

MONGOLIA
THE INTELLECTUAL PROPERTY LAW

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CHAPTER ONE GENERAL PROVISIONS

Article 1. Purpose of the law

1.1. The purpose of this law is to regulate common relations in connection with determining creations and works to be protected under intellectual property rights, intellectual property protection principles, the system and functions of intellectual property organization, and supporting commercialization of intellectual property.

Article 2. Legislation on intellectual property

2.1. Legislation on intellectual property shall consist of the Constitution of Mongolia, the Civil Code, this law and other legislative acts enacted in conformity with these laws.

2.2. If international treaties to which Mongolia is a party provides otherwise than this law, then provisions of the international treaties shall prevail.

Article 3. Definitions of terms

3.1. The following terms in this law shall be understood as follows:

3.1.1. "Intellectual property" means copyright works, objects of related rights and industrial property rights created as a result of intellectual creative activity;

3.1.2. "Intellectual property database" means compilation of paper and/or electronic information of intellectual property compiled, processed and stored in accordance with unified classification, index, standard, documentary requirement and relevant legislations;

3.1.3. "Collective management organization" means a non-profit legal entity aimed for exercising and protecting exclusive rights of author, right holder and related rights holder;

3.1.4. "Official journal/periodicals" means a regular publication on registration of invention, utility model, design and trademark by the state administrative body in charge of intellectual property matters in line with the Paris Convention for the Protection of Industrial Property.

Article 4. Principles of protection of intellectual property rights

4.1 The following principles shall be adhered to the protection of intellectual property rights:

4.1.1 To uphold the rule of law;

- 4.1.2. Be in accordance with the public interest and morals;
- 4.1.3. To ensure balance of intellectual property right holders and public interests;
- 4.1.4. To make intellectual property information available to public;
- 4.1.5. To ensure engagement of government, non-government, private institutions as well as public participation in intellectual property relations;
- 4.1.6. To follow first-to-file concept of industrial property;
- 4.1.7 To have unified system and methodology.

Article 5. Intellectual property rights

- 5.1 The following intellectual property rights shall be protected:
 - 5.1.1. Copyright and related rights;
 - 5.1.2. Industrial property rights.

Article 6. Copyright and related rights

- 6.1. Copyright and related rights are in force upon their creation as soon as creative works are fixed.
- 6.2. No registration is required for establishing and exercising copyright and related rights.
- 6.3. An author may voluntarily register the information of his/her work in the database of copyright and related rights of the state administrative body in charge of intellectual property matters.
- 6.4. An author shall be obliged to prove that he/she is the author of his/her work.
- 6.5. Member of the Government in charge of intellectual property matters shall approve a procedure on conducting voluntary registration stated in Article 6.3 of this law.

Article 7. Industrial property rights

- 7.1. The following shall be included in industrial property rights:
 - 7.1.1. Invention;
 - 7.1.2. Utility model;
 - 7.1.3. Industrial design;
 - 7.1.4. Trademark;
 - 7.1.5. Geographical indication.

7.2. Industrial property rights shall be established upon its registration and protection in the state administrative body in charge of intellectual property matters.

7.3. The state administrative body in charge of intellectual property matters shall grant patent to items specified in Articles 7.1.1, 7.1.2 and 7.1.3 and grant certificate to items specified in Articles 7.1.4 and 7.1.5 of this Law following its registration in accordance with relevant procedures.

Article 8. Protection of intellectual property rights

8.1. Detailed rules related to the protection of intellectual property rights specified in Articles 6 and 7 of this Law shall be regulated by an individual law.

CHAPTER TWO INTELLECTUAL PROPERTY ORGANIZATION SYSTEM, MANAGEMENT AND FUNCTIONS

Article 9. Duties of member of the Government in charge of intellectual property matters

9.1. The member of the Government in charge of intellectual property matters shall perform following functions in order to ensure implementation, enforcement, and monitoring of copyright and related rights and industrial property rights specified in Articles 6 and 7 of this Law.

9.1.1. To develop state policy on intellectual property and submit for approval;

9.1.2. To approve rules of procedure and members of Dispute Resolution Council for industrial property rights;

9.1.3 To approve rules of procedure and members of the Council for Copyright and Related rights;

9.1.4. To approve operational procedure on collective management organization;

9.1.5 To approve procedure for selecting intellectual property award on best works;

9.1.6. To approve procedure for registration of license agreements and other agreements related to use of intellectual property;

9.1.7. Other functions specified in the legislation.

Article 10. Functions of the National Intellectual Property Council

10.1. The National Intellectual Property Council shall function under the Prime Minister of Mongolia.

10.2. The National Intellectual Property Council shall be chaired by the Prime Minister of Mongolia and the Deputy Chairman shall be a member of the Government in charge of intellectual property matters.

10.3. The members and rules of procedure of the National Intellectual Property Council shall be approved by the Government.

10.4. The National Intellectual Property Council shall perform the following functions:

10.4.1. To carry out state intellectual property policy implementation, and actions for cross-sectoral coordination;

10.4.2. To develop a policy in support for commercialization of intellectual property and ensure coordination among sectors;

10.4.3. To develop proposals in order for improving as well as ensuring conformity of legislation related to copyright and related rights and industrial property rights with international treaties to which Mongolia is a party.

Article 11. Intellectual property organization

11.1. The state administrative body in charge of intellectual property matters (hereinafter referred to as "intellectual property organization") shall be an implementing agency of the Government and may establish divisions and units at the local level and employ a state inspector of intellectual property thereafter.

11.2 An intellectual property organization may finance a certain part of its activities with its commission fee and other operational and investment expenses shall be financed from the state budget.

11.3. The Industrial Property Rights Dispute Resolution Council (hereinafter referred to as "Dispute Resolution Council") shall review and resolve petitions and complaints related with protection of industrial property rights, and operate at the intellectual property organization.

11.4. The Intellectual Property Organization shall have a Copyright and Related rights Council with the functions of advising the Intellectual Property Organization on ensuring implementation of copyright legislation, monitoring tariffs, and pre-resolving complaints in connection with paying and distributing payment.

11.5. Local self-governing organizations and governors of the respective level shall provide support to creating normal working condition to local divisions, units and state inspectors of intellectual property organization.

Article 12. Functions of the Intellectual Property Organization

12.1. The Intellectual Property Organization shall perform following common functions:

12.1.1. To work for ensuring implementation of legislation related to intellectual property and international treaties to which Mongolia is a party;

12.1.2 To develop proposals in order for improving legislation related to intellectual property and ensuring conformity of with

international treaties to which Mongolia is a party;

12.1.3. To organize selection examination of intellectual property agent, issue suspend and revoke a license of intellectual property agent;

12.1.4. To issue permits to collective management organizations, conclude cooperation agreements, provide professional and methodological guidance, monitor its activities, assess its outcome, and inform the public;

12.1.5. To organize the selection of intellectual property award on best works annually in accordance with the procedures set forth in Article 9.1.5 of this Law;

12.1.6. To cooperate with foreign organizations and international organizations in accordance with relevant legislation and international treaties to which Mongolia is a party;

12.1.7. To create database of intellectual property registration and inform the public;

12.1.8. To conduct research on economic benefit and efficiency among registered inventions, product designs and utility models in order to provide information to the National Intellectual Property Council;

12.1.9. To develop proposals related to commercialization of intellectual property and submit them to the Government;

12.1.10. To register transfer agreement, license agreement, franchise and merchandise agreement;

12.1.11 To provide general guidelines and methodologies for intellectual property training and research;

12.1.12. To provide necessary inquiries to resolve intellectual property disputes;

12.1.13. To register a person engaged in intellectual property brokerage activities, to conclude a contract, to suspend or revoke the registration;

12.1.14. To approve rules of procedure of intellectual property agent;

12.1.15. To approve regulation on conversion of intellectual property registration integrated database into electronic format, establishment and usage of database, and ensuring its continuous operation, storage, safety, and security;

12.1.16. to promote intellectual property rights for public, to improve knowledge of public and intellectual property rights holders in respect to intellectual property law;

12.2 The Intellectual Property Organization shall perform following functions regarding copyright and related rights:

12.2.1. To register copyright and related rights, issue and revoke certificates, and create database of works at the request of the author, copyright holder or related rights holder;

12.2.2. To cooperate with citizens and legal entities to protecting interest of copyright and related rights holders, supporting their creative activities, and protecting folk art works;

12.2.3. To provide information, give advice, provide professional and methodical management on copyright to collective management organizations, copyright protection and representation rights enforcement organizations, users of works, and government authorities, and cooperate with them.

12.3. The Intellectual Property Organization shall perform the following functions regarding industrial property rights:

12.3.1. To receive, review, search, examine and register applications related to industrial property rights;

12.3.2. To keep a register of works related to industrial property rights, issue and revoke patents and certificates, and create database;

12.3.3. To publish an official periodical for the purpose of informing the public about information related to the registration of works related to industrial property rights.

Article 13. Powers of the head of the intellectual property organization

13.1. The Head of the Intellectual Property Organization shall exercise following power in addition to those specified in Article 8.3 of the Law on the Legal Status of Government Agencies:

13.1.1. To manage overall activities of the intellectual property organization;

13.1.2 To monitor activities of the state intellectual property inspector and change, suspend or annul his/her decision that violates the law;

13.1.3. To approve structure and staffing of local divisions and/or units of the intellectual property organization;

13.1.4. To appoint and dismiss employees and state inspectors of local divisions and/or units of the Intellectual Property Organization;

13.1.5. Other powers specified in the legislation.

Article 14. State Intellectual Property Inspector

14.1. The state intellectual property head inspector, senior state inspector and state inspector shall work in the intellectual property organization.

14.2. If a division or unit in charge of intellectual property matters is to be operated locally, a state intellectual property inspector may be employed.

14.3. The head of the intellectual property organization shall be the state intellectual property head inspector.

14.4. The right of the State Intellectual Property head inspector shall be granted by the Government and rights of the state intellectual property senior inspector and state intellectual property inspector shall be granted by the State Intellectual Property head inspector.

14.5. The state intellectual property inspector shall adhere to the intellectual property legislation, the Law on State Inspection, the Law on Violations and other legislation when conducting the inspection.

14.6. The state intellectual property senior inspector and the state inspector shall brief his/her duty to the head inspector.

14.7. The state intellectual property senior inspector and the state inspector shall use ID card, badge with personal number, and formal letter with specific letterhead for act, conclusion, and formal order, approved by the state intellectual property head inspector.

14.8. The decision of the state inspector shall be enforced by citizens, legal entities, and officials within the time specified in the decision, and the responses shall be notified officially.

14.9. It is prohibited to interfere or influence by citizens, legal entities, and officials to the state inspector while he/she is exercising his/her power specified in legislation.

Article 15. Examiner

15.1. An examiner, shall have degree on natural and technical sciences, have worked in the field of intellectual property for at least two years, is an employee of an intellectual property organization.

15.2. An examiner shall be specialized in industrial property rights specified in 7.1 of this Law.

CHAPTER THREE PARTICIPATION OF CITIZENS AND LEGAL ENTITIES ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Article 16. Intellectual property agent

16.1. An intellectual property agent shall have the right to represent its customer in the intellectual property organization and the competent authority within the scope of the rights granted by customer.

16.2. An intellectual property agent shall be an individual or legal entity with a license specified in the Law on Permits.

16.3. The license of intellectual property agent shall be issued by the intellectual property organization.

16.4. An intellectual property agent shall be a citizen of Mongolia, holds higher education degree, has working experience in the field of intellectual property sector at least 3 years, has no criminal record, is above 25 years of age and be a permanent residence of Mongolia.

16.5. An intellectual property agent may unite and establish a legal entity of intellectual property for profit.

16.6. An intellectual property agent shall follow the rules of procedure of intellectual property agents in its activities.

16.7. An intellectual property agent shall be obliged not to disclose information related to the proposed invention, utility model or product design that has not been made public yet to others.

16.8. An intellectual property agent shall be a member of its professional association.

Article 17. Collective management organization

17.1. A collective management organization shall be established at the initiative of the author, copyright holder and related rights holders.

17.2. A collective management organization shall be established exclusively by the type and category of copyrighted work and related

objects.

17.3. A collective management organization shall obtain permission from the intellectual property organization and enter into a cooperation agreement in the implementation and protection of copyright and related rights. The model agreement shall be approved by the Government member in charge of intellectual property matters.

17.4. A collective management organization shall adhere to principles of introducing good governance, accountability and transparency in its activities.

17.5. The operational and financial reports of collective management organization shall be transparent and open to the public.

17.6. Requirements, functions, control and other related requirements for collective management organization shall be regulated by the Law on Copyright.

Article 18. Conducting intellectual property brokerage activities

18.1 Intellectual property brokerage shall be conducted by a legal entity registered with the Intellectual Property Organization.

18.2 The member of the Government in charge of intellectual property matters shall approve the requirements for intellectual property brokers and the procedure for registration to the intellectual property organization.

18.3 An intellectual property organization shall enter into an agreement with a legal entity specified in Article 18.1 of this Law. The model agreement shall be approved by the Government member in charge of intellectual property matters.

CHAPTER FOUR COMMERCIALIZATION OF INTELLECTUAL PROPERTY RIGHTS AND GOVERNMENT SUPPORT

Article 19. Forms of commercialization of intellectual property rights

19.1. Intellectual property rights may be fully or partially used by others through licenses, franchises, merchandising and other agreements, transactions, transfer of ownership rights as well as use intellectual property rights as investment and collateral to legal entities in order to commercialize.

19.2. Contracts and agreements to be entered into commercialization in the form specified in 19.1 of this Law shall be regulated by relevant laws.

Article 20. Valuation of intellectual property

20.1. The Law on Property valuation, international valuation standards, national standards and methodology for valuation of intellectual property and intangible assets shall be taken into consideration to estimate valuation of intellectual property.

20.2. Unless otherwise provided by law, the parties may reach consensus on the value of intellectual property to commercialize intellectual property.

Article 21. Right to appraise intellectual property

21.1. An appraiser holding a license in accordance with the Law on Property Valuation shall conduct intellectual property valuation on the basis of successful completion of intellectual property valuation training and obtaining a certificate.

21.2. The intellectual property organization and the professional property valuation organization shall jointly develop the training program and organize the training specified in Article 21.1 of this law.

21.3. The intellectual property organization shall issue a certificate, create list of appraisers and establish database of appraiser who has completed intellectual property appraisal training and passed the examination.

Article 22. Government support for commercializing intellectual property rights

22.1. The Government may provide the following support in connection to commercializing intellectual property right:

22.1.1. Tax reliefs and exemptions;

22.1.2. To purchase goods, works and services related to intellectual property rights through state and local budget in accordance with the conditions and procedures specified in law;

22.1.3. To establish a fund for commercialization of intellectual property rights;

22.1.4. To provide support on applying and protecting its intellectual property rights as well seek assistance to applying for international system.

CHAPTER FIVE MISCELLANEOUS

Article 23. Intellectual property integrated database

23.1. Mongolia shall have an intellectual property integrated database.

23.2. Intellectual property database shall be available for electronic compilation and development format.

23.3. The intellectual property integrated database shall be fully protected from loss, destruction and recovery and shall be based on electronic technology.

23.4. The intellectual property integrated database shall consist of the archive of the original documents of the registration of works specified in Articles 6 and 7 of this Law and its electronic database.

23.5. A person who uses the information of the Intellectual Property Integrated Database in accordance with his/her official duties shall be obliged to keep its confidentiality.

23.6. The intellectual property organization shall back up the electronic intellectual property integrated database in accordance with the technology.

Article 24. Service fee for intellectual property organization

24.1. The state stamp duty and service fee shall be paid when applicant apply for intellectual property protection and request an inquiry in accordance with legislation.

24.2. The Government shall determine amount of the following services to be provided by the Intellectual Property Organization:

24.2.1. Services specified in the Law on Copyright;

24.2.2. Services specified in the Patent Law;

24.2.3. Services specified in the Law on Trademarks and Geographical Indications;

24.2.4. Dispute resolution council services;

24.2.5. Copyright and related rights council services;

24.2.6. Services for selection and licensing of intellectual property agents;

24.2.7. Registration services of intellectual property appraisers and brokers;

24.2.8. Intellectual property information center services.

Article 25. Disputes resolutions related with industrial property rights

25.1. The Dispute Resolution Council shall review and resolve the following complaints regarding industrial property rights:

25.1.1. Complaint from the applicant related with the activities specified in the Patent Law;

25.1.2. Objection of a third party to the patent application on the grounds specified by the law;

25.1.3. Complaint from the applicant related with the activities specified in the Law on Trademarks and Geographical Indications;

25.1.4. A third party's objection to a trademark application declared to the public on the grounds specified in the law;

25.1.5. A request to revoke the rights of the work related to the registered industrial property rights on the grounds specified by law;

25.1.6. A request for well-known trademarks;

25.1.7. Others specified in the law.

25.2. If he/she does not agree with the decision of the Dispute Resolution Council, he/she shall have the right to file a complaint to the court within 30 days following receipt of the decision.

25.3. The Dispute Resolution Council shall be convened in the presence of an overwhelming majority of all members and decisions shall be made by a simple majority vote of the members present at the meeting.

25.4. The Dispute Resolution Council shall review the validity of the complaint specified in Article 25.1 of this Law and make a decision to uphold or annul the decision on which the dispute is based, and the decision shall be issued in the form of a resolution.

25.5. The Dispute Resolution Council shall have the right to make recommendations in order to eliminate the causes and conditions of the dispute and to prevent violations of intellectual property legislation.

25.6. The Dispute Resolution Council shall make a decision on the complaint within 90 days after the initiation of the dispute and, if necessary, may extend the decision making period by 30 days with the consent of the complainant.

Article 26. Liability for violators of the law

26.1. A person or legal entity that violates this Law shall be subject to liability specified in the Criminal Code or the Law on Violations.

26.2. If actions of an official violating this Law are not of a criminal nature, he/she shall be subject to liability specified in the Civil Service Law.

Article 27. Entry into force of the law

27.1. This law shall enter into force on December 1, 2020.