCIPLE LAID DOWN:

***A mark that is likely to deceive and cause confusion in the minds of the consumers with respect to another's mark or product cannot be registered.***



Tejram Dharampal - **Writ Petitioner**

v.

Gadapati Tobacco – **Respondent**

(Decided on 2073/6/6, Decision No:10304 (Nepal Law Reporter, 2076))

**Case: Trademark Registration**

*Keywords- Paris Convention, TRIPS, Home Registration, Well-known*

## FACTS:

The Respondent had applied for the registration of the mark 'RAJ NIWAS' under class 31 and 34 before the Department of Industry on 2072/05/09. The Petitioner had also applied for the registration of the same mark 'RAJ NIWAS' before the DOI on 2072/07/23. The Petitioner's mark had been published in the IP Bulletin for Opposition, which was then opposed by the Respondent on the grounds of 'first to file' rule. The DOI refused the opposition and decided in favour of the Petitioner.

The Respondent then, appealed before the High Court of Patan against the decision of DOI. The High Court quashed the decision given by DOI and issued order to the DOI instructing to register the trademark in the name of the Respondent.

Thereafter, the Petitioner filed a petition with the Supreme Court requesting to quash the decision made by the High Court, Patan. In the petition, the Petitioner contended that it was the lawful proprietor and the prior user of the "RAJ NIWAS" mark and the mark is well known in the Indian and Nepali market and it had obtained protection through the registration of the mark in Lebanon and UAE. The Respondent in its written response contended that it was the first to apply for registration in Nepal, it had invested huge amount for its promotion and development and had paid more than 2 crores as tax to the Inland Revenue Department. The Respondent also stated that the Petitioner had failed to provide proof of their Home Registration at the time of registration in Nepal.

## HELD

The petition was heard by the division bench where the court decided in favour of the Respondents and upheld the decision of the High Court whereby the court addressed the following issues:

1. Considering the issue of the meaning of trademark and the rights granted through protection, the court held that trademark is one part of intellectual property and the owner of the trademark has the exclusive rights to use the mark for their business purposes. The court also referred to the definition of trademarks given under Article 2 Section 15 of the TRIPS agreement and Section 2 © of the PDTA. The court also emphasized on the fact that trademark is the creation of the owner and the innovator of the mark should obtain the rights and protection granted to the mark.
2. Regarding well-known marks and the protection granted under Article 6bis of the Paris Convention, the court emphasized on the provision of the Convention whereby it provides that the conditions for the filing and registration of the trademarks shall be determined in each country of the Union by its domestic legislation which means that the applicant must fulfil all the legal formalities for the registration of a mark in Nepal.
3. The Petitioner had applied for the registration of the mark on the basis of its home registration; however, the mark had not been registered in the home country itself at the time of filing the application. Trademark application and trademark registration are two different things. The PDTA clearly states that the trademark must be registered in the foreign country of origin in case of a foreign mark application in Nepal.
4. The court also cited the Madan Prasad Lamsal v. Repsona Publication case whereby the court laid down the precedent stating the priority granted to the prior application i.e. the 'first-to-file' rule.

## PRINCIPLE LAID DOWN:

**A trademark application must fulfil all the legal formalities and follow the mandatory procedures for the mark to be registered.**

*Sumi distillery Pvt. Ltd (Mr. Karma Ghale) - **Petitioner***  
*v.*  
*Guinness United Distillery Vintners Amsterdam Bv – **Respondent***  
*(Decided on 2068, Decision No: 8577)*  
*(Nepal Law Reporter, 2011(2068), Vol. 3, Page 448)*  
**Case: Trademark Registration**

Keywords- Well-known marks

## FACTS:

Guinness United Distillers Vintners Amsterdam B.V applied for the registration of their trademark GORDON's for international class 33 in Nepal and submitted an application in with the Department of Industry ("DOI"). The Department of Industry refused to register the trademark on the ground that the trademark CORDON has been already been registered by the Petitioner in Nepal and register the GORODON's trademark creates confusion to the general public and consumer. Guinness United Distillers appealed the decision before then Court of Appeal Patan contending that the GORDON trademark should be registered in its name under Section 16, 18 and 21© of the Patent Design and Trademark Act, Section 9 of the Treaty Act 2047 and Article 2 and 6bis of the Paris Convention. The Court of Appeal Patan accepted the Appeal of Guinness United Distillers, reversed the decision of DOI and asked the DOI to re-hear the matter examining all the evidences and documents. Sumi Distillery challenged the decision of the Appeal Court and filed an appeal before the Supreme Court.

## HELD

The Supreme Court upheld the decision of Court of Appeal Patan which required DOI to re-hear the matter with examining all the evidence and documents on the ground that:

1. Patent design and trademarks is important for the industry and therefore, monopoly is granted for the owner of patent, design trademark and other industrial properties.
2. The government for the benefit of the consumers has the duty protect the patent, design and trademarks rights.
3. Under PDTA the registration of a trademark can be cancelled if it hurts the reputation of other trademarks.

## PRINCIPLE LAID DOWN:

- 1. Registration of patent, design and trademark is the public duty of the state.**
- 2. Absolute right cannot be created merely registering a trademark in view that the registration can be cancelled in the given situation.**

Noor Pratap Rana, Partner of M/s Kiran Shoes Manufactures - **Writ Petitioner**

v.

M/s. Basnet Footwear et al-**Respondent**

(Decided on August 18, 2005, Decision No: 7536)

(Nepal Law Reporter, 2005 (2062), Vol. 47, Number 5, Page 539)

**Case: Certiorari including Prohibition**

*Keywords- Phonetical, visual similarity, prefix/suffix*

## FACTS:

This case was related to the trademark infringement. The Respondent, M/s Basnet Footwear had submitted an application to the Department of Industry (DOI) for registration of three trademarks "Gold Super", "Good Star" and "Eleven Star" under class 25 for sport shoes. The Petitioner M/s Kiran Shoes Manufactures filed opposition against the said application for registration on the ground that the proposed trademarks are identical to its already registered trademark "Gold Star" under class 25 and for shoes. The DOI refused to register the proposed trademarks on the ground that the applied trademarks were confusingly similar to the Petitioner's registered trademark.

The Respondent appealed before Court of Appeal Patan against the decision of DOI. The Court of Appeal quashed the decision given by DOI and issued order to the DOI instructing to register the trademark in the name of the Respondent. The Petitioner was not made party to the appeal and did not get the opportunity to defend its trademarks.

Thereafter, the Petitioner filed the Writ Petition with the Supreme Court requesting to quash decision made by the Court of Appeal Patan. In the writ petition, the Petitioner contended that it was the lawful proprietor of the "Gold Star" trademark, and that the trademarks applied by the Respondent were nothing more than modification adding pre-fix and suffix to their registered trademark.

The Writ Petition was heard by the division bench where two justices had divided opinion. The opinion of the Justices was mainly divided in respect of invoking writ remedy by the Petitioner and exercise of the extra-ordinary jurisdiction (writ jurisdiction) by the Courts. One of the justices was of the opinion that since the trademarks were identical and the petitioner had no effective alternative remedy, the writ petition should be entertained, and the petitioner should be granted the relief. The other Justice opined that the Writ Petitioner had the right to appeal against the act of registration of the trademarks of the DOI. Since there is alternative remedy available, the Supreme Court should not entertain the writ petition. Therefore, the case was referred to the full bench consisting of 3 justices of the Supreme Court. The Supreme Court quashed the decision of the Court of Appeal Patan and issued the Writ as requested by the Petitioner.

## HELD

The Supreme Court held that:

1. Publication of details of the industrial property by the DOI is not mandatory under section 21(a) of the Patent Design and Trademark Act, 1965 (PDTA 1965). Since there is no certainty of the publication of the details, the aggrieved party may not be able to file application for the cancellation of the trademark registered in the name of the Respondent (application for the revocation). The access of the petitioner to the writ jurisdiction is justified as there is no effective alternative remedy available to the petitioner under the PDTA 1965.
2. Since the Writ Petitioner was deprived of opportunity to be heard and since the Writ Petitioner was not made a party in the appeal process before the Court of Appeal, it could not file appeal against the decision made by the Court of Appeal to the Supreme Court pursuant to the existing laws of Nepal. In such circumstance, the Writ Petitioner had no option other than to enter writ jurisdiction for the effective remedy.

3. The proposed trademarks of the Respondent are phonetically similar and similar in get up to the registered trademark of the Petitioner. If the trademark is registered in the name of applicant, it is likely to damage the reputation of the Petitioner and mislead the general public.

4. The purpose of the trademark is to identify the goods of particular manufacturer and distinguish the same from that of the products of other manufacturer. This is the set practice recognized everywhere. While defining the trademark under section 2 ©, the PDTA, 1965 has also adopted this principle.

5. The trademark proposed to register by the applicant "Good Star", "Gold Super", "Eleven Star" are identical to the mark "Gold Star", "Super Star" and "Seven Star" registered in the name of the Writ Petitioner and thus cannot be registered.

6. The decision made by the Court of Appeal, Patan requiring DOI to register trademark which are similar to the registered trademark of the Petitioner is erroneous in the eye of law and is quashed.

### PRINCIPLE LAID DOWN:

**1. The mark which is phonetically or visually similar with the mark already registered is ineligible for registration.**

**2. Any trademark imitating the major component of the registered trademark is also disqualified for registration.**

**3. While considering the infringement of the trademark, all the relevant components/factors should be taken into account.**

**4. Similarities not the differences between the trademarks should be considered.**

*Dhurchandra Parakha - Writ Petitioner*

v.

*HMG, Secretary for Ministry of Industry and Commerce Mr. Kumar Mani – Respondent*

*(Decided on February 23, 1992, Decision No: 158)*

*(Nepal Law Reporter, 1992 (2018), Vol. 4, Page 390)*

**Case: Writ of Certiorari**

*Keywords- Similarity of trademarks/ Deceptive similarity*

### FACTS:

This case is related to trademark infringement. *Mr. Dhurchandra Parakh* proprietor of Bijay Bidi Factory ("the plaintiff") filed a complaint against Ganapati Bidi Factory for infringing trademark which was already registered in the DOI on 2016/05/08 by Bijaya Bidi Factory in its name. It was found that Ganapati Bidi factory was using a similar trademark to that used by Bijaya Bidi Factory which happened to be a picture of Gauri Ganesh. DOI ordered Ganapati Bidi Factory to change the trademark on 2018/08/29.

Ganapati Bidi Factory filed a Writ Petition against HMG, Secretary of Ministry of Industry and Commerce to quash the decision of DOI.

### HELD BY THE SUPREME COURT

The Supreme Court quashed the decision of DOI stating that the DOI has failed to refer the law for making such decision.

### PRINCIPLE LAID DOWN:

**Decision making authority shall show that he/she has the authority to make such decision under the law.**

*Kissan Dhanawat Proprietor of Mayur Food Industries- **Writ Petitioner***  
v.

*Kwality Biscuits Industries et al -**Respondent***

*Writ No 3240 of the Year 2055 (1999) (Not reported)*

**Case: Certiorari including Prohibition**

*Keywords- Descriptive words*

## FACTS:

The DOI had already registered a trademark "Tasty-Tasty" (with design) without giving exclusive right on the word in the name of Respondent. Later, the DOI also granted exclusive right over the word "Tasty-Tasty". The Petitioner filed an application for the registration of the trademark "Tasty-Tasty" with whole setting of a wrapper but without claiming exclusive rights over the word to the DOI. The Petitioner contended that the word "Tasty" is a descriptive one and no one could claim the exclusive right over such descriptive word. The DOI refused to register the said trademark in the name of the Petitioner. The Petitioner filed a petition before the Supreme Court against the decision of the DOI. The Supreme Court decided not to issue the writ as sought by the Petitioner.

## HELD

The Supreme Court held that:

- a) Exclusive right over a single word "tasty" was not granted to the Respondent. Rather, trademark registered in the name of the Respondent consisted of the device and the word "Tasty-Tasty" and the design and the font of the said trademark demonstrated distinctiveness. Therefore, registration of "Tasty-Tasty" trademarks in the name of the Respondent was not against section 18 (1) of the PDTA, 1965.
- b) It is a set practice to recognize the common words as trademark and register such common (descriptive) word as trademark if such word has acquired reputation among the consumers through continuous use and has become distinct.
- c) It is widely accepted principle in the field of the trademark that descriptive words, common words, used words or marks are not eligible for trademark. The words should be invented or be distinctive to receive the protection. The PDTA is not against the said principle.

## PRINCIPLE LAID DOWN

***Descriptive words may also acquire secondary meaning and can be recognized as trademark after long and uninterrupted use by a particular manufacturer.***

Mr. Madan Prasad Lamsal- **Petitioner**

v.

Repsona Publication Pvt. Ltd. - **Respondent**

(Decided on July, 2011, Decision No: 8686)

(Nepal Law Reporter, 2011 (2068), Vol. Number 9, Page 1545)

**Case: Trademark**

*Keywords- Registration of marks, Prior use not significant*

## FACT:

The Trademark Business Age is registered in the name of the Petitioner who has been publishing its magazine under the name of New Business Age. The Respondent has been also publishing its magazine by the name of Business Age. The Petitioner filed a complaint with the Department of Industry (DOI) restraining the Respondent from using the Business Age trademark, among other things. The Respondent contended that the Petitioner and Respondent were the joint owner of the Respondent Company who was publishing the magazine namely Business Age and the Petitioner fraudulently registered Business Age trademark in his name which should have been registered in the name of the Respondent Company. The Respondent further contended that it has been publishing the magazine by the name of Business Age for long time hence it should not be restrained from using the said trademark. The Respondent had also registered a separate complaint before DOI against the Petitioner to restrain Petitioner from using the Business Age trademark. The DOI instructed both the parties to use their respective trademarks in such a manner that they are distinctive and cannot create confusion.

The Petitioner challenged the decision of DOI and filed an appeal before the then Court of Appeal, Patan. The Court of Appeal partly overturned the decision of DOI. The Court of Appeal partly invalidated the decision saying that DOI failed to follow the mandatory procedure while making decision however, rejected the Petitioner's claim on confiscation of goods of the Respondent bearing Business Age trademark. Petitioner again filed an appeal before the Supreme Court.

## HELD

The Supreme overturned the Decision of the DOI in relation to the ownership of trademark and decided Petitioner is the rightful owner of the Business Age trademark.

## PRINCIPLE LAID DOWN

**Only the trademarks which are registered under the laws of Nepal are protected. An unregistered trademark cannot get legal protection irrespective of the period of use of such trademark.**

*Suresh Chandra Gupta, Proprietor of M/s Kalika Soap Industries- **Writ  
Petitioner***

*v.*

*M/s. Bijay Soap Industries et al-**Respondent***

*(Decided on August 24, 1984, Decision N° 2007)*

*(Nepal Law Reporter, 1984 (2041), Vol. 26, Number 5, Page 482)*

**Case: Writ of Certiorari**

*Keywords- Invented word, Distinctiveness of trademark*

## FACTS:

Application for registration of the trademark filed by the Writ Petitioner was rejected by DOI on the ground that the said trademark is identical to the mark already registered with the DOI. The Writ Petitioner had applied for the registration of "MK" Trademark which in fact was confusingly similar with "OK" Trademark registered by TATA Company based in India. After few months, the Respondent registered MK Trademark in its name. The whole design of the said MK trademark was apparently distinctive from the OK Trademark. Thereafter, the Writ Petitioner filed a writ petition before the Supreme Court requesting to cancel the registration of MK Trademark in the name of the Respondent through writ of certiorari. The Writ Petitioner alleged that the DOI became biased towards the Respondent as it registered the same Trademark for the Respondent and rejected to register the same Trademark in the name of the Writ Petitioner. It further contended that such act is discriminatory practice and is not sustainable in the eye of law.

## HELD

The Supreme Court upheld the decision of the DOI and dismissed the Writ Petition. The Court held that the Respondent's MK Trademark is apparently distinctive from that of the TATA Company's OK Trademark. The trademark which is distinctive from the already registered Trademark would be qualified for registration.

## PRINCIPLE LAID DOWN

**Trademark distinctive from the registered trademark is eligible for registration. The mark which is invented or coined would always be eligible for registration.**

# 

*Amrit Distilleries Pvt. Ltd -Appellant*  
v.

*Facebook Inc. – Respondent*

*Decided on 2075/06/16, Decision No- 64*

**Case: Trademark Registration**

*Keywords- Well-known marks, cross-class protection, unfair trade practices*

## FACTS:

The Appellant had applied for the registration of the mark “FACEBOOK” in Class 33 vide application number 045868 before the Department of Industry. The Respondent opposed the registration of the mark on the ground that the said mark was deceptively similar to their mark “FACEBOOK logo” which had already been registered in Classes 9, 35, 36, 41, 42 and 45 in Nepal. The Appellant in its written response to the opposition before the DOI contended that the Respondent had not registered their trademark in international class 33. The Department of Industries on November 19, 2017, decided in favor of the Respondent that the mark “FACEBOOK” shall not be registered in the name of Amrit Distillery i.e. the Appellant. The Appellant then filed an appeal against the decision of the DOI on the grounds that a trademark is protected based on the provisions enacted by the concerned country and that the laws of Nepal does not recognize a well-known mark and does not provide cross class protection.

## HELD:

The High Court upheld the decision made by the DOI and decided the appeal in favor of the Respondents stating that:

1. No one should not dilute the reputation of a trademark, by using unfair trade practices. A minimum level of fairness should be practiced ensuring a fair and competitive market environment.
2. If any trademark application does not clear the scrutiny of Section 18(1), merely stating that the application for a mark that is similar or identical to a registered mark, falls in different categories of goods and services, is not enough for any mark to obtain protection.
3. If a trademark application which is similar to an already registered trademark, cannot prove goodwill and has no evidence of prior use or registration in or outside the territory of Nepal, the trademark applicant has aimed to freeride the good will and investment made by the trademark owner.
4. The trademark FACEBOOK (and logo) as applied by the appellant for the registration seems to be a well-known mark and if it is used in an unauthorized manner, it will affect the initial users’ actual identity and prestige and there is no precondition as to compulsory registration in case of well-known trademarks.

***Registration of any mark identical to a well-known mark, in any class other than the registered mark will tarnish the reputation of that mark, even though the registered mark does not fall in that class.***



*Prem Mehendi Center-**Petitioner***

*v.*

*Habib Kala Kokila Mehendis- **Respondent***

*Decided on September 17, 2015, Decision no-62 (High Court Patan)*

**Case: Trademark Registration**

*Keywords- Well-known marks,*

## FACTS:

This case was related to the infringement of a well-known mark. This was the first case where the courts of Nepal recognized a mark to be a well-known mark. The Respondent, M/s Habib Kala Kokila Mehendis had submitted an application to the Department of Industry (DOI) for registration of trademark "NISHA"(label) under class 03 for hair colouring products. The Petitioner, Prem Mehendi Center filed an opposition against the said application for registration on the ground that it was the prior user of the mark and had acquired considerable reputation. The DOI on 28th February, 2013 refused the pre-opposition and registered the mark NISHA, on the ground that, the Respondent had filed for registration before the Petitioner and the Petitioner could not submit complete documents at the time of the application, establish its well-known status and prior use in Nepal.

The Petitioner on 23rd February 2014 challenged the decision of the DOI and appealed before the Court of Appeal Patan, contending that it was the lawful proprietor of the NISHA trademark.

## HELD:

The Court of Appeal, Patan quashed the decision and held that:

1. The contention of the DOI, that the Respondent's mark must be registered based on its "first registration" is not acceptable in the eyes of law, as no provision of the PDTA provides "First come, first choice" rule.
2. The assessment of a mark is based on (i) the duration of use of the trademark in Nepal (ii) record of invoices and bills of sales (iii) extent of advertisement through television, FM stations and Newspaper.
3. From the study of Article 6bis of the Paris Convention, Section 2(1)(zg) of the Trademarks Act 1999 of India and the Section 56 of the UK Trademarks Act, 1944 the following factors to determine a well-known mark has been established:
  - i. If a trademark has been registered in any country and has been listed as a well-known mark.
  - ii. If the goods or services of any product, having their trademark registered in any country, have been expanded in two or more countries as well known, the mark should be protected as a well-known in any other country.
4. In case a mark has not been listed as a well-known and two parties claim the same mark, the factors that should be considered before providing the right of the mark to any party are:
  - i. The number of the actual consumers
  - ii. The number of people involved in the business
  - iii. The national and international network of the business
  - iv. The tax/revenue paid by the party for the business
  - v. The advertisements made in relation to the production,

5. Marks which are 'deceptively similar or similar' to another mark should not be registered. Doing so, will not only cause harm to the owner's intellectual property but will also affect the consumer's perception of the brand. Confusing the consumers means deceiving the consumers. This may cause violation of the fundamental right of good health of the consumer along with the right of the consumers to the choice of goods of their preference.

6. While determining the reputation and goodwill of the industrial trademarks words like the impact created in the minds of the consumer can be the factor for determining well-known status of the mark. The number of consumers using the product can also be another factor. For this, a detailed survey or sampling survey can be conducted. Similarly, the size of the production, distribution and export can also be another factor. In case of a foreign product, the determination of a well-known mark is based on the factors like the number of exports, the continuous usage, and the amount spent on advertisements featuring the products.

***When considering whether two trademarks are similar and are likely to be confused, courts compare marks from the perspective of the "average consumer" of the relevant goods or services for which the marks have been registered or applied for. If any consumer mentally relates a product with a trademark, such connection would be sufficient for that mark to be considered as well-known.***

*Perfect Blends (Nepal) Pvt. Ltd. -Appellant*

*v.*

*VISA International Service Association- Respondent*

*Decided on 2076/03/09, Decision No- 115*

***Case: Trademark Registration***

*Keywords- TRIPS, well-known mark, international exception*

## **FACTS:**

The Appellant had applied for the registration of the mark VISA (and logo) in Class 34 vide application no. 038088 before the Department of Industry. The Respondent opposed the registration of the mark on the ground that it is deceptively similar to its already registered famous mark VISA. The Petitioner contended that it was the prior user of the mark and had been using the mark since 1976. The DOI on 2074/09/30 decided that the mark "VISA (and logo)" could not be registered in the name of the Appellant. The Appellant then appealed in the High Court against the decision of the DOI.

## **HELD:**

The High Court decided the appeal in favour of the Respondent and held that the trademark VISA (and logo) cannot be registered in the name of the Appellant.

Considering the issue of determining the well-known marks and cross class protection, the court referred to the Joint Recommendation concerning protection of well-known marks and the Facebook Inc v. Amrit Distillery judgement.

The court also referred to Article 16(2) and (3) of the TRIPS agreement which lays down the rule that Article 6 bis of the Paris Convention (1967) shall apply mutatis mutandis, to goods or services which are not similar to those in respect of which a trademark is registered, provided that the use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered mark are likely to be damaged by such use.

***An extremely well known mark may also be able to obtain cross class protection if it proves it is able to prove its extremely well-known status.***

## DEPARTMENT OF INDUSTRY

*Pizza Hut International U.S.A-**Complaint***

*v.*

*Pizza Hut Restaurant Pvt. Ltd.*

*Kathmandu- **Respondent***

*(Decided on 2071/07/10)*

**Case: Trademark Registration**

*Keywords- Similarity of marks*

### FACTS:

The Respondent Pizza Hut Restaurant Pvt. Ltd submitted an application to the Department of Industry for the registration of the mark PIZZA HUT under class 43 for services for providing food and drink. The Complainant, Pizza Hut International filed opposition against the said application for registration on the ground that it is deceptively similar to its already registered trademark PIZZA HUT under class 42 registered on 22nd July 1989. The Complainant also, filed an application for the registration of the said trademark under Class 43 as NICE classification revised Class 42 with the creation of classes 43 to 45.

### HELD:

The Respondent Pizza Hut Restaurant Pvt. Ltd submitted an application to the Department of Industry for the registration of the mark PIZZA HUT under class 43 for services for providing food and drink. The Complainant, Pizza Hut International filed opposition against the said application for registration on the ground that it is deceptively similar to its already registered trademark PIZZA HUT under class 42 registered on 22nd July 1989. The Complainant also, filed an application for the registration of the said trademark under Class 43 as NICE classification revised Class 42 with the creation of classes 43 to 45.

***A mark that is deceptively similar to an already registered cannot be registered.***

*Sujal Foods Pvt. Ltd.-Complaint*  
v.

*ITC LTD. India- Respondent*

*Decided on- 2070/03/13 (Department of Industry)*

**Case: Trademark Registration**

*Keywords- Generic word, well-known mark, first-to-file*

## FACTS:

The Respondent, ITC LTD., had submitted an application in the Department of Industry for the registration of their mark CANDYMAN COCOLAIR in Class 30. The Complainant, Sujal Foods Pvt. Ltd filed opposition against the said application for registration on the ground that it was deceptively similar to the Complainant's already registered trademark. The Respondent contended that words like 'CANDY, CHOCOLATE, BISCUITS' are generic words and no one could claim the exclusive right over such generic word. The Respondent also contended that their mark CANDYMAN COCOLAIR is in itself a well-known mark. The DOI registered the said trademark in the name of the Respondent. The Complainant, then filed for the cancellation of the Respondent's mark on the grounds of prior use and 'first-to-file' rule.

## HELD:

The Director General decided in favour of the Complainant by cancelling the registration of the Respondent's trademark on the ground that it is deceptively similar to an already registered trademark and is likely to deceive and cause confusion in the minds of the consumers.

***The Director General decided in favour of the Complainant by cancelling the registration of the Respondent's trademark on the ground that it is deceptively similar to an already registered trademark and is likely to deceive and cause confusion in the minds of the consumers.***

*Reckkit Benckiser (India) Ltd.-Complaint*  
v.

*Utsav Detergent Cosmetic Udyog-Respondent*

*Decided on- 2069/05/14 (Department of Industry)*

**Case: Non-registration of trademark**

*Keywords- Unreasonable Delay*

## FACTS:

The Respondent, Utsav Detergent Cosmetic Udyog had submitted an application for the registration of the mark 'RONAK HARPIC' in Class 30 for Toilet Cleaner in the Department of Industry. The Complainant, Reckkit Benckiser (India) Ltd. filed an opposition against the application for registration on the ground that the mark 'HARPIC' is already registered in the name of the Complainant. The Complainant is a highly reputed industry and the use of the mark which is deceptively similar to the Complainant's well-known mark can cause confusion and deceive the consumers.

## HELD:

The Director General decided in favour of the Respondent, by quashing the Opposition petition of the Petitioner on the grounds that the Petitioner failed to submit the opposition within the stipulated period of 90 days and that they failed to provide reasonable justification for the delay.

***Opposition to the registration of the trademark must be filed within the stipulated period.***

Bagmati Rubber Industries Pvt. Ltd-**Complaint**  
v.  
Jayshree Company Pvt. Ltd- **Respondent**  
Decided on- 2076/02/06 (Department of Industry)  
**Case: Trademark Infringement**

Keywords- Similarity of marks

### FACTS:

The Complainant had registered the trademark WILDHORSE (and logo), KINGHORSE along with the STAR DEVICE in the Department of Industry. The Respondent had been selling their products (slippers) using the trade name MAGICO STAR and a label in the shape of a STAR that was similar to that of the Complainant. The Complainant filed an infringement petition in the DOI along with the evidences on the grounds that the mark was deceptively and confusingly similar to the Complainant's mark.

### HELD:

The Director General decided in favor of the complainant, on the grounds that the use of the trademark by the Respondent that is deceptively similar to that of the Complainant can cause confusion in the minds of the consumers and may cause harm to the reputation of the Complainant. The Respondent was fined a sum of Rs. 5000/-

**Similarity on the basis of appearance alone, can also be a ground for refusal of registration.**

T.C. Pharmaceuticals Co. Ltd-**Complaint**  
v.  
S.S. and Sons Pvt. Ltd.- **Respondent**  
Decided on- 2076/02/05 (Department of Industry)  
**Case: Trademark Infringement**

Keywords- Similarity of marks

### FACTS:

The Complainant, T.P. Pharmaceuticals Industries Co. Ltd., had registered the trademark 'RED BULL' along with the label in the Department of Industry for Energy Drinks. The Respondent had been selling their energy drinks under the name 'RED STAR'. The Complainant filed an infringement petition in the DOI against the Respondent's use of the mark on the grounds that it was similar to the Complainant's trademark.

### HELD:

The Director General decided in favour of the Respondents on the grounds that:

1. One cannot claim exclusivity over the mark 'RED' as it is a generic word.
2. The word 'BULL' is also different from the word 'STAR'.
3. The label of the Respondent is also different from that of the Complainant.

**Generic words are not and cannot be registered as a trademark. Trademark distinctive from the registered trademark is eligible for registration.**

# **SCHEDULE-1**

# THE PATENT DESIGN AND TRADEMARK ACT, 2022 [1965]

## Date of Authentication and publication

14 Bhadra 2022 (August 30, 1965 A.D.)

## Amendment

1. First Amendment
2. Justice Administration Act,
3. Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006) ढ
4. Act made to Amend Some Nepal Acts and strengthening of Republic 2066 (2009) ø

## Date of Amendment

2044.07.01 (October 18, 1987)  
2048.02.16 (May 30, 1991)  
2063.8.8 (November 24, 2006)  
2066.10.07 (January 21, 2010)

Act no. 15 of the year 1965

α.....

An Act made to provision for registration of Patent, design and Trademark

**Preamble:** Whereas it is necessary to update the legal arrangements in respect to patents, designs and trademarks for the convenience and economic benefit of the general Public,

Be it enacted by, His Majesty King Mahendra Bir Bikram Shah Dev on the aid and advice of the National Panchayat.

## Chapter 1

### Preliminary

**1. Short Title Extent and Commencement:** (1) This Act may be called "**Patent, Design and Trademark Act, 1965**",

(2) It shall be applicable throughout α ..... Nepal.

(3) It shall come into force immediately.

**2. Definitions:** Unless the subject or the context otherwise requires in this Act:

(a) "patent" means any useful invention relating to a new method of process or manufacture, operation or transmission of any material or a combination of materials, or that made on the basis of a new theory or formula.

(b) "Design" means the form or shape of any material manufactured in any manner.

ढ This Act came into effect from 2063.06.05 (September 21, 2006).

ø This Act came into effect from 2065.02.15 (May 28, 2008).

α Removed pursuant to Act made to Amend Some Nepal Acts and strengthening of Republic, 2066 (2009).

<sup>†</sup>(c) "Trade-mark" means word, symbol, or picture or a combination thereof to be used by any firm, company or individual in its products or services to distinguish them with the product or services of others.

(d) "Department" means the department prescribed by Government of Nepal by notification in the Nepal Gazette and the Department of Industry unless so prescribed.

(e) "Schedule" means the schedule to this Act.

<sup>\*</sup>(f) "Prescribed or as prescribed" means prescribed as prescribed in the Rules framed or orders issued under this Act.

## Chapter 2

### Patents

**3. ACQUISITION OF PATENT RIGHTS** (1) A person desirous of obtaining right over any patent shall register such patent in his/her name under this Act.

<sup>Δ</sup>(2) No one shall copy or use or cause to use in the name of the others without transforming the ownership or written permission pursuant to Section 21d, the patent registered in the name of any person pursuant to this Act.

(3) α.....

**4. APPLICATION FOR ACQUIRING RIGHT OVER PATENT:** (1) A person desirous of having any patent registered in his/her name shall submit to the Department an application as specified in Schedules 1 (a), containing the particulars mentioned hereunder, along with all available evidence in his/her possession:

(a) Name address and occupation of the parson inventing the patent.

(b) If the applicant him/herself is not the inventors, how and in what manner he/she acquired title thereto from the inventor.

(c) Process of manufacturing, operating or using the patent.

(d) The theory or formula if any, on which the patent is based.

(2) Along with the application pursuant Sub- Section (1), applicant shall also submit map and <sup>†</sup>drawings along with, of the patent, as well as the fee specified in Schedule 3(1) (a).

**5. INVESTIGATION BY DEPARTMENT:** (1) On receipt of application submitted under Section 4, the Department shall, on the advice of experts if so considered necessary, conduct all investigation or study to ascertain whether the patent investigations in the application is a new invention or not, and whether it is useful to the general public or not, and thereafter decide whether or not to register such patent.

(2) In case the Department concludes that any patent should not be registered in the circumstances mentioned in Section 6, it shall give a notice to the applicant to the effect that the patent cannot be registered according to his/her application.

(3) .....<sup>ο</sup>

### 6. CIRCUMSTANCES IN WHICH PATENTS CANNOT BE REGISTERED:

(1) The Department shall not register any patent under this Act in the following circumstances: -

(a) In case the patent is already registered in the name of any other person, or

(b) In case the applicant him/herself is not the inventor of the patent sought to be so registered nor has acquired rights over it from the original inventor, or

<sup>†</sup> Amended by the first amendment

<sup>\*</sup> Inserted by the first amendment

<sup>Δ</sup> Amended by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

<sup>α</sup> Deleted by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

<sup>ο</sup> Deleted by the first amendment



(c) In case the patent sought to be registered is likely to adversely affect the public health, conduct or morality or the national interest, or

(d) In case it is contradictory to the prevailing laws (the registration of the patent) will constitute a contravention of existing Nepal law.

Provided that nothing contained in Clause (a) shall be deemed to have prejudiced to update transfer of the registration of any patent under Section 9.

(2) In the circumstances mentioned in Sub-Section (1), the Department may cancel the registration of any patent which had been registered.

Provided that the Department shall, before cancelling the registration of any patent, provide reasonable opportunity to the patentee to show the cause, if any, why the registration of this patent should not be cancelled.

**7. REGISTRATION OF PATENT :** (1) On receipt of applications filed under Section 4 for registration of a patents, the Department shall, after completing necessary investigations under Section 5 issue a registration certificate in a format as specified in Schedule 2 (a) to the applicant, except in the circumstance mentioned in Section 6.

(2) For obtaining the certificate mentioned in Sub-Section (1), the applicant shall pay the registration fees as to the department specified in schedule 3 (1) (b).

**\* 7A. Registered patents to be published:** (1) Patents registered under this Act, other than those which must be kept secret in the national interest, shall be published by the Department in the Nepal Gazette for the information of the public.

(2) In case anybody desires to see or copy the, maps, or drawings of a patent published under Sub-Section (1), one may be allowed to do so after paying the fees prescribed by the Department.

(3) In case anyone has any objection to such a patent, one may file a complaint with the Department within a period of 35 days from the date of seeing or copying the patent under Sub-Section 92).

(4) In case any complaint is received under Sub-Section (3), the Department shall take necessary Action after conducting inquiries

**† 8. TERM OF PATENT:** (1) The title of the patentee to the patent shall be valid only for a period of seven years from the date of registration thereof under Section 7, except when it is renewed under Section 23 B.

(2) Notwithstanding, anything contained in Sub-Section (1), in the case of patent registered before the commencement of this Section, the term fixed according to the provision in force at the time of registration thereof shall be valid After the expiry of that term, the patent must be renewed under Section 23B.

**9. α.....**

**10. Submission of Design or Model of Patent to Government Archives:** The patentee shall submit to the National Archive also a copy of the design or model of the article manufactured according to the patent registered under this Act.

**Δ 11. Penalty for violation of Section 3:** A person, who commits any of the acts, shall be fined as per gravity of offense by the order of the Department and the goods or commodities related to the offense shall be confiscated:

(a) A fine of up to Five Hundred Thousand Rupees for committing an offense mentioned in Sud-section 2 of Section 3.

(b) A fine of up to Two Hundred and Fifty Thousand (Two lac fifty thousand) Rupees for committing an attempt or abetment of an offense mentioned in Sud-section (2) of Section 3.

† Amended by the first amendment

• Inserted by the first amendment

Δ Amended by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

α Deleted by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

### Chapter 3

#### Designs

**12. ACQUISITION OF TITLE TO DESIGN:** (1) A person may acquire title under this Act to the design of any article manufactured or caused to be manufactured upon registration under Section 14.

<sup>Δ</sup>(2) No one shall copy or use or cause to use in the name of the others without transforming the ownership or written permission pursuant to Section 21d, the design registered in the name of any person pursuant to this Act.

**13. APPLICATION FOR REGISTRATION OF DESIGN:** (1) A person desirous to register the design of any article manufactured or caused to be manufactured under Section 14, shall submit to the Department, an application in a form as specified in Schedule 1 (b), together with four copies of such design and maps, and drawings and particulars thereof.

(2) The person submitting an application under Sub-Section (1) shall pay, along with the application, the application fee to the department specified in Schedule 3 (2) (a).

**14. REGISTRATION OF DESIGN:** (1) On receipt of the application filed by any person under Section 13, the Department shall register the design in the name of the applicant and issue a certificate as mentioned in Schedule 2(b).

Provided that in case such design hurts the prestige of any individual or institution or adversely affects the public conduct or morality, or undermines the national interest, or in case such design has already been registered in the name of any other person, it shall not be registered under this-Section.

(2) For obtaining the certificate mentioned in Sub-Section (1), the applicant shall pay a design registration fee as prescribed in Schedule 3 (2) (b), to the department.

(3) In case the Department is satisfied that there exists any circumstance as mentioned in the provision of Sub-Section (1), it may cancel the registration of any design.

Provided that the department shall, before cancelling the registration of such design, provide reasonable opportunity to the design- holder to show case if any, why the registration of his/her design should not be cancelled.

\* 14A. Term of Design. The title of the person in whose name a design has been registered under Section 14 shall remain valid for a period of five years from the date of registration thereof, except when it is renewed under Section 23B.

15. PUNISHMENT FOR CONTRAVENTION OF SECTION 12 : In case a person, contravenes the provisions or Sub-Section (2) of Section 12, or operates a design invalidated the Department, may be<sup>†</sup> punished with a fine not exceeding <sup>Δ</sup>Fifty thousand Rupees, and articles and goods connected with such offense shall be confiscated on the order of the Department, <sup>™</sup>as per the gravity of offense.

### Chapter 4

#### Trademarks

**16. ACQUISITION OF TITLE TO TRADEMARKS:** (1) A person may acquire, under this Act, title to the trademark of his business, upon registration in the department under Section 18.

<sup>Δ</sup>(2) No one shall copy or use or cause to use in the name of the others without transforming the ownership or written permission pursuant to Section 21d, the trademark registered in the name of any person pursuant to this Act.

**17. APPLICATION FOR REGISTRATION OF TRADEMARK:** (1) A person desirous to register the trademark of his business registered under Section 18 shall submit to the Department an application in a format as specified in Schedule 1(c), along with four specimen of such trade-marks, shall conduct necessary investigation and provide sufficient opportunity to defend him/her self and also conduct further inquiry based on the dense made and if finds it appropriate to register it.

(2) The person submitting application under Sub-section (1), shall pay an application fee to the department as specified in Schedule 3(3) (a).

<sup>†</sup> Amended by the first amendment

• Inserted by the first amendment

<sup>Δ</sup> Amended by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

<sup>™</sup> Inserted by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

**18. REGISTRATION OF TRADEMARK :** (1) In case any person files an application under Section 17 for registration of trademark, the department shall register such trademark in the name of the applicant the specimen form indicated in Schedule 2 (c), <sup>TM</sup>shall conduct necessary investigation and provide sufficient opportunity to defend him/herself and also conduct further inquiry based on the cense made and if finds it appropriate to register it.

Provided that in case it is felt such trade-mark may hurt the prestige of any individual or institution or adversely affect the public conduct or morality or undermine the national interest or the reputation of the trade-mark of any other person, or in case such trade-mark is found to have already been registered in the name of another person, it shall not be registered

(2) To obtain a certificate as mentioned in Sub-Section (1), the applicant shall pay registration fees as specified in Schedule 3 (3) (b) to the Department.

(3) The Department may cancel the registration of any trademark, if it is satisfied that any of the circumstance prescribed in the provision of Sub-Section (1) exists.

Provided that the Department shall, before cancelling the registration of a trademark provide a reasonable opportunity to the holder of the trademark to show cause if any, why his/her trademark should not be cancelled.

**\* 18A. Classification of Goods and Services for Trade-Mark Registration:** (1) For the purpose of registering trademarks related to any goods or services, Government of Nepal may classify such goods or services by a notification in the Nepal Gazette.

(2) Separate application shall be submitted to register trade- marks of goods or services placed in different categories.

(3) The trademark registered for goods or services in one category under Sub-section (1) may be registered for goods or services under another category if it so falls.

**\*18B. Prohibition to Use Trademarks:** No trademark may be used as a registered trademark without registering it at the Department.

**\*18C. Time Limit for Use of Trademarks:** In case a trademark registered at the Department is not brought into use within one year from the date of registration thereof, the department shall conduct necessary inquiries and cancel such registration.

**\*18D Term of Trademarks:** The title of the person in whose name a trademark has been registered under Section 18 shall remain valid for a period of seven years from the date of registration thereof, except when it is renewed under Section 18.

**†19. PUNISHMENT FOR ILLEGAL USE OF TRADE-MARKS:** In case anyone who, violates Sub-Section (2) of Section 16, or brings into use a trademark which has been cancelled under Sub-section (3) of Section 18, or violates Section 18B, may be punished with a fine not exceeding is <sup>A</sup>One Hundred Thousand Rupees and articles and goods connected with such offense confiscated on the orders of the Department <sup>TM</sup>as per the gravity of offense.

† Amended by the first amendment

• Inserted by the first amendment

<sup>TM</sup> Inserted by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

## Chapter 5

### Miscellaneous

**20. Right to appoint Attorney:** A person may appoint an attorney or legal practitioner for to take any Action so required under this Act, and all Actions taken <sup>†</sup>by such attorney or legal practitioner shall be deemed to have been taken by him/herself.

**21** .....<sup>o</sup>

**\*21A. Publication of Registered Designs and Trademarks:** (1) The Department shall publish the designs registered under Section 14 and the trademarks registered under Section 18, as well as particulars of their renewal or cancellation, for the information of the public.

(2) Anyone who has any objection to the published under Sub-Section (1) may file a complaint to the department within a period of 35 days from the date of such publication. The Department shall take necessary Actions after holding inquiries into such complaints.

**\*21B. Title Not to be valid Unless Registered in Nepal:** The title to any patent, design or trade-mark registered in a foreign country shall not be valid in Nepal unless it is registered in Nepal by the concerned person.

**\*21C. Registration of Foreign patents, Designs and Trade-Marks:** The Department may register patents, designs and trade- marks registered in foreign countries without conducting any enquiries if an application is filed for their registration along with certificates of its registration in a foreign country<sup>™</sup>and the Department shall provide the facility of pursuant to the Paris Convention for the Protection of Industrial Property 1883 to the registration holder.

<sup>Δ</sup>**21D. Transfer of ownership or approval for use of patent, Design or Trade:** (1) The owner of the patent, Design or Trademark may transfer the ownership or provide approval in writing for its use.

(2) In case it is so intended to transfers the ownership or to provide or received the approval for the use of patent, Design or Trademark pursuant to Sub-Section (1), both the persons shall file a joint application, stating the facts accordingly before the Department accompanied by the prescribed fees .

(3) If an application pursuant to Sub-section (2) is received , the Department may transfer the ownership or provide approval of use for such patent, design or trademark.

(4) If the ownership of the patent, design or trademark is transferred pursuant to Sub-section (3), the name of receiving person.

(5) If the approval for use is provided pursuant to Sub-section (2) the Department shall maintain the register-book and certificate laying in the office accordingly and also issue a note for the same to the receiver.

**22. Maintain Register by the Department:** The Department shall maintain separate register of patents, designs and trade-marks, indicating therein registration or cancellation thereof under this Act.

<sup>†</sup>**23. α**.....

**\*23A. α** .....

<sup>†</sup> Amended by the first amendment

• Inserted by the first amendment

<sup>™</sup> Inserted by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

<sup>Δ</sup> Amended by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

α Deleted by the Act Made to Amend Some Nepal Acts Relating to Export and Import and Intellectual Property, 2063 (2006)

<sup>†</sup>**Schedule 1(A)**

**Format of an Application For Registration of Patent**

To,

.....

.....

Since I am/We are the inventor/s of ..... I/we hereby apply, attaching herewith the principle/formula/and maps and drawings containing all particulars, as well as the application fee, for the registration of its patent. I/we hereby request to register the patent in my name/our names and to issue me/us a certificate thereof.

Witnesses:

1.....

2.....

Signature of the Applicant:

Address:

Date:

<sup>†</sup> Amended by the first amendment

<sup>†</sup>**Schedule 1(B)****Format of an Application For Registration of Design**

To,

.....

.....

Since I/we have manufactured am/are arranging for the manufacture of ..... according to the design attached hereto, I/We hereby apply, along with the maps and drawings containing full thereof, four pieces of samples, and the application fee, requesting for the registration of the design. I/We hereby request you to register the design in my name/our names and then issue to me/us a certificate thereof.

Witnesses:

1.....

2.....

Signature of the Applicant:

Address:

Date:

<sup>†</sup> Amended by the first amendment

<sup>†</sup>**Schedule 1(C)**

**Format of an Application For Registration of Trademark**

To,

.....

.....

Since I/we intend to affix/have been affixing the trademark attached here to on, I/we hereby apply for the registration of that trademark along with four samples thereof and the application fee. I/we hereby request to register the trade- mark in my name/our names and issue a certificate thereof to me/us.

Witnesses:

1.....

2.....

Signature of the Applicant:

Address:

Date:

<sup>†</sup> Amended by the first amendment



<sup>†</sup>**Schedule 2(A)**  
**Format of an Application For Registration of Patent**

Government of Nepal  
..... Ministry  
.....Department

Certificate No., Date:

Certificate of Registration of Patent

The patent of ..... which has been invented by ..... has been registered under Section 7 of patent, Design and Trade-Mark Act, 2022 (1965) and this certificate has been issued accordingly.

.....  
**Director- General**

Date of Renewal	Date on which the Renewed term expires	Signature of Renewing Authority of the

<sup>†</sup> Amended by the first amendment

<sup>†</sup>**Schedule 2(B)**  
**Format of an Application For Registration of Design**

Government of Nepal  
..... Ministry  
.....Department

Certificate No., Date:

Certificate of Registration of Design

The design of ..... manufactured/or caused to manufacture thereof by..... has been registered under Section 14 of Patent, Design and Trade-Mark Act, 2022 (1965) and this certificate has been issued accordingly.

.....  
**Director- General**

Date of Renewal	Date on which the Renewed term expires	Signature of Renewing Authority of the

<sup>†</sup> Amended by the first amendment

† **Schedule 2(C)**

**Format of an Application For Registration of Trademark**

Government of Nepal  
..... Ministry  
.....Department

Certificate No., Date:

Certificate of Registration of Trademark

The trademark affixed/to be affixed in ..... by..... has been registered under Section 18 of the patent, Design, and Trade-Mark Act, 2022 (1965) and this certificate has been issued accordingly.

.....  
**Director- General**

Date of Renewal	Date on which the Renewed term expires	Signature of Renewing Authority of the

† Amended by the first amendment

**Schedule 2(D)**  
**Format of an Application For Renewal of Patent**

To,  
.....  
.....

Since the validity date of the registration of the patent of .....registered by me/us on  
..... has expired, I/we hereby request you for the renewal thereof. The renewal fee is enclosed.

Signature of the Applicant:  
.....

Address:  
Date:

• *Inserted by the first amendment*

**Schedule 2(E)**

**Format of an Application For Renewal of Design**

To,

.....

.....

Since the validity date of the registration of the design of .....registered by me/us on ..... has expired, I/we hereby request you for the renewal thereof. The renewal fee is enclosed.

Signature of the Applicant:

.....

Address:

Date:

• *Inserted by the first amendment*

**Schedule 2(F)**

**Format of an Application For Renewal of Trademark**

To,

.....

.....

Since the duration of the registration of the trademark being affixed by us in .....by registering it on ..... has expired, I/we hereby request you for the renewal thereof. The renewal fee is enclosed.

Signature of the Applicant:

.....

Address:

Date:

• *Inserted by the first amendment*

**\*Schedule-3****Application Registration and Renewal Fees in Respect to patents, Designs and Trademarks**

S.N.	Detail of fees	Patent	Design	Trademark
1	Application of Registration fees for the patents, Designs and Trademarks	Rs 2000/-	Rs 1000/-	Rs 2000/-
2	Application Amendment fee	Rs 500/-	Rs 500/-	Rs 500/-
3	Registration fee	Rs 1000/-	Rs 7000/-	Rs 5000/-
4.	Transfer fee	Rs 5000/-	Rs 3000/-	Rs 2000/-
5.	Endorsement fees for Amendment on record and Certification except transfer	Rs 2000/-	Rs 1000/-	Rs 1000/-
6.	Fees for the information of registration details	Rs 750/-	Rs 750/-	Rs 500/-
7.	Fees for complain and objection	Rs 1000/-	Rs 1000/-	Rs 1000/-
8.	Fees for the copy of the registration certificate	Rs 1000/-	Rs 1000/-	Rs 1000/-
9.	Renewal Fees			
(a)	Annual rate for the first time	Rs 5000/-	Rs 1000/-	-
(b)	Annual rate for the second time	Rs 7500/-	Rs 2000/-	-
(c)	Annual rate for the Trademark each time	-	-	Rs 500/-

\* Came into force on 2062.6.1 as per the notification of Nepal Gazette published on 2062.5.13



## **SCHEDULE-2**

# NICE CLASSIFICATION - 11TH EDITION, VERSION 2021

## GENERAL REMARKS

The indications of goods or services appearing in the class headings are general indications relating to the fields to which, in principle, the goods or services belong. The Alphabetical List should therefore be consulted in order to ascertain the exact classification of each individual product or service.

### GOODS

- a. If a product cannot be classified with the aid of the List of Classes, the Explanatory Notes and the Alphabetical List, the following remarks set forth the criteria to be applied:
- b. A finished product is in principle classified according to its function or purpose. If the function or purpose of a finished product is not mentioned in any class heading, the finished product is classified by analogy with other comparable finished products, indicated in the Alphabetical List. If none is found, other subsidiary criteria, such as that of the material of which the product is made or its mode of operation, are applied.
- c. A finished product which is a multipurpose composite object (e.g., clocks incorporating radios) may be classified in all classes that correspond to any of its functions or intended purposes. If those functions or purposes are not mentioned in any class heading, other criteria, indicated under (a), above, are to be applied.
- d. Raw materials, unworked or semi-worked, are in principle classified according to the material of which they consist.
- e. Goods intended to form part of another product are in principle classified in the same class as that product only in cases where the same type of goods cannot normally be used for another purpose. In all other cases, the criterion indicated under (a), above, applies.
- f. When a product, whether finished or not, is classified according to the material of which it is made, and it is made of different materials, the product is in principle classified according to the material which predominates.
- g. Cases adapted to the product they are intended to contain are in principle classified in the same class as the product.

### SERVICES

If a service cannot be classified with the aid of the List of Classes, the Explanatory Notes and the Alphabetical List, the following remarks set forth the criteria to be applied:

- a. Services are in principle classified according to the branches of activities specified in the headings of the service classes and in their Explanatory Notes or, if not specified, by analogy with other comparable services indicated in the Alphabetical List.
- b. Rental services are in principle classified in the same classes as the services provided by means of the rented objects (e.g., Rental of telephones, covered by [Cl. 38](#)). Leasing services are analogous to rental services and therefore should be classified in the same way. However, hire- or lease-purchase financing is classified in [Cl. 36](#) as a financial service.
- c. Services that provide advice, information or consultation are in principle classified in the same classes as the services that correspond to the subject matter of the advice, information or consultation, e.g., transportation consultancy ([Cl. 39](#)), business management consultancy ([Cl. 35](#)), financial consultancy ([Cl. 36](#)), beauty consultancy ([Cl. 44](#)). The rendering of the advice, information or consultancy by electronic means (e.g., telephone, computer) does not affect the classification of these services.
- d. Services rendered in the framework of franchising are in principle classified in the same class as the particular services provided by the franchisor (e.g., business advice relating to franchising ([Cl. 35](#)), financing services relating to franchising ([Cl. 36](#)), legal services relating to franchising ([Cl. 45](#))).

## CLASS 1

Chemicals for use in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing and fire prevention compositions; tempering and soldering preparations; substances for tanning animal skins and hides; adhesives for use in industry; putties and other paste fillers; compost, manures, fertilizers; biological preparations for use in industry and science.

### **Explanatory Note**

Class 1 includes mainly chemical products for use in industry, science and agriculture, including those which go to the making of products belonging to other classes.

This Class includes, in particular:

- sensitized paper;
- tyre repairing compositions;
- salt for preserving, other than for foodstuffs;
- certain additives for use in the food industry, for example, pectin, lecithin, enzymes and chemical preservatives;
- certain ingredients for use in the manufacture of cosmetics and pharmaceuticals, for example, vitamins, preservatives and antioxidants;
- certain filtering materials, for example, mineral substances, vegetable substances and ceramic materials in particulate form.

This Class does not include, in particular:

- raw natural resins (Cl. 2), semi-processed resins (Cl. 17);
- chemical preparations for medical or veterinary purposes (Cl. 5);
- fungicides, herbicides and preparations for destroying vermin (Cl. 5);
- adhesives for stationery or household purposes (Cl. 16);
- salt for preserving foodstuffs (Cl. 30);
- straw mulch (Cl. 31).

## CLASS 2

Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants, dyes; inks for printing, marking and engraving; raw natural resins; metals in foil and powder form for use in painting, decorating, printing and art.

### **Explanatory Note**

Class 2 includes mainly paints, colorants and preparations used for protection against corrosion.

This Class includes, in particular:

- paints, varnishes and lacquers for industry, handicrafts and arts;
- thinners, thickeners, fixatives and siccatives for paints, varnishes and lacquers;
- mordants for wood and leather;
- anti-rust oils and oils for the preservation of wood;
- dyestuffs for clothing;
- colorants for foodstuffs and beverages.

This Class does not include, in particular:

- unprocessed artificial resins (Cl. 1), semi-processed resins (Cl. 17);
- mordants for metals (Cl. 1);
- laundry blueing (Cl. 3);
- cosmetic dyes (Cl. 3);
- paint boxes (articles for use in school) (Cl. 16);
- inks for stationery purposes (Cl. 16);
- insulating paints and varnishes (Cl. 17).

## CLASS 3

Non-medicated cosmetics and toiletry preparations; non-medicated dentifrices; perfumery, essential oils; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations.

### **Explanatory Note**

Class 3 includes mainly non-medicated toiletry preparations, as well as cleaning preparations for use in the home and other environments.

This Class includes, in particular:

- sanitary preparations being toiletries;
- tissues impregnated with cosmetic lotions;
- deodorants for human beings or for animals;
- room fragrancing preparations;
- nail art stickers;
- polishing wax;
- sandpaper.

This Class does not include, in particular:

- ingredients for use in the manufacture of cosmetics, for example, vitamins, preservatives and antioxidants (Cl. 1);
- degreasing preparations for use in manufacturing processes (Cl. 1);
- chemical chimney cleaners (Cl. 1);
- deodorants, other than for human beings or for animals (Cl. 5);
- medicated shampoos, soaps, lotions and dentifrices (Cl. 5);
- emery boards, emery files, sharpening stones and grindstones (hand tools) (Cl. 8);
- cosmetic and cleaning instruments, for example, make-up brushes (Cl. 21), cloths, pads and rags for cleaning (Cl. 21).

## CLASS 4

Industrial oils and greases, wax; lubricants; dust absorbing, wetting and binding compositions; fuels and illuminants; candles and wicks for lighting.

### **Explanatory Note**

Class 4 includes mainly industrial oils and greases, fuels and illuminants.

This Class includes, in particular:

- oils for the preservation of masonry or of leather;
- raw wax, industrial wax;
- electrical energy;
- motor fuels, biofuels;
- non-chemical additives for fuels;
- wood for use as fuel.

This Class does not include, in particular:

- certain special industrial oils and greases, for example, oils for tanning leather (Cl. 1), oils for the preservation of wood, anti-rust oils and greases (Cl. 2), essential oils (Cl. 3);
- massage candles for cosmetic purposes (Cl. 3) and medicated massage candles (Cl. 5);
- certain special waxes, for example, grafting wax for trees (Cl. 1), tailors' wax, polishing wax, depilatory wax (Cl. 3), dental wax (Cl. 5), sealing wax (Cl. 16);
- wicks adapted for oil stoves (Cl. 11) and for cigarette lighters (Cl. 34).

## CLASS 5

Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for human beings and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

### **Explanatory Note**

Class 5 includes mainly pharmaceuticals and other preparations for medical or veterinary purposes.

This Class includes, in particular:

- sanitary preparations for personal hygiene, other than toiletries;
- diapers for babies and for incontinence;
- deodorants, other than for human beings or for animals;
- medicated shampoos, soaps, lotions and dentifrices;
- dietary supplements intended to supplement a normal diet or to have health benefits;
- meal replacements and dietetic food and beverages adapted for medical or veterinary use.

This Class does not include, in particular:

- ingredients for use in the manufacture of pharmaceuticals, for example, vitamins, preservatives and antioxidants (Cl. 1 );
- sanitary preparations being non-medicated toiletries (Cl. 3 );
- deodorants for human beings or for animals (Cl. 3 );
- support bandages, orthopaedic bandages (Cl. 10 );
- meal replacements and dietetic food and beverages not specified as being for medical or veterinary use, which should be classified in the appropriate food or beverage classes, for example, low-fat potato crisps (Cl. 29 ), high-protein cereal bars (Cl. 30 ), isotonic beverages (Cl. 32 ).



## CLASS 6

Common metals and their alloys, ores; metal materials for building and construction; transportable buildings of metal; non-electric cables and wires of common metal; small items of metal hardware; metal containers for storage or transport; safes.

### **Explanatory Note**

Class 6 includes mainly unwrought and partly wrought common metals, including ores, as well as certain goods made of common metals.

This Class includes, in particular:

- metals in foil or powder form for further processing, for example, for 3D printers;
- metal building materials, for example, materials of metal for railway tracks, pipes and tubes of metal;
- small items of metal hardware, for example, bolts, screws, nails, furniture casters, window fasteners;
- transportable buildings or structures of metal, for example, prefabricated houses, swimming pools, cages for wild animals, skating rinks;
- certain goods made of common metals not otherwise classified by function or purpose, for example, all-purpose boxes of common metal, statues, busts and works of art of common metal.

This Class does not include, in particular:

- metals and ores used as chemicals in industry or scientific research for their chemical properties, for example, bauxite, mercury, antimony, alkaline and alkaline-earth metals (Cl. 1);
- metals in foil and powder form for use in painting, decorating, printing and art (Cl. 2);
- electric cables (Cl. 9) and non-electric cables and ropes, not of metal (Cl. 22);
- pipes being parts of sanitary installations (Cl. 11), flexible pipes, tubes and hoses, not of metal (Cl. 17) and rigid pipes, not of metal (Cl. 19);
- cages for household pets (Cl. 21);
- certain goods made of common metals that are classified according to their function or purpose, for example, hand tools, handoperated (Cl. 8), paper clips (Cl. 16), furniture (Cl. 20), kitchen utensils (Cl. 21), household containers (Cl. 21).

## CLASS 7

Machines, machine tools, power-operated tools; motors and engines, except for land vehicles; machine coupling and transmission components, except for land vehicles; agricultural implements, other than hand-operated hand tools; incubators for eggs; automatic vending machines.

### **Explanatory Note**

Class 7 includes mainly machines and machine tools, motors and engines.

This Class includes, in particular:

- parts of motors and engines of all kinds, for example, starters, mufflers and cylinders for motors and engines of any type;
- electric cleaning and polishing apparatus, for example, electric shoe polishers, electric machines and apparatus for carpet shampooing and vacuum cleaners;
- 3D printers;
- industrial robots;
- certain special vehicles not for transportation purposes, for example, road sweeping machines, road making machines, bulldozers, snow ploughs, as well as rubber tracks as parts of those vehicles' crawlers.

This Class does not include, in particular:

- hand tools and implements, hand-operated (Cl. 8);
- humanoid robots with artificial intelligence, laboratory robots, teaching robots, security surveillance robots (Cl. 9), surgical robots (Cl. 10), robotic cars (Cl. 12), robotic drums (Cl. 15), toy robots (Cl. 28);
- motors and engines for land vehicles (Cl. 12);
- treads for vehicles and tractors (Cl. 12);
- certain special machines, for example, automated teller machines (Cl. 9), respirators for artificial respiration (Cl. 10), refrigerating apparatus and machines (Cl. 11).

## CLASS 8

Hand tools and implements, hand-operated; cutlery; side arms, except firearms; razors.

### **Explanatory Note**

Class 8 includes mainly hand-operated tools and implements for performing tasks, such as drilling, shaping, cutting and piercing.

This Class includes, in particular:

- hand-operated agricultural, gardening and landscaping tools;
- hand-operated tools for carpenters, artists and other craftspersons, for example, hammers, chisels and gravers;
- handles for hand-operated hand tools, such as knives and scythes;
- electric and non-electric hand implements for personal grooming and body art, for example, razors, implements for hair curling, tattooing, and for manicure and pedicure;
- hand-operated pumps;
- table cutlery, such as knives, forks and spoons, including those made of precious metals.

This Class does not include, in particular:

- machine tools and implements driven by a motor (Cl. 7);
- surgical cutlery (Cl. 10);
- pumps for bicycle tyres (Cl. 12), pumps specially adapted for use with balls for games (Cl. 28);
- side arms being firearms (Cl. 13);
- paper knives and paper shredders for office use (Cl. 16);
- handles for objects that are classified in various classes according to their function or purpose, for example, walking stick handles, umbrella handles (Cl. 18), broom handles (Cl. 21);
- serving utensils, for example, sugar tongs, ice tongs, pie servers and serving ladles, and kitchen utensils, for example, mixing spoons, pestles and mortars, nutcrackers and spatulas (Cl. 21);
- fencing weapons (Cl. 28).

## CLASS 9

Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; recorded and downloadable media, computer software, blank digital or analogue recording and storage media; mechanisms for coin-operated apparatus; cash registers, calculating devices; computers and computer peripheral devices; diving suits, divers masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; fire-extinguishing apparatus.

### Explanatory Note

Class 9 includes mainly apparatus and instruments for scientific or research purposes, audiovisual and information technology equipment, as well as safety and life-saving equipment.

This Class includes, in particular:

- apparatus and instruments for scientific research in laboratories;
  - training apparatus and simulators, for example, resuscitation mannequins, simulators for the steering and control of vehicles;
  - apparatus and instruments for controlling and monitoring aircraft, watercraft and unmanned vehicles, for example, navigational instruments, transmitters, compasses for measuring, GPS apparatus, automatic steering apparatus for vehicles;
  - safety and security apparatus and instruments, for example, safety nets, signalling lights, traffic-light apparatus, fire engines, sound alarms, security tokens being encryption devices;
  - clothing that protects against serious or life-threatening injuries, for example, clothing for protection against accidents, irradiation and fire, bullet-proof clothing, protective helmets, head guards for sports, mouth guards for sports, protective suits for aviators, knee-pads for workers;
  - optical apparatus and instruments, for example, eyeglasses, contact lenses, magnifying glasses, mirrors for inspecting work, peepholes;
  - magnets;
  - smartwatches, wearable activity trackers;
  - joysticks for use with computers, other than for video games, virtual reality headsets, smartglasses;
  - eyeglass cases, cases for smartphones, cases especially made for photographic apparatus and instruments;
  - automated teller machines, invoicing machines, material testing instruments and machines;
  - batteries and chargers for electronic cigarettes;
  - electric and electronic effects units for musical instruments;
  - laboratory robots, teaching robots, security surveillance robots, humanoid robots with artificial intelligence.
- fencing masks, boxing gloves (Cl. 28).

\*(continued in next page)\*

This Class does not include, in particular:

- joysticks being parts of machines, other than for game machines (Cl. 7), vehicle joysticks (Cl. 12), joysticks for video games, controllers for toys and game consoles (Cl. 28);
- coin-operated apparatus that are classified in various classes according to their function or purpose, for example, coin-operated washing machines (Cl. 7), coin-operated billiard tables (Cl. 28);
- industrial robots (Cl. 7), surgical robots (Cl. 10), toy robots (Cl. 28);
- pulse meters, heart rate monitoring apparatus, body composition monitors (Cl. 10);
- laboratory lamps, laboratory burners (Cl. 11);
- diving lights (Cl. 11);
- explosive fog signals, signal rocket flares (Cl. 13);
- histological sections for teaching purposes, biological samples for use in microscopy as teaching materials (Cl. 16);
- clothing and equipment worn for the practice of certain sports, for example, protective paddings being parts of sports suits, fencing masks, boxing gloves (Cl. 28).

## CLASS 10

Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopaedic articles; suture materials; therapeutic and assistive devices adapted for persons with disabilities; massage apparatus; apparatus, devices and articles for nursing infants; sexual activity apparatus, devices and articles.

### **Explanatory Note**

Class 10 includes mainly surgical, medical, dental and veterinary apparatus, instruments and articles generally used for the diagnosis, treatment or improvement of function or condition of persons and animals.

This Class includes, in particular:

- support bandages, orthopaedic bandages;
- special clothing for medical purposes, for example, compression garments, stockings for varices, strait jackets, orthopaedic footwear;
- articles, instruments and devices for menstruation, contraception and childbirth, for example, menstrual cups, pessaries, condoms, childbirth mattresses, forceps;
- therapeutic and prosthetic articles and devices for implantation made of artificial or synthetic materials, for example, surgical implants comprised of artificial materials, artificial breasts, brain pacemakers, biodegradable bone fixation implants;
- furniture especially made for medical purposes, for example, armchairs for medical or dental purposes, air mattresses for medical purposes, operating tables.

This Class does not include, in particular:

- medical dressings and absorbent sanitary articles, for example, plasters, bandages and gauze for dressings, breast-nursing pads, diapers for babies and for incontinence, tampons (Cl. 5 );
- surgical implants comprised of living tissue (Cl. 5 );
- tobacco-free cigarettes for medical purposes (Cl. 5 ) and electronic cigarettes (Cl. 34 );
- wheelchairs and mobility scooters (Cl. 12 );
- massage tables and hospital beds (Cl. 20 ).

## CLASS 11

Apparatus and installations for lighting, heating, cooling, steam generating, cooking, drying, ventilating, water supply and sanitary purposes.

### **Explanatory Note**

Class 11 includes mainly environmental control apparatus and installations, in particular, for the purposes of lighting, cooking, cooling and sanitizing.

This Class includes, in particular:

- air-conditioning apparatus and installations;
- ovens, other than for laboratory use, for example, dental ovens, microwave ovens, bakers ovens;
- stoves being heating apparatus;
- solar thermal collectors;
- chimney flues, chimney blowers, hearths, domestic fireplaces;
- sterilizers, incinerators;
- lighting apparatus and installations, for example, luminous tubes for lighting, searchlights, luminous house numbers, vehicle reflectors, lights for vehicles;
- lamps, for example, electric lamps, gas lamps, laboratory lamps, oil lamps, street lamps, safety lamps;
- tanning apparatus being sun beds;
- bath installations, bath fittings, bath plumbing fixtures;
- toilets, urinals;
- fountains, chocolate fountains;
- electrically heated pads, cushions and blankets, not for medical purposes;
- hot water bottles;
- electrically heated clothing;
- electric appliances for making yogurt, bread-making machines, coffee machines, ice-cream making machines;
- ice machines and apparatus.

*\*(continued in next page)\**

This Class does not include, in particular:

- steam producing apparatus being parts of machines (Cl. 7 );
- air condensers (Cl. 7 );
- current generators, generators of electricity (Cl. 7 );
- soldering lamps (Cl. 7 ), optical lamps, darkroom lamps (Cl. 9 ), lamps for medical purposes (Cl. 10 );
- ovens for laboratory use (Cl. 9 );
- photovoltaic cells (Cl. 9 );
- signalling lights (Cl. 9 );
- electrically heated pads, cushions and blankets, for medical purposes (Cl. 10 );
- portable baby baths (Cl. 21 );
- non-electric portable coolers (Cl. 21 );
- cooking utensils that do not have an integrated heat source, for example, non-electric griddles and grills, non-electric waffle irons, non-electric pressure cookers (Cl. 21 );
- footmuffs, not electrically heated (Cl. 25 ).



## CLASS 12

Vehicles; apparatus for locomotion by land, air or water.

### **Explanatory Note**

Class 12 includes mainly vehicles and apparatus for the transport of people or goods by land, air or water.

This Class includes, in particular:

- motors and engines for land vehicles;
- couplings and transmission components for land vehicles;
- air cushion vehicles;
- remote control vehicles, other than toys;
- parts of vehicles, for example, bumpers, windscreens, steering wheels, tyres for vehicle wheels, as well as treads for vehicles.

This Class does not include, in particular:

- railway material of metal (Cl. 6);
- motors, engines, couplings and transmission components, other than for land vehicles (Cl. 7);
- parts of all kinds of motors and engines, for example, starters, mufflers and cylinders for motors and engines (Cl. 7);
- rubber tracks being parts of crawlers on construction, mining, agricultural and other heavy-duty machines (Cl. 7);
- tricycles for infants and scooters, being toys (Cl. 28);
- certain special vehicles or wheeled apparatus not for transportation purposes, for example, self-propelled road sweeping machines (Cl. 7), fire engines (Cl. 9), tea carts (Cl. 20);
- certain parts of vehicles, for example, electric batteries, mileage recorders and radios for vehicles (Cl. 9), lights for automobiles and bicycles (Cl. 11), automobile carpets (Cl. 27).

## CLASS 13

Firearms; ammunition and projectiles; explosives; fireworks.

### **Explanatory Note**

Class 13 includes mainly firearms and pyrotechnic products.

This Class includes, in particular:

- rescue flares, explosive or pyrotechnic;
- flare pistols;
- sprays for personal defence purposes;
- explosive fog signals, signal rocket flares;
- air pistols being weapons;
- bandoliers for weapons;
- sporting firearms, hunting firearms.

This Class does not include, in particular:

- grease for weapons (Cl. 4);
- blades being weapons (Cl. 8);
- side arms, other than firearms (Cl. 8);
- non-explosive fog signals, rescue laser signalling flares (Cl. 9);
- telescopic sights for firearms (Cl. 9);
- flaming torches (Cl. 11);
- Christmas crackers (Cl. 28);
- percussion caps being toys (Cl. 28);
- toy air pistols (Cl. 28);
- matches (Cl. 34).

## CLASS 14

Precious metals and their alloys; jewellery, precious and semi-precious stones; horological and chronometric instruments.

### **Explanatory Note**

Class 14 includes mainly precious metals and certain goods made of precious metals or coated therewith, as well as jewellery, clocks and watches, and component parts therefor.

This Class includes, in particular:

- jewellery, including imitation jewellery, for example, paste jewellery;
- cuff links, tie pins, tie clips;
- key rings, key chains and charms therefor;
- jewellery charms;
- jewellery boxes;
- component parts for jewellery, clocks and watches, for example, clasps and beads for jewellery, movements for clocks and watches, clock hands, watch springs, watch crystals.

This Class does not include, in particular:

- smartwatches (Cl. 9);
- charms, other than for jewellery, key rings or key chains (Cl. 26);
- objects of art not made of precious metals or coated therewith that are classified according to the material of which they are made, for example, works of art of metal (Cl. 6), of stone, concrete or marble (Cl. 19), of wood, wax, plaster or plastic (Cl. 20), of porcelain, ceramic, earthenware, terra-cotta or glass (Cl. 21);
- certain goods made of precious metals or coated therewith that are classified according to their function or purpose, for example, metals in foil and powder form for use in painting, decorating, printing and art (Cl. 2), dental amalgams of gold (Cl. 5), cutlery (Cl. 8), electric contacts (Cl. 9), pen nibs of gold (Cl. 16), teapots (Cl. 21), gold and silver embroidery (Cl. 26), cigar boxes (Cl. 34)

## CLASS 15

Musical instruments; music stands and stands for musical instruments; conductors' batons.

### **Explanatory Note**

Class 15 includes mainly musical instruments, their parts and their accessories.

This Class includes, in particular:

- mechanical musical instruments and their accessories, for example, barrel organs, mechanical pianos, intensity regulators for mechanical pianos, robotic drums;
- musical boxes;
- electrical and electronic musical instruments;
- strings, reeds, pegs and pedals for musical instruments;
- tuning forks, tuning hammers;
- colophony (rosin) for stringed musical instruments.

This Class does not include, in particular:

- apparatus for the recording, transmission, amplification and reproduction of sound, for example, electric and electronic effects units for musical instruments, wah-wah pedals, audio interfaces, audio mixers, equalisers being audio apparatus, subwoofers (Cl. 9);
- downloadable music files (Cl. 9);
- downloadable electronic sheet music (Cl. 9), printed sheet music (Cl. 16);
- juke boxes, musical (Cl. 9);
- metronomes (Cl. 9);
- musical greeting cards (Cl. 16).

## CLASS 16

Paper and cardboard; printed matter; bookbinding material; photographs; stationery and office requisites, except furniture; adhesives for stationery or household purposes; drawing materials and materials for artists; paintbrushes; instructional and teaching materials; plastic sheets, films and bags for wrapping and packaging; printers' type, printing blocks.

### **Explanatory Note**

Class 16 includes mainly paper, cardboard and certain goods made of those materials, as well as office requisites.

This Class includes, in particular:

- paper knives and paper cutters;
- cases, covers and devices for holding or securing paper, for example, document files, money clips, holders for cheque books, paper-clips, passport holders, scrapbooks;
- certain office machines, for example, typewriters, duplicators, franking machines for office use, pencil sharpeners;
- painting articles for use by artists and interior and exterior painters, for example, artists' watercolour saucers, painters' easels and palettes, paint rollers and trays;
- certain disposable paper products, for example, bibs, handkerchiefs and table linen of paper;
- certain goods made of paper or cardboard not otherwise classified by function or purpose, for example, paper bags, envelopes and containers for packaging, statues, figurines and works of art of paper or cardboard, such as figurines of papier mâché, framed or unframed lithographs, paintings and watercolours.

This Class does not include, in particular:

- paints (Cl. 2);
- hand tools for artists, for example, spatulas, sculptors' chisels (Cl. 8);
- teaching apparatus, for example, audiovisual teaching apparatus, resuscitation mannequins (Cl. 9), and toy models (Cl. 28);
- certain goods made of paper or cardboard that are classified according to their function or purpose, for example, photographic paper (Cl. 1), abrasive paper (Cl. 3), paper blinds (Cl. 20), table cups and plates of paper (Cl. 21), bed linen of paper (Cl. 24), paper clothing (Cl. 25), cigarette paper (Cl. 34).

## CLASS 17

Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal.

### **Explanatory Note**

Class 17 includes mainly electrical, thermal and acoustic insulating materials and plastics for use in manufacture in the form of sheets, blocks and rods, as well as certain goods made of rubber, gutta-percha, gum, asbestos, mica or substitutes therefor.

This Class includes, in particular:

- rubber material for recapping tyres;
- floating anti-pollution barriers;
- adhesive tapes, other than stationery and not for medical or household purposes;
- plastic films, other than for wrapping and packaging, for example, anti-dazzle films for windows;
- elastic threads and threads of rubber or plastic, not for textile use;
- certain goods made of the materials in this class not otherwise classified by function or purpose, for example, foam supports for flower arrangements, padding and stuffing materials of rubber or plastics, rubber stoppers, shock-absorbing buffers of rubber, rubber bags or envelopes for packaging.

This Class does not include, in particular:

- fire hose (Cl. 9);
- pipes being parts of sanitary installations (Cl. 11) and rigid pipes of metal (Cl. 6) and not of metal (Cl. 19);
- insulating glass for building (Cl. 19);
- certain goods made of the materials in this class that are classified according to their function or purpose, for example, gum resins (Cl. 2), rubber for dental purposes (Cl. 5), asbestos screens for firemen (Cl. 9), adhesive rubber patches for repairing inner tubes (Cl. 12), rubber erasers (Cl. 16).

## CLASS 18

Leather and imitations of leather; animal skins and hides; luggage and carrying bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; collars, leashes and clothing for animals.

### **Explanatory Note**

Class 18 includes mainly leather, imitations of leather and certain goods made of those materials.

This Class includes, in particular:

- luggage and carrying bags, for example, suitcases, trunks, travelling bags, sling bags for carrying infants, school bags;
- luggage or baggage tags;
- business card cases and pocket wallets;
- boxes and cases of leather or leatherboard.

This Class does not include, in particular:

- walking sticks or canes for medical purposes (Cl. 10);
- clothing, footwear and headwear of leather for human beings (Cl. 25);
- bags and cases adapted to the product they are intended to contain, for example, bags adapted for laptops (Cl. 9), bags and cases for cameras and photographic equipment (Cl. 9), cases for musical instruments (Cl. 15), golf bags with or without wheels, bags especially designed for skis and surfboards (Cl. 28);
- certain goods made of leather, imitations of leather, animal skins and hides that are classified according to their function or purpose, for example, leather strops (Cl. 8), polishing leather (Cl. 21), chamois leather for cleaning (Cl. 21), leather belts for clothing (Cl. 25).

## CLASS 19

Materials, not of metal, for building and construction; rigid pipes, not of metal, for building; asphalt, pitch, tar and bitumen; transportable buildings, not of metal; monuments, not of metal.

### Explanatory Note

Class 19 includes mainly materials, not of metal, for building and construction.

This Class includes, in particular:

- semi-worked woods for use in building, for example, beams, planks, panels;
- wood veneers;
- building glass, for example, glass tiles, insulating glass for building, safety glass;
- glass granules for marking out roads;
- granite, marble, gravel;
- terra-cotta for use as a building material;
- roofing, not of metal, incorporating photovoltaic cells;
- gravestones and tombs, not of metal;
- statues, busts and works of art of stone, concrete or marble;
- letter boxes of masonry;
- geotextiles;
- coatings being building materials;
- scaffolding, not of metal;
- transportable buildings or structures, not of metal, for example, aquaria, aviaries, flagpoles, porches, swimming pools.

This Class does not include, in particular:

- cement preservatives, cement-waterproofing preparations (Cl. 1);
- fireproofing preparations (Cl. 1);
- wood preservatives (Cl. 2);
- oils for releasing form work for building (Cl. 4);
- letter boxes of metal (Cl. 6) and not of metal or masonry (Cl. 20);
- statues, busts and works of art of common metal (Cl. 6), of precious metal (Cl. 14), of wood, wax, plaster or plastic (Cl. 20), of porcelain, ceramic, earthenware, terra-cotta or glass (Cl. 21);
- certain pipes, not of metal, not for building, for example, pipes being parts of sanitary installations (Cl. 11), flexible pipes, tubes and hoses, not of metal (Cl. 17);
- substances for insulating buildings against moisture (Cl. 17);
- glass for vehicle windows (semi-finished product) (Cl. 21);
- birdcages (Cl. 21);
- mats and matting, linoleum and other materials for covering existing floors (Cl. 27);
- unsawn or undressed timber (Cl. 31).



## CLASS 20

Furniture, mirrors, picture frames; containers, not of metal, for storage or transport; unworked or semi-worked bone, horn, whalebone or mother-of-pearl; shells; meerschaum; yellow amber.

### **Explanatory Note**

Class 20 includes mainly furniture and parts therefor, as well as certain goods made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastic.

This Class includes, in particular:

- metal furniture, furniture for camping, gun racks, newspaper display stands;
- indoor window blinds and shades;
- bedding, for example, mattresses, bed bases, pillows;
- looking glasses, furniture and toilet mirrors;
- registration plates, not of metal;
- small items of hardware, not of metal, for example, bolts, screws, dowels, furniture casters, collars for fastening pipes;
- letter boxes, not of metal or masonry.

This Class does not include, in particular:

- special furniture for laboratories (Cl. 9) or for medical use (Cl. 10);
- outdoor blinds of metal (Cl. 6), not of metal and not of textile (Cl. 19), of textile (Cl. 22);
- bed linen, eiderdowns and sleeping bags (Cl. 24);
- certain mirrors for specific uses, for example, mirrors used in optical goods (Cl. 9), mirrors used in surgery or dentistry (Cl. 10), rearview mirrors (Cl. 12), sighting mirrors for guns (Cl. 13);
- certain goods made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastic, that are classified according to their function or purpose, for example, beads for making jewellery (Cl. 14), wooden floor boards (Cl. 19), baskets for domestic use (Cl. 21), plastic cups (Cl. 21), reed mats (Cl. 27).

## CLASS 21

Household or kitchen utensils and containers; cookware and tableware, except forks, knives and spoons; combs and sponges; brushes, except paintbrushes; brush-making materials; articles for cleaning purposes; unworked or semi-worked glass, except building glass; glassware, porcelain and earthenware.

### Explanatory Note

Class 21 includes mainly small, hand-operated utensils and apparatus for household and kitchen use, as well as cosmetic and toilet utensils, glassware and certain goods made of porcelain, ceramic, earthenware, terra-cotta or glass.

This Class includes, in particular:

- household and kitchen utensils, for example, fly swatters, clothes-pegs, mixing spoons, basting spoons and corkscrews, as well as serving utensils, for example, sugar tongs, ice tongs, pie servers and serving ladles;
- household, kitchen and cooking containers, for example, vases, bottles, piggy banks, pails, cocktail shakers, cooking pots and pans, and non-electric kettles and pressure cookers;
- small hand-operated kitchen apparatus for mincing, grinding, pressing or crushing, for example, garlic presses, nutcrackers, pestles and mortars;
- dish stands and decanter stands;
- cosmetic and toilet utensils, for example, electric and non-electric combs and toothbrushes, dental floss, foam toe separators for use in pedicures, powder puffs, fitted vanity cases;
- gardening articles, for example, gardening gloves, window-boxes, watering cans and nozzles for watering hose;
- indoor aquaria, terrariums and vivariums.

This Class does not include, in particular:

- cleaning preparations (Cl. 3);
- containers for storage and transport of goods, of metal (Cl. 6), not of metal (Cl. 20);
- small apparatus for mincing, grinding, pressing or crushing, which are driven by electricity (Cl. 7);
- razors and shaving apparatus, hair and nail clippers, electric and non-electric implements for manicure and pedicure, for example, manicure sets, emery boards, cuticle nippers (Cl. 8);
- table cutlery (Cl. 8) and hand-operated cutting tools for kitchen use, for example, vegetable shredders, pizza cutters, cheese slicers (Cl. 8);
- lice combs, tongue scrapers (Cl. 10);
- cooking utensils, electric (Cl. 11);
- toilet mirrors (Cl. 20);
- certain goods made of glass, porcelain and earthenware that are classified according to their function or purpose, for example, porcelain for dental prostheses (Cl. 5), spectacle lenses (Cl. 9), glass wool for insulation (Cl. 17), earthenware tiles (Cl. 19), building glass (Cl. 19), glass fibres for textile use (Cl. 22).

## CLASS 22

Ropes and string; nets; tents and tarpaulins; awnings of textile or synthetic materials; sails; sacks for the transport and storage of materials in bulk; padding, cushioning and stuffing materials, except of paper, cardboard, rubber or plastics; raw fibrous textile materials and substitutes therefor.

### **Explanatory Note**

Class 22 includes mainly canvas and other materials for making sails, rope, padding, cushioning and stuffing materials and raw fibrous textile materials.

This Class includes, in particular:

- cords and twines made of natural or artificial textile fibres, paper or plastics;
- fishing nets, hammocks, rope ladders;
- vehicle covers, not fitted;
- certain sacks and bags not otherwise classified by function or purpose, for example, mesh bags for washing laundry, body bags, mail bags;
- packaging bags of textile;
- animal fibres and raw textile fibres, for example, animal hair, cocoons, jute, raw or treated wool, raw silk.

This Class does not include, in particular:

- metal ropes (Cl. 6);
- strings for musical instruments (Cl. 15) and for sports rackets (Cl. 28);
- padding and stuffing materials of paper or cardboard (Cl. 16), rubber or plastics (Cl. 17);
- certain nets and bags that are classified according to their function or purpose, for example, safety nets (Cl. 9), luggage nets for vehicles (Cl. 12), garment bags for travel (Cl. 18), hair nets (Cl. 26), golf bags (Cl. 28), nets for sports (Cl. 28);
- packaging bags, not of textile, which are classified according to the material of which they are made, for example, packaging bags of paper or plastics (Cl. 16), of rubber (Cl. 17), of leather (Cl. 18).

## CLASS 23

Yarns and threads for textile use.

### **Explanatory Note**

Class 23 includes mainly natural or synthetic yarns and threads for textile use.

This Class includes, in particular:

- fibreglass, elastic, rubber and plastic threads for textile use;
- threads for embroidery, darning and sewing, including those of metal;
- spun silk, spun cotton, spun wool.

This Class does not include, in particular:

- certain threads for specific uses, for example, identification threads for electric wires (Cl. 9), surgical thread (Cl. 10), threads of precious metal being jewellery (Cl. 14);
- threads, other than for textile use, that are classified according to the material of which they are made, for example, threads for binding of metal (Cl. 6) and not of metal (Cl. 22), elastic threads, threads of rubber or plastic (Cl. 17), fibreglass threads (Cl. 21).

## CLASS 24

Textiles and substitutes for textiles; household linen; curtains of textile or plastic.

### **Explanatory Note**

Class 24 includes mainly fabrics and fabric covers for household use.

This Class includes, in particular:

- household linen, for example, bedspreads, pillow shams, towels of textile;
- bed linen of paper;
- sleeping bags, sleeping bag liners;
- mosquito nets.

This Class does not include, in particular:

- electrically heated blankets, for medical purposes (Cl. 10) and not for medical purposes (Cl. 11);
- table linen of paper (Cl. 16);
- asbestos safety curtains (Cl. 17), bamboo curtains and bead curtains for decoration (Cl. 20);
- horse blankets (Cl. 18);
- certain textiles and fabrics for specific uses, for example, fabrics for bookbinding (Cl. 16), insulating fabrics (Cl. 17), geotextiles (Cl. 19).

## CLASS 25

Clothing, footwear, headwear.

### **Explanatory Note**

Class 25 includes mainly clothing, footwear and headwear for human beings.

This Class includes, in particular:

- parts of clothing, footwear and headwear, for example, cuffs, pockets, ready-made linings, heels and heelpieces, cap peaks, hat frames (skeletons);
- clothing and footwear for sports, for example, ski gloves, sports singlets, cyclists' clothing, judo and karate uniforms, football shoes, gymnastic shoes, ski boots;
- masquerade costumes;
- paper clothing, paper hats for use as clothing;
- bibs, not of paper;
- pocket squares;
- footmuffs, not electrically heated.

This Class does not include, in particular:

- small items of hardware used in shoemaking, for example, shoe pegs and shoe dowels of metal (Cl. 6) and not of metal (Cl. 20), as well as haberdashery accessories and fastenings for clothing, footwear and headwear, for example, clasps, buckles, zippers, ribbons, hatbands, hat and shoe trimmings (Cl. 26);
- certain clothing, footwear and headwear for special use, for example, protective helmets, including for sports (Cl. 9), clothing for protection against fire (Cl. 9), clothing especially for operating rooms (Cl. 10), orthopaedic footwear (Cl. 10), as well as clothing and footwear that are essential for the practice of certain sports, for example, baseball gloves, boxing gloves, ice skates, skating boots with skates attached (Cl. 28);
- electrically heated clothing (Cl. 11);
- electrically heated footmuffs (Cl. 11), fitted footmuffs for pushchairs and prams (Cl. 12);
- bibs of paper (Cl. 16);
- handkerchiefs of paper (Cl. 16) and of textile (Cl. 24);
- clothing for animals (Cl. 18);
- carnival masks (Cl. 28);
- dolls' clothes (Cl. 28);
- paper party hats (Cl. 28).

## CLASS 26

Lace, braid and embroidery, and haberdashery ribbons and bows; buttons, hooks and eyes, pins and needles; artificial flowers; hair decorations; false hair.

### Explanatory Note

Class 26 includes mainly dressmakers' articles, natural or synthetic hair for wear, and hair adornments, as well as small decorative items intended to adorn a variety of objects, not included in other classes.

This Class includes, in particular:

- wigs, toupees, false beards;
- barrettes, hair bands;
- ribbons and bows being haberdashery or used as hair decorations, made of any material;
- ribbons and bows for gift wrapping, not of paper;
- hair nets;
- buckles, zippers;
- charms, other than for jewellery, key rings or key chains;
- artificial Christmas garlands and wreaths, including those incorporating lights;
- certain articles for curling hair, for example, electric and non-electric hair curlers, other than hand implements, hair curling pins, hair curling paper.

This Class does not include, in particular:

- false eyelashes (Cl. 3);
- hooks being small items of metal hardware (Cl. 6) or hardware, not of metal (Cl. 20), curtain hooks (Cl. 20);
- certain special types of needles, for example, tattoo needles (Cl. 8), needles for surveying compasses (Cl. 9) needles for medical purposes (Cl. 10), needles for pumps for inflating balls for games (Cl. 28);
- hand implements for curling hair, for example, curling tongs, eyelash curlers (Cl. 8);
- hair prostheses (Cl. 10);
- jewellery charms, charms for key rings or key chains (Cl. 14);
- certain ribbons and bows, for example, paper ribbons and bows, other than haberdashery or hair decorations (Cl. 16), rhythmic gymnastics ribbons (Cl. 28);
- yarns and threads for textile use (Cl. 23);
- Christmas trees of synthetic material (Cl. 28).

## CLASS 27

Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings, not of textile.

### **Explanatory Note**

Class 27 includes mainly products intended to be added as coverings to previously constructed floors and walls.

This Class includes, in particular:

- automobile carpets;
- mats being floor coverings, for example, bath mats, door mats, gymnastic mats, yoga mats;
- artificial turf;
- wallpaper, including textile wallpaper.

This Class does not include, in particular:

- floors, floorings and floor tiles of metal (Cl. 6) and not of metal (Cl. 19), wooden floor boards (Cl. 19);
- electrically heated carpets (Cl. 11);
- geotextiles (Cl. 19);
- mats for infant playpens (Cl. 20);
- wall hangings of textile (Cl. 24).



## CLASS 28

Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

### **Explanatory Note**

Class 28 includes mainly toys, apparatus for playing games, sports equipment, amusement and novelty items, as well as certain articles for Christmas trees.

This Class includes, in particular:

- amusement and game apparatus, including controllers therefor;
- novelty toys for playing jokes and for parties, for example, carnival masks, paper party hats, confetti, party poppers and Christmas crackers;
- hunting and fishing tackle, for example, fishing rods, landing nets for anglers, decoys, hunting game calls;
- equipment for various sports and games.

This Class does not include, in particular:

- Christmas tree candles (Cl. 4), electric lights for Christmas trees (Cl. 11), confectionery and chocolate decorations for Christmas trees (Cl. 30);
- diving equipment (Cl. 9);
- sex toys and love dolls (Cl. 10);
- clothing for gymnastics and sports (Cl. 25);
- certain gymnastic and sporting articles, for example, protective helmets, goggles and mouthguards for sports (Cl. 9), sporting firearms (Cl. 13), gymnasium mats (Cl. 27), as well as certain fishing and hunting equipment, for example, hunting knives, harpoons (Cl. 8), hunting firearms (Cl. 13), fishing nets (Cl. 22), that are classified according to other functions or purposes.

## CLASS 29

Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk, cheese, butter, yogurt and other milk products; oils and fats for food.

### **Explanatory Note**

Class 29 includes mainly foodstuffs of animal origin, as well as vegetables and other horticultural comestible products which are prepared or preserved for consumption.

This Class includes, in particular:

- meat-, fish-, fruit- or vegetable-based food;
- edible insects;
- milk beverages with milk predominating;
- milk substitutes, for example, almond milk, coconut milk, peanut milk, rice milk, soya milk;
- preserved mushrooms;
- pulses and nuts prepared for human consumption;
- seeds prepared for human consumption, not being seasonings or flavourings.

This Class does not include, in particular:

- oils and fats, other than for food, for example, essential oils (Cl. 3), industrial oil (Cl. 4), castor oil for medical purposes (Cl. 5);
- baby food (Cl. 5);
- dietetic food and substances adapted for medical use (Cl. 5);
- dietary supplements (Cl. 5);
- salad dressings (Cl. 30);
- processed seeds for use as a seasoning (Cl. 30);
- chocolate-coated nuts (Cl. 30);
- fresh and unprocessed fruits, vegetables, nuts and seeds (Cl. 31);
- foodstuffs for animals (Cl. 31);
- live animals (Cl. 31);
- seeds for planting (Cl. 31).

## CLASS 30

Coffee, tea, cocoa and artificial coffee; rice, pasta and noodles; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

### **Explanatory Note**

Class 30 includes mainly foodstuffs of plant origin, except fruits and vegetables, prepared or preserved for consumption, as well as auxiliaries intended for the improvement of the flavour of food.

This Class includes, in particular:

- beverages with coffee, cocoa, chocolate or tea base;
- cereals prepared for human consumption, for example, oat flakes, corn chips, husked barley, bulgur, muesli;
- pizza, pies, sandwiches;
- chocolate-coated nuts;
- flavourings, other than essential oils, for food or beverages.

This Class does not include, in particular:

- salt for industrial purposes (Cl. 1);
- food or beverage flavourings being essential oils (Cl. 3);
- medicinal teas and dietetic food and substances adapted for medical use (Cl. 5);
- baby food (Cl. 5);
- dietary supplements (Cl. 5);
- yeast for pharmaceutical purposes (Cl. 5), yeast for animal consumption (Cl. 31);
- milk beverages flavoured with coffee, cocoa, chocolate or tea (Cl. 29);
- soups, bouillon (Cl. 29);
- raw cereals (Cl. 31);
- fresh herbs (Cl. 31);
- foodstuffs for animals (Cl. 31).

## CLASS 31

Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

### **Explanatory Note**

Class 31 includes mainly land and sea products not having been subjected to any form of preparation for consumption, live animals and plants, as well as foodstuffs for animals.

This Class includes, in particular:

- unprocessed cereals;
- fresh fruits and vegetables, even after washing or waxing;
- plant residue;
- unprocessed algae;
- unsawn timber;
- fertilised eggs for hatching;
- fresh mushrooms and truffles;
- litter for animals, for example, aromatic sand, sanded paper for pets.

This Class does not include, in particular:

- cultures of micro-organisms and leeches for medical purposes (Cl. 5);
- dietary supplements for animals and medicated animal feed (Cl. 5);
- semi-worked woods (Cl. 19);
- artificial fishing bait (Cl. 28);
- rice (Cl. 30);
- tobacco (Cl. 34).

## CLASS 32

Beers; non-alcoholic beverages; mineral and aerated waters; fruit beverages and fruit juices; syrups and other non-alcoholic preparations for making beverages.

### **Explanatory Note**

Class 32 includes mainly non-alcoholic beverages, as well as beer.

This Class includes, in particular:

- de-alcoholised beverages;
- soft drinks;
- rice-based and soya-based beverages, other than milk substitutes;
- energy drinks, isotonic beverages, protein-enriched sports beverages;
- non-alcoholic essences and fruit extracts for making beverages.

This Class does not include, in particular:

- flavourings for beverages being essential oils (Cl. 3) or other than essential oils (Cl. 30);
- dietetic beverages adapted for medical purposes (Cl. 5);
- milk beverages with milk predominating, milk shakes (Cl. 29);
- milk substitutes, for example, almond milk, coconut milk, peanut milk, rice milk, soya milk (Cl. 29);
- lemon juice for culinary purposes, tomato juice for cooking (Cl. 29);
- beverages with coffee, cocoa, chocolate or tea base (Cl. 30);
- beverages for pets (Cl. 31);
- alcoholic beverages, except beer (Cl. 33).

## CLASS 33

Alcoholic beverages, except beers; alcoholic preparations for making beverages.

### **Explanatory Note**

Class 33 includes mainly alcoholic beverages, essences and extracts.

This Class includes, in particular:

- wines, fortified wines;
- alcoholic cider, perry;
- spirits, liqueurs;
- alcoholic essences, alcoholic fruit extracts, bitters.

This Class does not include, in particular:

- medicinal beverages (Cl. 5);
- de-alcoholised beverages (Cl. 32);
- beers (Cl. 32);
- non-alcoholic mixers used to make alcoholic beverages, for example, soft drinks, soda water (Cl. 32).

## CLASS 34

Tobacco and tobacco substitutes; cigarettes and cigars; electronic cigarettes and oral vaporizers for smokers; smokers articles; matches.

### **Explanatory Note**

Class 34 includes mainly tobacco and articles used for smoking, as well as certain accessories and containers related to their use.

This Class includes, in particular:

- tobacco substitutes, not for medical purposes;
- flavourings, other than essential oils, for use in electronic cigarettes, oral vaporizers for smokers;
- herbs for smoking;
- snuff;
- certain accessories and containers related to the use of tobacco and articles for smoking, for example, lighters for smokers, ashtrays for smokers, tobacco jars, snuff boxes, cigar humidors.

This Class does not include, in particular:

- tobacco-free cigarettes for medical purposes (Cl. 5);
- batteries and chargers for electronic cigarettes (Cl. 9);
- ashtrays for automobiles (Cl. 12).

## CLASS 35

Advertising; business management, organization and administration; office functions.

### **Explanatory Note**

Class 35 includes mainly services rendered by persons or organizations principally with the object of:

1. help in the working or management of a commercial undertaking, or
2. help in the management of the business affairs or commercial functions of an industrial or commercial enterprise,

as well as services rendered by advertising establishments primarily undertaking communications to the public, declarations or announcements by all means of diffusion and concerning all kinds of goods or services.

This Class includes, in particular:

- the bringing together, for the benefit of others, of a variety of goods, excluding the transport thereof, enabling customers to conveniently view and purchase those goods; such services may be provided by retail stores, wholesale outlets, through vending machines, mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes;
- advertising, marketing and promotional services, for example, distribution of samples, development of advertising concepts, writing and publication of publicity texts;
- shop window dressing;
- public relations services;
- production of teleshopping programmes;
- organization of trade fairs and exhibitions for commercial or advertising purposes;
- search engine optimization for sales promotion;
- commercial assistance services, for example, personnel recruitment, negotiation of business contracts for others, cost price analysis, import-export agency services;
- administration services relating to business transactions and financial records, for example, book-keeping, drawing up of statements of accounts, business and financial auditing, business appraisals, tax preparation and filing services;
- commercial administration of the licensing of the goods and services of others;
- services consisting of the registration, transcription, composition, compilation or systematization of written communications and registrations, and also the compilation of mathematical or statistical data;
- office functions, for example, appointment scheduling and reminder services, data search in computer files for others, computerized file management, telephone switchboard services.

This Class does not include, in particular:

- financial services, for example, financial analysis, financial management, financial sponsorship (Cl. 36 );
- real estate management (Cl. 36 );
- stock brokerage services (Cl. 36 );
- transportation logistics (Cl. 39 );
- energy auditing (Cl. 42 );
- graphic design of promotional materials (Cl. 42 );
- legal services in relation to the negotiation of contracts for others (Cl. 45 );
- licensing of intellectual property, legal administration of licences, copyright management (Cl. 45 );
- registration of domain names (Cl. 45 ).



## CLASS 36

Financial, monetary and banking services; insurance services; real estate affairs.

### **Explanatory Note**

Class 36 includes mainly services relating to banking and other financial transactions, financial valuation services, as well as insurance and real estate activities.

This Class includes, in particular:

- financial transaction and payment services, for example, exchanging money, electronic funds transfer, processing of credit card and debit card payments, issuance of travellers' cheques;
- financial management and research;
- financial appraisals, for example, jewellery, art and real estate appraisal, repair costs evaluation;
- cheque verification;
- financing and credit services, for example, loans, issuance of credit cards, hire- or lease-purchase financing;
- crowdfunding;
- safe deposit services;
- financial sponsorship;
- real estate agency services, real estate management, rental of apartments, rent collection;
- insurance underwriting, actuarial services;
- brokerage services, for example, securities, insurance and real estate brokerage, brokerage of carbon credits, pawnbrokerage.

This Class does not include, in particular:

- administration services relating to business transactions and financial records, for example, book-keeping, drawing up of statements of accounts, business and financial auditing, business appraisals, tax preparation and filing services (Cl. 35 );
- sponsorship search, promotion of goods and services through sponsorship of sports events (Cl. 35 );
- cash replenishment of automated teller machines (Cl. 39 );
- freight brokerage, transport brokerage (Cl. 39 );
- quality evaluation of wool and standing timber (Cl. 42 ).

## CLASS 37

Construction services; installation and repair services; mining extraction, oil and gas drilling.

### **Explanatory Note**

Class 37 includes mainly services in the field of construction, as well as services involving the restoration of objects to their original condition or their preservation without altering their physical or chemical properties.

This Class includes, in particular:

- construction and demolition of buildings, roads, bridges, dams or transmission lines, as well as services in the field of construction, for example, interior and exterior painting, plastering, plumbing, heating equipment installation, and roofing;
- shipbuilding;
- rental of construction tools, machines and equipment, for example, rental of bulldozers, rental of cranes;
- various repair services, for example, those in the fields of electricity, computer hardware, furniture, instruments, tools;
- various restoration services, for example, building restoration, furniture restoration and restoration of works of art;
- maintenance services for preserving an object in its original condition without changing any of its properties;
- cleaning of different objects, for example, windows, vehicles, clothing, as well as the laundering and pressing of clothing.

This Class does not include, in particular:

- physical storage of goods (Cl. 39);
- transformation of an object or substance that involves a process of change in its essential properties, for example, the cutting, dyeing, fireproofing of cloth (Cl. 40), the casting, plating, treating of metal (Cl. 40), custom tailoring, dressmaking, embroidering (Cl. 40), food and drink preservation (Cl. 40);
- installation, maintenance and updating of computer software (Cl. 42), creation and hosting of web sites (Cl. 42);
- construction drafting and architectural services (Cl. 42).

## CLASS 38

Telecommunications services.

### **Explanatory Note**

Class 38 includes mainly services that allow at least one party to communicate with another, as well as services for the broadcasting and transmission of data.

This Class includes, in particular:

- transmission of digital files and electronic mail;
- providing user access to global computer networks;
- radio and television broadcasting;
- video-on-demand transmission;
- providing internet chatrooms and online forums;
- telephone and voice mail services;
- teleconferencing and videoconferencing services.

This Class does not include, in particular:

- radio advertising (Cl. 35);
- telemarketing services (Cl. 35);
- content or subject matter that may be contained in the communication activity, for example, downloadable image files (Cl. 9), providing business information via a web site (Cl. 35), providing films and television programmes, not downloadable, via videoon- demand services (Cl. 41);
- services conducted using telecommunication connections, for example, online retail services for downloadable digital music (Cl. 35), online banking (Cl. 36);
- production of radio and television programmes (Cl. 41);
- telecommunications technology consultancy (Cl. 42);
- online social networking services (Cl. 45).

## CLASS 39

Transport; packaging and storage of goods; travel arrangement.

### **Explanatory Note**

Class 39 includes mainly services for the transport of people, animals or goods from one place to another by rail, road, water, air or pipeline and services necessarily connected with such transport, as well as the storing of goods in any kind of storage facility, warehouses or other types of building for their preservation or guarding.

This Class includes, in particular:

- operation of stations, bridges, railways, ferries and other transport facilities;
- rental of vehicles for transportation, as well as chauffeuring and piloting services;
- rental services related to transport, storage and travel, for example, parking place rental, garage rental, rental of storage containers;
- operation of maritime tugs, unloading, operation of ports and docks, and salvaging of wrecked ships and their cargoes;
- packaging, bottling, wrapping and delivering of goods;
- replenishing vending machines and automated teller machines;
- services for providing information about journeys or the transport of goods by brokers and tourist agencies, as well as for providing information relating to tariffs, timetables and methods of transport;
- inspection of vehicles or goods for the purpose of transport;
- distribution of energy and electricity, as well as distribution and supply of water.

This Class does not include, in particular:

- advertising travel or transport (Cl. 35 );
- insurance services during the transport of people or goods (Cl. 36 );
- maintenance and repair of vehicles or other items connected with the transport of people or goods (Cl. 37 );
- conducting guided tours (Cl. 41 );
- electronic data storage (Cl. 42 );
- reservation of hotel rooms or other temporary accommodation by travel agents or brokers (Cl. 43 ).

## CLASS 40

Treatment of materials; recycling of waste and trash; air purification and treatment of water; printing services; food and drink preservation.

### Explanatory Note

Class 40 includes mainly services rendered by the mechanical or chemical processing, transformation or production of objects or inorganic or organic substances, including custom manufacturing services. For the purposes of classification, the production or manufacturing of goods is considered a service only in cases where it is effected for the account of another person to their order and specification. If the production or manufacturing is not being performed to fulfil an order for goods which meet the customer's particular needs, requirements, or specifications, then it is generally ancillary to the maker's primary commercial activity or goods in trade. If the substance or object is marketed to third parties by the person who processed, transformed or produced it, then this would generally not be considered a service.

This Class includes, in particular:

- transformation of an object or substance and any process involving a change in its essential properties, for example, dyeing a garment; such transformation services are also classified in Class 40 if they are provided in the framework of repair or maintenance work, for example, chromium plating of motor vehicle bumpers;
- services of material treatment which may be present during the production of any substance or object other than a building, for example, services which involve cutting, shaping, polishing by abrasion or metal coating;
- joining of materials, for example, soldering or welding;
- processing and treatment of foodstuffs, for example, fruit crushing, flour milling, food and drink preservation, food smoking, freezing of foods;
- custom manufacturing of goods to the order and specification of others (bearing in mind that certain offices require that the goods produced be indicated), for example, custom manufacturing of automobiles;
- services of a dental technician;
- quilting, embroidering, custom tailoring, textile dyeing, applying finishes to textiles.

This Class does not include, in particular:

- services that do not entail a change in the essential properties of the object or substance, for example, furniture maintenance or repair services (Cl. 37);
- services in the field of construction, for example, painting and plastering (Cl. 37);
- cleaning services, for example, laundering, window cleaning, cleaning of interior and exterior surfaces of buildings (Cl. 37);
- rustproofing, for example, anti-rust treatment for vehicles (Cl. 37);
- certain customization services, for example, the custom painting of automobiles (Cl. 37);
- decorating of food, food sculpting (Cl. 43).

## CLASS 41

Education; providing of training; entertainment; sporting and cultural activities.

### **Explanatory Note**

Class 41 includes mainly services consisting of all forms of education or training, services having the basic aim of the entertainment, amusement or recreation of people, as well as the presentation of works of visual art or literature to the public for cultural or educational purposes.

This Class includes, in particular:

- organization of exhibitions for cultural or educational purposes, arranging and conducting of conferences, congresses and symposiums;
- translation and language interpretation services;
- publication of books and texts, other than publicity texts;
- news reporters services, photographic reporting;
- photography;
- film direction and production services, other than for advertising films;
- cultural, educational or entertainment services provided by amusement parks, circuses, zoos, art galleries and museums;
- sports and fitness training services;
- training of animals;
- online gaming services;
- gambling services, organization of lotteries;
- ticket reservation and booking services for entertainment, educational and sporting events;
- certain writing services, for example, screenplay writing, songwriting.

This Class does not include, in particular:

- organization of exhibitions for commercial or advertising purposes (Cl. 35 );
- writing and publication of publicity texts (Cl. 35 );
- news agency services (Cl. 38 );
- radio and television broadcasting (Cl. 38 );
- videoconferencing services (Cl. 38 );
- technical writing (Cl. 42 );
- day nursery and crèche services (Cl. 43 );
- health spa services (Cl. 44 );
- planning and arranging wedding ceremonies (Cl. 45 ).

## CLASS 42

Scientific and technological services and research and design relating thereto; industrial analysis, industrial research and industrial design services; quality control and authentication services; design and development of computer hardware and software.

### **Explanatory Note**

Class 42 includes mainly services provided by persons in relation to the theoretical and practical aspects of complex fields of activities, for example, scientific laboratory services, engineering, computer programming, architectural services or interior design.

This Class includes, in particular:

- services of engineers and scientists who undertake evaluations, estimates, research and reports in the scientific and technological fields, including technological consultancy;
- computer and technology services for securing computer data and personal and financial information and for the detection of unauthorized access to data and information, for example, computer virus protection services, data encryption services, electronic monitoring of personally identifying information to detect identity theft via the internet;
- software as a service (SaaS), platform as a service (PaaS);
- scientific research services for medical purposes;
- architectural and urban planning services;
- certain design services, for example, industrial design, design of computer software and systems, interior design, packaging design, graphic arts design, dress designing;
- surveying;
- oil, gas and mining exploration services.

This Class does not include, in particular:

- certain research services, for example, business research (Cl. 35), marketing research (Cl. 35), financial research (Cl. 36), genealogical research (Cl. 45), legal research (Cl. 45);
- business auditing (Cl. 35);
- computer file management services (Cl. 35);
- financial evaluation services (Cl. 36);
- mining extraction, oil and gas drilling (Cl. 37);
- installation, maintenance and repair of computer hardware (Cl. 37);
- sound engineering services (Cl. 41);
- certain design services, for example, landscape design (Cl. 44);
- medical and veterinary services (Cl. 44);
- legal services (Cl. 45).

## CLASS 43

Services for providing food and drink; temporary accommodation.

### **Explanatory Note**

Class 43 includes mainly services provided in relation to the preparation of food and drink for consumption, as well as services for providing temporary accommodation.

This Class includes, in particular:

- temporary accommodation reservations, for example, hotel reservations;
- boarding for animals;
- rental of meeting rooms, tents and transportable buildings;
- retirement home services;
- day-nursery and crèche services;
- decorating of food, food sculpting;
- rental of cooking apparatus;
- rental of chairs, tables, table linen, glassware;
- hookah lounge services;
- personal chef services.

This Class does not include, in particular:

- rental services for real estate such as houses, flats, etc., for permanent use (Cl. 36 );
- arranging travel by tourist agencies (Cl. 39 );
- preservation services for food and drink (Cl. 40 );
- discotheque services (Cl. 41 );
- boarding schools (Cl. 41 );
- rest and convalescent homes (Cl. 44 ).



## CLASS 44

Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, aquaculture, horticulture and forestry services.

### Explanatory Note

Class 44 includes mainly medical care, including alternative medicine, hygienic and beauty care given by persons or establishments to human beings and animals, as well as services relating to the fields of agriculture, aquaculture, horticulture and forestry.

This Class includes, in particular:

- hospital services;
- telemedicine services;
- dentistry, optometry and mental health services;
- medical clinic services and medical analysis services for diagnostic and treatment purposes provided by medical laboratories, such as x-ray examinations and taking of blood samples;
- therapy services, for example, physiotherapy and speech therapy;
- pharmacy advice and preparation of prescriptions by pharmacists;
- blood bank and human tissue bank services;
- convalescent home and rest home services;
- dietary and nutritional advice;
- health spa services;
- artificial insemination and in vitro fertilization services;
- animal breeding;
- animal grooming;
- body piercing and tattooing;
- services relating to gardening, for example, plant nursery services, landscape design, landscape gardening, lawn care;
- services relating to floral art, for example, flower arranging, wreath making;
- weed killing, vermin and pest control for agriculture, aquaculture, horticulture and forestry.

This Class does not include, in particular:

- vermin and pest control, other than for agriculture, aquaculture, horticulture and forestry (Cl. 37);
- installation and repair services for irrigation devices (Cl. 37);
- ambulance transport (Cl. 39);
- slaughtering of animals and taxidermy (Cl. 40);
- timber felling and processing (Cl. 40);
- animal training services (Cl. 41);
- health clubs for physical exercise (Cl. 41);
- scientific research services for medical purposes (Cl. 42);
- boarding for animals (Cl. 43);
- retirement homes (Cl. 43);
- funerary undertaking (Cl. 45).

## CLASS 45

Legal services; security services for the physical protection of tangible property and individuals; personal and social services rendered by others to meet the needs of individuals.

### **Explanatory Note**

This Class includes, in particular:

- services rendered by lawyers, legal assistants, and personal advocates, to individuals, groups of individuals, organizations and enterprises;
- investigation and surveillance services relating to the physical safety of persons and security of tangible property;
- services provided to individuals in relation with social events, such as social escort services, matrimonial agencies, funeral services.

This Class does not include, in particular:

- professional services giving direct aid in the operations or functions of a commercial undertaking (Cl. 35);
- services relating to financial or monetary affairs and services dealing with insurance (Cl. 36);
- escorting of travellers (Cl. 39);
- security transport (Cl. 39);
- services consisting of all forms of education of persons (Cl. 41);
- performances of singers or dancers (Cl. 41);
- computer programming services for the protection of software (Cl. 42);
- computer and internet security consultancy and data encryption services (Cl. 42);
- services provided by others to give medical, hygienic or beauty care for human beings or animals (Cl. 44);
- certain rental services (consult the Alphabetical List of Services and General Remark (b) relating to the classification of services).

## **SCHEDULE-3**

# Paris Convention for the Protection of Industrial Property

of March 20, 1883,

as revised

at Brussels on December 14, 1900, at Washington  
on June 2, 1911, at The Hague on November 6, 1925,  
at London on June 2, 1934, at Lisbon on October 31, 1958,  
and at Stockholm on July 14, 1967,  
and as amended on September 28, 1979

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\* This Table of Contents is added for the convenience of the reader. It does not appear in the signed text of the Convention.

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## Article 1

### [Establishment of the Union; Scope of Industrial Property]<sup>1)</sup>

(1) The countries to which this Convention applies constitute a Union for the protection of industrial property.

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

(4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

## Article 2

### [National Treatment for Nationals of Countries of the Union]

(1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

(2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

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<sup>1</sup> Articles have been given titles to facilitate their identification. There are no titles in the signed (French) text.

### Article 3

[Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union]

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

### Article 4

[A to I. *Patents, Utility Models, Industrial Designs, Marks, Inventors' Certificates*: Right of Priority. –  
G. *Patents*: Division of the Application]

#### A.—

(1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

**B. —** Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union

#### C.—

(1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union shall be considered as 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 previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

#### D.—

(1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may

in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

**E.—**

(1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

**F. —** No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

**G.—**

(1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

**H. —** Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

**I.—**

(1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

#### **Article 4<sup>bis</sup>**

[*Patents: Independence of Patents Obtained for the  
Same Invention in Different Countries*]

(1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

#### Article 4<sup>ter</sup>

[*Patents: Mention of the Inventor in the Patent*]

The inventor shall have the right to be mentioned as such in the patent.

#### Article 4<sup>quater</sup>

[*Patents: Patentability in Case of Restrictions of Sale by Law*]

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

#### Article 5

[A. *Patents: Importation of Articles; Failure to Work or Insufficient Working; Compulsory Licenses.* — B. *Industrial Designs: Failure to Work; Importation of Articles.* — C. *Marks: Failure to Use; Different Forms; Use by Co-proprietors.* — D. *Patents, Utility Models, Marks, Industrial Designs: Marking*]

##### A.—

(1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.

(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.

(3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

(4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.

(5) The foregoing provisions shall be applicable, *mutatis mutandis*, to utility models.

**B. —** The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

##### C.—

(1) If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.

(2) Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the



Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

(3) Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.

**D.** — No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

#### **Article 5<sup>bis</sup>**

*[All Industrial Property Rights: Period of Grace for  
the Payment of Fees for the Maintenance of Rights;  
Patents: Restoration]*

(1) A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.

(2) The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

#### **Article 5<sup>ter</sup>**

*[Patents: Patented Devices Forming Part of Vessels, Aircraft, or Land Vehicles]*

In any country of the Union the following shall not be considered as infringements of the rights of a patentee:

1. the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;
2. the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

#### **Article 5<sup>quater</sup>**

*[Patents: Importation of Products Manufactured by  
a Process Patented in the Importing Country]*

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that country.

#### **Article 5<sup>quinquies</sup>**

*[Industrial Designs]*

Industrial designs shall be protected in all the countries of the Union.

#### **Article 6**

*[Marks: Conditions of Registration; Independence of Protection of Same Mark in Different Countries]*

(1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.

(2) However, an application for the registration of a mark filed by a national of a country of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin.

(3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

#### **Article 6<sup>bis</sup>**

[Marks: Well-Known Marks]

(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.

(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

#### **Article 6<sup>ter</sup>**

[Marks: Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations]

(1)

(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of subparagraph (b), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph (a), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

(3)

(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of subparagraph (b) of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.

(6) In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.

(7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before November 6, 1925.

(8) Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6<sup>quinquies</sup>, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

#### Article 6<sup>quater</sup>

[Marks: Assignment of Marks]

(1) When, in accordance with the law of a country of the Union, the assignment of a mark is valid only if it takes place at the same time as the transfer of the business or goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee, together with the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned.

(2) The foregoing provision does not impose upon the countries of the Union any obligation to regard as valid the assignment of any mark the use of which by the assignee would, in fact, be of such a nature as to mislead the public, particularly as regards the origin, nature, or essential qualities, of the goods to which the mark is applied.

#### Article 6<sup>quinquies</sup>

[Marks: Protection of Marks Registered in One Country of  
the Union in the Other Countries of the Union]

##### A.—

(1) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

**B.** — Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

1. when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;
2. when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
3. when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

This provision is subject, however, to the application of Article 10<sup>bis</sup>.

**C.**—

(1) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(2) No trademark shall be refused in the other countries of the Union for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

**D.** — No person may benefit from the provisions of this Article if the mark for which he claims protection is not registered in the country of origin.

**E.** — However, in no case shall the renewal of the registration of the mark in the country of origin involve an obligation to renew the registration in the other countries of the Union in which the mark has been registered.

**F.** — The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Article 4, even if registration in the country of origin is effected after the expiration of such period.

#### **Article 6<sup>sexies</sup>**

[Marks: Service Marks]

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

#### **Article 6<sup>septies</sup>**

[Marks: Registration in the Name of the Agent or Representative of the Proprietor Without the Latter's Authorization]

(1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.

(2) The proprietor of the mark shall, subject to the provisions of paragraph (1), above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.

(3) Domestic legislation may provide an equitable time limit within which the proprietor of a mark must exercise the rights provided for in this Article.

## Article 7

[Marks: Nature of the Goods to which the Mark is Applied]

The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.

## Article 7<sup>bis</sup>

[Marks: Collective Marks]

(1) The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

(2) Each country shall be the judge of the particular conditions under which a collective mark shall be protected and may refuse protection if the mark is contrary to the public interest.

(3) Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

## Article 8

[Trade Names]

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

## Article 9

[Marks, Trade Names: Seizure, on Importation, etc.,  
of Goods Unlawfully Bearing a Mark or Trade Name]

(1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.

(2) Seizure shall likewise be effected in the country where the unlawful affixation occurred or in the country into which the goods were imported.

(3) Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country.

(4) The authorities shall not be bound to effect seizure of goods in transit.

(5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.

(6) If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

## Article 10

[False Indications: Seizure, on Importation, etc.,  
of Goods Bearing False Indications as to their Source  
or the Identity of the Producer]

(1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.

(2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

**Article 10<sup>bis</sup>**  
[Unfair Competition]

- (1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.
- (2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.
- (3) The following in particular shall be prohibited:
  1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
  2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
  3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

**Article 10<sup>ter</sup>**  
[Marks, Trade Names, False Indications, Unfair Competition: Remedies, Right to Sue]

- (1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10<sup>bis</sup>.
- (2) They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10<sup>bis</sup>, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

**Article 11**  
[Inventions, Utility Models, Industrial Designs, Marks: Temporary Protection at Certain International Exhibitions]

- (1) The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.
- (2) Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition.
- (3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

**Article 12**  
[Special National Industrial Property Services]

- (1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.
- (2) This service shall publish an official periodical journal. It shall publish regularly:
  - (a) the names of the proprietors of patents granted, with a brief designation of the inventions patented;
  - (b) the reproductions of registered trademarks.

### Article 13

[Assembly of the Union]

(1)

(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2)

(a) The Assembly shall:

- (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;
- (ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as “the International Bureau”) referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as “the Organization”), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;
- (iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
- (iv) elect the members of the Executive Committee of the Assembly;
- (v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
- (vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;
- (vii) adopt the financial regulations of the Union;
- (viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;
- (ix) determine which countries not members of the Union and which intergovernmental and international nongovernmental organizations shall be admitted to its meetings as observers;
- (x) adopt amendments to Articles 13 to 17;
- (xi) take any other appropriate action designed to further the objectives of the Union;
- (xii) perform such other functions as are appropriate under this Convention;
- (xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)

(a) Subject to the provisions of subparagraph (b), a delegate may represent one country only.

(b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.

(4)

(a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions

concerning its own procedure, all such decisions shall take effect only if the conditions, set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(5)

(a) Subject to the provisions of subparagraph (b), a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)(b) shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

(6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(7)

(a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

(8) The Assembly shall adopt its own rules of procedure.

#### **Article 14**

[Executive Committee]

(1) The Assembly shall have an Executive Committee.

(2)

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 16(7)(b), have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements established in relation with the Union to be among the countries constituting the Executive Committee.

(5)

(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.



(b) Members of the Executive Committee may be re-elected, but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)

(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and biennial budget of the Union prepared by the Director General;

(iii) *[deleted]*

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)

(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8)

(a) Each country member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one country only.

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

## Article 15

[International Bureau]

(1)

(a) Administrative tasks concerning the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property which the International Bureau may find useful in its work.

- (3) The International Bureau shall publish a monthly periodical.
- (4) The International Bureau shall, on request, furnish any country of the Union with information on matters concerning the protection of industrial property.
- (5) The International Bureau shall conduct Studies, and shall provide services, designed to facilitate the protection of industrial property.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.
- (7)
- (a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 17.
- (b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.
- (8) The International Bureau shall carry out any other tasks assigned to it.

**Article 16**  
[Finances]

- (1)
- (a) The Union shall have a budget.
- (b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.
- (c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.
- (2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.
- (3) The budget of the Union shall be financed from the following sources:
- (i) contributions of the countries of the Union;
  - (ii) fees and charges due for services rendered by the International Bureau in relation to the Union;
  - (iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;
  - (iv) gifts, bequests, and subventions;
  - (v) rents, interests, and other miscellaneous income.
- (4)
- (a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I .....	25
Class II .....	20
Class III .....	15
Class IV .....	10
Class V .....	5
Class VI .....	3
Class VII .....	1

- (b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change

class. If it chooses a lower class, the country must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6)

(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)

(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

## Article 17

[Amendment of Articles 13 to 17]

(1) Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the

countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

### Article 18

[Revision of Articles 1 to 12 and 18 to 30]

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Amendments to Articles 13 to 17 are governed by the provisions of Article 17.

### Article 19

[Special Agreements]

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.

### Article 20

[Ratification or Accession by Countries of the Union; Entry Into Force]

(1)

(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(i) to Articles 1 to 12, or

(ii) to Articles 13 to 17.

(c) Any country of the Union which, in accordance with subparagraph (b), has excluded from the effects of its ratification or accession one of the two groups of Articles referred to in that subparagraph may at any later time declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

(2)

(a) Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(i), three months after the deposit of the tenth such instrument of ratification or accession.

(b) Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)(b)(ii), three months after the deposit of the tenth such instrument of ratification or accession.

(c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs (a) and (b), of each of the two groups of Articles referred to in paragraph (1)(b)(i) and (ii), and subject to the provisions of paragraph (1)(b), Articles 1 to 17 shall, with respect to any country of the Union, other than those referred to in subparagraphs (a) and (b), which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)(c), enter into force three months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 18 to 30 shall enter into force on the earlier of the dates on which any of the groups of Articles referred to in paragraph (1)(b) enters into force with respect to that country pursuant to paragraph (2)(a), (b), or (c).

## Article 21

[Accession by Countries Outside the Union; Entry Into Force]

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)

(a) With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 20(2)(a) or (b); provided that:

- (i) if Articles 1 to 12 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,
- (ii) if Articles 13 to 17 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3), (4), and (5), of the Lisbon Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

(b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of Articles of the present Act, this Act shall, subject to the proviso of subparagraph (a), enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

## Article 22

[Consequences of Ratification or Accession]

Subject to the possibilities of exceptions provided for in Articles 20(1)(b) and 28(2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

## Article 23

[Accession to Earlier Acts]

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

## Article 24

[Territories]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)

(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

#### **Article 25**

[Implementation of the Convention on the Domestic Level]

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

#### **Article 26**

[Denunciation]

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

#### **Article 27**

[Application of Earlier Acts]

(1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of March 20, 1883 and the subsequent Acts of revision.

(2)

(a) As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which the Lisbon Act of October 31, 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(b) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of June 2, 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(c) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of November 6, 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(3) Countries outside the Union which become party to this Act shall apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 20(1)(b)(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is party.

#### **Article 28**

[Disputes]

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before

the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

## Article 29

[Signature, Languages, Depositary Functions]

(1)

(a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the English, German, Italian, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 20(1)(c), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 24.

## Article 30

[Transitional Provisions]

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be deemed to be references to the Bureau of the Union or its Director, respectively.

(2) Countries of the Union not bound by Articles 13 to 17 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 13 to 17 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

(3) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(4) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

# **SCHEDULE-4**



# THE COPYRIGHT ACT, 2059 (2002)

## Date of Authentication and Publication

2059.04.01 (15 August 2002)

## Amendment

- |   |                          |
|---|--------------------------|
| 1. Amendment by Some Nepal Acts relating to Export and Import and Intellectual Property Act, 2063 ऋ | 2063.8.8 (24 Nov 2006)   |
| 2. Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010) ø                          | 2066.10.7 (21 Jan 2010)  |
| 3. Act made to amend some Nepal Act, 2072 (2015)  | 2071.11.13 (25 Feb 2015) |
| 4. Act made to amend some Nepal Acts in compliance with the Constitution 2075 (2017)                | 2075.11.19 (3 Mar 2019)  |

Act number 8 of the year 2059 (2002)

α.....

## **An Act made to provision for registration of Patent, design and Trademark**

**Preamble:** Whereas, it is expedient to update the legal provisions relating to copyright;

Now, therefore, be it enacted by Parliament in the first year of reign of His Majesty the King Gyanendra Bir Bikram Shah Dev.

## **Chapter 1**

### **Preliminary**

**1. Short Title Extent and Commencement:** (1) This Act may be called as the "Copyright Act, 2059 (2002).

(2) This act shall come into force immediately.

**2. Definitions:** Unless the subject or the context otherwise requires in this Act:

(a) "Work" means any work presented originally and intellectually in the field of literature, art and science and in any other field, and this term also includes the following work:

- (1) Book, pamphlet, article, thesis,
- (2) Drama, dramatic-music, dumb show and a work prepared to perform in such manner,
- (3) Musical notation with or without words,
- (4) Audio visual works,
- (5) Architectural design,

Ϡ This Act came into effect from 2063.06.05 (September 21, 2006).

ø This Act came into effect from 2065.02.15 (May 28, 2008).

α Removed pursuant to Act made to Amend Some Nepal Acts and strengthening of Republic, 2066 (2009).

- (6) Fine Arts, painting, work of sculpture, work of woodcarving, lithography, and other work relating to architecture,
  - (7) Photographic work,
  - (8) Work of applied art,
  - (9) Illustration, map, plan, three-dimensional work relating to geography, and scientific article and work,
  - (10) Computer program.
- (b) "Author" means a person who creates a work as referred to in clause (a) above.
- (c) "Audio-visual work" means a cinematographic work that can be viewed in screen, with or without sound.
- (d) "Photographic work" means a work produced by using light or any other radiation recorded in the surface in such a manner that the image (picture) of anything can be set in the surface or that the image (picture) can be created from such surface with the help of chemical, electrical or any other technology. Provided, however, that a still photography taken from any audio-visual work shall not be considered as a photographic work but as a part of the concerned audio-visual work.
- (e) "Sound recording" means the act of recording of sound of any performance recorded in any manner and with any method whatsoever for the purpose of hearing, except the act of recording sound and image at the same time.
- (f) "Performance" means, -
- (1) In the case of work other than the audio-visual work, performance made through recitation, playing music, dancing, acting or any other manner, directly or with the help of any other device or method,
  - (2) In the case of the audio-visual work, sequential video clipping of the scene contained in such a work, along with sound for hearing purpose,
  - (3) In the case of the sound recording, act of performance made outside the family circle, neighbors, friends or relatives or made in such manner that it can be heard publicly despite the presence of such persons.
- (g) "Economic right" means the rights conferred on the copyright owner pursuant to Section 7.
- (h) "Copyright owner" means the author of a work in cases where the economic right of that work is vested in that author, a person or organization in cases where the economic right of the work is primarily vested in the person or organization other than the author, and a person or organization, in cases where the economic right of the work is transferred to that person or organization.
- (i) "Broadcasting" means communication or exhibition of a work for public information or broadcasting of audio or audio-visual work through wireless equipment or satellite.
- (j) "Communication to the public" means the act of broadcasting and audio or visual broadcasting or both either by wire or wireless equipment in such a manner that it can be heard or viewed staying near or far from the place of broadcasting.
- (k) "Moral right" means the right to be conferred to the author or his successor or any person authorized by the author pursuant to Section 8.
- (l) "Performer" means any actor, singer, musician, dancer and other person who performs a literary or artistic work or folklore expression to the general public through acting, singing, music and dancing.
- (m) "Publication" means:
- (1) In the case of a work of drama, motion picture, or work performed in any other manner, the shows, sale or rental of such a work publicly with or without translating or altering it,
  - (2) In the case of any other work, the work which has been publicly sold, distributed or utilized or so brought out as to be sold and distributed or utilized publicly, with or without translating or altering it; and, in the case of a work that can be exhibited through acting, this term includes its exhibition in a public manner with or without translating or altering it.
- (n) "Registrar" means the person specified pursuant to Sub-section (1) of Section 30.
- (o) "Royalty collecting body" means the body formed pursuant to Section 39.
- (p) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

## **Chapter-2**

### **Acquisition and Protection of Copyright**

**3. Protection of copyright:** (1) Copyright protection shall be extended to any work.

- (2) Any translation, arrangement, sequential arrangement of work or collection of works presented as original from viewpoint of presentation, collection or expression, data or database readable with or without support of machine, any proverb, folktale, folk song falling under folk expression or any other derivative works based on folk expression shall be protected as original work, without prejudice to the copyright of the original work.

**4. Non-availability of copyright protection:** Notwithstanding anything contained in Section 3, copyright protection under this Act shall not be extended to any thought, religion, news, method of operation, concept, principle, court judgment, administrative decision, folksong, folktale, proverb and general data despite the fact that such matters are expressed or explained or interpreted or included in any work.

**5. Registration not compulsory:** (1) Registration of a work, sound recording, performance or broadcasting shall not be required to acquire the right under this Act.

- (2) Notwithstanding anything contained in sub-section (1), in cases where any person intends to get any work, sound recording, performance or broadcasting registered voluntarily, that person may make an application to the Registrar and get the same registered; and the procedures on registration shall be as prescribed.

**6. Owner of economic right of work:** (1) The author of a work shall be the first owner of the economic right of that work.

- (2) Notwithstanding anything contained in Sub-section (1), the economic right of a work shall vest in the following person or organization in the following circumstances: -

- (a) Co-author in the case of a joint work;

Provided, however, that where such a joint work is divided in different parts and each part can be identified as of different authors and the work can be used separately, the economic right shall vest in the concerned author in respect of each part created by that author.

- (b) In cases where a joint work is prepared at the initiation or direction of any person a work has been so prepared,

- (c) In case where a work is prepared on payment of remuneration by any person or organization, that person or organization who has paid such remuneration,

- (d) In the case of an anonymous work, the publisher of that work, until the authorship of such a work is proved.

Provided, however, that in cases where the real author of such a work presents his/her identity subsequently, the economic right of that work shall vest in that author from the date of presentation of his/her identity.

- (e) In the case of an audio-visual work, the producer of such a work except as otherwise provided for in the contract.

Provided, however, that in case where the work of the co-author of an audiovisual work or a pre-existing work is incorporated or adapted in making the audio-visual work, their economic right shall be according to their respective contribution.

**7. Economic Right:** Subject to provisions of Chapter-4, only the author or the owner of copyright shall have the exclusive right to carry out the following acts in respect of the work:

- (a) To reproduce the work,
- (b) To translate the work,
- (c) To revise or amend the work,
- (d) To make arrangement and other transformation in the work,
- (e) To sell, distribute or rent the original and copy of the work for the general public,
- (f) To transfer or rent the right of audiovisual work, work embodied in sound recording, computer program or musical work in graphic form conferred to that author or owner,
- (g) To import copies of the work,
- (h) To have public exhibition of the original or copy of the work,

- (i) To perform the work in public,
- (j) To broadcast the work,
- (k) To communicate the work to the general public.

**8. Moral right:** (1) The author of a work shall have the following moral rights, irrespective of whether that author has the economic right to that work:

- (a) To get his/her name mentioned in copies of the work or in his/her work where it is used publicly,
  - (b) In cases where, instead of his/her real name, a pseudonym is mentioned in his work, then to get that pseudonym mentioned while using such a work publicly,
  - (c) To prevent such acts as undermining the reputation or goodwill earned by him/her, by mutilating his/her work or presenting it in a distorting manner,
  - (d) To make necessary amendment or revision in the work.
- (2) The right referred to in sub-section (1) shall not be transferable during the life of the author.

Provided, however, that where the author has nominated any one whom such right is to be transferred after the death of the author, such right shall devolve on the person or organization so nominated, and on the nearest heir, failing such nomination.

**9. Rights of performer:** (1) The performer shall have the right to perform the following acts: -

- (a) To take one's performance to the general public through broadcasting or communication,
  - (b) To determine modality or medium of making one's performance and reproduce it,
  - (c) To take one's performance to the general public for the first time by making performance or selling or transferring copies thereof or changing ownership,
  - (d) To rent copies of one's performance,
  - (e) To take the performance produced through the determined modality or medium to the general public in an easily available manner, through wire or wireless equipment,
  - (f) To amend or revise one's performance.
- (2) The performer shall not be allowed to re-exercise the rights mentioned in Subsection (1) once he/she has authorized his/her performance to be incorporated in audio-visual medium.
- (3) Notwithstanding anything contained in Sub-section (2), the performer shall have the right to have his/her identity maintained as the performer of direct audio performance as well as of the performance incorporated in the sound recording and to make a claim for the same, and, where any person has so mutilated or distorted his/her performance or otherwise deformed his performance by mutilating the meaning as to prejudice his/her reputation or goodwill, to prevent such acts.
- (4) Nothing mentioned in this Section shall be deemed to have any effect on the right of a performer to enter into, or to be agreed on, an agreement with such terms as may yield much more benefits or facilities to him/her from the performance.
- (5) The right conferred to the performer pursuant to this Section shall be protected for a period of fifty years from the year of incorporation of performance in sound recording device, and for a period of fifty years from the year of such performance where such incorporation has not been made.

**10. Right of sound recording producer:** (1) The sound recording producer shall have the following rights: -

- (a) To reproduce the sound recording, directly or indirectly, in any manner or in any form,
  - (b) To import copies of the sound recording,
  - (c) To make the sound recording easily available by way of sale or ownership transfer or otherwise of the original or copies of the sound recording,
  - (d) To rent or lease the sound recording publicly,
  - (e) To make the sound recording capable of being heard with wire or wireless equipment from any specific place or from the place of one's own choice or by the general public.
- (2) The term of the right referred to in sub-section (1) shall be of fifty years from the year of publication of such a sound recording.

**11. Reasonable remuneration for the use of sound recording:** (1) In cases where a sound recording published for commercial purpose or a reproduced copy of such sound recording is directly used for broadcasting or other communications and is so performed to the people publicly, the producer shall get a reasonable remuneration from the user of the same.

- (2) The performer shall get the remuneration as per the agreement, in any, made between the performer and the producer on the remuneration referred to in Sub-section (1), and half the amount received by the producer where no such agreement is made.
- (3) The term of the right to receive reasonable remuneration under Sub-section (1) shall be for fifty years from the year of publication of such a sound recording or from the year of adjustment of such a sound recording.

**12. Right of broadcasting organization:** (1) The broadcasting organization shall have the right to carry out the following act: -

- (a) To re-broadcast the subject it has broadcast,
- (b) To so communicate its broadcast as to make it easily available to the general public,
- (c) To make adjustment of its own broadcast,
- (d) To reproduce the adjustment of its broadcast.

(2) The term of the right referred to in sub-section (1) shall be for fifty years from the year of commencement of such broadcast.

**\*13. Protection of work, performer, sound recording producer or broadcasting organization:**

(1) A work of the following author shall enjoy protection under this Act:

- (a) A work created by the author residing in Nepal or in a member country of the World Trade Organization and published in the Nepal or in that country,
- (b) An audio-visual work produced by a producer residing in Nepal or in a member country of the World Trade Organization,
- (c) An architectural design of a building made in the Nepal or in a member country of the World Trade Organization or other kind of artistic work used in a building or any other structure,
- (d) A work published in Nepal by an author residing in a country other than Nepal or a member country of the World Trade Organization or an audio-visual work produced in the Nepal by a producer of such other country.

(2) The following performer shall be entitled to the rights relating to performer as referred to in this Act:

- (a) A performer of Nepal or a member country of the World Trade Organization,
- (b) A performer of the performance made in Nepal or in a member country of the World Trade Organization or of the performance contained in the sound recording protected under this Act or of the performance contained in a broadcast even though it is not contained in the sound recording.

(3) The following sound recording producer shall be entitled to the rights relating to sound recording producer as referred to in this Act:

- (a) A sound recording produced by a person in Nepal or a member country of the World Trade Organization,
- (b) A sound recording published in Nepal or in a member country of the World Trade Organization.

(4) The following broadcasting organization shall be entitled to the rights relating to broadcasting organization as referred to in this Act:

- (a) A broadcast by a broadcasting organization with its office in Nepal or in a member country of the World Trade Organization,
- (b) A Broadcast by a broadcasting station situated in Nepal or in a member country of the World Trade Organization.

\* Amendment by the Act Made to Amend Some Nepal Acts relating to Export and Import and Intellectual Property.

### **Chapter: 3**

#### **Term of protection of Copyright**

**14. Term of protection of copyright:** (1) The economic and moral rights available to the author under this Act shall be protected throughout the life of the author and in the case of his/her death until fifty years computed from the year of his death.

- (2) The economic and moral rights over the work prepared jointly shall be protected for fifty years computed from the year of death of the last surviving author.
- (3) The economic and moral right of the work prepared pursuant to Clauses (b) and (c) or Sub-section (2) of Section 6 shall be protected until fifty years from the date of first publication of such work or the date on which the work is made public, whichever is earlier.
- (4) The economic and moral right of the work published anonymously or with pseudonym name shall be protected until fifty years from the date of first publication of such work or the date on which the work is made public, whichever is earlier.

Provided, however, that in cases where the name of author is published within that period of time, the protection referred to in Sub-section (1) or (5) shall be available depending on the case.

- (5) The economic and moral right of a work relating to applied art and photographic work shall be protected until twenty-five years from the year of preparation of such work.

**15. Term of protection of work published after the death of author:** Notwithstanding anything contained in Section 14, the work published after the death of the author where there is only one author of such work and after the death of one of the authors where there are two or more authors shall be protected until fifty years from the year of publication of that work.

### **Chapter-4**

#### **Circumstances where the copyrighted materials can be used without authorization**

**16. Reproduction allowed for personal purpose:** (1) Notwithstanding anything contained in Clause (a) of Section 7, no authorization shall be required from the author or the copyright owner to reproduce some portions of any published work for personal use.

- (2) Notwithstanding anything contained in Sub-section (1), no reproduction of an architectural design erected as a building and other construction related design or a significant portion of any book or of a musical work as notation of all or significant portion of a database through digital transmission shall be allowed in a manner to be prejudicial to the economic right of the author or the copyright owner.

**17. Citation allowed:** Notwithstanding anything contained in Clause (a) of Section 7, some portions of a published work can be cited for fair use without authorization of the author or the copyright owner in a manner not to be prejudicial to the economic right of such author or owner. In making such citation, its source and the author's name, in cases where it appears, shall also be mentioned.

**18. Reproduction allowed for teaching and learning:** (1) Notwithstanding anything contained in Clause (a) of Section 7, the following acts may be done for teaching and learning activities without authorization of the author or the copyright owner in a manner not to be prejudicial to the economic right of such author or owner:-

- (a) To reproduce a small portion of any published work by way of citation, writing or audio-visual aid,
- (b) To reproduce, broadcast and exhibit some portions of the work for purposes of educational activities to be performed in the classroom.

- (2) All copies reproduced pursuant to Sub-section (1) have to indicate the source and the author's name.

**19. Reproduction by library and archives:** Notwithstanding anything contained in Clause (a) of Section 7, in cases where a public library or archives, which makes available the work stored in it at the request of a person doing research or study without deriving economic profits directly or indirectly, loses any work with it or such work is destroyed or is old or is incapable of being obtained, it may reproduce one copy of such a work without authorization of the author or the copyright owner of such work.

## **20. Reproduction, broadcast and other communication allowed for purposes of information to the general public:**

(1) Notwithstanding anything contained in clauses (a), (i) and (j) of Section 7, the following acts can be done, by mentioning the sources and name of the author of any work, without authorization of the author or the copyright owner of such work.

- (a) To print in any newspaper or journal or to make broadcast or other communication to public of any article, article under political or religious topics or similar other broadcasts published in any newspaper or journal.

Provided, however, that such act shall not be prejudicial to the economic right of the author or the copyright owner.

- (b) To reproduce, broadcast or otherwise communicate or justify any event with a view to informing the general public about any current event.

- (c) To reproduce, broadcast or to make communication to public some portions of any regular newspaper or journal regularly publishing information for communication to the general public or pleadings made on court proceedings with a view to disseminating current information.

(2) Notwithstanding anything contained in Sub-section (1), in cases where the author himself/herself has indicated that his/her work is prohibited from being reproduced, broadcast and other kinds of communications, no reproduction, broadcasting and other communication shall be allowed.

**21. Reproduction of computer program:** Notwithstanding anything contained in Clauses (a) and (c) of Section 7, in cases where the objectives for which a computer program was acquired could not be achieved or with a view to maintaining records or where the computer program acquired legally is lost or destroyed or is incapable of being used, one copy of the computer program can be reproduced without authorization of its author or copyright owner.

**22. Importation allowed for personal purposes:** Notwithstanding anything contained in Clauses (g) of Section 7, one copy of any work can be imported for personal purpose, without authorization of its author or copyright owner.

**23. Public exhibition allowed:** Notwithstanding anything contained in clauses (h) of Section 7, in cases where any person intends to have public display of any work or copy of the work, he may do so without authorization of its author or copyright owner.

Provided, however, that such public display has to be made without the help of film, slide, television image or otherwise using the screen or device of other kind.

## **Chapter-5**

### **Transfer of Copyright**

**24. Transfer of Copyright:** (1) The copyright owner may transfer all or any of the economic rights conferred on him/her to any one by making a written agreement or authorize any one to use the same with or without specifying any terms.

- (2) The person entitled to moral rights may, for the protection of moral rights, transfer his moral rights to anyone, with effect after his/her death, by making a written agreement, with the terms and conditions that his/her name shall not be removed from the work.

- (3) The person to whom the rights are transferred by the copyright owner pursuant to this Section shall not carry out any other activities except the rights so transferred.

## **Chapter-6**

### **Infringement of Protected Right and Punishment**

**25. Infringement of protected right:** (1) Anyone who carries out the following act shall be considered to have infringed the right protected under this Act: -

- (a) To reproduce copies of a work or sound recording and sell and distribute them or publicly communicate or rent them with commercial or any other motive with or without deriving economic benefits without authorization of the author or the copyright owner or by infringing the terms contained in the agreement or license notwithstanding that such authorization has been obtained,
  - (b) To do advertisement or publicize by copying a work belonging to another person with a motive of taking advantage of the reputation gained by that work,
  - (c) To make work of another subject or nature by changing the form and language of a work belonging to another person with a motive of deriving economic benefit,
  - (d) To make an attempt to take benefit by adapting any work directly or indirectly with intention of making the viewer, listener or reader believe it to be another work through advertisement or by any other means,
  - (e) To import, produce or rent any equipment or device prepared with intention of circumventing any device designed to discourage the unauthorized reproduction,
  - (f) To produce or import, with intent to sell, any equipment facilitating unauthorized reception of a program broadcast by encrypting it in a code language,
  - (g) To import, sell, distribute and use a mechanical device prepared with a sole object of infringing the copyright, except those mentioned in Clauses (e) and (f).
- (2) No one shall, with knowledge of publication of any work or sound recording or where there is adequate ground to believe it, sell and distribute and rent copies of work or sound recording so published, in contravention of sub- section (1).

**26. Restriction on the importation of unauthorized copies:** Importation of copies of work or sound recording, either made in a foreign country or sourced otherwise, into α..... Nepal for business purpose shall not be permitted if preparation of such copies would be considered illegal if they were prepared in α..... Nepal.

**27. Punishment on infringement of protected right:** (1) In cases where any person infringes Section 25, such a person shall be punished with a fine of a sum from ten thousand to one hundred thousand rupees or with imprisonment for a term not exceeding six months or both and with a fine of a sum from twenty thousand to two hundred thousand rupees or with imprisonment for a term not exceeding one year or with both for each instance from the second time. The materials so published or reproduced or distributed or devices used to reproduce such materials shall be seized.

- (2) Compensation for the loss caused to the copyright owner by the infringer of the protected right shall also be realized and provided to the copyright owner.

**28. Punishment for importation of unauthorized copy:** In cases where any person imports unauthorized copies of any work in violation of Section 26, such a person shall be punished with a fine of a sum from ten thousand to one hundred thousand rupees according to the gravity of the offense, and such copies shall be seized; and compensation for the loss caused to the copyright owner from such importation shall also be realized from the importer and provided to the copyright owner.

**29. Other punishment:** In cases where any person infringes any other matter contained in this Act or the Rules framed under this Act, such a person shall be punished with a fine of a sum from five thousand to fifty thousand rupees according to the gravity of the offense.



## **Chapter-7**

### **Miscellaneous**

**30. Registrar and his functions, duties and powers:** (1) Government of Nepal may, by a notification in the Nepal Gazette, designate any officer of at least Gazetted second class to act as the Registrar pursuant to this Act.

(2) In addition to those mentioned elsewhere in this Act, the functions, duties and powers of the Registrar shall be as follows:

- (a) To monitor and control the royalty collecting body,
- (b) To hear complain as prescribed made by any party who is not satisfied with the royalty fixed by the royalty collecting body,
- (c) To perform, or cause to be performed such other functions as prescribed for the accomplishment of the objective of this Act.

**31. Appeal against order and decision of Registrar:** A party who is not satisfied with any order or decision made by the Registrar may make an appeal in the ∞District Court in the area where the Office of the Registrar is situated, within thirty-five days.

**32. Power to seize copies of work, sound recording or other materials:** (1) In cases where any person doubt that any one has published or reproduced or is about to publish or reproduce any work or sound recording contrary to Section 25 and makes a complaint before the police who has a duty of investigating the offense under this Act, the police shall make necessary arrangements for preventing the copies of such work or sound recording from being sold and distributed and may, in cases where required, search the copies of such work or sound recording and seize the same pursuant to the law in force.

(2) In conducting search and seizure pursuant to Sub-section (1), the machine including materials used to publish and reproduce the copies of such work or sound recording may also be seized.

**33. To destroy copies of work, sound recording or other materials:** In cases where the copies of the work or sound recording seized pursuant to Section 32 are held by the court liable to be seized, they shall be destroyed in presence of the representatives of the District Administration Office and the ∞Local Level after preparing an affidavit.

**34. Power of Customs Officer to stop importation of unauthorized copies:** (1) In cases where any person suspects that any other person is importing copyrighted materials into α... Nepal in an unauthorized manner, such a person may make an application, accompanied by the evidence, to the Custom Officer to prevent the importation of such material.

(2) In cases where, in conducting necessary investigation upon receipt of an application pursuant to Sub-section (1), the demand of the applicant appears reasonable, the Customs Officer may prevent the materials to be imported for a maximum of twenty working days at the rate of ten working days at a time.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), in cases where the Customs Officer learns or suspects that any one is importing copyright reserved materials into α.... Nepal in an unauthorized manner, he/she may prevent such materials for a maximum of twenty working days at the rate of ten working days at a time.

(4) Other procedures on the prevention of importation of unauthorized copies shall be as prescribed.

**35. To try and settle cases:** (1) The concerned District Court shall have the powers to try and settle cases punishable under this Act.

(2) In trying and settling cases under this Act, the procedures referred to in the Summary Procedures Act, 2028 (1971) shall be followed.

**36. Power to order for withholding:** In cases where, in the course of trying and settling a compliant pursuant to this Act, the District Court, at the request of the concerned party, thinks it reasonable to stop any activity contrary to this Act, it may order the concerned person or body to stop such activity.

**37. To be state cases:** (1) The cases punishable under Sections 27 and 28 shall be state cases and those cases shall be considered to be included in Schedule-1 of the State Cases Act, 2049 (1992).

(2) A police officer of at least the rank of police inspector shall investigate and inquire into the cases under this Act.

∞ Amended by the Act made to amend some Nepal Act, 2072 (2015)

α Removed pursuant to Act made to Amend Some Nepal Acts and strengthening of Republic, 2066 (2009)

**38. Limitation:** In cases where any right under this Act is infringed, a case has to be filed within three months of the knowledge of such infringement.

**39. Provisions relating to royalty collecting body:** (1) Generally, one royalty collecting body shall be formed as prescribed in one discipline for the purposes of fixing, collecting and distributing royalty of the works relating to copyright.

- (2) The royalty collecting body formed pursuant to Sub-section (1) has to be registered with the Registrar in the manner as prescribed.
- (3) The royalty collecting body shall be an autonomous body corporate with perpetual succession.
- (4) The royalty collecting body shall have a seal of its own for all of its activities.
- (5) The royalty collecting body may, like an individual, acquire, use, sell and dispose of or otherwise manage movable and immovable property and may, like an individual, sue and be sued by its name.
- (6) Government of Nepal may specify the terms to be followed by the royalty collecting body; and it shall be the duty of the royalty collecting body to abide by such terms.

**40. Copyright of the Government of Nepal and State Government:** (1) Government of Nepal shall have the copyright over the work prepared by Government of Nepal and State Government shall have the copyright over the work prepared by State Government.

- (2) Government of Nepal or State Government may rent or sell the right accrued to it pursuant to sub-section (1) to any person or organization or give authorization to use the same in any other manner.

**41. Calculation of year:** In calculating a year pursuant to this Act, it shall be calculated from the New year as per *Bikram Sambat* that starts from the end of the year on which the work was published or communicated publicly, or sound recording was produced.

**42. Powers to frame rules:** Government of Nepal may frame necessary Rules in order to carry out the objectives of this Act.

**43. Repeal and saving:** (1) The Copyright Act, 2022 (1965) is hereby repealed.

- (2) The remaining term of protection of the copyright of a work published publicly prior to the commencement of this Act shall be deemed to have been protected pursuant to this Act.
- (3) The acts and actions done and taken under the Copyright Act, 2022 (1965) shall be deemed to have been done and taken under this Act.

<sup>70</sup> Amended pursuant to Act made to amend some Nepal Acts in compliance with the Constitution 2075 (2017)

Note: The words changed pursuant to Act made to amend some Nepal laws, 2063 (2006): -

"Government of Nepal" instead of "His majesty's Government"

# **SCHEDULE-5**

# COPYRIGHT RULES, 2061 (2004)

## **Date of Publication**

2061/4/18 (2 Aug 2004)

## **Amendment**

1. Copyright (First Amendment Rules, 2069

2069.9.23 (7 Jan 2013)

In exercise of the power conferred by Section 42 of Copyright Act, 2002, Government of Nepal has framed the following Rules:

**1. Short Title and Commencement:** (1) These Rules may be referred as "Copyright Rules, (2061) 2004"

(2) These Rules shall come into force immediately.

**2. Definitions:** Unless the subject or context otherwise requires, in these Rules,-

(a) "Act" means Copyright Act, 2002.

(b) "Body" means Royalty collecting body formed under rule 6.

**3. Provision concerning Registration of work, sound recording, performance or broadcasting:** (1) Any owner of the work, sound recording, performance or broadcasting who desires to register any work, sound recording, performance or broadcasting under Subsection (2) of Section 5 of the Act shall have to submit an application to the Registrar in the format as specified in Schedule-1 along with evidence.

(2) If an application is received under Sub-rule (1), the Registrar shall examine it and shall order the applicant, if required, to submit additional documents,

(3) The registrar shall, if it deemed reasonable to register such a work, sound recording, performance or broadcasting in applicant's name on the basis of the documents asked under rule (2), register such a work, sound recording, performance or broadcasting in the applicant's name within thirty-five days from the date on which documents were submitted, if documents were asked, and from the date on which an application was submitted, if documents were not asked, having charged one hundred rupees as application fee and shall issue a certificate of registration of such a work, sound recording, performance or broadcasting in the format as specified in Schedule-2, to the applicant.

(4) The Registrar shall, while examining the documents ordered under Sub- rule (3), if it is deemed unreasonable to register such a work, sound recording, performance or broadcasting in applicant's name, inform the applicant specifying the reasons thereof within seven days.

(5) The Registrar shall arrange a registered book for the purpose of registration of the work, sound recording, performance or broadcasting under Sub- rule (3),

**4. To Correct the particulars:** (1) If anything requires to correct in the particulars under Rule (3), the author or owner of the sound recording, performance or broadcasting shall have to submit an application to the Registrar specifying the reason thereof.

(2) While examining the application received under Sub-rule (1), the Registrar shall, if it deemed reasonable to correct the particulars, correct the particulars in the registered book and give the information thereof to the applicant.

**5. Functions, Duties and powers of the Registrar:** Functions, duties and powers of the Registrar, except those provided for in the Act, shall be as follows:

- (a) To perform necessary work in regard to protect copyrights,
- (b) To register copyright and maintain the details thereof up-to-date.
- (c) To inspect the Body on the spot and if any weaknesses are found in the business to be performed by such a body, to give direction to improve the same.

**6. Formation of the Body:** (1) For the purpose of Section 39 of the Act, a Royalty Collection Body, may be generally formed in one discipline consisting at least seven members including author and owner of the sound recording, performance or broadcasting.

- (2) While forming a Body under Sub-rule (1) there shall be at least fifty general members.

**7. Application to submit for Registration of the Body:** The persons interested register a Body shall submit an application to the Registrar in the format as specified in the schedule specifying the following particulars:

- (a) Name and address of the Body,
- (b) Objectives of the Body,
- (c) Necessary qualification of the members of the Body and provision concerning membership fees.
- (d) Provision concerning resignation and expulsion of the members of the Body.
- (e) Provision regarding general meeting of the Body.
- (f) Formation of the executive committee of the body and provision concerning election.
- (g) Procedure regarding the meeting of the executive committee of the Body.
- (h) Fund of the Body and provision concerning income and expenditure and audit.
- (i) The amount expendable for administrative and managerial activities of the Body,
- (j) Collection of the royalty of the body and provision for distribution.
- (k) Provision concerning complaint of the Body,
- (l) Procedures for amendment of the statute of the Body,
- (m) Other necessary matters.

**8. To issue Certificate of Registration of the Body:** (1) If any application for registration of a body is submitted under Rule 7, the Registrar shall, if it is found reasonable to register such a body, while conducting necessary examination in this regard, issue a certificate of registration of such a body in the format as specified in Schedule-4 within a period of Ninety days from the date on which an application is submitted upon charging Five Thousand Rupee as application fees.

- (2) If it is found unreasonable to register such a body in the applicants' name, while conducting an examination under Sub-rule (1), the Registrar shall inform the applicants within a period of seven days upon specifying the reason thereof.

**9. Period of validity and Renewal of the Body:** (1) The period of validity of the certificate issued under Rule 8, shall be of two years.

- (2) A person who intends to renew the certificate shall submit an application to the Registrar within a period of thirty days on which validity of such a certificate has been expired along with Three Thousand Rupees, audit report of the previous year and also annual progress statement.
- (3) A person who fails to renew the certificate within the period under Sub- rule (2), may submit an application for the renewal of the certificate along with an additional fee at the rate of twenty five percent of the renewal fee within a period of thirty five days on which the said time limit has been expired.
- (4) If an application is submitted under Sub-rules (2) or (3), the Registrar shall, upon conducting necessary examination, finds reasonable to renew such a certificate, renew the certificate.
- (5) If a person fails to renew the certificate even within the period under Sub-rule (3), such certificate shall, ipso facto, be terminated.

**10. Functions, Duties and Powers of the Body:** Functions, duties and powers of the Body shall be as follows;

- (a) To provide membership to the creator of the concerned discipline,
- (b) To determine and publish the royalty payable to the author or owner of the concerned discipline,
- (c) To develop and execute the criteria for collection of royalty,
- (d) To collect and distribute the royalty payable to the author or owner of the concerned discipline,
- (e) To inform the activities of the Body to the Registrar.

**11. Progress Statement and Audit Report to Submit:** The Body shall submit a progress statement covering the business performed in the entire year and audit report within thirty days from the date on which the fiscal year has been expired.

**12. To Inform about the Affiliation with the International Royalty Collecting Body:** If a Body affiliates with any international royalty collecting body and performs any business with it the information thereof shall, immediately, be given to the Registrar.

**13. Action to be taken in case of Importation of Unauthorized Copies:** If the customs officer that any goods of unauthorized copy is likely to be imported into Nepal <sup>⌘</sup>..... or he/she has such suspicion, he/she shall take action under Section 34 of the Act and information thereof shall be given to the person importing such goods, to the Director General of the Department of Customs and also to the concerned police office.

**14. Examination and Expert Service charge:** While conducting examination of any goods by the laboratory under the application submitted by the author or owner of the sound recording, performance or broadcasting for breach of economic and moral rights or while obtaining expert opinion in regard to such goods by any expert, the service charge payable in this regard shall be borne by the applicant.

**15. Complaint may be filed:** (1) A person who is dissatisfied with the royalty fixed by the Body may file a complaint before the Registrar within thirty-five days from the date on which royalty was fixed.

- (2) If any complaint is filed under Sub-rule (1), the Registrar shall ask the concerned parties to appear before him/her and decide the case within sixty days from the date on which a complaint was filed and shall give the information thereof to the concerned parties.

**16. Amendment to the Schedule:** Government of Nepal may change and alter the Schedule by a Notification published in the Nepal Gazette.

**17. Repeal and Saving:** (1) The Copyright Rules, 1989 are, hereby, repealed.

- (2) Acts done and action taken under the Copyright Rules, 1989 shall be deemed to have been done and taken under these Rules.

<sup>⌘</sup> Removed by First Amendment

Note: The words changed pursuant to Act made to amend some Nepal laws, 2063 (2006): -  
"Government of Nepal" instead of "His majesty's Government"

**Schedule- 1**

(Relating to Sub-rule (1) of Rule 3)

**Application to be submitted for Registration of the Work, Sound recording  
Performance or Broadcasting**

To

The Registrar,

Nepal Copyright Registrar's Office,

In order to get registration of the following work, sound recording, performance or broadcasting under Copyright Rules, 2004, I hereby submit this application specifying the details as follows:

1. Name of the author or owner of the sound recording, performance or broadcasting:
2. Address:
3. Citizenship:
4. Date of birth:
5. In case of a work:
  - (a) Name and pages:
  - (b) Language:
  - (c) Date of completion of the work:
  - (d) Country and date where the work was published for the first time.
  - (e) Number of copies published:
  - (f) Other matters:
6. In case of sound recording, performance or broadcasting, details thereof:
7. Documents or evidence substantiating the ownership of the work, sound recording, performance or broadcasting.
8. Other details:
  - (a) .....
  - (b) .....
  - (c) .....
  - (d) .....

Applicant's

Signature:-

Name:

Address:

Date:

**Schedule- 2**

(Relating to Sub-rule (3) of Rule 3)

**Certificate of Registration of Work, Sound recording, Performance or broadcasting****Certificate No:**

As the work, sound recording, performance or broadcasting containing the following details has been registered in your name pursuant to Copyright Rules, 2004, and therefore, this certificate has been issued to you.

1. Name of the author or owner of the sound recording, performance or broadcasting:
2. Address:
3. Citizenship:
4. Date of birth:
5. In case of a work:
  - (a) Name and pages:
  - (b) Language:
  - (c) Date of completion of the work:
  - (d) Country and date where the work was published for the first time.
  - (e) Number of copies published:
  - (f) Other matters:
6. In case of sound recording, performance or broadcasting, details thereof:
7. Other details:-
  - (a) .....
  - (b) .....
  - (c) .....
  - (d) .....

Seal of the office: Name

Certifying Authority's

Signature:-

Name:

Designation: Registrar

Date:



**Schedule- 3**  
(Relating to Rule 7)

**Application to be Submitted for Registration of a Body**

To  
The Registrar,  
Nepal Copyright Registrar's Office,

**Subject: Registration of a Body**

I hereby submit this application, in order to get registration of a Body under the Copyright Rules, 2004, specifying the following details and having attached the documents as follows: 1. Name of the author or owner of the sound recording, performance or broadcasting:

1. Name of Body:
2. Discipline intended to get registration:
3. Other necessary details:
4. Attached documents:
  - (a) Constitution of the Body:
  - (b) Copies of citizenship of the officials of the Executive Committee,
  - (c) Evidence that substantiate the involvement of the members of the Body,
  - (d) A copy of the decision of the executive committee.

Seal of the office: Name

Certifying Authority's

Signature:-

Name:

Designation: Registrar

Date:

**Schedule- 4**  
(Relating to Rule 8)

**Certificate of Registration of a Body**  
Mr. / Ms. ....  
.....,

As a Body named as ..... in ..... discipline has been registered pursuant to Rule 8 of the Copyright Rules, 2004, and therefore, this certificate has hereby been issued.

Seal of the office:

Authority issuing the certificate  
Signature:-  
Name:  
Designation: Registrar  
Date:

# **SCHEDULE-6**

**NEPAL GOVERNMENT  
MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS**

The following Act formulated by the Federal Parliament pursuant to the Constitution of Nepal  
has been published for information of the general public.  
Act No 34 of Year 2075 B.S

**AN ACT MADE FOR AMENDMENT AND UNIFICATION OF LAW ON FOREIGN  
INVESTMENT AND TECHNOLOGY TRANSFER**

**Preamble:** Whereas, it is expedient to amend and consolidate the prevailing law on foreign investment and technology transfer, for making national economy competitive, strong and employment oriented by maximum utilizing available resources for the economic prosperity of the nation, and for achieving sustainable economic growth through industrialization by creating investment friendly environment in order to attract foreign capital, technology transfer and investment in the sector of import replacement, export promotion, infrastructure development and production of goods or services, now, therefore, be it enacted by the federal parliament.

**Chapter -1**

**Preliminary**

**1. Short title and commencement:**

- (1) This Act is named as "Foreign Investment and Technology Transfer Act, 2075 (2019)".
- (2) Section 10 and 11 of this Act shall commence from the date prescribed by the Government of Nepal by a notification published in Nepal Gazette and other Sections shall commence immediately.

**2. Definition:** Unless the subject or context otherwise requires, in this Act:

- (a) "Industry" means an industry established under prevailing law on industrial enterprises.
- (b) "One-Point Service Center" means the One-Point Service established under prevailing law on industrial enterprises.
- (c) "Non-resident Nepalese" means a person having obtained identity card of nonresident Nepalese under prevailing law on non-resident Nepalese.
- (d) "Prescribed or as prescribed" means prescribed or as prescribed in Rules framed under this Act.
- (e) "Securities Board" means Securities Board of Nepal established under prevailing law on securities.
- (f) "Technology Transfer" means the transfer of technology to be made under an agreement, on the following matters, between an industry and a foreign investor:
  - (1) Patent, design, trademark, goodwill, technological specialization, formula or process;
  - (2) User's license, know-how sharing or franchise;
  - (3) Providing foreign technical consultancy, management and marketing services, or other technical skill or knowledge.
- (g) "Board" means Industrial and Investment Promotion Board under prevailing law on industrial enterprises.
- (h) "Ministry" means the Ministry of Industry, Commerce and Supply of the Government of Nepal.
- (i) "Investment Board" means the Investment Board under prevailing law on investment board.

- (j) "Foreign Investment" means the following investment made by a foreign investor in an industry or a company:
  - (1) Share investment made in foreign currency;
  - (2) Reinvestment of the dividend received from foreign currency or share in an industry;
  - (3) Lease financing made under Section 6;
  - (4) Investment made in venture capital fund under Section 9;
  - (5) Investment made in listed shares through secondary securities market under Section 10;
  - (6) Investment made by acquiring share or assets of a company incorporated in Nepal;
  - (7) Investment received through banking channel after issue of securities in under Section 11;
  - (8) Investment made through technology transfer; or
  - (9) Investment maintained by establishing and expanding an industry in Nepal.
- (k) "Foreign Investor" means a foreign person, firm, company, non-resident Nepalese or foreign government or international organization or similar other incorporated organization making foreign investment; if the foreign investor is any incorporated foreign investor, the term includes the final beneficiary of such investor.
- (l) "Body approving foreign investment" means the body under Section 17.
- (m) "Department" means the Department of Industries.
- (n) "Institutional Foreign Investor" means a foreign company, incorporated organization or international organization making foreign Investment.

## Chapter -2

### Foreign Investment

#### **3. Foreign investment may be made:**

- (1) A foreign investor may make foreign investment in an industry and obtain benefit from such investment.
- (2) Notwithstanding anything contained in sub-section (1), no foreign investment shall be made in an industry mentioned in Annex from profit made by an industry operated from foreign investment or in any other manner. Provided that, technology transfer may be made, with the approval of Department, to an industry established with Nepalese investment mentioned in Annex.
- (3) Notwithstanding anything contained in sub-section (1), no approval shall be provided to make foreign investment in an industry in an amount less than the amount as prescribed by the Government of Nepal by a notification published in Nepal Gazette.

**4. Foreign investment may be made singly or jointly:** A foreign investor may make foreign investment by establishing an industry either singly, or jointly, or jointly with an industry established in Nepal or with a Nepalese citizen.

**5. Foreign investment may be made by acquiring assets or shares of industry:** A foreign investor may make foreign investment by acquiring assets or shares up to prescribed percentage of an industry established in Nepal.

**6. Lease financing may be made:** A foreign investor may make lease financing on aircraft, ship, machinery and equipment, construction apparatus, or similar other apparatus, subject to the prescribed conditions.

#### **7. Foreign investment may be made through technology transfer:**

- (1) A foreign investor may make foreign investment in an industry established in Nepal through technology transfer.
- (2) The terms of the technology transfer to be made under sub-section (1) shall be as mentioned in the agreement for technology transfer concluded between the concerned industry and the foreign investor.

- (3) No provision providing for the payment of royalty in an amount exceeding the prescribed limit shall be made in the agreement under sub-section (2).
- (4) The agreement under sub-section (2) shall be approved from the body approving foreign investment.
- (5) The body approving foreign investment may, in providing approval under subsection (4), prescribe necessary terms on the basis international practice on foreign investment, production and sales capacity of the industry.

**8. Foreign investment may be made by establishing branch:**

- (1) An industry incorporated abroad may make foreign investment by establishing or expanding its branch industry in Nepal within the limits of the prevailing law.
- (2) Other provisions relating to establishment or expansion of branch of industry under subsection (1) shall be as prescribed.

**9. Foreign investment may be made by establishing venture capital fund:**

- (1) An incorporated foreign investor may, for the purpose of making equity investment in any industry, establish a venture capital fund, by incorporating a company under prevailing law and obtaining approval of the Securities Board.
- (2) In making investment in an industry from the fund under sub-section (1), approval shall be obtained after fulfilling the procedures of Section 15.
- (3) The details of venture capital fund under sub-section (1) shall be provided to the Department in every six months.
- (4) Other provisions relating to the fund established under sub-section (1) shall be as prescribed.

**10. Securities transaction may be carried out:**

- (1) An incorporated foreign investor which has established a venture capital fund under Section 9 shall be registered with the Securities Board for carrying out securities transaction.
- (2) A foreign investor registered with the Securities Board under sub-section (1) may, through secondary market, carry out the transaction of securities of an industry in which the foreign investment may be made under the Act.
- (3) In carrying out the securities transaction under sub-section (2), minimum number of securities to be purchased, limit of investment, minimum holding period after purchasing securities, reserve fund to be maintained in foreign currency for purchasing securities and other provisions relating thereto shall be as prescribed.

**11. Loan or foreign currency obtained by issuing securities:**

- (1) A public limited company incorporated in Nepal or a body corporate authorized to issue securities under prevailing law may, with the approval of Nepal Rastra Bank and Securities Board, obtain loan or foreign currency by issuing loan instrument, debenture or other securities in foreign capital market.
- (2) A company incorporated in Nepal with foreign investment may, subject to prevailing law on securities, obtain loan by issuing securities within Nepal.
- (3) Loan or foreign currency obtained by issuing securities under sub-section (1) and (2) shall be invested in Nepal.
- (4) Other provisions relating to the issue of securities under this Section shall be as provided for in prevailing law on securities.

**12. Loan may be obtained from foreign financial institutions:** An industry with foreign investment may, with the recommendation of Ministry and approval of Nepal Rastra Bank subject to prevailing Nepalese law, obtain loan from a foreign financial institution by entering into project loan or project financing agreement.

**13. Maximum limit of foreign investment shall not be prescribed:**

- (1) Maximum limit of amount and proportion of investment that may be invested by a foreign investor willing to invest in Nepal shall not be prescribed.

- (2) Notwithstanding anything contained in sub-section (1), in regards to service industry, maximum limit of equity of foreign investment or limit of investment to be made in securities under Section 10 may be prescribed in a manner that it shall not be less than the commitment made by Nepal, in relation to the concerned sector or sub-sector, at the time of obtaining membership of the World Trade Organization.

**14. Agreement may be entered into with commercial bank:**

- (1) A foreign investor making investment under this Act may, for the purpose of activities relating to investment made by such investor in Nepal, enter into an escrow agreement with his partner investor or other foreign investor and a commercial bank or infrastructure development bank approved by Nepal Rastra Bank.

**Explanation:** For the purpose of this Section, escrow agreement means an agreement entered into in relation to transactions between the parties to the agreement for the security of such transactions with the consent that the parties to the agreement shall keep with a third party, as collateral, an amount or evidence document or for guarantee and such amount, evidence document or guarantee shall be provided to the concerned party after the fulfillment of contractual obligation by the parties to the agreement.

- (2) The bank entering into an escrow agreement under sub-section (1) shall act as an agent of the parties to such agreement.
- (3) Other provisions relating to the escrow agreement to be entered into sub-section (1) shall be as prescribed.

**Chapter -3**

**Approval and Withdrawal of Foreign Investment**

**15. Application to be made for approval of making foreign investment:**

- (1) A foreign investor willing to make foreign investment under this Act shall, for approval of making foreign investment, make an application, in the prescribed format, to the body approving foreign investment, disclosing particulars that include time schedule of bringing foreign investment in Nepal and action plan for investment in an industry, and other prescribed particulars.
- (2) If, in making inquiry into the application submitted under sub-section (1), it appears that the prescribed documents are complete, the body approving foreign investment shall provide approval for foreign investment, in prescribed format, within 7 days of receipt of application.
- (3) No re-approval of foreign investment shall be required if an industry having obtained approval under sub-section (2) is willing to invest, out of the profit earned, in the same industry, or any other industry other than an industry mentioned in Annex.

Provided that, matters of obtaining license or permission under prevailing law for registration of industry or company, or for tax or any other purpose shall be as provided for accordingly.

- (4) If an industry is established under sub-section (3) or if the ownership structure of an industry is changed because of foreign investment, such industry shall provide information thereof to the Department and Nepal Rastra Bank. The Department shall, after receipt of such information, maintain record thereof.
- (5) If, in making inquiry into the application submitted under sub-section (2), it appears that the approval cannot be given, the body approving foreign investment shall give written information thereof to the applicant, within 7 days, stating the ground and reason thereof.
- (6) The concerned investor may, if he not satisfied with the decision of the Department as per the information received under sub-section (5), make an application for appeal to the Ministry against such decision.
- (7) The Ministry shall, after necessary inquiry into the application submitted under sub-section (6), take a decision within 30 days.

**16. Information to be given to Nepal Rastra Bank:**

- (1) A foreign investor shall, after obtaining approval for foreign investment under Section 15, inform Nepal Rastra Bank, in writing, together with the declaration that the amount to be invested was procured from legal source. The foreign investor may bring such amount of investment after providing such information.
- (2) The amount to be invested by the foreign investor shall, after fulfilling the procedures determined by Nepal Rastra Bank, be brought in convertible foreign currency through banking channel.  
  
Provided that, an Indian investor may invest the amount of such investment in Indian currency through banking channel.
- (3) Notwithstanding anything contained in sub-section (3), lease financing under Section 6 and debt investment issued against the collateral under Section 11 shall be as prescribed.

**17. Body approving foreign investment:**

- (1) The Department shall provide approval for foreign investment up to NPR. 6 Billion (6 Arab).
- (2) Investment Board under the Investment Board Act, 2010 (2068) shall provide approval for foreign investment above NPR. 6 Billion (6 Arab).

**18. Period within which investment is to be made:**

- (1) A foreign investor shall invest the amount approved for foreign investment under Section 15(2) within the prescribed period.
- (2) A foreign investor having obtained approval for foreign investment under prevailing law at the time of commencement of this Act shall also invest the minimum prescribed amount within the period mentioned in sub-section (1).
- (3) The concerned body approving foreign investment shall cancel the approval for foreign investment provided to an industry which fails to invest, without reasonable cause, within the period mentioned in sub-section (1) or (2) or Section 43.

**19. Information of sale or transfer of share shall be provided:**

- (1) If structure of ownership or underlying ownership of assets, properties, shares or any other type of financial instruments created in Nepal from foreign investment is changed due to sale or transfer of shares within or outside Nepal, or in any other manner, the concerned company shall provide information to the body approving investment, accompanied by evidence document thereof, within 30 days of the transaction and get such information recorded as prescribed.
- (2) If ownership of an industry in Nepal with foreign investment is changed due to transfer of properties, asset or shares or any other financial instrument of a holding company, the liability of providing information under sub-section (1) shall be of concerned branch industry or unit of industry established in Nepal.
- (3) If a transaction as mentioned in sub-section (1) is carried out, recording as per sub-section (1) shall not be done until the concerned industry pays tax under prevailing law after disclosing the amount of transaction.
- (4) Other provisions relating to sale and transfer of shares shall be as prescribed.

**20. Investment and earned amount may be withdrawn:**

- (1) A foreign investor may, if he so desires, withdraw his investment from Nepal by selling, fully or partially, share or industry of his investment in accordance with prevailing law of Nepal and after paying all leviable tax under prevailing law of Nepal.
- (2) A foreign investor is entitled to withdraw the following amount in the same foreign currency in which the investor made investment or, with the approval of Nepal Rastra Bank, in other convertible foreign currency, after fulfilling the liability relating to tax under prevailing law:
  - (a) Amount received from sale of shares of foreign investment;
  - (b) Amount in respect of profit or dividend received from foreign investment;
  - (c) In the event of dissolution or liquidation of industry or company, residual amount after payment of all liabilities;



(d) Amount in respect of royalty received under agreement for technology transfer;

Provided that, amount of royalty or net profit in respect of use of trademark under technology transfer in a liquor industry, other than a liquor industry exporting 100% of liquor, shall not be more than prescribed 5 percent of the gross sales revenue excluding prevailing tax.

(e) Amount of lease rent under lease financing;

(f) Amount in respect of compensation or damages from the final settlement of dispute, arbitration or any other legal proceedings;

(g) Amount that may be taken back under prevailing law.

(3) Amount in convertible foreign currency shall be withdrawn under sub-section (1) or (2) after getting converted at prevailing exchange rate.

(4) Where a foreign investor has provided loan to an industry or a company against the mortgage or collateral of movable or immovable property in Nepal, and it is required to auction or forfeit such property because of non-payment of principal or interest of such loan, the lending organization may withdraw principal and interest of the loan after auctioning such property in accordance with prevailing law in the same manner as by a bank or financial institution of Nepal.

(5) If a lease agreement is terminated because of non-payment in accordance with lease agreement or of violation of terms of agreement, the foreign investor may withdraw his investment and asset invested on lease.

(6) A foreign investor willing to withdraw foreign investment or amount earned therefrom, under this section shall, for approval, make an application, in the prescribed format, to the body approving foreign investment.

Provided that, the application shall be made to the One-Point Service Center if the Government of Nepal has, by a notification published in Nepal Gazette, given the authority of providing approval in relation to withdrawal of foreign investment or amount earned therefrom to such center.

(7) The body approving foreign investment shall, if, in making inquiry into the application submitted under sub-section (6), it appears that the foreign investor has fulfilled terms and liabilities under this Act, prevailing law and agreement for foreign investment, provide approval for withdrawing foreign investment or amount derived therefrom, within 15 days from the date of receipt of application.

(8) The foreign investor may, after obtaining approval under sub-section (7), apply to Nepal Rastra Bank for the facility of foreign currency exchange.

(9) Nepal Rastra Bank shall, after receipt of application under sub-section (8), provide the facility of exchange to the foreign investor for withdrawing foreign investment.

(10) In the event of withdrawal of investment after selling, fully or partially, an industry with foreign investment or because of cancellation of registration of such industry or company for any reason, residual amount may be withdrawn only after payment or settlement of all liabilities including tax.

(11) Notwithstanding anything contained elsewhere in this Section, a foreign investor is entitled to withdraw the foreign investment made in an industry under this Act or profit earned therefrom only to the extent of proportion of his investment in the concerned industry.

(12) A foreign investor may, if he is not satisfied with the decision of the body providing approval in relation to the withdrawal of his investment, apply to the Ministry. The Ministry shall make a decision on such application within 30 working days.

#### Chapter 4 – Promotion, Facilitation and Regulation of Foreign Investment

**21. Functions, duties and powers of Board:** The functions, duties and powers of the Board shall be as follows, in addition to the functions, duties and powers mentioned elsewhere in this Act:

- a) To advise the Government of Nepal for policy-related, organizational and procedural improvement to be adopted for attracting foreign investment on industrial and infrastructure development;
- (b) To determine strategy and program necessary for increasing attraction of foreign investment in Nepal and its promotion;
- (c) To provide approval for the establishment of industry and infrastructure based on foreign investment and to promote foreign investment;
- (d) To provide facilitation to foreign investment by increasing, expanding and protecting foreign investment;
- (e) To maintain coordination at policy and implementation level of foreign investment;
- (f) To assist in the implementation of policy and law relating to foreign investment;
- (g) To make arrangements for providing services from one-point service center to foreign investors;
- (h) To provide necessary direction to concerned body after obtaining information on whether or not the acts and actions of approval and service flow of foreign investment are operated appropriately;
- (i) To facilitate if any difficulty appears in relation to withdrawal of foreign investment or amount derived therefrom under Section 20, or in the implementation of this Act or the Rules framed under this Act;
- (j) To perform or cause to be performed other duties as prescribed.

**22. Functions, duties and powers of Department:** The functions, duties and powers of the Department shall be as follows, in addition to the functions, duties and powers mentioned elsewhere in this Act:

- (a) To create friendly environment for establishment and operation of industries to be established on foreign investment;
- (b) To provide facilitation to foreign investor for obtaining any approval or license under prevailing law including initial environmental examination and environmental impact assessment;
- (c) To maintain up-to-date record of foreign investment approved or licensed under this Act or prevailing law and of technology transferred in Nepal, to update the same and publish periodically;
- (d) To provide approval for withdrawal of investment and remuneration to foreign specialist, technician or managerial employee, employed under foreign investor and industry with foreign investment, under Section 27;
- (e) To frame and implement standard operating procedure for making foreign investment transparent and for procedural simplification;
- (f) To provide recommendation for visa for foreign investor and his authorized agent, specialist, technician or managerial employee working in an industry with foreign investment under Section 27 and infant member of their family, and to provide facilitation for the same;
- (g) To carry out regular supervision and inspection as to whether or not an industry with foreign investment has misused any facilities provided under this Act;
- (h) To provide facilitation for establishment of an industry with foreign investment in industrial zone or special economic zone;
- (i) To perform or cause to be performed other duties as prescribed.

**23. Service to be provided through One-Point Service Center:**

- (1) The Government of Nepal may make necessary arrangements for providing exemptions, facilities, concessions or services to be provided to the foreign investors under this Act or prevailing law from One-Point Service Center.
- (2) In managing the services to be provided from One-Point Service Center under sub-section (1), necessary arrangements shall be made for providing the following services subsequently:
  - (a) Registration of industry and its administration;
  - (b) Approval of foreign investment and loan;
  - (c) Registration of company and its administration
  - (d) Work permit;
  - (e) Visa facility;
  - (f) Measurement and control of quality of goods produced from an industry;
  - (g) Approval of environmental study report;
  - (h) Energy and infrastructure development and necessary coordination for such development and focal point for other bodies;
  - (i) Other exemptions and facilities to be enjoyed by industries;
  - (j) Provide permanent account number;
  - (k) Approval for foreign exchange;
  - (l) Any service related with other acts to be done for industries under this Act and Rules framed under this Act.
- (3) One-Point Service Center may be appointed to provide other services under prevailing law in addition to the services and facilities to be provided under this Section.

**Chapter 5 – Exemptions, Facilities and Concessions to be Provided to Industry with Foreign Investment or Foreign Investor**

**24. Facility to be obtained by industries:**

- (1) In addition to the exemptions, facilities, concessions or protection under this Act, an industry with foreign investment shall also be provided with exemptions, facilities or concessions available under prevailing Industrial Enterprises Act and other prevailing law.
- (2) Notwithstanding anything contained in sub-section (1), an industry with foreign investment shall not be provided with the facility to be enjoyed by sick industry under prevailing law.

**25. Facility of foreign currency transaction:**

- (1) A foreign investor or an industry with foreign investment may carry out transactions by opening account in Nepalese currency in any commercial bank or infrastructure development bank or financial institution and foreign currency account in any licensed bank and financial institution for transaction of convertible foreign currency pursuant to prevailing law.

Provided that, approval of Nepal Rastra Bank shall be obtained for carrying out transaction by opening account of convertible foreign currency.

- (2) To minimize foreign exchange fluctuation risk, an industry with foreign investment may use approved derivative instruments through bank or financial institution.

**26. Facility of foreign currency:**

- (1) An industry with foreign investment may, after obtaining approval of Nepal Rastra Bank on the recommendation of body approving foreign investment, obtain the facility of foreign currency for the amount needed for following purposes:
  - (a) To pay remuneration of foreign specialist, technician or managerial employee engaged in the industry under Section 27;
  - (b) To pay principal or interest of bond or debenture issued under Section 11(1);
  - (c) To repatriate foreign investment or earned amount under Section 20.
- (2) An industry with foreign investment may, after obtaining approval of Nepal Rastra Bank under sub-section (1), pay or utilize the approved amount out of foreign currency kept in account referred to in Section 25 of such industry.
- (3) A foreign specialist, technician or managerial employee engaged in an industry under Section 27 may repatriate to his/her country his/her remaining remuneration, in convertible foreign currency, after paying income tax in Nepal under prevailing law.
- (4) While exchanging or repatriating convertible foreign currency under sub-section (2) or (3), it shall be done as per open market exchange rate.

**27. Provision relating to specialist, technician and managerial employee:**

- (1) Specialist, top technician, managerial employee or technical employee in top management of an industry with foreign investment shall be hired from Nepalese citizens.
- (2) Notwithstanding anything contained in sub-section (1), foreign citizens may be engaged in work in accordance with prevailing law where the specialist, top technician, managerial employee or technical employee in top management of the industry cannot be supplied from Nepalese citizens, and where technical knowledge or skill is to be provided in such industry through specialist or technician of other countries.
- (3) The concerned industry shall provide the details of foreign citizen engaged in work under sub-section (2) to the Department. The Department shall provide such details to Ministry of Finance, Ministry of Home and Ministry of Labor, Employment and Social Security as well.
- (4) The employees and workers engaged in an industry with foreign investment under subsection (2) shall comply with the terms under prevailing Nepalese law.

**28. Provision relating to industrial security:** An industry with foreign investment shall be provided with industrial security equivalent to other industries established in Nepal.

**29. Facility of identity card:** The Department may provide identity card, in prescribed format, to a foreign investor making foreign investment as prescribed.

**30. Provision relating to visa:**

- (1) A foreign citizen visiting for conducting study, research or survey for foreign investment shall be provided with non-tourist visa for up to six months.
- (2) A foreign investor or his one authorized representative and family member of such investor or representative shall, for staying in Nepal, be provided with business visa until the minimum foreign investment as prescribed is retained.

Explanation: For the purpose of this Section, family member means spouse, parents and infant children of foreign investor or of his authorized representative.

- (3) Notwithstanding anything contained in sub-section (2), in the case of investor making investment in an amount exceeding the prescribed amount, such facility shall be provided to a maximum of two persons and to his family member only.
- (4) A foreign investor making investment in excess of ten lakh USD (one million USD) or equivalent convertible foreign currency at a time or his representative and family member of such person shall be provided with residential visa until the minimum foreign investment as prescribed is retained.
- (5) A foreign specialist, technician or managerial employee coming to work in an industry under Section 27 shall be provided with non-tourist visa.
- (6) Other provisions relating to visa facility shall be as prescribed.

**31. Provision relating to land:**

- (1) A foreign investor shall himself/herself arrange the land required for the industry by purchasing or through other means in accordance with prevailing law.
- (2) Notwithstanding anything contained in sub-section (1), where the foreign investor fails to purchase or arrange the land required for operating prescribed industry himself, the body approving foreign investment shall, on request for purchasing or arranging land disclosing such failure, provide necessary recommendation, coordination and facilitation for the same.
- (3) Where an industry operated or to be operated with foreign investment requires land for its establishment and operation in excess of ceiling, the body registering industries shall provide necessary recommendation, coordination and facilitation in a manner to be in accordance with prevailing law. The land not subject to ceiling shall be used only for the purpose for which it was purchased.
- (4) Provision relating to providing land on lease to an industry with foreign investment and other provisions relating to land ceiling shall be as provided for in Industrial Enterprises Act and prevailing law.
- (5) Other provisions relating to land to be provided to an industry to be operated with foreign investment shall be as prescribed.

**32. National treatment to be provided:**

- (1) After the commencement of this Act, national treatment shall be provided to foreign investment made by a foreigner and such investment is brought into Nepal subject to this Act and prevailing laws and until such investment is retained in Nepal, in a manner that the terms applicable on management, maintenance, utilization, transfer or sale of such investment shall not be less favorable than the terms applicable on management, maintenance, utilization, transfer or sale of investment made by Nepalese person.
- (2) Notwithstanding anything contained in sub-section (1), in the case of foreign investment having obtained approval prior to the commencement of this Act, the provisions under prevailing foreign investment law in force at the time of such investment shall be applicable and no change shall be made without the consent of foreign investor in a manner detrimental to any facilities being enjoyed by him thereunder.
- (3) An industry with foreign investment under sub-section (1) shall obtain following protections:
  - (a) An industry or business with foreign investment shall be treated in the manner same as an industry of same nature with investment of Nepalese citizens.
  - (b) An industry or business with foreign investment shall be free to determine the price of goods and services, subject to prevailing law.
  - (c) An industry or business with foreign investment shall not be prohibited to operate trade as prescribed within the limit of its industry.
  - (d) An industry or business with foreign investment shall not be prohibited to repatriate profit, withdraw investment, pay interest and repay principal of loan.
- (4) Notwithstanding anything contained in sub-section (1), national treatment shall not be applicable on the following matters:
  - (a) Matters prescribed for compulsory licensing on creation, limits thereof, transfer of rights or usage of intellectual property mentioned in agreement concluded under World Trade Organization;
  - (b) Matters of exemption or facility, if any, provided for domestic industry or goods under prevailing Nepalese law relating to public procurement;
  - (c) Matters of subsidy or concession to be provided by the Government of Nepal;
  - (d) Matters of non-commercial services to be provided by the Government of Nepal;
  - (e) Measures relating to financial services adopted or managed by the Government of Nepal for the protection of investors, participants of securities market, insurance policy holder or insurance policy claimant, or on matters relating to financial institutions undertaking the liability of protecting financial interest of any person, or on matters of maintaining soundness, morality or financial responsibility of financial institutions;

- (f) Matters on which the Government of Nepal has the responsibility of providing special treatment because of being a party to any regional or multisectoral economic, monetary or similar organization of which the Government of Nepal is or going to be a party;
- (g) Matters relating to terms prescribed by regulatory body under prevailing law on withdrawal of investment, payment of loan (including principal, interest and fee) or payment of service fee outside Nepal;
- (h) Matters of protection of public health, animals, plant or environment.

**33. No nationalization or expropriation:**

- (1) No industry with foreign investment under this Act shall be nationalized.
- (2) No industry shall be expropriated directly or indirectly, except for public purpose.

Appropriate procedure under prevailing law shall be followed where expropriation is needed for public purpose.

**34. Change in terms and service facilities:** Notwithstanding anything contained elsewhere in this Act or prevailing law, if any provision purported to change the terms of foreign investment, or the exemption, facilities or concessions to be obtained by foreign investors, is detrimental to a foreign investor having obtained approval prior to such change, such change shall not be applicable in the case of such investor.

## Chapter 6 – Complaint Management and Action

**35. Complaint management:**

- (1) A foreign investor or an industry may, if he has any complaint in respect of any act done or action taken by an official carrying out registration, regulation or supervision of industry under prevailing law, or by an official of One-Point Service Center, for hearing, apply to the Department disclosing details thereof.
- (2) The Department shall address the complaints received under sub-section (1) as prescribed.
- (3) A foreign investor may, if he has any complaint in respect of any act done or action taken by the Department or One-Point Service Center, for hearing, apply to the Ministry disclosing the details thereof.
- (4) The Ministry shall address the complaints received under sub-section (3) as prescribed.

**36. Act or action not to be done or taken in contravention of terms:** If a foreign investor or an industry with foreign investment is found to have done any act in contravention of this Act, the Rules framed under this Act, and the terms prescribed at the time of providing approval for foreign investment, such approval may be cancelled by fulfilling the prescribed procedures or such error may be caused to be corrected.

**37. Supervision and inspection of industry:**

- (1) An officer prescribed by the Department may, as per necessity, carry out supervision and inspection of an industry with foreign investment as well.
- (2) The officer carrying out supervision and inspection under sub-section (1) shall submit a report to the Department, disclosing whether or not the foreign investor or industry has done an act in contravention of Section 36, within 3 days of completion of supervision and inspection.
- (3) Other provisions relating to supervision and inspection of industry shall be as prescribed.

## Chapter 7 – Miscellaneous

**38. Bilateral or multilateral investment agreement may be entered into:** For promoting foreign investment, the Government of Nepal may bring foreign investment by entering into bilateral or multilateral agreement with foreign ally countries or international organization.

**39. Agreement may be entered into:**

- (1) While making investment in an industry by Nepalese investors and foreign investors jointly, a joint agreement in respect of such investment may be entered into, subject to this Act.
- (2) The agreement under sub-section (1) shall provide for, inter alia, terms of joint investment, apportionment of profit derived from investment, and settlement of investment related disputes.

**40. Settlement of disputes:**

- (1) If any dispute arises between Nepalese investors and foreign investors in relation to foreign investment, the Department may provide necessary facilitation for settlement of such dispute through mutual discussion or conversation of concerned parties.
- (2) If dispute could not be solved as per sub-section (1) or (2) within 45 days from date of origin of dispute, the dispute will be solved as per, if there is one, joint investment or dispute resolution agreement.
- (3) The parties shall provide information of settlement of the dispute under sub-section (2) to the body approving foreign investment within 15 days of settlement of the dispute.  
Provided that the parties shall not be obliged to provide information of agreed terms.
- (4) If there is no arrangement to resolve dispute in the agreement between parties as per subsection (2), the dispute will be resolved through arbitration as per Nepalese law related to the arbitration.
- (5) Dispute arising in relation to any foreign investment except agreed otherwise, will be solved following the prevailing law or procedure of United Nations Commission on International Trade and Law (UNCITRAL).
- (6) Arbitration to be conducted pursuant to this Section will take place in Nepal and substantive law relating to arbitration will be applicable law.  
Provided that for matters under sub-section (2), the same Section shall prevail.
- (7) If there is no agreement between parties before dispute arises or agreement is felt not sufficient, parties may make agreement to solve the dispute even after dispute arises. Such agreement made should be informed to the body registering industries.
- (8) Dispute can be resolved pursuant to this section even in the case of agreement made as per sub-section (7).

**41. Electronic medium may be used:** The body approving foreign investment may carry out acts and actions relating to approval of foreign investment under this Act and other acts and actions relating thereto through electronic means approved under prevailing law on electronic transactions.

**42. Arrangement may be made for automatic approval process:**

- (1) The Government of Nepal may, by a notification published in Nepal Gazette, provide such services as registration of company, registration of industry and approval of foreign investment under this Act and prevailing law through automatic route, for making the process of foreign investment simple and easy.
- (2) Other provisions relating to automatic route and online system under sub-section (1) shall be as prescribed.

**43. Effective period of approval of foreign investment:**

- (1) The approval of foreign investment provided by the body approving foreign investment shall remain effective until such period during which such investment is retained in Nepal.
- (2) Notwithstanding anything contained in sub-section (1), such approval shall, ipso facto, be deemed to be ineffective in the following circumstances:
  - (a) If foreign investment in Nepal is not brought within 2 years from the date of approval of such investment without any reasonable reasons;

- (b) If, consequent to the sale of shares of an industry registered after approval of foreign investment, 100% ownership of such industry with foreign investment is transferred to Nepalese investors;
  - (c) If the registration of foreign investment approved industry or of the company which established such industry is cancelled for any reason.
- (3) Other provisions relating to effective period of approval of foreign investment shall be as prescribed.

#### **44. Terms shall be complied**

Foreign investor shall comply to the prescribed term in addition to this Act.

#### **45. Production through contracting may be done:**

- (1) An industry with foreign investment may produce any part of its product, or auxiliary goods or services needed for it, other than its main product, by contracting with other industries.
- (2) Other provisions relating to production by contracting shall be as prescribed.

#### **46. Power of attorney may be given:**

- (1) A person willing to make foreign investment in Nepal under this Act may give power of attorney to any person for the purpose of doing and taking any, some or all acts and actions to be done and taken by him/her. All acts and actions done and taken by the agent in accordance with the power of attorney shall be treated as done and taken by the investor himself/herself.
- (2) The power of attorney given under sub-section (1) shall, for doing acts in accordance with such power of attorney, be notarized and provided to the body approving foreign investment. The body approving foreign investment may, if deems necessary, look the original of such power of attorney.
- (3) The agent under sub-section (1) shall not be entitled to delegate the authority bestowed on him to another person.
- (4) The principal may withdraw the power of attorney given by him at any time. The power of attorney so withdrawn shall be ineffective from the date of registration of information thereof, by the principal, with the body approving foreign investment.
- (5) Other provisions relating to giving power of attorney shall be as prescribed.

#### **47. Delegation of authority:**

The Board or the Department may delegate, as per necessity, some authority out of the authority bestowed on him under this Act or the Rules framed under this Act, to any body or officer of the Government of Nepal.

#### **48. Foreign investment in industry registered in province:**

- (1) If foreign investment or technology transfer is to be made or done under this Act in an industry registered by a provincial government under prevailing state or provincial law, approval of the Department shall be obtained under this Act.
- (2) In obtaining approval under sub-section (1), certificate of registration of industry in the province and the recommendation of the concerned provincial ministry looking after industrial matters shall, inter alia, be submitted.
- (3) Other provisions relating to foreign investment in an industry registered in state shall be as prescribed.

#### **49. To be as provided for in prevailing law:**

The matters stated in this Act shall be dealt in accordance with this Act, and other matters in accordance with prevailing Industrial Enterprises Act and other prevailing law.

#### **50. May make alteration or amendment in Annex:**

The Government of Nepal may, by a notification published in Nepal Gazette, make necessary amendment or alteration in the Annex.



**51. Power to frame Rules:**

The Government of Nepal may frame necessary Rules for the implementation of this Act.

**52. May frame and implement directives, work procedure or standards:**

The Government of Nepal may frame necessary directives, work procedures or standards without adversely affecting the overall generality of this Act and the Rules framed under this Act, and implement the same.

**53. Repeal and savings:**

- (1) The Foreign Investment and Technology Transfer Act, 2049 (1992) is hereby repealed.
- (2) All acts and actions done and taken under Foreign Investment and Technology Transfer Act, 2049 shall be deemed to be done and taken under this Act.

## ANNEX

(Relating to Section 3(2))

### **Industry or business not opened to foreign investment**

1. Poultry farming, fish farming, bee keeping, fruits, vegetable, oil seeds, pulse seeds, milk industry and priority production in agricultural sector
2. Small and cottage industry
3. Personal service business (such as hair salon, tailoring, driving, etc.)
4. Industry producing arms and ammunitions, bullets and shell, gunpower, explosive materials, nuclear, biological and chemical (N.B.C.) weapon, atomic energy, radio-active materials;
5. Real estate business (other than construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service;
6. Travel agency involved in tourism; guide, trekking and mountaineering guide, rural tourism including homestay;
7. Business of mass communication media (newspaper, radio, television and online news), motion picture of national language;
8. Management, account, engineering, legal consultancy service and language training, music training, computer training; and
9. Consultancy service having foreign investment of more than 51 percent.

# **SCHEDULE-7**

# BLACK-MARKETING AND SOME OTHER SOCIAL OFFENSES AND PUNISHMENT ACT, 2032 (1975)

## **Date of Authentication and publication**

2032.5.20 (5 September 1975)

## **Amending Act**

1. Administration of Justice Act, 2048(1991)	2048.2.16 (30 May 1991)
2. Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010)*	2066.10.7 (21 Jan. 2010)
3. Act made to amend some Nepal Act, 2072 (2015)	2071.11.13 (25 Feb 2015)
4. Act made to amend some Nepal Acts in compliance with the Constitution 2075 (2017)	2075.11.19 (3 Mar 2019)

Act number 10 of the year 2032 (1975)

## **The Black-marketing and Some Other Social Offenses and Punishment Act**

**Preamble:** Whereas, it is expedient to control black-marketing, profiteering, adulteration and some other social offenses in order to maintain health, convenience and economic interests of the general public;

Now, therefore, His Majesty King Birendra Bir Bikram Shah Dev has, on the advice and with the consent of the National Panchayat, enacted this Act.

### **1. Short title, extent and commencement:**

- (1) This Act may be called as the "Black-marketing and Some Other Social Offenses and Punishment Act, 2032 (1975)."
- (2) This Act shall extend to the whole of <sup>9</sup>Nepal.
- (3) This Act shall come into force immediately.

**2. Black-marketing:** If any person commits, or causes to be committed, any of the following acts, that person shall be deemed to have committed blackmarketing and be liable for the punishment as follows:

- (a) If any person sells any goods by receiving the price higher than the price fixed, if any, by Government of Nepal, and then the price fixed by the producer, importer or main distributor of the goods prescribed by Government of Nepal upon a Notification published in the Nepal Gazette, where Government of Nepal has not fixed the price, such person shall be punished with imprisonment for a term not exceeding «one year and with also a fine up to Ten lakh Rupees, and the price of the goods received by such person shall be returned and the goods forfeited.

**Explanation:** While fixing the wholesale or retail price, it shall be fixed generally, by having regard to the following matters and hearing the concerned sector so that the consumer gets it at a fair price:

- (a) the price of goods,
- (b) fare and rent,

<sup>‡</sup> This Act came into effect from 2065.02.15 (May 28, 2008). Removed terms like Kingdom.

<sup>9</sup> Deleted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010).

« Amended by Act made to amend some Nepal Act, 2072 (2015)

- (c) customs duties,
  - (d) taxes, fees and all reasonable expenses permissible under the prevailing law payable while importing or producing goods,
  - (e) enterprise expenses,
  - (f) reasonable commission of the dealer, retailer or agent, and
  - (g) reasonable profit of the producer or the importer.
- (b) If any person, who has taken any goods referred to in Clause (a) which are not easily available in the open market in the required quantity at the fixed price with or without getting an order or coupon for personal consumption, sells such goods or order or coupon at a higher price with or without receiving commission or gives the same in any other manner, such person may be punished with imprisonment for a term not exceeding Three years or with a fine or both, and the price, commission received for such goods or order or coupon shall be returned and the order or coupon shall be cancelled.

Provided that, -

- (1) If the goods do not remain necessary after the goods have been taken, the goods shall be given to the person designated by the person whose coupon has been used to get the goods with his/her consent in writing at the price obtained by him/her immediately upon being the goods not necessary. If the goods have not been taken, the order or coupon shall be returned immediately.
- (2) The giving of such goods in a small quantity to manage the need of personal consumption of one's near person or neighbor without receiving higher price shall not be deemed to be an offense under this Clause.
- (c) If any person sells a ticket for the fee or fare payable for any recreation or transportation service by receiving the price higher than the price of ticket, such person may be punished with imprisonment for a term not exceeding one year or with a fine or with both, and the amount of the price received in excess shall be forfeited.
- (d) Government of Nepal may, as per necessity, form price fixation advisory committees for the purpose of fixing the price under this Section.

### **3. Profiteering:**

- (1) Except as the price has been fixed under Section 2, in cases where a person trading any goods prescribed by Government of Nepal has taken profit in excess of Twenty percent normally or sell the goods, by receiving undue profit, taking advantage of the shortage, such a person may be punished with imprisonment for a term not exceeding « One years or with a fine up to two lakh Fifty thousand Rupees or with both.
- (2) Notwithstanding anything contained in Section 2, in the case of the goods imported by recovering loss in export, a person may receive profit pursuant to Sub-section (1) in a manner also to recover the loss sustained in exporting the goods.
- (3) Each wholesaler or retailer shall display a price index of the goods as prescribed by Government of Nepal at the place of sale in a manner conspicuous to all. One who fails to display may be punished with imprisonment for a term not exceeding One year or with a fine or with both.

**4. Deflection of goods:** If any person takes elsewhere or sells elsewhere the goods of the quota prescribed by Government of Nepal for distribution in any «State or District or the goods made available to such person as an agent, dealer or retailer or sells in contravention of the terms of agency or dealership or in a manner that may not have proper distribution among the consumers, such person may be punished with imprisonment for a term not exceeding «One years or with a fine up to two lakh Fifty thousand Rupees or with both.

« Amended by Act made to amend some Nepal Act, 2072 (2015)

« Amended by Act made to amend some Nepal Acts in compliance with the Constitution 2075 (2017)

**5. Hoarding and artificial shortage:** If any person hoards the goods with an intention to sell them in the market to receive undue profit by getting the price of the goods increased in a manner to create an artificial shortage of such goods, such person shall be punished with imprisonment for a term not exceeding «One years or with a fine up to two lakh Fifty thousand Rupees or with both.

Provided that, if the producer, importer or main distributor or any of his/her dealer or agent commits the same offense in regard to the goods as prescribed by Government of Nepal to be essential goods, he/she shall be punished with imprisonment for a term not exceeding «One years or with a fine up to Ten Lakh Rupees or with both.

**6. Sale and distribution by misrepresentation:** If any person sells or distributes the goods by misleading any sub-standard goods to be standard ones or by misrepresenting any goods to be another goods or by adulterating any goods to reduce the standard of the goods and without disclosing that fact, such person may be punished with imprisonment for a term not exceeding «Nine months or with a fine up to Two Lakh Rupees or with both.

**7. Adulteration in medicine and sale of adulterated medicine:**

(1) If any person, with an intention of getting any medicine sold or used as of pure medicine, adulterates in a manner to make the medicine non-effective or less effective or change it or make it injurious or with a knowledge that there is a possibility of such sale or use or sells or attempts to sell such medicine with a knowledge that such medicine is adulterated or its date is expired, or keeps it for sale or gives it to anyone for treatment or causes any one, who does not have information on adulteration, to consume such medicine, such person shall be punished as follows:

- (a) With life imprisonment or imprisonment for a term not exceeding Ten years and with a fine, in the event of the existence of a possibility of causing threat to the human body,
- (b) With imprisonment for a term not exceeding Ten years or a fine in the event of the lessening of, or deprivation of, or the possibility of deprivation of, the strength of any organ of the body, and
- (c) With imprisonment for a term not exceeding Five years or a fine or with both, in other cases.

(2) In the event of selling any other thing by misleading it to be a medicine, one shall be liable to the punishment as if the offense referred to in Sub-section (1) were committed.

**8. Upper ceiling of fine and imprisonment for fine:**

α(1) .....

Provided that, excessive fine shall not be imposed in a manner that may not be in harmony with the situation of the offender or with circumstances in which the offense was committed.

- (2) In imposing the punishment of a fine, the adjudicating authority shall also indicate in his/her judgment as to how long one may be imprisoned for the non-payment of the fine, if one fails to pay it.
- (3) In cases where the offense for the commission of which punishment of fine has been imposed also carries punishment of imprisonment, no punishment of imprisonment exceeding a period of Five years shall be imposed for the non-payment of fine under Sub-section (2). Where life imprisonment has been imposed, no additional imprisonment shall be set for the fine.

**9. Commission of offense by a corporate body:**

(1) If a person who commits an offense as referred to in this Act is a corporate body or company, the director, general manager, any other official or person having control over the activities of the concerned corporate body or company shall, except in cases where such person fails to prove that the offense took place without his/her knowledge or that he/she has exercised all due diligence to prevent the offense to the extent possible, be liable to the punishment for such offense.

**10. Commission:** If any person informs the concerned official that anyone has committed or is going to commit any offense referred to in this Act, and the offender is arrested and held to be guilty, the informant shall be entitled to Twenty-Five percent of the fine imposed to the offender.

**11. Punishment for false clue or complaint:** If a person makes a false complaint with a knowledge of its being false or with a reason for believing it to be false or by making fabricated proof or without any reasonable ground or suspicion with an intention of frightening, threatening, defaming, troubling or harassing any one, such person may be punished with imprisonment for a term not exceeding Three months or with a fine not exceeding Five Thousand Rupees or with both.

**12. Disqualification:** Any person who has been convicted with imprisonment for more than Six months under this Act, except in the case of Section 11, shall not be eligible to serve, or to obtain a contract, license of, Government of Nepal or a corporate body owned by Government of Nepal prior to the expiry of Five years of the serving of punishment by such a person.

**13. Power to arrest and search:**

- (1) If a person commits an offense punishable under this Act or any reasonable suit is filed claiming that such a person has committed such an offence or any reliable information thereof has been received or a warrant is issued by the official referred to in Sub-section (2) upon a reasonable suspicion, the police officer up to the rank of Sub- inspector may arrest such a person.
- (2) In the circumstance referred to in Sub-section (1), <sup>9</sup>....., Chief District Officer or even the official designated by Government of Nepal in this regard may him/herself arrest or order to arrest such a person.
- (3) The police up to the rank of Sub-inspector or the <sup>9</sup>....., Chief District officer, or the official designated by Government of Nepal in this regard or a government employee up to the rank of Kharidar (non-gazetted second class) authorized by them in writing may, according to the prevailing Nepal law, search any village, house/building or vehicle reasonably suspected of being placed there the goods related with the offense under this Act or the person to be arrested is hiding therein.
- (4) In making a search, the goods, vehicles, documents and cash, as well, related with the offense referred to in this Act may be seized.

**14. Procedures for filling case:**

- (1) No case under this Act shall be filed without the consent of Government of Nepal or of the official designated by Government of Nepal by a Notification published in the Nepal Gazette.
- (2) If any retailer keeping a mini shop on a roadside or elsewhere commits an offense referred to in Sections 3, 4 and 5, the official referred to in Sub-section (1) may, if such a person has committed the offense for the first time, cause the concerned person to return the profit received unreasonably, get the person to make a deed covenanting that he/she shall not repeat the commission of such offense thereafter and terminate the case.
- (3) A case under this Act must be instituted within Ninety days of the disclosing or the commission of the offense.

**α15. Adjudicating Authority:**

- (1) The District Court shall act as the court of first instance in respect of the offence punishable pursuant to section 7.
- (2) The Chief District Officer shall have powers to first hear and adjudicate the matters in respect of offences punishable under the provisions of this Act except as provided in Sub-Section (1).
- (3) The District court or Chief District officer as referred to in Subsection (1) and (2) shall, while initiating the proceedings under this Act, follow the procedures and exercise the powers referred to in the Special Court Act, 2059 (2002).
- (4) An appeal may be made against a decision made by the District Court or the Chief District Officer pursuant to sub-section (1) and (2), within 35 days of the decision and the appeal in respect of the decision given by the Chief District Officer shall be appealed before the District Court.

<sup>α</sup> Deleted by Act made to amend some Nepal Act, 2072 (2015)

<sup>9</sup> Deleted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010).

**17. Saving of act and action done under this Act:** No suit, complaint or legal proceedings may be instituted against any person for any act and action done or attempted to be done in good faith under this Act.

**18. Sale and distribution of goods forfeited:** The sale and distribution of goods forfeited under this Act shall be arranged by Government of Nepal; and if the goods so forfeited require to be destroyed, such expenses may be realized from the concerned person as governmental dues.

**19. Circumstance where the accused is to remain in custody:** In cases where there is a possibility that the accused may not appear on the appointed dates or may abscond if he/she is released on bail or surety or he/she may interfere with the proofs and evidence or he/she may commit any other offense under this Act, the case shall be tried by keeping the accused in custody.

**20. Government of Nepal to be the Plaintiff:** The cases under this Act shall be Government cases and be deemed to be included in Schedule 1 to Government Case Act, 2049 (1992)

**21. Institution of case according to other prevailing law:** In cases where any act which is an offense under this Act also becomes an offense under the other prevailing Nepal Act, this Act shall not be deemed to bar in instituting of case according to the other Act.

**22. Delegation of powers:** Government of Nepal may delegate any or all the powers conferred to it under this Act to any officer by issuing a notified order in the Nepal Gazette.

**23. Powers to frame Rules:** Government of Nepal may, by publishing a Notification in the Nepal Gazette, frame Rules for the accomplishment of the objectives of this Act.

**24. Repeal:** Black-marketing Act, 2008 (1951), Control of Black Marketing and Smuggling of Cotton Thread and Cloths Manufactured in the Mills Act, 2008 (1951), Nepal Prevention of Food Hoarding Act, 2009 (1952), and Clause (c) of Sub-section (1) of Section 8 of the Local Administration Act, 2028 (1971) are, hereby, repealed.

Note: 1. The words changed pursuant to Special Court Act, 2059 (2002): -

"Special Court Act, 2059 (2002)" instead of "Special Court Act, 2031 (1974)"

2. The words changed pursuant to Act made to amend Some Nepal Acts, 2055 (1998): -

"Government Cases Act, 2049 (1992)" instead of "Government Cases Act, 2017 (1960)

3. The words changed pursuant to Act made to amend some Nepal laws, 2063 (2006): -

"Government of Nepal" instead of "His majesty's Government"

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