

## **Annex 2 | *Relevant Law***



## Republic Act No. 10066

Providing for the protection and conservation of the national cultural heritage, strengthening the national commission for culture and the Arts (NCCA) and its andits affiliated cultural agencies, and for the other

Republic of the Philippines  
CONGRESS OF THE PHILIPPINES  
Metro Manila  
Fourteenth Congress  
Third Regular Session

---

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

**SECTION 1. *Short Title.*** - This Act shall be known as the “National Cultural Heritage Act of 2009.”

### ARTICLE I POLICIES AND PRINCIPLES

**SECTION 2. *Declaration of Principles and Policies.*** – Sections 14, 15, 16, and 17, Article XIV of the 1987 Constitution declare that the State shall foster the preservation, enrichment, and dynamic evolution of a Filipino culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression. The Constitution likewise mandates the State to conserve, develop, promote and popularize the nation’s historical and cultural heritage and resources, as well as artistic creations. It further provides that, all the country’s artistic and historic wealth constitutes the cultural treasure of the nation and shall be under the protection of the State, which may regulate its disposition.

In the pursuit of cultural preservation as a strategy for maintaining Filipino identity, this Act shall pursue the following objectives:

- a) Protect, preserve, conserve and promote the nation’s cultural heritage, its property and histories, and the ethnicity of local communities;
- b) Establish and strengthen cultural institutions; and,
- c) Protect cultural workers and ensure their professional development and well-being.

The State shall likewise endeavor to create a balanced atmosphere where the historic past co-exists in harmony with modern society. It shall approach the problem of conservation in an integrated and holistic manner, cutting across all relevant disciplines and technologies. The State shall further administer the heritage resources in a spirit of stewardship for the inspiration and benefit of the present and future generations.

## **ARTICLE II**

### **DEFINITION OF TERMS**

**SECTION 3. *Definition of Terms.*** – For purposes of this Act, the following terms shall be defined as follows:

- (a) “Adaptive Re-use” shall refer to the utilization of buildings, other built-structures, and sites of value for purposes other than that for which they were intended originally, in order to conserve the site, their engineering integrity and authenticity of design;
- (b) “**Anthropological Area**” shall refer to any place where studies of specific ethno-linguistic groups are undertaken, the properties of which are of value to our cultural heritage;
- (c) “**Antique**” refers to a cultural property found locally which is one hundred (100) years in age, more or less, the production of which has ceased;
- (d) “**Archaeological Area**” shall refer to any place, whether above or under ground, underwater or at sea level, containing fossils, artifacts, and other cultural, geological, botanical, zoological materials which depict and document culturally relevant paleontological, prehistoric and/or historic events;
- (e) “**Archives**” shall refer to public and private records in any format which have been selected for permanent preservation because of their evidential, historical informational value; otherwise known as archival materials collections or archival holdings; the place (building/room/storage area) where archival materials are kept and preserved; and an organization or agency or part thereof whose main responsibility is to appraise, arrange, describe, conserve, promote and make archival materials available for reference and research, also known as archival agency;
- (f) “**Built Heritage**” shall refer to architectural and engineering structures, such as but not limited to bridges, government buildings, houses of ancestry, traditional dwellings, quartels, train stations, lighthouses, small ports, educational technological and industrial complexes, and their settings, and landscapes with notable historical and cultural significance;
- (g) “**Collector**” shall refer to any person who or institution that acquires cultural property for purposes other than sale;

- (h) **“Commission”** shall refer to the National Commission for Culture and the Arts (NCCA);
- (i) **“Conservation”** shall refer to all the processes and measures of maintaining the cultural significance of a cultural property, including but not limited to, preservation, restoration, reconstruction, protection, adaptation or any combination thereof;
- (j) **“Cultural agencies”** shall refer to the following national government agencies with their specific areas of responsibility: National Museum (cultural property); the National Library (books); National Historical Institute (Philippine history); National Archives (documents); Cultural Center of the Philippines (culture and the arts); and Komisyon sa Wikang Filipino (language).
- (k) **“Cultural Education”** shall refer to the teaching and learning of cultural concepts and processes;
- (l) **“Cultural Heritage”** shall refer to the totality of cultural property preserved and developed through time and passed on to posterity;
- (m) **“Cultural Heritage Worker”** shall refer to an individual undertaking cultural heritage work;
- (n) **“Cultural Institution”** shall refer to entities engaged primarily in cultural work;
- (o) **“Cultural Property”** shall refer to all products of human creativity by which a people and a nation reveal their identity, including churches, mosques and other places of religious worship, schools and natural history specimens and sites, whether public or privately-owned, movable or immovable, and tangible or intangible;
- (p) **“Dealers”** shall refer to natural or juridical persons who acquire cultural property for the purpose of engaging in the acquisition and disposition of the same;
- (q) **“Heritage Zone”** shall refer to historical, anthropological, archaeological, artistic geographical areas and settings that are culturally significant to the country, as declared by the National Museum and/or the National Historical Institute.
- (r) **“History”** shall refer to a written record of past events relating to Philippine history;
- (s) **“Historical Landmarks”** shall refer to sites or structures that are associated with events or achievements significant to Philippine history as declared by the National Historical Institute;
- (t) **“Historical Monuments”** shall refer to structures that honor illustrious persons or commemorate events of historical value as declared by the National Historical Institute;
- (u) **“Historical Shrines”** shall refer to historical sites or structures hallowed and revered for their history or association as declared by the National Historical Institute;
- (v) **“Historical Street Name”** shall refer to a street name which has been in existence for at least fifty (50) years and over time has been considered historic;

- (w) **“Important Cultural Property (ICP)”** shall refer to a cultural property having exceptional cultural, artistic, and historical significance to the Philippines, as shall be determined by the National Museum and/or National Historical Institute.
- (x) **“Intangible Cultural Heritage”** shall refer to the practices, representations, expressions, knowledge, skills - as well as the instruments, objects and artifacts associated therewith, that communities, groups and individuals recognize as part of their cultural heritage, such as : (1) oral traditions, languages, and expressions; (2) performing arts; (3) social practices, rituals, and festive events; (4) knowledge and practices concerning nature and the universe; and (5) traditional craftsmanship;
- (y) **“Intangible cultural property”** shall refer to the peoples’ learned processes along with the knowledge, skills and creativity that inform and are developed by them, the products they create and the resources, spaces and other aspects of social and natural context necessary for their sustainability.
- (z) **“Library”** shall refer to an institution where the collection of books, manuscripts, computerized information, and other materials are organized to provide physical, bibliographic, and/or intellectual access to the public, with a librarian that is trained to provide services and programs related to the information needs of its clientele;
- (aa) **“Museum”** shall refer to a permanent institution that researches, acquires, conserves, communicates, and exhibits the material evidence of humans and their environment for purposes of education or leisure;
- (bb) **“National Cultural Treasure”** shall refer to a unique cultural property found locally, possessing outstanding historical, cultural, artistic and/or scientific value which is highly significant and important to the country and nation, and officially declared as such by pertinent cultural agency;
- (cc) **“Nationally significant”** shall refer to historical, aesthetic, scientific, technical, social and/or spiritual values that unify the nation by a deep sense of pride in their various yet common identities, cultural heritage and national patrimony.
- (dd) **“Natural Property of Cultural Significance”** shall refer to areas possessing outstanding ecosystem with flora and fauna of national scientific importance under the National Integrated Protected Areas System ;
- (ee) **“NCCA Portal Cultural Databank”** refers to the specific domain in the Commission’s intranet for cultural information that is accessed only internally with control and confidentiality. It includes the registry of national cultural property.
- (ff) **“Pre-history”** shall refer to the period of human history before the introduction of the forms of writing;
- (gg) **“Registry”** shall refer to the Philippine Registry of Cultural Property which is the registry of all cultural property of the country deemed of significant importance to our cultural heritage;

- (hh) **“Restoration”** shall refer to the action taken or the technical intervention to correct deterioration and alterations.
- (ii) **“Tangible cultural property”** shall refer to a cultural property with historical, archival, anthropological, archaeological, artistic and architectural value, and with exceptional or traditional production, whether of Philippine origin or not, including antiques and natural history specimens with significant value.

### **ARTICLE III** CULTURAL PROPERTY

**SECTION 4. *Categories.*** - The Cultural Property of the country shall be categorized as follows:

- (a) National Cultural Treasures;
- (b) Important Cultural Property;
- (c) World Heritage Sites;
- (d) National historical shrine;
- (e) National Historical Monument; and,
- (f) National Historical Landmark;

**SECTION 5. *Cultural Property Considered Important Cultural Property.*** -For purposes of protecting a cultural property against exportation, modification or demolition, the following works shall be considered Important Cultural Property, unless declared otherwise by the pertinent cultural agency:

Unless declared by the Commission,

- (a) Works by a *Manlilikha ng Bayan*;
- (b) Works by a National Artist;

Unless declared by the National Museum,

- (c) Archaeological and traditional ethnographic materials;

Unless declared by the National Historical Institute,

- (d) Works of national heroes;
- (e) Marked structure;
- (f) Structures dating at least fifty (50) years old; and

Unless declared by the National Archives,

- (g) Archival material/document dating at least fifty (50) years old.

The property owner may petition the appropriate cultural agency to remove the presumption of important cultural property which shall not be unreasonably withheld.

**SECTION 6. *World Heritage Sites (WHS).*** - The appropriate cultural agency shall

closely collaborate with United Nations Educational Scientific and Cultural organization (UNESCO) National Commission of the Philippines in ensuring the conservation and management of world heritage sites of cultural and mixed sites category, in the Philippines.

**SECTION 7. *Privileges for Cultural Property.*** - All cultural properties declared as National Cultural Treasures and national historical landmarks shall be entitled to the following privileges:

- (a) Priority government funding for protection, conservation and restoration;
- (b) Incentive for private support of conservation and restoration through the Commission's Conservation Incentive Program for National Cultural treasures;
- (c) An official Heritage Marker placed by the cultural agency concerned indicating that the immovable cultural property has been identified as national cultural treasures; and/or national historical landmarks, sites or monuments; and,
- (d) In times of armed conflict, natural disasters, and other exceptional events that endanger the cultural heritage of the country, all National Cultural Treasures or national historical landmarks, sites or monuments shall be given priority protection by the Government.

All cultural properties declared as Important Cultural Property may also receive government funding for its protection, conservation, and restoration. An official Heritage Marker shall likewise be placed on an immovable cultural property to identify the same as important cultural property.

**SECTION 8. *Procedure for Declaration, or De-Listing of National Cultural Treasures or Important Cultural Property.*** - The procedure in declaring as well as in delisting a National Cultural Property or an Important Cultural Property shall be as follows:

- (a) A declaration or a delisting of a cultural property as a National Cultural Treasure or an Important Cultural Property shall commence upon the filing of a petition by the owner, stakeholder or any interested person, with the Commission, which shall refer the matter to the appropriate cultural agency;
- (b) Upon verification of the suitability of the property as a national cultural treasure or an important cultural property, the cultural agency concerned shall send notice of hearing to the owner and stakeholders. Stakeholders, including but not limited to local government units, local culture and arts council, local tourism councils, non-government conservation organizations, and schools, may be allowed to file their support or opposition to the petition;
- (c) The owner and/or other stakeholders shall file their position paper within fifteen (15) days from receipt of the notice of hearing, furnishing all the parties, including the appropriate cultural agency, with such position



- paper. Extensions may be allowed, but in no case shall it exceed more than thirty (30) days; and
- (d) The petitioner/stakeholder shall give their answer within fifteen (15) days upon receipt of any position paper. Thereafter, no further submissions shall be allowed.
  - (e) The appropriate cultural agency shall have a maximum of ninety (90) days from the deadline of the submission of all the answers within which to submit its resolutions and render its decision on the application.

**SECTION 9. *Right of First Refusal on the Sale of National Cultural Treasures (NCT).*** -

The appropriate cultural agency shall be given the right of first refusal in the purchase of cultural properties declared as national cultural treasures. Prior to the finality of the sale, the appropriate cultural agency may likewise match any offer made for the purchase of national cultural property.

**SECTION 10. *Licensing of Dealers of Cultural Property.*** - All dealers of cultural property shall secure a license to operate as such from the appropriate cultural agency concerned. They shall submit a quarterly inventory of items carried, which shall include a history of each item. Failure to submit two (2) consecutive inventories shall be a ground for cancellation of the license. All dealers of Cultural Property shall be subject to inspection of the concerned cultural agencies.

The cultural agencies may charge and collect fees for registration as well as for licenses, inspections, certifications, authorizations and permits that they issue and undertake in connection with the implementation of this Act. Funds generated from these collections by cultural agencies shall be retained by the cultural agency concerned for its operations.

**SECTION 11. *Dealings of Cultural Property.*** - No cultural property shall be sold, resold, or taken out of the country without first securing a clearance from the cultural agency concerned. In case the property shall be taken out of the country, it shall solely be for the purpose of scientific scrutiny or exhibit.

**ARTICLE IV**  
**HERITAGE ZONES**

**SECTION 12. *Designation of Heritage Zones.*** - The National Historical Institute and the National Museum in consultation with the Commission and, the Housing and Land Use Regulatory Board or other concerned agencies, shall designate Heritage Zones to protect the historical and cultural integrity of a geographical area.

**SECTION 13. *Maintenance of Heritage Zones.*** - A Heritage Zone shall be

maintained by the local government unit concerned, in accordance with the following guidelines:

- (a) Implementation of adaptive re-use of cultural property;
- (b) Appearance of streets, parks, monuments, buildings, and natural bodies of water, canals, paths and Barangays within a locality shall be maintained as close to their appearance at the time the area was of most importance to Philippine History as determined by the National Historical Institute; and,
- (c) Local government units shall document and sustain all socio-cultural practices such as but not limited to traditional celebrations, historical battles, recreation of customs, and the re-enactment of battles and other local customs that are unique to a locality.

## **ARTICLE V**

### **REGISTRATION AND CONSERVATION OF CULTURAL PROPERTY**

**SECTION 14. *Establishment of a Philippine Registry of Cultural Property (PRECUP).*** - All cultural property of the country deemed important to cultural heritage shall be registered in the Philippine Registry of Cultural Property.

The Commission, through the appropriate cultural agencies and local government units, shall establish and maintain this Registry within three (3) years from the effectivity of this Act. The guidelines in the registration of cultural property are as follows:

- (a) All cultural agencies concerned shall individually maintain an inventory, evaluation and documentation of all cultural properties it has declared according to their category and shall submit the same to the Commission. For cultural property declared as Immovable Cultural Property, the appropriate cultural agency shall, after registration, give due notice to the Registry of Deeds having jurisdiction for annotation on the land titles pertaining to the same;
- (b) Local government units, through their cultural offices, shall likewise maintain an inventory of cultural property under its jurisdiction and shall furnish the Commission a copy of the same;
- (c) Both cultural agencies concerned and local government units shall continuously coordinate in making entries and in monitoring the various cultural properties in their respective inventory;
- (d) All government agencies and instrumentalities, government-owned and/or controlled corporations and their subsidiaries, including public and private educational institutions, shall report their ownership and/or possession of such items to the pertinent cultural agency and shall register such properties within three (3) years from the effectivity of this Act;
- (e) Private collectors and owners of cultural property shall register such

properties, within three (3) years from the effectivity of this Act. The private collectors and owners of cultural property shall not be divested of their possession and ownership thereof even after registration of said property as herein required.

Information on registered cultural properties owned by private individuals shall remain confidential and may be given only upon prior consent of the private owner. The Commission shall operate the Registry in the NCCA portal cultural databank.

**SECTION 15. *Conservation of Cultural Property.*** – All intervention works and measures on conservation of National Cultural Treasures, Important Cultural Property, as well as national historical landmarks, sites or monuments, and structures previously marked by the National Museum and/or National Historical Institute before the implementation of this Act shall be undertaken only upon prior approval of the Commission through the appropriate cultural agency which shall supervise the same.

The Commission shall approve only those methods and materials that strictly adhere to the accepted international standards of conservation.

**SECTION 16. *Documentation and Preservation of Traditional and Contemporary Arts.*** - Local government units shall document traditional and contemporary arts and crafts, including their processes and makers, and sustain the sources of their raw materials. The local government units shall encourage and sustain traditional arts and crafts as active and viable sources of income for the community.

The Commission, the Department of Trade and Industry, the Department of Tourism and other government agencies involved directly or indirectly in the production of goods shall assist the local government units in protecting their traditional and contemporary arts and crafts making them viable for current and future markets, with a view to encouraging and promoting the unique heritage and identities of the said communities.

The local government unit concerned shall submit an annual inventory of these documentations to the Commission, which will be included in the Philippine Registry of Cultural Property, as established in Section 14 of this Act.

**SECTION 17. *Systematic Research in Natural History.*** - The National Museum shall have the authority to collect, maintain and develop the national reference collections of Philippine flora and fauna, rocks and minerals through research and field collection of specimens including Important Cultural Property within the territorial jurisdiction of the Philippines. It shall be exempt from any and all permit systems regulating the same.

The National Museum shall inform the Department of Environment and Natural

Resources and the Department of Agriculture of such collection. All type of specimens collected in the Philippine territory shall be deposited in the National Museum.

**SECTION 18. *Heritage Agreements.*** - The Commission, upon advice of the concerned cultural agency, may enter into agreements with private owners of cultural properties with regard to the preservation of said properties.

Such agreement shall be in the form of a contract, and may include such terms and conditions including, but not limited to:

- (a) Public access to the property;
- (b) Value of the encumbrance;
- (c) Duration of the servitude of the property;
- (d) Restriction of the right of the owner or occupant to perform acts on or near the place;
- (e) Maintenance and management of the property;
- (f) Provision of financial assistance for the conservation of the property;
- (g) Procedure for the resolution of any dispute arising out of the agreement.

Such agreement should be annotated in the land title to bind future owners and/or occupants of the immovable cultural property.

**SECTION 19. *National Inventory of Intangible Cultural Heritage.*** - The appropriate cultural agency shall closely collaborate with the UNESCO National Commission of the Philippines in safeguarding intangible cultural heritage in the Philippines. The Philippine Intangible Cultural Heritage Committee established by the UNESCO National Commission of the Philippines shall continue to take lead role in implementing the provisions of the UNESCO Convention for the Safeguarding of the Intangible Cultural heritage with particular attention to Article 11 to 15 of the said Convention.

**SECTION 20. *Immovable National Cultural Treasures.*** - Immovable National Cultural Treasures shall not be relocated, rebuilt, defaced or otherwise changed in a manner, which would destroy the property's dignity and authenticity, except to save such property from destruction due to natural causes.

The site referred to in this provision may only be moved after securing a permit from the Commission or the appropriate cultural agency.

**SECTION 21. *Indigenous properties.*** - The appropriate cultural agency in consultation with the National Commission on Indigenous Peoples shall establish a program and promulgate regulations to assist indigenous people in preserving their particular cultural and historical properties.

**SECTION 22. *Renaming of Historical Streets, Buildings Designated as Cultural Treasure or Important Cultural Property.*** - The names of historical streets, parks, buildings, shrines, landmarks, monuments and sites designated as

National Cultural Treasures or Important Cultural Property shall not be allowed to be re-named by a local or national legislation, unless approved by the National Historical Institute, and only after due hearing on the matter. Furthermore, for changes of names done to historical streets, parks, buildings, shrines, landmarks, monuments, and sites prior to the effectivity of this act, the National Historical Institute may direct the local government units to restore their original names, also after due hearing.

## ARTICLE VI

### REGULATING THE EXPORT, TRANSIT, IMPORT AND REPATRIATION OF CULTURAL PROPERTY

**SECTION 23. *Export of Cultural Property.*** – Whoever desires to export cultural property registered in the Philippine Registry of Cultural Property shall adhere to the following requirements:

- (a) Authorization from the Commission through the appropriate cultural agencies;
- (b) Application for export permit shall be submitted thirty (30) days before the intended export from the Philippines; and
- (c) Application for export permit must include the following: (1) the purpose of the temporary export; (2) the export date of the cultural property; (3) the repatriation date of the cultural property; (4) a description of the cultural property; and, (5) the inventory of the cultural property in the Philippine Registry of Cultural Property.

The grant of export permit shall be based on the following conditions: (i) the cultural property is exported on a temporary basis; and (ii) export of cultural property is necessary for scientific scrutiny or exhibit.

**SECTION 24. *Repatriation Claims and Agreements.*** – Should the cultural property registered in the Philippine Registry of Cultural Property be illicitly exported from the country, the Department of Foreign Affairs shall, upon the recommendation of the appropriate cultural agency, claim the right of repatriation *vis-à-vis* all other contracting States. Any compensation and costs shall be carried by the Philippine government.

For the protection of cultural and foreign affairs interests and to secure cultural heritage, the Philippines may conclude international treaties with contracting

States on the import and repatriation of cultural property subject to the following conditions:

- (a) The scope of the agreement must be cultural property of significant importance to the cultural heritage of the contracting States;
- (b) The cultural property must be subject to the existing export policies for the purpose of protecting cultural heritage; and,
- (c) The contracting States shall grant reciprocal rights.

## **ARTICLE VII**

### **POWERS OF THE COMMISSION/CULTURAL AGENCIES**

**SECTION 25. *Power to Issue a Cease and Desist Order.*** - When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency, shall immediately issue a Cease and Desist Order suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving interested parties and stakeholders.

**SECTION 26. *Power to Issue Compulsory Repair Order.*** - When a privately-owned heritage site cannot be maintained by the owner or has fallen into disrepair thru neglect to such an extent that it will lose its potential for conservation, the Commission, through the appropriate cultural agency, may serve on the owner or occupant of such property, an order to repair or maintain such site. If the owner fails to comply with said order within thirty (30) to forty-five (45) days, repairs may be undertaken by the appropriate cultural agency for the account of the owner.

**SECTION 27. *Visitorial Powers.*** - The cultural agencies concerned, through the Commission, are hereby given the power to inspect National Cultural Treasures and Important Cultural Properties, and national historical landmarks, sites or monuments at any time to ensure the protection and integrity of such. They may also inspect public or private collections or objects that may be categorized as cultural property; Provided, That in the case of private collections or objects, the prior written consent of the owner shall be obtained.

**SECTION 28. Power to Deputize Other Government Agencies.** – The cultural agencies concerned, as well as the Commission, shall have the power to deputize the Philippine National Police, the National Bureau of Investigation, the Armed Forces of the Philippines, the Philippine Coast Guard, and other local or national law enforcement agencies, including the Bureau of Fisheries’ agents, the Department of the Environment and Natural Resources’ rangers, the Bureau of Customs and Immigrations agents, members of the Office of the Special Envoy on Transnational Crimes and other such agencies and their successors in interest, to enforce the provisions of this Act and its implementing rules and regulations. The said agencies shall immediately detail their respective personnel to protect the cultural items under the National Registry.

Failure to follow deputization order of the concerned cultural agency as well as the Commission shall be penalized in accordance with Section 49 herein.

**SECTION 29. Power to Recover Cultural Properties.** – The Commission is empowered to recover or retrieve cultural properties which are under the custody of foreign nationals or entities and to bring these properties back to Philippine custody.

**SECTION 30. Anthropological Research and Archaeological Exploration/Excavation.** –

The National Museum with respect to cultural/ archaeological/ anthropological matters, and the National Historical Institute, with respect to historical anthropological matters, shall regulate and control all anthropological research conducted by foreigners; and all archaeological excavation or exploration. Pursuant to the foregoing, the National Museums or the National Historical Institute shall deputize other agencies to protect archaeological and anthropological sites. It shall be guided by the following rules:

- (1) All cultural property found in terrestrial and / or underwater archaeological sites belong to the State.
- (2) No terrestrial and/or underwater archaeological explorations and excavations for the purposes of obtaining materials and data of cultural value shall be undertaken without written authority and direct site supervision by archaeologists and/or representatives of the National Museum;
- (3) All anthropological researches, for the purpose of obtaining materials and data of cultural value and where the principal proponent is a foreign national shall be undertaken only with the authority, and under the supervision of the National Museum or the National Historical Institute. Anthropological research by Philippine nationals, especially members of the indigenous communities shall be encouraged;
- (4) Archaeological or anthropological materials presumed as important cultural property shall be allowed to leave the country only upon proper evaluation and written permission of the National Museum or the National Historical Institute;
- (5) All explorations and excavations undertaken wherein the caves, rock

shelters and their vicinities may have been used in the prehistoric past by man either for habitation, religious and/or sacred and burial purposes all over the country, shall be under the direct jurisdiction and supervision of archaeologists and/or other experts of the National Museum;

- (6) All mining activities inside caves, rock shelters and any such other areas shall require a written permit and clearance from the National Museum. An appropriate prior inspection by representatives of the National Museum, funded by the company applying for a mining right, shall be required to ensure that no archaeological materials are present and, possibly, destroyed;
- (7) Excavations in caves, rock shelters and other areas by laymen are prohibited by this Act. All earth-moving activities in these areas must have the proper permit and clearance from the National Museum and monitored by their representatives;
- (8) All treasure hunting permits and licenses shall be issued by the National Museum, which shall formulate the rules and regulations to adequately control, regulate and monitor all applicants for such undertakings; and
- (9) The provisions of this Act on explorations and excavations of terrestrial and underwater archaeological sites shall supersede all local, municipal, regional and autonomous regional governments' resolutions and ordinances.
  - a. When the presence of any cultural or historical property is discovered, the National Museum or the National Historical Institute shall immediately suspend all activities that will affect the site and shall immediately notify the local government unit having jurisdiction of the place where the discovery was made. The local government shall promptly adopt measures to protect and safeguard the integrity of the cultural property so discovered and within five (5) days from the discovery shall report the same to the appropriate agency. The suspension of these activities shall be lifted only upon the written authority of the National Museum or the National Historical Institute and only after the systematic recovery of the archaeological materials.
  - b. The Commission, upon the recommendation of the appropriate cultural agency, shall provide incentives for persons who discover and report heretofore unknown archaeological sites, in accordance with its rules and regulations implementing the provisions of this Act.
  - c. Any government or non-government infrastructure project or architectural site development shall include anthropological, archaeological, and historical and heritage site conservation concerns in their Environmental Impact Assessment System.

## **ARTICLE VIII**

### **ROLE OF CULTURAL AGENCIES**



**SECTION 31. Responsibilities of Cultural Agencies for Designation of Cultural Property.** - The cultural agencies, in conformity with their respective charters, shall define and delineate their respective areas of responsibility with respect to cultural property and assessment of National Cultural Treasures and national historical landmarks, sites or monuments. These areas shall be subject to periodic re-assessment whenever necessary.

For purposes of this Act, the following shall be the responsibilities of cultural agencies in the categorization of cultural property:

- (a) The **Cultural Center of the Philippines** shall be responsible for significant cultural property pertaining to the performing arts;
- (b) The **National Archives of the Philippines** shall be responsible for significant archival materials;
- (c) **The National Library** shall be responsible for rare and significant contemporary books, manuscripts such as, but not limited to, presidential papers, periodicals, newspapers, singly or in collection, and libraries and electronic records;
- (d) The **National Historical Institute** shall be responsible for significant movable and immovable cultural property that pertains to Philippine History; heroes and the conservation of historical artifacts
- (e) The **National Museum** shall be responsible for significant movable and immovable cultural and natural property pertaining to collections of Fine Arts, Archaeology, Anthropology, Botany, Geology, Zoology and Astronomy, including its conservation aspect; and
- (f) The **Komisyon sa Wikang Filipino (KWF)** shall be responsible for the dissemination, development, and the promotion of the Filipino national language and the conservation of ethnic languages;

**SECTION 32. Institutional Linkages of the National Cultural Agencies.** - The cultural agencies and other national government agencies, as listed below, shall consult, coordinate and work closely with the Commission in the implementation of their respective programs/projects in the context of this Act. Furthermore, the Commission may link up with other agencies and institutions, as it may deem appropriate, as a way of dealing with conservation on a holistic manner.

- (a) The **Department of Tourism**, and its attached agencies, which shall be responsible for cultural education among tourism services, and protection of cultural property supplemental to the jurisdiction of the cultural agencies as defined in this Act. The implementation and creation of a tourism master plan shall be consistent with this Act;
- (b) The **Intramuros Administration** which shall be responsible for the restoration and administration of the development in Intramuros;
- (c) The **National Parks Development Committee** as an attached agency of the Department of Tourism, which shall be responsible in supervising the development (beautification, preservation and maintenance) of Quezon Memorial, Fort Santiago, Luneta, Paco Park, Pook ni Maria Makiling and

- other national parks and satellite projects;
- (d) The **Department of Education** which shall be responsible in instituting the governance of basic education act, and the conservation and restoration of its built heritage such as the significant Gabaldon School buildings as determined by the National Historical Institute;
  - (e) The **Department of Public Works and Highways** which shall be responsible in undertaking major infrastructure projects specifically in the planning, design, construction, and maintenance of national roads and bridges as they impact on heritage structures or aspects of heritage conservation;
  - (f) The **National Commission on Indigenous Peoples** in behalf of the country's indigenous cultural communities, which shall coordinate with the national agencies on matters pertaining to Cultural Property under its jurisdiction;
  - (g) The **Department of Environment and Natural Resources** which shall be responsible for the establishment and management of the National Integrated Protected Areas System and the conservation of wildlife resources, including cave and cave resources and which shall coordinate with the National Commission on Indigenous peoples, the conservation of natural resources that are cultural sanctuaries of indigenous peoples;
  - (h) The **Department of the Interior and Local Government** which shall coordinate with the national cultural agencies on matters pertaining to Cultural Properties under its jurisdiction, and ensure that the provisions of this Act is properly executed by the local government unit;
  - (i) The **Office of the Muslim Affairs** which shall coordinate with the national cultural agencies on matters pertaining to Cultural Property under its jurisdiction;
  - (j) The **UNESCO National Commission of the Philippines** which shall be responsible for providing the liaison between the cultural agencies of the Philippines and UNESCO as well as assist the national cultural agencies in implementing the agreements and conventions adopted by the UNESCO of which the Philippines has ratified or is in the process of ratification;
  - (k) The **Housing and Land Use Regulatory Board** which shall coordinate with the local government units and the Commission on matters pertaining to the establishment and maintenance of Heritage Zones;
  - (l) The **Autonomous Regional Government in Muslim Mindanao** and the **Cordillera Administrative Region** which shall coordinate with the national cultural Agencies on matters pertaining to Cultural Property under their respective jurisdictions; and,
  - (m) The **Office of the Special Envoy on Transnational Crimes** which shall have the oversight and operational capacity to go after illicitly trafficked and stolen cultural treasures.

**SECTION 33. *Incorporation of Cultural Property Programs in Local Government Units Budgets.*** - The local government units are encourage to incorporate programs and budgets for the conservation and preservation of Cultural Property in their environmental, educational and cultural activities.

**SECTION 34. *Training Programs.*** - The Commission, in coordination with the appropriate cultural agencies shall provide general training programs on conservation to the local government units which have established cultural heritage programs and projects in their localities.

**ARTICLE IX**  
CULTURAL PROPERTY INCENTIVES PROGRAM

**SECTION 35. *Tax Exemption on Donations.*** - All donations in any form to the Commission and its affiliated cultural agencies shall be exempt from the donor's tax and the same shall be considered as allowable deduction from the gross income in the computation of the income tax of the donor, in accordance with the provisions of the National Internal Revenue Code of 1997, as amended.

**SECTION 36. *National Heritage Resource Assistance Program.*** - The Commission may provide financial assistance in the form of a grant to historic, archaeological, architectural, artistic organizations for conservation or research on cultural property. No grant made pursuant to this Act shall be treated as taxable income.

**SECTION 37. *Awards and Citations.*** - To encourage preservation of the national heritage, the Commission shall establish an annual conservation recognition program under which monetary prizes, awards and citations will be given by the President of the Philippines, upon the recommendation of the Commission, for special achievements and important contributions and services in the area of heritage preservation and conservation efforts.

**ARTICLE X**  
CULTURAL EDUCATION

**SECTION 38. *Incorporation of National Cultural Treasures and Important Cultural Property in the Basic Education System.*** - Within one (1) year from the effectivity of this Act, the Department of Education in coordination with the Commission's Philippine Cultural Education Program shall formulate the cultural heritage education programs both for local and overseas Filipinos to be incorporated into the formal, alternative and informal education, with emphasis on the protection, conservation and preservation of cultural heritage property.

The Philippine Registry of Cultural Property shall likewise be incorporated into the formal, alternative, and informal education by the provincial and local governments.

**SECTION 39. *Cultural Heritage Education Program.*** - Within one (1) year from the effectivity of this Act, the Department of Education, the Technical Education and Skills Development Authority and the Commission on higher Education in consultation with the Commission shall set forth in its teaching programs nationwide the following cultural heritage education programs with emphasis at the provincial, city and municipal levels:

- (a) Protection, conservation and preservation of cultural heritage properties;
- (b) Instructional materials in prints, film and broadcast media on the cultural and historical significance of cultural properties; and
- (c) Visitation, public accessibility and information dissemination on designated local cultural properties.

**SECTION 40. *Public Accessibility.*** - Access to national historical landmarks, monuments and sites, whether designated as National Cultural Treasure, Important Cultural Property by the general public for visitation and information, and by government representatives for inspection, shall not be hindered except on reasonable cause. Fees, as prescribed by the cultural agency concerned, may in appropriate cases be charged to defray cost of conservation, inclusive of general maintenance and upkeep. In the case of privately owned monuments and sites, the National Historical Institute or the National Museum shall arrange with the owners the schedules of visits and regular inspection.

## **ARTICLE XI**

### **CULTURAL HERITAGE WORKERS' INCENTIVES PROGRAM**

**SECTION 41. *Cultural Heritage Workers' Incentives.*** - The national cultural agencies, in coordination with the Commission on Higher Education shall initiate scholarships, educational training programs, and other measures to protect the well being of curators, conservators, authenticators and valuers/appraisers of cultural property. Such cultural workers shall be given grants, incentives and scholarships upon the endorsement by the head of the appropriate cultural agency.

- (a) ***Program for Cultural Heritage Workers.*** Within ninety (90) days from the effectivity of this Act, the Commission through the cultural agencies concerned shall come up with the following:
  - 1) An active Roster of Authenticators and Valuers/Appraisers;
  - 2) An education and training plan for conservators, authenticators, valuers/appraisers, and other conservation related workers; and
  - 3) A general training plan on conservation for local government units.
- (b) ***Application of Scientific Career Merit System.*** Cultural heritage workers in the Civil Service with a Doctorate, Master of Science, or Master of Arts

Degree in fields related to cultural heritage promotion and conservation, shall be given the rank and benefits of Scientists, subject to qualifying standards equivalent to those prescribed in the scientific career merit system of the government.

A cultural heritage worker involved in science and technology in the government agencies shall be eligible for the benefits under Republic Act 8439 or the Magna Carta for Scientists, Engineers, Researchers and other S&T Personnel in Government. The Commission shall likewise establish a merit award system for non-civil service cultural heritage workers.

## **ARTICLE XII** **SENTRO RIZAL**

**SECTION 42. *Creation of Sentro Rizal.*** – There is hereby created and established a *Sentro Rizal* whose main purpose is the promotion of Philippine arts, culture and language throughout the world.

**SECTION 43. *Overseas Branches or Offices of Sentro Rizal.*** –*Sentro Rizal* shall have branches or offices in countries where there are children of overseas Filipino workers who need to be educated about their roots, as well as developed countries where there are large Filipino communities.

The office or branch shall be repository, *inter alia*, of the following materials on Philippine art, culture and language: books, digital video discs, compact discs, films, magazines, artworks, tourism promotion materials, information materials, etc. all these shall be made available to the public both Filipino and foreign.

**SECTION 44. *Coordination and Supervision with Philippine Schools.*** – The *Sentro Rizal* shall coordinate and supervise the Philippine Schools for Filipino children overseas.

**SECTION 45. *Services Offered.*** –The *Sentro Rizal* shall offer Filipino language courses for children and adults, as well as exhibits, small concerts, poetry reading, Philippine cuisine lessons in all *Sentro Rizal* branches.

**SECTION 46. *Provision of Tourism, Trade and Investment Materials to the Sentro Rizal.*** – The Department of Tourism, as well as the Department of Education, National Commission for Culture and the Arts, Commission on Higher Education, National Historical Institute, National Archives, National Library, and the Cultural Center of the Philippines, shall provide tourism promotion materials to the *Sentro Rizal* overseas branches. In the same manner, the Department of Trade and Industry will also provide trade and investments materials.

**SECTION 47. *Appropriation.*** - The amount of One hundred million pesos

(P100,000,000.00) necessary to carry out the provisions of this article shall be appropriated immediately to be generated from whatever source that are available in the National Treasury.

### **ARTICLE XIII** **PENAL PROVISIONS**

**SECTION 48. *Prohibited Acts.*** - To the extent that the offense is not punishable by a higher punishment under another provision of law, violations of this Act may be made by whoever intentionally:

- (a) Destroys, demolishes, mutilates or damages any world heritage site national cultural treasures important cultural property, and archaeological and anthropological sites;
- (b) Modifies, alters, or destroys the original features of or undertakes construction or real state development in any national shrine, monument, landmark and other historic edifices and structures, declared, classified, and marked by the National Historical Institute as such, without the prior written permission from the Commission. This includes the designated security or buffer zone, extending five (5) meters from the visible perimeter of the monument or site;
- (c) Explores, excavates or undertakes diggings for the purpose of obtaining materials of cultural historical value without prior written authority from the National Museum. No excavation or diggings shall be permitted without the supervision of a certified archaeologist;
- (d) Appropriates excavation finds contrary to the provisions of the New Civil Code and other pertinent laws;
- (e) Imports, sells, distributes, procures, acquires, or exports cultural property stolen, or otherwise lost against the will of the lawful owner;
- (f) Illicitly exports cultural property listed in the Philippine Registry of Cultural Property or those that may be categorized as such upon visitation or incorrectly declares the same during transit; and,
- (g) Deals in cultural property without proper registration and license issued by the cultural agency concerned.

**SECTION 49. *Penal Provisions.*** - Upon conviction, the offender shall be subject to a fine of not less than Two Hundred Thousand Pesos (P200,000.00) or imprisonment for a term of not less than ten (10) years, or both upon the discretion of the Court: *Provided*, That any cultural property attempted to be concealed from registration or those intended to be encumbered or excavated in violation of this Act shall be summarily confiscated and forfeited in favor of the Commission: *Provided further*, That if the violation is committed by a juridical person, the president, manager, representative, director, agent or employee of said juridical person responsible for the act shall also be liable for the penalties provided herein: *Provided furthermore*, That if the acts are committed by dealers, they shall suffer, in addition to the penalties provide herein, the automatic

revocation of their license to operate: *Provided finally*, That if the offender is an alien, he shall be placed under the custody of the Bureau of Immigration for the appropriate proceedings under this Act, and shall be summarily deported after serving his/her sentence.

Heads of departments, commissions, bureaus, agencies or offices, officers and/or agents found to have intentionally failed to perform their required duty as prescribed by the deputization order under Section 28 of this Act shall be liable for nonfeasance and shall be penalized in accordance with applicable laws.

If the offense involves the non-registration of a cultural property such as those referred to in Section 14, and the non-registration occurs upon or after proper notification by the Commission or the cultural agency concerned, the offender shall be subject to a fine of not less than ten thousand pesos (P10,000.00) but not more than one hundred thousand pesos (P100,000).

The concerned head of agency, officer and/or employee of the government entities mentioned in Section 31 shall be held liable for failure to consult and coordinate with the Commission for the damage to the cultural property resulting from the implementation of the entity's program/project, and shall be meted the penalty mentioned in the first paragraph of this section: *Provided*, That the offender/s shall likewise be asked to pay for the repair or rebuilding of what has been damaged.

#### **ARTICLE XIV**

##### **ENDOWMENT**

**SECTION 50. *National Endowment for Culture and the Arts.*** – The sum of Five hundred million pesos (P500,000,000.00) shall be contributed by the Philippine Amusement and Gaming Corporation (PAGCOR) and/or General Appropriations at the minimum rate of One hundred million pesos (P100,000,000.00) per year for five years, towards the establishment of a National Endowment for Culture and the Arts. Said amount shall be kept separate and deposited in a special account in the Bureau of Treasury specifically earmarked for culture and the arts.

#### **ARTICLE XV**

##### **FINAL PROVISIONS**

**SECTION 51. *Implementing Rules and Regulations.*** – The Commission, in consultation with other government agencies mentioned in this Act, shall promulgate the implementing rules and regulations within ninety (90) days after the effectivity of this Act.

**SECTION 52. *Repealing Clause.*** – Pertinent provisions of Republic Act No. 7356, the “Law Creating the National Commission for Culture and the Arts”; Republic Act No. 8492, the “National Museum Act of 1998”; Republic Act No. 9072, the “National Caves and Cave Resources Management and Protection Act”; and Republic Act No. 7942, the “Philippine Mining Act of 1995”; and all other laws, presidential decrees, executive orders and rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**SECTION 53. *Separability Clause.*** – Any portion or provision of this Act that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions hereof as long as such remaining provisions can still subsist and be given effect.

**SECTION 54. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

**Approved,**

**PROSPERO C. NOGRALES**  
Speaker of the House  
Representatives

**JUAN PONCE ENRILE**  
of President of the Senate

This Act which is a consolidation of Senate Bill No. 3014 and House Bill No. 6733 was finally passed by the Senate and the House of Representatives on December 14, 2009 and December 16, 2009, respectively.

**MARILYN B. BARUA-YAP**  
Secretary general  
House of Representatives

**EMMA LIRIO-REYES**  
Secretary of the Senate



## Republic Act No. 7355

An Act providing for the recognition of national living treasures, otherwise known as the Manlilikha ng Bayan, and the promotion and development of traditional folk arts, providing funds therefor, and for other purpose

---

Sec. 1. Title. - This Act shall be known as the Manlilikha ng Bayan Act.

Sec. 2. Policy and Objectives. - It is hereby declared to be the policy of the State to preserve and promote its traditional folk arts whether visual, performing, or literary, for their cultural value, and to honor and support traditional folk artists for their contribution to the national heritage by ensuring that the artistic skills which they have painstakingly cultivated and preserved are encouraged and passed on to future generations of Filipinos.

The objectives of this Act shall be as follows:

- a) to acknowledge the importance of traditional folk artist as singular conduit between skills of the past and the future;
- b) to revitalize a community's artistic tradition thereby protecting a valuable facet of Philippine culture;
- c) to provide mechanisms for identifying and assisting qualified traditional folk artists to transfer their skills to the community; and
- d) to create opportunities for popularizing their works locally and internationally.

Sec. 3. Definition of Terms. - For the purpose of this Act, Manlilikha ng Bayan shall mean a citizen or a group of citizens engaged in any traditional art uniquely Filipino, whose distinctive skills have reached such a high level of technical and artistic excellence and have been passed on to and widely practiced by the present generations in his/her community with the same degree of technical and artistic competence.

"Traditional Folk Art" refers to expressions of distinctiveness and artistic quality created to serve a decorative and/or utilitarian or sociocultural functions of traditional folk artists commonly known for such works.

Sec. 4. Criteria and Qualifications. - To become a Manlilikha ng Bayan, the candidate must satisfy the following minimum criteria;

- a) Technical and creative skill - The candidate must possess a mastery of the tools and materials needed by the art, and must have an established reputation in the art as master and maker of works of extraordinary technical quality;

- b) Artistic quality - The work of the candidate must be outstanding aesthetically, and he/she must have consistently produced over a significant period, works of superior quality;
- c) Community tradition - The candidate must have transferred and/or willing to transfer to other members of the community, skills in the folk art for which the community has become nationally known;
- d) Folk art tradition - The candidate must have engaged in a folk art tradition that has been in existence and documented for at least fifty (50) years; and
- e) Character and integrity. - As a precious treasure of the county, the candidate must command the respect and admiration of the country for his character and integrity.

The implementing agency may require additional criteria and qualifications in pursuance of the purposes of this Act.

Sec. 5. Award and other Incentives. - The award given to the Manlilikha ng Bayan shall be called Gawad sa Manlilikha ng Bayan.

In addition, the following shall be enjoyed: acd

- a) Plaque/Medal - The awardee shall each receive a commemorative plaque and/or medal, a duplicate set of which is to be donated to and permanently displayed in the pertinent provincial museum or largest cultural center in order to broaden community awareness of the significance of our traditional folk arts and to accord them the recognition they richly deserve;
- b) An initial grant of One hundred thousand pesos (P100,000.00) and Ten thousand Pesos (P10,000.00) a month thereafter for life, shall be given, unless the Commission after due hearing finds good reason to discontinue the grant arising from violations of pertinent terms and conditions herein stated.

This grant may be increased whenever circumstances so warrant provided that the increase shall not be given retroactive effect;

- c) Documentation - All surviving samples of works by the awardee shall be catalogued and photographed, and his/her work methods and tools shall likewise be documented; cd i
- d) A vocational course using materials, tools, methods, and designs of the awardee may be offered at the nearest arts and trades school through the cooperative efforts of the Department of Trade and Industry, the Department of Education, Culture and Sports, and private foundation and/or private corporation, to effect the transfer of his/her skills and the preservation of folk art tradition;
- e) A feasibility study of converting the awardee's art into a specialized cottage industry in the awardee's province, preferably in the recipient's barangay or town, may be undertaken by the Department of Trade and Industry in collaboration with private investors; and
- f) The recipient shall be invited to Manila-based and regional cultural events that salute the importance of traditional folk arts in the Filipino cultural heritage;

Sec. 6. Duties and Responsibilities of Awardees. - The Manlilikha ng Bayan is a link between the past, in which his/her traditional folk art found fertile soil for growth, and the future, during which he/she seeks his/her art to be permanently sustained. It becomes his/her responsibility therefore to undertake the following:

- a) to transfer the skills of his/her traditional folk art to the younger generation through apprenticeship and such other training methods as are found to be effective;
- b) to cooperate with the implementing agency, as provided for in Section 7 of this Act, in the promotion and propagation of his/her traditional folk arts; and
- c) to donate to the National Museum a sample or copy of his/her work.

Sec. 7. Implementing Agency. - The Presidential Commission on Culture and Arts, created under Executive Order No. 118, dated January 30, 1987, shall develop and adopt a program to effectuate the provisions of this Act and promulgate such rules, regulations and criteria that will govern the selection of the Manlilikha ng Bayan.

For purposes of this Act, the Commission shall have the following powers and functions;

- a) to constitute and appoint panels of experts including, but not limited to, the nominees of the Office of Muslim Affairs, Office for Southern Cultural Communities and Office for Northern Cultural Communities in each of the traditional folk arts categories to assist the Commission in a thorough search for and fair selection of the awardee; such categories of traditional folk arts shall include but will not be limited to the following: weaving, woodcarving, metal-working, jewelry-making, embroidery, furniture-making using indigenous materials, dance, song, instrumental folk music, folk literature, drama, boat-making, pottery-making and other indigenous technology and architecture such as rice terracing;
- b) to increase the monetary grant whenever circumstances so warrant provided that the increase shall not be given retroactive effect;
- c) to design, monitor and evaluate appropriate programs that shall ensure that the Manlilikha ng Bayan transfers his/her skills to others, and to coordinate with pertinent agencies, public and private, for program implementation;
- d) to undertake measures that shall protect the intellectual/cultural property rights of the awardees; cdt
- e) to promote the widest utilization and improvement of the awardees' design and patterns as well as their materials, tools and techniques in coordination with pertinent agencies, public and private;
- f) to undertake information dissemination programs intended to broaden community awareness of and instill pride in the achievements of the Manlilikha ng Bayan;
- g) to facilitate or undertake activities, public and private in coordination with the Department of Trade and Industry, the Department of Science and Technology, and the Department of Tourism, that shall make the efforts of

the awardees not only aesthetically rewarding but also economically profitable; and

- h) to generate funds from the Government and the private sector for the implementation of the provisions of this Act. acd

Sec. 8. Appropriations. - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

Sec. 9. Tax Privileges. - Pursuant to the existing provisions under the National Internal Revenue Code (NIRC), as amended, and the Tariff and Customs Code of the Philippines (TCCP), as amended, any gifts or donations which shall be made to or for the use of the Philippine Commission on Culture and Arts, exclusively for the Manlilikha ng Bayan, shall be entitled to the following privileges;

- a) Exemption from donor's tax pursuant to Section 94(a)(3) of the NIRC, as amended;
- b) Deductibility of donations from the donor's gross income for purposes of computing taxable income in accordance with Section 29 (h) of the NIRC, as amended; and
- c) Exemption from taxes and duties of donations from foreign countries subject to the provisions of Section 105 of the TCCP, as amended, and Section 103 of the NIRC, as amended.

Sec. 10. Repealing Clause. - All laws, issuances, decrees, or any part or parts thereof inconsistent with the provisions of this Act are deemed amended or repealed accordingly.

Sec. 11. Effectivity Clause. - This Act shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general circulation.

Approved: April 3, 1992

## Presidential Decree No. 15

Creating the cultural center of the Philippines, defining its objectives, powers and functions and for other purposes

---

WHEREAS, one of the priority measures pending before Congress prior to the promulgation of Proclamation No. 1081 dated September 21, 1972, was House Bill No. 4454 creating the Cultural Center of the Philippines; and

WHEREAS, this measure is necessary to establish and enable the Cultural Center of the Philippines as a non-municipal public corporation to implement more effectively and vigorously the constitutional injunction that arts and letters shall be under the patronage of the State.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, as amended, in order to promote, enhance and develop Philippine culture, do hereby order and decree that House Bill No. 4454 of the Seventh Congress of the Philippines, Sixth Special Session, with certain modifications shall be, as it is hereby adopted, approved and made as part of the law of the land, as follows:

Sec. 1. Name and Location. - Pursuant to the constitutional mandate that arts and letters shall be under the patronage of the State, there is hereby created a body corporate to be known as the Cultural Center of the Philippines, hereinafter referred to as the Center, with its main executive office in the City of Manila.

Sec. 2. Purposes and Objectives. - The Center shall have the following purposes and objectives:

- a) To construct, establish and maintain in a single site a national theater, a national music hall, an art gallery and such other buildings and facilities as are necessary or desirable for the holding of conferences, seminars, concerts and the like;
- b) To awaken the consciousness of our people to our cultural heritage, and to encourage them to assist in its preservation, promotion, enhancement and development;
- c) To cultivate and enhance public interests in, and appreciations of, distinctive Philippine arts in various fields; cd

- d) To discover, assist and develop talents, connected with Philippine cultural pursuits and create greater opportunities for individual and national self-expression in cultural affairs;
- e) To encourage the organization of cultural groups, associations or societies and the holding or staging of cultural exhibitions, performances and similar activities.

Sec. 3. Nature. - The corporation hereby created shall be a non-municipal public corporation. Its property, real and personal, shall belong to and be managed exclusively by the corporation for the benefit of the Filipino people. Any income that may be derived from its projects and operations shall be invested in a Cultural Development Fund set up to attain the objectives of this Act, or utilized for such purposes as its governing board may decide upon, consistent with the purposes herein provided. It shall enjoy autonomy of policy and operation but may seek the assistance and cooperation of various government offices in pursuit of its objectives.

Sec. 4. General Corporate Powers. - The Cultural Center of the Philippines shall have perpetual succession with the power to sue and be sued; to contract and be contracted with; to own and hold such real and personal property as shall be necessary for corporate purposes; to receive real and personal property by gift, devise, or bequest; to adopt a seal and alter the same; to adopt by-laws, rules and regulations not inconsistent with the provisions of this Act; and generally, to do all such acts and things as may be necessary to carry into effect the provisions of this Act.

Sec. 5. Existence. - The corporation shall have perpetual succession. Within sixty (60) days from the approval of this Act, the President of the Philippines shall issue a proclamation declaring the dissolution of the trust created by Executive Order No. 30 dated June 25, 1966, known as the Cultural Center of the Philippines and transferring all the properties including the Cultural Development Fund at present managed by an investment bank and a parcel of land covered by Presidential Proclamation No. 316 dated December 15, 1967, as well as all obligations thereof to the new Center created herein.

Sec. 6. Board of Trustees. - The governing powers and authority of the corporation shall be vested in, and exercised by, a Board of nine (9) trustees who shall serve without compensation.

- a) The trustees appointed by the President of the Philippines pursuant to Executive Order No. 30 dated June 25, 1966, and currently holding office shall be the first Trustees to serve on the Board of the new Center and shall be known as Founding Trustees. They shall elect the remaining trustees for a complete Board of nine (9) members. Elected trustees shall hold office for a period of four (4) years.
- b) Vacancies in the Board of Trustees due to termination of term, resignation, incapacity, death or other cause as may be provided in the By-laws, shall be

filed by election by a vote of a majority of the trustees held at the next regular meeting following occurrence of such vacancy. The elected trustee shall then hold office for a complete term of four years unless sooner terminated by reason of resignation, incapacity, death or other cause. Should only one trustee survive, the vacancies shall be filled by the surviving trustee acting in consultation with the ranking officers of the Center. Such officers shall be designated in the Center's Code of By-laws. Should for any reason the Board be left entirely vacant, the same shall be filled by the President of the Philippines acting in consultation with the aforementioned ranking officers of the Center.

- c) No person may serve as trustee who is not a resident of the Philippines, of good moral standing in the community and at least 25 years of age: Provided, That there shall always be a majority of the trustees who are citizens of the Philippines. Trustees may not be reelected for more than two (2) consecutive terms.
- d) A trustee who shall seek a political office shall be deemed automatically resigned upon filing of the certificate of candidacy.
- e) The majority of the trustees holding office shall constitute a quorum to do business.

Sec. 7. By-Laws. - The Board of Trustees shall ordain and promulgate the rules and regulations governing the Center, providing for, among other things, the organization, regular monthly, special and annual meetings of the Board, its officers, their powers and duties, as well as other officers, and their duties, of the Center, in a Code of By-Laws which shall be passed by an affirmative vote of majority plus one of all the members. Amendments thereto shall likewise be made by a similar vote of the trustees at any meeting of the Board duly convened.

Sec. 8. Appointment of Personnel. - The Chairman, with the confirmation of the Board, shall have the power to appoint all officers, staff and personnel of the Center with such compensation as may be fixed by the Board, who shall be residents of the Philippines. The Center may elect membership in the Government Service Insurance System and if it so elects, its officers and employees who qualify shall have the same rights and privileges as well as obligations as those enjoyed or borne by persons in the government service. Officials and employees of the Center shall be exempt from the coverage of the Civil Service Law and Rules.

Sec. 9. Chapters. - The Center shall establish regional cultural centers in all regions of the Philippines in pursuit of the purposes and objectives for which it is hereby organized. cd

Sec. 10. Title to Properties. - The corporation hereby created shall succeed to all rights, title and interests of the trust created by Executive Order No. 30 dated June 25, 1966, known by the same name, to properties of all classes within the territory of the Philippines and assume all its

obligations upon proclamation by the President of the dissolution of the trust and transfer of all its rights and obligations to the corporation.

- Sec. 11. Finances. - The corporation shall be financed both by the income from its various assets and from its operation, as well as by contributions from the private sector either from local or foreign sources. For permanent support of the Center, the equivalent of five (5%) per centum of the total annual collections of all taxes on amusement is hereby set aside and appropriated for the yearly maintenance and support of the Center. Government corporations are hereby authorized to make such contributions to the Center from time to time as their discretion decide, provided that said contributions do not exceed fifteen per centum (15%) of their annual unimpaired surplus. Contributions to the Center shall be considered as deductions deductible in full and shall not be included for purposes of computing the maximum amounts deductible under the first paragraph of Section 30 (h) of Commonwealth Act No. 466, as amended.
- Sec. 12. Title to Land Site. - The parcel of land described in and embraced by Presidential Proclamation No. 316 dated December 15, 1967, is hereby assigned, transferred and conveyed to the Center in fee simple provided only that the same as well as all improvements thereon and all other properties of the Center after payment of obligations shall revert to the Government of the Philippines when and if the Center ceases to exist.
- Sec. 13. Tax Exemption. - The Center shall be exempt from all forms of taxation whatever and from duties and all other imposts on any equipment, articles or goods that it may import from abroad which may be reasonably necessary for use in or as part of its operations.
- Sec. 14. Annual Report. - The corporation shall, at the end of every calendar year, submit to the President of the Philippines and Congress an annual report containing the activities of the corporation and showing clearly its exact financial condition, the sources of all receipts and the purposes of all disbursements. cdt
- Sec. 15. Separability Clause. - If any clause, paragraph or part of this Act shall be adjudged to be invalid, the same shall not affect, impair or invalidate the other provisions of this Act.
- Sec. 16. Effectivity. - This Act shall take effect upon its approval.

DONE in the City of Manila, this 5th day of October, in the year of Our Lord, nineteen hundred and seventy-two.



## Republic Act No. 7356

An Act creating the national commission for culture and the arts, Establishing a national endowment fund for culture and the arts, and for other purposes

---

Sec. 1. Title. - This Act shall be known at the "Law Creating the National Commission for Culture and the Arts".

### TITLE I DECLARATION OF PRINCIPLES

Sec. 2. Culture as a Human Right. - Culture is a manifestation of the freedom of belief and of expression and is a human right to be accorded due respect and allowed to flourish.

Sec. 3. National Identity. - Culture reflects and shapes values, beliefs, aspirations, thereby defining a people's national identity. A Filipino national culture that mirrors and shapes Philippine economic, social and political life shall be evolved, promoted and conserved.

Sec. 4. Culture of the People. - The Filipino national culture shall be: a) independent, free of political and economic structures which inhibit cultural sovereignty; b) equitable, effectively creating and distributing cultural opportunities and correcting the imbalance that has long prejudiced the poor and other marginalized sector who have the least opportunities for cultural development and educational growth; c) dynamic, continuously developing in pace with scientific, technological, social, economic and political changes both in national and international levels; d) progressive, developing the vast potential of all Filipinos as responsible change agents of society; and (e) humanistic, ensuring the freedom and creativity of the human spirit.

Sec. 5. Culture by the People. - The Filipino national culture shall be evolved and developed by the people themselves in a climate of freedom and responsibility.

National cultural policies and programs shall be formulated which shall be: a) pluralistic, fostering deep respect for the cultural identity of each locality, region of ethno-linguistic locality, as well as elements assimilated from other cultures through the natural process of acculturation; b) democratic, encouraging and supporting the participation of the vast

masses of our people in its programs and projects; c) non-partisan, open to all people and institution, regardless of creed, affiliation, ideology, ethnic origin, age, gender or class, with no organized group or sector having monopoly of its services, and d) liberative, having concern for the decolonization and emancipation of the Filipino psyche in order to ensure the full flowering of Filipino culture.

Sec. 6. Culture for the People. - The creation of artistic and cultural products shall be promoted and disseminated to the greatest number of our people. The level of consciousness of our people about our own cultural values in order to strengthen our culture and to instill nationhood and cultural unity, shall be raised formally through the educational system and informally through extra-scholastic means, including the use of traditional as well as modern media of communication.

Sec. 7. Preservation of the Filipino Heritage. - It is the duty of every citizen to preserve and conserve the Filipino historical and cultural heritage and resources. The retrieval and conservation of artifacts of Filipino culture and history shall be vigorously pursued.

## **TITLE II**

### **ORGANIZATION OF THE NATIONAL COMMISSION FOR CULTURE AND ARTS AND THE ESTABLISHMENT OF THE NATIONAL ENDOWMENT FUND**

Sec. 8. The Commission. - A National Commission for Culture and Arts is hereby created to formulate policies for the development of culture and arts, implement these policies in coordination with affiliated cultural agencies; administer the National Endowment Fund for Culture and Arts (NEFCA); encourage artistic creation within a climate of artistic freedom; develop and promote the Filipino national culture and arts; and preserve Filipino cultural heritage. The Commission shall be an independent agency. It shall render an annual report of its activities and achievements to the President and to Congress.

Sec. 9. Composition. - The Commission shall be composed of the following members;

- a) the Undersecretary of the Department of Education, Culture and Sports;
- b) the Undersecretary of the Department of Tourism;
- c) the Chairman of the House Committee on Culture;
- d) the Chairman of the Senate Committee on Culture;
- e) the President of the Cultural Center of the Philippines;
- f) the Executive Director of the National Historical Institute;
- g) the Director of the National Museum;
- h) the Director of the National Library;
- i) the Director of the Institute of Philippine Languages;

- j) the Director of the Records Management and Archives Office;
- k) the Executive Director of the Commission;
- l) the Head of the Subcommittee on Cultural Communities and Traditional Arts;
- m) three (3) representatives from the private sector who shall be the elected heads of the three (3) Subcommittee identified hereunder, namely: the Subcommittee on Cultural Heritage, the Subcommittee on the Arts and the Subcommittee on Cultural Dissemination. They shall be elected by the chairpersons of the national committees under their respective Subcommittees.

The Chairman of the Commission shall be elected by the members from among themselves. cdt

Sec. 10. Term of Office and Compensation. - The non-ex-officio members of the Commission shall serve for a term of three (3) years, and shall not serve for more than two (2) successive terms. Non-ex-officio members shall each receive a per diem of One thousand pesos (P1,000.00) for actual attendance in the meetings of the Commission, but not to exceed Five thousand pesos (P5,000.00) a month, and shall be reimbursed travel expenses incurred for actual attendance of meetings.

Ex officio members of the Commission shall receive representation and travel allowances (RATA) in accordance with rates recommended by the Department of Budget and Management.

Sec. 11. Memberships Restrictions. - During his/her term as member of the Commission, a Commissioner shall not be eligible for any grant or such other financial aid from the Commission as an individual; Provided, however, That he/she may compete for grants and awards on the same level as other artists one (1) year after his/her shall have expired.

Sec. 12. Mandate. - The Commission is hereby mandated to formulate and implement policies and plans in accordance with the principles stated in Title 1 of this Act.

- a) To encourage the continuing and balanced development of a pluralistic culture by the people themselves, it shall;
  - 1) encourage and ensure the exercise of the freedom of expression by eliminating all forms of censorships inimical to cultural and artistic growth and development without prejudice to the rights of other people to develop their own culture, or to the enhancement of a genuinely Filipino culture;
  - 2) extend financial and economic assistance such as subsidies, artist funds and social security to promote cultural development and protect artists and cultural workers;
  - 3) ensure the decentralization of opportunities for creative expression through the establishment of local culture and art centers in various regions, with resources needed for artistic cultural activities;

- 4) extend recognition of artistic achievement through awards, grants and services to artists and cultural groups which contribute significantly in the Filipino's cultural legacy;
  - 5) promote the interests and welfare of artists and cultural workers by protecting their rights to intellectual and artistic properties as well as by associations which shall promote and protect the economic and moral rights of artists over the country;
  - 6) encourage and support research into Philippine artistic traditions which may be adopted for the creation of contemporary forms;
  - 6) adopt measures and recommend legislations to protect the intellectual and artistic rights and properties of Filipino artists, cultural workers and other matters concerning culture and arts;
  - 7) explore and adopt the best possible structure of relationship between the public and private sector at the local level, taking into account varying socio-cultural situations.
- b) To conserve and promote the nation's historical and cultural heritage, it shall;
- 1) support, monitor and systematize the retrieval and conservation of artifacts of Filipino culture and history and all Filipino cultural treasures from all over the archipelago and other countries;
  - 2) encourage and support the study, recognition and preservation of endangered human cultural resources such as weavers, chanters, dancers, and other craftsmen as well as the conservation and development of such artistic, linguistic and occupational skills as are threatened with extinction;
  - 3) support and promote the establishment and preservation of cultural and historical monuments, markers, names and sites;
  - 4) encourage and support the establishment and/or maintenance all over the country of museums, libraries, archives, private or public, as repositories, respectively of all cultural/historical artifacts and artistic creation, printed works, archival records and all other materials indispensable to the study and evaluation of Filipino culture and history;
  - 5) encourage the private sector to establish and maintain private museums and libraries;
  - 6) encourage and support scholarly research into and documentation of Philippine cultural traditions, arts and crafts, as well as significant cultural movements, achievements and personalities especially in the literary, visual and performing arts; and in mass media, as well as the various aspects of Filipino culture;
  - 7) encourage and support the writing of Philippine history from the Filipino perspective;
  - 8) encourage, support and systematize the audio-visual documentation of Filipino cultural expressions in the contemporary period.
- c) To ensure the widest dissemination of artistic and cultural products among the greatest number across the country and overseas for their appreciation and enjoyment, it shall, with the cooperation of the

Departments of Education, Culture and Sports, Tourism, Interior and Local Government, Foreign Affairs and all other concerned agencies, public and private:

- 1) cause to be established and developed an intensified arts education program at all levels of the educational system, public and private, to ensure meaningful arts integration across the school curriculum;
  - 2) encourage and support programs through publication, exhibition, production, performance, staging, and reproduction of original Filipino creations;
  - 3) coordinate and provide technical and/or financial assistance for cultural events and related activities such as cultural festivals, competitions, lecturers, seminars, forums and symposia;
  - 4) encourage and monitor a comprehensive translation program which shall make works by Filipinos and selected foreign classics equally accessible to Filipino as well as international readers;
  - 5) promote the popularization of information about artistic and cultural achievements and programs, in coordination with government agencies and non-government organizations and institutions;
  - 6) reorient tourism programs to become an instrument for popular education of our people and other about the best of our heritage and creativity;
  - 7) undertake a systematic collection of statistical and other data which reflects the state of cultural conditions in the country, to serve as essential quantitative and qualitative basis for formulating cultural policies; and
  - 8) create and support a sustained program of international cultural exchange, scholarships, travel grants and other forms of assistance;
  - 9) promulgate standards and guidelines for the protection and promotion of Filipino artists, cultural workers and creative works in other countries;
  - 10) encourage and support the continuous training of cultural workers and administrators by qualified trainers.
- d) To preserve and integrate traditional culture and its various creative expressions as a dynamic part of the national cultural mainstream, it shall;
- 1) help set up or encourage, monitor and subsidize companion systems at the regional, provincial and local levels, intended to develop traditional cultures such as arts/crafts centers, preferably in community settings apart from the usual museum settings, where exponents of living and crafts can practice and teach their art and enrich contemporary designs;
  - 2) encourage and subsidize cultural research and the retrieval of cultural research information (e.g. folklore, dance, music, crafts) through the training of students, teachers, and cultural researchers, and their revitalization by practice and performance;

- 3) ensure that the ultimate beneficiaries of all research efforts, tourism programs and other activities affecting cultural communities are the people and cultural communities that are the subject of research, and that their cultures are nurtured rather than violated, damaged, or exploited;
  - 4) ensure that relevant information is made available to legislators who introduce laws with cultural implication;
  - 5) encourage and support the continuous training of cultural workers and administrators by qualified trainers.
- e) To ensure that standards of excellence are pursued in programs and activities implementing policies herein stated, it shall encourage and support continuing discussion and debate, through symposia, workshops, publications, etc., on the highest norms available in the matrix of Philippine culture.

Sec. 13. Powers and Functions. - To carry out its mandate, the Commission shall exercise the following powers and functions:

- a) encourage and facilitate the organization of a network of regional and local councils for culture and the arts, hereunder described, to ensure a broad nationwide, people-based participation in the formulation of plans, the enforcement of culture-related laws and regulations, the implementation of programs/projects and the review of funding requirements.
- b) establish a secretariat under an Executive Director for the administrative and day-to day operations of the Commission;
- c) set up a system of networking and coordination with and among all existing government cultural agencies for the effective implementation of programs and activities;
- d) create committees and other mechanisms to help expedite the implementation of plans and strategies;
- e) call upon and coordinate with other government and non-government art and cultural institutions and agencies for assistance in any form;
- f) generate resources, both from the Government and private sectors, local, national and international, for its operation, as well as for the National Endowment Fund for Culture and Arts;
- g) receive and accept donations and other conveyances including funds, materials, and services, by gratuitous title;
- h) administer the National Endowment Fund for Culture and Arts and give grants for the development, protection, preservation and dissemination of Philippine culture and arts, and designate a comptroller;
- i) prepare an annual budget of the Commission and submit the same to the President for inclusion in the annual General Appropriations Act;
- j) advise the President on matters pertaining to culture and the arts, including the creation of a special decoration or award, for persons who have significantly contributed to the development and promotion of Philippine culture and arts;

- k) promulgate rules, regulations and undertake any and all measures as may be necessary to implement this Act;
  - l) regulate activities inimical to preservation/conservation of national cultural heritage/properties.
- Sec. 14. The Secretariat. - The Commission shall organize a secretariat headed by an Executive Director. The Commission shall fix its staffing pattern, determine the duties, qualifications, responsibilities and functions as well as the compensation scheme for the positions to be created upon the recommendation of the Executive Director. The staffing pattern shall be approved and prescribed by the Commission within one hundred twenty (120) days from the approval of this Act.
- Sec. 15. The Subcommissions. - The Commission shall oversee the operation and maintenance of National Committees under the following Subcommissions:
- a) Subcommission on Cultural Heritage, which shall cover but will not be limited to the following areas: libraries and information services, archives, museums, galleries, monuments, and sites, and historical research;
  - b) Subcommission on the Arts, which shall cover but he will not be limited to the following areas; literary arts, visual arts, architecture, dramatic arts, broadcast arts, musical arts, dance, and film;
  - c) Subcommission on Cultural Dissemination, which shall cover but will not be limited to the following areas: language and translation, cultural events, cultural education and information;
  - d) Subcommission on Cultural Communities and Traditional Arts, which shall cover but will not be limited to the following areas; Agta culture and arts, cultures and arts of Northern cultural communities, Southern cultural communities, Muslim cultural communities, and lowland cultural communities.
- Sec. 16. Local, Provincial or Regional Councils. - The Commission may establish or coordinate with local, provincial, or regional government or non-government councils/groups to promote, develop and implement programs and plans of the Commission.
- Sec. 17. The National Advisory Board. - The chairpersons of the National Committees shall form the National Advisory Board. and
- Sec. 18. The National Cultural Agencies. - The Commission shall coordinate with the national cultural agencies including but not limited to the Cultural Center of the Philippines, the Institute of Philippine Languages, the National Historical Institute, the National Library, the National Museum, the Records Management and Archives Office, However, they shall continue operating under their respective charters or as provided by law where provisions therein are not inconsistent with the provisions of this Act. They shall serve as the national repository and/or showcase, as the

case may be of the best of Philippine culture and arts. For this purpose, these agencies shall submit periodic reports, including recommendations to the Commission.

Sec. 19. Program Plans. - The Commission shall within three (3) months after having been officially constituted and finally staffed, adopt and immediately cause to be implemented in coordination with cultural agencies, a short-range program in support of relevant existing projects and activities; and within six (6) months, a long range three-year development program. This development program shall be developed and subjected to annual review and revision by the Commission in coordination with the councils as well as public and private cultural agencies and organizations.

Sec. 20. The National Endowment Fund for Culture and Arts. - A National Endowment Fund for Culture and Arts (the Fund) is hereby established exclusively for Philippine art and cultural programs, projects and activities all over the country.

a) The contribution of the Fund shall be the following:

1) the amount of One hundred million pesos (P100,000,000.00) as seed capital shall be taken from the Philippine Amusement and Gaming Corporation (PAGCOR) fund at Five million pesos (P5,000,000.00) per month for twenty (20) months: Provided, That no grant shall be awarded by the Commission except from the interest drawn from the funds; Provided, further, That no grant shall be awarded until after one (1) year from the organization of the Fund. aisa dc

2) ten percent (10%) of the travel tax collection, the share to be taken from the annual allotment of the travel tax given to the Philippine Tourism Authority.

b) Government corporations are hereby authorized to give grants to the Fund at their discretion, but not to exceed fifteen percent (15%) of their unimpaired surplus;

c) The private portion of the Fund shall be raised from donations and other conveyances including funds, materials, property and services, by gratuitous title;

d) Contributions to the Fund shall be deductible for income tax purposes in accordance with the provisions of Section 29(h)(2)(A) of the National Internal Revenue Code;

e) For the sound and judicious management of the Fund, the Commission shall appoint a reputable government-accredited investment institution as Fund Manager, subject to guidelines promulgated by the Commission;

f) The Commission shall be the administrator of the Fund, and as such, shall prepare implementing guidelines and decision-making mechanisms, subject to the following:

1) unless otherwise stipulated by the private donor, only earnings of private contributions shall be used;



- 2) no part of the seed capital of the Fund, including earnings, thereof, shall be used to underwrite overhead expenses for administration; casia
- 3) not more than twenty percent (20%) of the Government's annual contribution to the Fund shall be devoted to administrative functions of the Commission; at least ten percent (10%) shall be earmarked as part of the fund's capital, and the balance shall be used for its programs and projects;
- 4) The Commission shall organize a separate staff, administratively independent of the secretariat to be headed by a comptroller appointed by and directly responsible and accountable to the Commission;
- 5) There shall be an external auditor to perform an annual audit of its performance;
- 6) The Fund shall be exempt from pre-audit by the Commission on Audit.

Sec. 21. Tax Exemption. - The Commission shall be exempt on all its income and duty obligations.

All materials that are reasonably necessary and are not manufactured or produced locally for the use of the Filipino artists shall be tax of duty free.

Sec. 22. Revolving Fund. - The income of the Commission not exceeding the amount of Five hundred thousand pesos (P500,000.00) derived from the proceeds of sales of cultural items or publications shall be constituted as a revolving fund for the fabrication of such items or printing of such publications. Sales proceeds in excess of the aforementioned amount shall be remitted to the National Treasury and shall accrue to the General Fund.

### **TITLE III**

#### **MISCELLANEOUS PROVISIONS**

Sec. 23. Transitory Provisions.

- a) All the personnel, properties, assets and liabilities of the Presidential Commission on Culture and Arts (PCCA) created by Executive Order No. 188, are hereby transferred to the Commission as its successor-in-interest.
- b) within a period of one year after the first meeting of the Commission, it shall harmonize the policies of the cultural agencies referred to, but limited to those enumerated in Section 18 of this Act, with those of the Commission as over-all policy-making and coordinating body, as herein indicated.

Sec. 24. Notice or Consent Requirement. - If any organizational change herein authorized is of such substance or materiality as to prejudice third

persons with rights recognized by law or contract such that notice to or consent of said persons or creditors is required to be made or obtained pursuant to any agreement entered into with any of such creditors, such notice or consent requirement shall be complied with prior to the implementation of such organizational change.

Sec. 25. Separability Clause. - Any portion or provision of this Act that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions thereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

Sec. 26. Saving Clause. - All laws, rules, regulations, other issuances or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly. All provisions of Executive Order No. 118 not inconsistent with this Act shall however remain in full force and effect.  
cdt

Sec. 27. This Act shall take effect immediately upon its approval.

Approved: April 3, 1992

## **Rules and Regulation on Administrative Complaints for Violation of Laws Involving Intellectual Property Right**

### **NOTICE**

Pursuant to Section 1 of the Final Provision of the Rules and Regulations on Administrative Complaints for Violation of Laws involving Intellectual Property Rights which took effect on 16 December 1998, NOTICE IS HEREBY GIVEN that the Intellectual Property Office will begin to accept and adjudicate complaints for violations of laws involving intellectual property rights on 26 April 2001 to commemorate the First World Intellectual Property Day.

For the information and guidance of all concerned, the Rules and Regulations have been modified and are hereby published in full, as modified:

---

Whereas, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creativity, facilitates transfer of technology, attracts foreign investments and ensures market access for our products;

Whereas, the State recognizes that the use of intellectual property bears a social function and to this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the country and to protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people;

Now, therefore, pursuant to the provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, the following rules and regulations on administrative complaints for violation of laws involving intellectual property rights are hereby promulgated:

### **Rule 1**

#### **DEFINITIONS, INTERPRETATION, RULES OF COURT**

Section 1. Definition of Terms .— Unless otherwise indicated, the following terms shall be understood as follows:

- (a) "Answer" means a pleading in which the adverse party sets forth the negative and affirmative defenses upon which he relies;
- (b) "Bonds" and "Counterbonds" shall refer to cash bonds and cash counterbonds in the form of cash, cashiers check or manager's check, excluding surety bonds and surety counterbonds;
- (c) "Bureau" means the Bureau of Legal Affairs of the Intellectual Property Office;
- (d) "Chief Hearing Officer" means the officer within the Bureau who exercises immediate supervision over any Hearing Officer. His title or official designation may differ from the words "Chief Hearing Officer" depending on the structure of the Office;
- (e) "Complaint" means a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief sought, but it may add a general prayer for such further or other relief as may be just and equitable.
- (f) "Court" means a court of general jurisdiction such as Regional Trial Court;
- (g) "Director General" means the head of Intellectual Property Office;
- (h) "Director" means the Director of the Bureau of Legal Affairs;
- (i) "False Designation of Origin" means the act of any person who, on or in connection with any goods, or services, or any container for goods, uses in commerce any word, term, name symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which: (i) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or (ii) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of the IP Code by any person who believes that he or she is likely to be damaged by such act.
- (j) "False or Fraudulent Declaration" means the act of any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or writing, or by any false means;
- (k) "Hearing Officer" means the officer within the Bureau authorized to exercise the functions of "Hearing Officer" in these Regulations. The title or official designation of such officers may differ from the words "Hearing Officer" depending on the structure of the Office;
- (l) "Infringement of Copyright and Related Rights" means any violation of the rights provided under Part IV of the IP Code and/or the applicable IP Law, including the act of any person who at the time when copyright subsists

in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of: (i) selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article; (ii) distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or (iii) trade exhibit of the article in public.

- (m) "Infringement of Patent" means any violation of any of the rights of patentees and holders of utility model patents and industrial design registrations under Part II of the IP Code and/or the applicable IP Law, including the act of making, using, offering for sale, selling or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee.
- (n) "Infringement of mark" means any violation of any of the rights of the registered owner under Part III of the IP Code and/or the applicable IP Law, including the act of any person who shall, without the consent of the owner of the registered mark, and regardless of whether there is actual sale of goods or services using the infringing material:
- (o) use in commerce any reproduction, counterfeit, copy or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.
- (p) "Intellectual property rights" include:
  - (i) Copyright and Related Rights;
  - (ii) Trademarks and Service Marks;
  - (iii) Geographic Indications;
  - (iv) Industrial Designs
  - (v) Patents;
  - (vi) Layout-Designs (Topographies) of Integrated Circuits; and
  - (vii) Undisclosed Information
- (q) "IP Code" means Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines;
- (r) "IP Law" means any law, in addition to the IP Code, involving intellectual property rights;
- (s) "Office" means the Intellectual Property Office;
- (t) "Regulations" means this set of rules and regulations and such Regulations as may be formulated by the Director of Bureau of Legal Affairs and approved by the Director General;
- (u) "Unfair Competition" means the act of any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result.

The following shall likewise constitute unfair competition:

- (i) the act of selling one's goods and giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, or the act of clothing the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or the act of reselling the goods by any subsequent vendor with a like purpose.
- (ii) the act of employing any other means, by artifice or device, calculated to induce the false belief that a person is offering the services of another who has identified such services in the mind of the public.
- (iii) the act of making any false statement in the course of trade or any act contrary to good faith of a nature calculated to discredit the goods, business or services of another.
- (v) "Violation of laws involving intellectual property rights mentioned in Rule 2 Section 2" means violation of any law relating to the intellectual property rights enumerated under Section 4 of Republic Act No. 8293.

Sec. 2. Interpretation. — These Regulations shall be liberally construed to carry out the objectives of the IP Code and IP Laws and to assist the parties in obtaining just and expeditious settlement or disposition of administrative cases filed before the Office.

Sec. 3. Suppletory Application of the Rules of Court. — These Regulations shall primarily govern in the prosecution of administrative complaints in the Bureau. The provisions of the Rules of Court, however, shall apply in a suppletory character.

## **Rule 2**

### **COMMENCEMENT OF ACTION**

Section 1. Complaint, When and to Whom Filed. — All administrative complaints for violation of the IP Code or IP Laws shall be commenced by filing a verified complaint with the Bureau within four (4) years from the date of commission of the violation, or if the date be unknown, from the date of discovery of the violation. A complaint is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information, and belief" or lacks proper verification, shall be treated as an undersigned pleading.

The complaint shall include a certification that the party commencing the action has not filed any other action or proceeding involving the same issue or issues before any tribunal or agency nor such action or proceeding is pending in other quasi-judicial bodies: Provided, however, that if any such action is pending, the status of the same must be stated, and should knowledge thereof be acquired after the filing of the complaint, the party concerned undertakes to notify the Bureau within five (5) days from such knowledge. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice. The submission of a false certification or non-compliance with any of the undertaking therein shall constitute indirect contempt, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt.

Sec. 2. Original Jurisdiction.

- (a) The Bureau shall have original jurisdiction in administrative actions for violations of laws involving intellectual property rights where the total damages claimed are not less than two hundred thousand pesos (P200,000.00); Provided however, that availment of the provisional remedies may be granted in accordance with these Regulations and the provisions of the Rules of Court; The Director shall coordinate with local enforcement agencies for the strict and effective implementation and enforcement of these Regulations.

The commencement of the action under these Rules and Regulations is independent and without prejudice to the filing of any action with the regular courts.

Sec. 3. Venue of Hearings. — All hearings on actions covered by these regulations shall be held within the premises of the Office.

Sec. 4. Formal Requirement. — The Complaint shall be typewritten and addressed to the Bureau, and shall contain the names and residence of the parties and a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer for such further or other relief/s as may be deemed just or equitable. Every pleading filed shall likewise contain a caption forth the name of the Office and the Bureau, the title of the case, the case number, and the designation of the pleading.

No pleading shall be accepted by the Bureau unless it conforms to the formal requirements provided by these Regulations and accompanied by the required filing fee.

Sec. 5. Partners, Named Individually. — When two or more persons associated in any business, transact such business under a common name, the associates may be sued under such common name.

The associates of the business who are sued under a common name may be named individually in the Answer filed by them or on their behalf with their respective postal address.

Sec. 6. Payment of Filing Fee and Docketing. — The complaint shall be filed in triplicate with the Bureau, which shall issue an order for the payment of the required fee.

Upon payment of the required fee, the complainant, his counsel, or representative shall submit to the Bureau a copy of the receipt and present the original copy thereof for comparison. Immediately after the receipt of proof of payment of the required fee, the Records Officer or any authorized officer of the Bureau shall acknowledge receipt of the papers by assigning the Administrative Complaint Number, docket the same, and raffle the case to any of the Hearing Officers.

Sec. 7. Representation and Confidentiality of Records. — (a) The complaint may be prosecuted by the complainant by himself or through counsel. The complainant and his counsel are required to conduct their business with politeness, decorum and courtesy.

It is strictly and absolutely forbidden for the Director, and other employees of the Office to discuss the case or any phase thereof with either counsel of record in the absence of the other or with any third person not having any interest or legal standing before the Bureau.

Sec. 8. Summons.

(a) Within three (3) days from receipt of the complaint, the Staff Clerk shall prepare, and the Process Server shall serve, the Summons or Notice to Answer together with a copy of the complaint to the Respondent by mail or by personal service. If the service is done through registered mail, the return card shall be attached to the documents as evidence of receipt. The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy.

(b) If service cannot be made under the preceding paragraph, the office and place of residence of the party being unknown, service may be made by publication in a newspaper of general circulation, once a week for three (3) consecutive weeks and at the expense of the complainant. When a party summoned by publication failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party. If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing deposit of a copy of the summons and order



for publication in the post office, postage prepaid, directed to the party by registered mail to his last known address.

- (c) Any application for leave to effect service by way of publication shall be made motion in writing, supported by affidavit of the complainant or some person on his behalf, setting forth the grounds for the application.
- (d) When the service has been completed, the server shall within five (5) days thereafter, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the Hearing Officer who issued it, accompanied by proof of service.

Sec. 9. Answer.

- (a) The summons shall require respondent to answer the complaint within ten (10) days from receipt thereof. The respondent shall answer the complaint in writing, by either specifically denying the material allegations of the complaint or alleging any affirmative defense. If the respondent fails to answer within the time allowed therefor, the Hearing Officer shall, motu proprio or upon motion of the complainant with notice to the respondent, and proof of such failure, declare the respondent in default. Thereupon, the Hearing Officer shall proceed to render judgment granting the complainant such relief as his pleading may warrant, unless the Hearing Officer in his discretion requires the complainant to submit evidence. All such decisions or orders shall comply with Rule 11 of these Regulations.
- (b) A party declared in default may, at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such a case, the order of default may be set aside terms and conditions as the Hearing Officer may impose in the interest of justice.
- (c) A party in default shall not be entitled to notice of subsequent proceedings, unless he files a motion to lift or set aside the order of default.

Sec. 10. Answer to Amended Complaint. — If the complaint is amended, the time fixed for the filing and service of the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original answer shall be considered as answer to the amended complaint unless a new answer is filed within ten (10) days from receipt or service of the amended complaint.

Sec. 11. Motion to Dismiss Not Allowed. — No motion to dismiss on any of the grounds mentioned in the Rules of Court and in any other law shall be allowed except on the ground of prescription. Such grounds other than prescription shall instead be pleaded as affirmative defenses, the resolution of which shall be made in the decision on the merits. The Hearing Officer may, for good cause shown, conduct a preliminary

hearing on any of the affirmative defenses if this will expedite the resolution of the case.

Sec. 12. Pre-trial. — Upon joinder of issues, the pre-trial conference shall be set immediately by the Hearing Officer. The notice of said pre-trial shall be delivered by the Process Server within three (3) days from receipt of the answer or last pleading.

The notice of pre-trial shall require parties to submit a pre-trial containing the following:

- (a) A brief statement of the parties' claims and defenses;
- (b) Suggestions, if any, for simplification of issues;
- (c) A list of documents they intend to produce as evidence, together with appropriate marking as exhibits as well as the identification of witnesses and a statement of the substance and purpose of their testimony during the hearing on the merits. The originals of these documents must be produced for comparison during the pre-trial conference without prejudice to the presentation of additional documents during the trial if the party was prevented from producing the same during the pre-trial on account of fraud, accident, mistake, excusable negligence or such other reason which the Director or Hearing Officer deems justifiable in the interest of justice and fair play;
- (d) A statement whether they can stipulate on facts not covered by admissions in their pleadings. If so, they should come up with drafts of matters they are ready to stipulate on;
- (e) The limitation of the number of witnesses;
- (f) A statement whether they are open to the possibility of an amicable settlement; and
- (g) Such other matter as may aid in the prompt disposition of the action.

Sec. 13. Effect of Failure to File Pre-Trial or to Appear. — The failure of the complainant to submit the Pre-Trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to declare respondent as in default *motu proprio* or upon motion and to allow the complainant to present his evidence *ex-parte* and the office to render judgment on the basis thereof.

Sec. 14. Appearance of the Parties. — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear on his behalf fully authorized in writing to enter into an amicable settlement and to enter into stipulations or admissions of facts and of documents.

Sec. 15. Effect of Failure to File Pre-Trial Brief or to Appear in the Pre-trial Conference. — The failure of the complainant to submit the Pre-trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to allow the complainant to present his evidence *ex-parte* and the Bureau to render judgment on the basis thereof.

Sec. 16. Record of Pre-Trial Results. — After the Pre-Trial, the Hearing Officer shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered, controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.

Sec. 17. Pre-Trial Calendar. — The Hearing Officer shall cause to be prepared a pre-trial calendar of cases for consideration as above provided. After preparing Notice of Pre-Trial, it shall be the duty of the designated clerk of the Bureau to place such case in the pre-trial calendar.

### **Rule 3**

#### **POWERS OF HEARING OFFICERS**

Section 1. Powers of Hearing Officers. —

(a) A Hearing Officer conducting the hearing and investigating shall be empowered to administer oaths and affirmations; issue subpoena and subpoena *duces tecum* to compel attendance of parties and witnesses and the production of any book, paper, document, correspondence and other records which are material to the case; grant provisional remedies in accordance with these Regulations and the Rules of Court; and make preliminary rulings on questions raised at the hearings, with the ultimate decision on the merits of all the issues involved being left to the Director.

(b) Furthermore, a Hearing Officer as alter ego of the Director, shall have the power to cite a party or counsel or any person in contempt in accordance with these Regulations. The Hearing Officer shall likewise have the power to pass upon and approve bonds and counterbonds that may be posted by the parties; the bond or counterbond shall be in the form of cash, cashier's or manager's check issued in the name of the Intellectual Property Office.

Sec. 2. Service of Subpoena. — Service of Subpoena shall be made at least three (3) calendar days before the scheduled hearing so as to allow the witness reasonable time for preparation and travel to the place of attendance.

Sec. 3. Quashing a Subpoena Duces Tecum. — The Hearing Officer, upon motion made before the time specified in a subpoena duces tecum for compliance therewith, may quash the subpoena if it is unreasonable or the relevance of the books, papers, documents, correspondence and other records does not appear, or if the persons on whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

#### **Rule 4**

##### **PRELIMINARY ATTACHMENT**

Section 1. Grounds Upon Which Attachment May Issue. — At the commencement of the action or at any time before entry of judgment, a complainant or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action against a party who has been guilty of fraud in procuring the registration of a mark in the Office by false or fraudulent declaration or representation, whether oral in writing, or by any false means;
- (b) In an action against a party who has employed deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals or his business or services for those of the one having established such goodwill, or who shall commit any act calculated to produce said result whether or not a mark is involved;
- (c) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication;
- (d) In an action for the recovery of a specified amount of money or damages on a cause of action arising from a violation of the IP Code against a party who is about to depart from the Philippines with intent to evade the execution of judgment; or
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud the aggrieved party.

Sec. 2. Issuance and Contents of Order. — An order of attachment may be issued either ex-parte upon motion with notice and hearing conducted by the Hearing Officer. The Hearing Officer shall determine whether the attachment sought is meritorious or not. Should an order of attachment be issued by the Hearing Officer, he shall sign and forward the order to the Director who shall direct without delay, the officer or such other designated employee of the Bureau to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from

execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs.

Sec. 3. Affidavit and Bond Required. — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, to the value of the property the possession of which he is entitled to recover, is an much as the sum for which the order is granted above all legal counterclaims. The affidavit and the receipt evidencing payment of the bond must be duly filed with the Hearing Officer and forwarded to the Office of the Director before the order issues.

Sec. 4. Condition of Applicant's Bond. — The party applying for the order must give a bond executed to the adverse party in the amount fixed by the Hearing Officer in his order granting the issuance of the writ conditioned that the applicant will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the Hearing Officer shall finally adjudged that the applicant was not entitled thereto.

Sec. 5. Manner of Attaching Property. — The officer enforcing the writ shall, without delay and with all reasonable diligence, attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against who, the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former files a counterbond, in an amount equal to the bond fixed by the Hearing Officer in the order of attachment or to the value of the property to be attached, exclusive of costs. No levy on attachment pursuant to the writ shall be enforced unless it is preceded, or accompanied by service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order and writ of attachment on the defendant within the Philippines.

The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines.

Sec. 6. Sheriff's Return.

- (a) After enforcing the writ, the sheriff must likewise, without delay, make a return thereon to the Hearing Officer from whom the writ issued, with a full statement of his proceeding under the writ and a complete inventory of the property attached, together with any counterbond given by the party against whom attachment is issued, and serve copies thereof on the applicant.
- (b) The sheriff shall submit a report to the Hearing Officer on the action taken on all writs and processes assigned to them within twenty (20) days from receipt of said process or writ. Said report shall form part of the records of the case.
- (c) At the end every month, said Hearing Officer shall submit a report to the Director indicating therein the number of writs and processes issued and served, as well as the number of writs and processes unserved during the month and the names of the sheriffs who executed each writ. Unserved writs and processes shall be explained in the report.

Sec. 7. What may be the Subject of Attachment and the Manner of Executing the Same. — The following properties may be the subject of attachment:

- (a) Real Properties. — Real properties, or the machineries that may be found inside the premises belonging to the party against whom the writ is issued, or any interest therein, by filing with the Registry of Deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent of found within the city or province where the property is located. The Registrar of Deeds must index attachments filed under this section in the name of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed in the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of land or interest to be affected shall be included in the registration of such attachment.
- (b) Personal Properties. — Those personal properties capable of manual delivery, by taking such properties after issuing the corresponding receipt therefore. The sheriff shall thereafter deliver the attached properties to the complainant or proper party who shall be responsible for the custody, safekeeping, preservation, and the inventory and return of said properties to the other party or proper party upon termination of the case.
- (c) Shares of Stocks. — Shares of stocks or an interest in shares of stocks of any corporation or company, by leaving with the president or managing agent thereof, a copy of the writ, and a stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ.

Sec. 8. When Attached Property May Be Sold After Levy on Attachment and Before entry of Judgment. — Whenever it shall be made to appear to the Hearing Officer, upon hearing with notice to both parties, that the property attached is perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the Hearing Officer may order such property to be sold at public auction in such manner as he may direct, and the proceeds of such sale to be deposited as the Director may prescribe to await the judgment in the action.

Sec. 9. Discharge of Attachment Upon Giving Counterbond. — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The Hearing Officer shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counterbond with the Office of the Director in an amount equal to that fixed by the Hearing Officer in the order of attachment, exclusive of costs. But if the attachment sought to be discharged is with respect to a particular property, the counterbond shall be equal to the value of that property as determined by the Hearing Officer. The case deposit or the counterbond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served in the attaching party. Upon the discharged of an attachment in accordance with the provisions of this section, the property attached, or The proceeds of any sale thereof, shall be delivered to the party making the deposit or filing the counterbond, or to the person appearing on his behalf, the deposit or counterbond aforesaid standing in place of the property so released. Should such counterbond for any reason be found to be or become, insufficient, and the party furnishing the same fails to file a additional counterbond, the attaching may apply for a new order of attachment.

Sec. 10. Discharge of Attachment on Other Grounds. — The party whose property has been ordered attached may file a motion with the Hearing Officer before whom the case is pending, before or after levy or even after release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the property being attached is exempt from execution. If the attachment is excessive, the discharge shall be limited to the excess. If said motion be made on affidavit, the attaching party may oppose the same by counter-affidavit or other evidence in addition to that on which the attachment was made. After due notice and hearing, the Hearing Officer shall order the setting aside or the discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith, or the property being attached is exempt from execution.

Sec. 11. When the Property Attached is Claimed by Third Person. — If the property attached is claimed by a person not a party to the proceeding, as such person makes an affidavit of his title thereto, or right to the possession thereof, and serves such affidavit upon the sheriff and a copy thereof upon attaching party, the sheriff shall not be bound to keep the property under attachment unless the attaching party or his agent, on demand of the sheriff shall file a bond approved by the Hearing Officer to indemnify the third party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the Director. No claim for damages for the taking of keeping the property may be enforced against the bond unless the action therefor is filed within sixty (60) days from the date of the filing of the bond.

The sheriff shall not be liable for damages for taking or keeping of such property, to any such third party claimant, if such bond shall be filed. Nothing therein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third party claimant who filed a frivolous or plainly spurious claim, in the same or in separate action.

Sec. 12. Satisfaction of Judgment out of Property Attached; Sheriff's Return. — If judgment be recovered by the attaching party and execution issue thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

- (a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the Bureau, or so much as shall be necessary to satisfy the judgment;
- (b) If any balance remains due, be selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough property remain in the sheriff's hands for that purpose, or in those of the Office of the Director.

The sheriff shall forthwith make a return to the Hearing Officer of his proceedings under this Section and furnish the parties with copies thereof.

Sec. 13. Balance Due Collected Upon an Execution; Excess Delivered to Judgment Obligor. — If after realizing upon all the property attached, applying the proceeds to the satisfaction of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached



property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment.

- Sec. 14. Disposition of Money Deposited. — Where the party against whom attachment had been issued has deposited money, it shall be applied under the direction of the Director of the satisfaction of any judgment rendered in favor of attaching party, and after satisfying the judgment balance shall be refunded to the depositor or his assignee. If the judgment is in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or his assignee.
- Sec. 15. Disposition of Attached Property Where Judgment is of Party Against Whom Attachment was Issued. — If judgment be rendered against the attaching party, all the proceeds of sales and money collected or received by the sheriff, under the order of attachment and all properly attached remaining in such officer's hands, shall be delivered to the party against whom the attachment was issued, and the order of attachment discharged.
- Sec. 16. Claim for Damages on Account of Improper, Irregular or Excessive Attachment.
- An application for damages on account of improper, irregular or excessive attachment must be filed with the Director before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment to the main case.
- If, on appeal, the judgment of the Director-General be favorable to the party against whom the attachment was issued, the latter may claim damages sustained during the pendency of the appeal by filing an application in the Office of the Director-General, with notice to the party in whose favor the attachment was issued, before the judgment of the Director-General becomes executory. The Director-General may remand the application to the Bureau for hearing and decision. Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

## **Rule 5**

### **PRELIMINARY INJUNCTION**

- Section 1. Preliminary injunction defined; who may grant. —Preliminary injunction is an order granted at any stage of an action or

proceeding prior to the judgment or final order, requiring a party to an administrative case or any third person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as preliminary mandatory injunction.

A preliminary injunction may be granted by the Hearing Office who is hearing the case but no such power can be exercised as against a concurrent court of other Office which has already acquired jurisdiction over the subject matter.

Sec. 2. Grounds for Issuance of Preliminary Injunction. —A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a period of perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party or any person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject to the action or proceeding and tending to render the judgment ineffectual.

Sec. 3. Verified Application and Bond for Preliminary Injunction or Temporary Restraining Order. — A preliminary or temporary restraining order may be granted only when:

- (a) The application in the action or proceeding is verified and shows facts entitling the applicant to the relief demanded;
- (b) Unless exempted, the applicant files with the Bureau a bond executed to the party or person enjoined in an amount to be fixed by the Hearing Officer, to the effect that the applicant will pay to such party or person all damages which the latter may sustain by reason of the injunction or temporary restraining order if the Hearing Officer should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued;
- (c) When an applicant for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or accompanied by service of summons, together with a copy of complaint or initiatory pleading and the applicant's affidavit and bond upon the adverse party in the Philippines. However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof,

the requirement of prior or contemporaneous service of summons shall not apply.

- (d) The application for a temporary restraining order shall thereafter be acted upon only after all the parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the Hearing Officer to whom the case was raffled and to whom the records shall be transmitted immediately.

If it shall appear from the facts shown the great or irreparable injury would result to the applicant, the Hearing Office to whom the application for preliminary injunction was made, may issue temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within said twenty day period, the Hearing Officer must order said party or person to show cause at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

Sec. 4. Preliminary Injunction not Granted Without Notice; Exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. Should the petition be granted after compliance with the requirement of due process, the Hearing Officer shall be issue an order enjoining the party against whom it is issued from further committing acts detrimental or injurious to the application effective for a period of time not exceeding ninety (90) days as may be determined by the Hearing Officer with the concurrence of the Director without prejudice to the filing of a counterbond as provided in subsequent sections.

Sec. 5. Grounds for Objections to, or for Motion of Dissolution of, Injunction or Restraining Order. — The application for injunction or restraining order may be denied, upon showing of its insufficiency. The injunction or restraining order may also be denied, or if granted, may be dissolved, on other grounds upon affidavit of the party or person enjoined, which may be opposed by the applicant also by affidavit. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files bond in an amount fixed by the Hearing Officer conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is to great, it may be modified.

Sec. 6. When Final Injunction Granted. — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the Hearing Officer shall grant a final injunction perpetually restraining the party or person enjoined from further commission of the act or acts or confirming the preliminary mandatory injunction.

## **Rule 6** CONTEMPT

Section 1. Direct Contempt Punished Summarily. — A person guilty of misbehavior in the presence of or so near the Director or Hearing Officer as to obstruct or interrupt the proceedings before him, including disrespect toward the Director or Hearing Officer, offensive personalities toward others, or refusal to be sworn to or answer as a witness, or to subscribe to an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by the Director or Hearing Officer and punished by fine not exceeding Two Thousand Pesos (P2,000.00) or imprisonment not exceeding ten (10) days, or both.

Sec. 2. Indirect Contempt to be Punished After Charge and Hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt by the Director:

- (a) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of the Hearing Officer, or injunction granted by him;
- (b) Any abuse or unlawful interference with the process or proceedings of the Bureau, not constituting direct contempt under Section 1 of this Rule;
- (c) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice or the performance of the Bureau's proper function;
- (d) Failure to obey a subpoena duly served;
- (e) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him; or
- (f) The submission of a false certification, without prejudice to the filing of the appropriate civil and/or criminal action, or non-compliance with any undertaking regarding commencement of actions.

But nothing in this section shall be so construed as to prevent the Director from issuing process to bring the respondent party into or before the Bureau, or from holding him in custody pending such proceedings.

Sec. 3. Contempt Proceedings. — Proceedings for indirect contempt may be initiated *motu proprio* by the Bureau by an order or any other formal

charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions. If the contempt charges arose out of or are related to principal action pending in the Bureau, the petition shall be docketed, heard, and decided separately, unless the Bureau in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

- Sec. 4. Hearing; Release on Bail. — If the hearing is not ordered to be had forthwith, the respondent may be released from custody upon filing a bond, in an amount fixed by the Director or Hearing Officer, for his appearance to answer the charge. On the day set for the hearing, the Director or Hearing Officer shall proceed to investigate the charge and consider such answer or testimony as the respondent may make or offer.
- Sec. 5. Punishment for Indirect Contempt. — If the respondent is thereupon adjudged guilty of indirect contempt committed, he may be punished by a fine not exceeding Thirty Thousand Pesos (P30,000.00) or imprisonment of not more than six (6) months, or both, and if the contempt consists in the violation of an injunction, he may also be ordered to make a complete restitution to the party injured by such violation.
- Sec. 6. Imprisonment Until Order Obeyed. — When the contempt consists in the omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the Hearing Officer until he performs it.
- Sec. 7. Proceedings When Party Released on Bail Fails to Answer. — When a respondent released on bail fails to appear on the date fixed for the hearing, the Hearing Officer may issue another order of arrest may order the bond for his appearance to be prosecuted, or both; and, if the bond be prosecuted, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party, by reason of misconduct for which the contempt was prosecuted, and the costs of the proceedings, and such recovery shall be for the benefit of the party injured. But if there is no aggrieved party, the bond shall be liable and disposed of as in criminal cases.
- Sec. 8. Hearing Officer May Release Respondent. — The Director or the Hearing Officer may discharge from imprisonment a person imprisoned for contempt when it appears that public interest will not suffer thereby.
- Sec. 9. Review of Judgment or Order by the Director. — The judgment or order of the Hearing Officer made in a case of direct contempt punished after

written charge and hearing may be reviewed by the Director, but execution of the judgment or order shall not be suspended until a bond is filed by the person in contempt, in an amount fixed by the Hearing Officer conditioned until that if the appeal be decided against him he will abide by and perform the judgment or order.

### **Rule 7**

#### **CALENDAR AND ADJOURNMENTS**

Section 1. Trial Calendar. — The staff clerk shall have a trial calendar for the cases that have passed pre-trial stage. Cases where there is a prayer for preliminary mandatory injunction and/or attachment shall be given preference.

Sec. 2. Notice of Trial. — Upon entry of a case in the trial calendar, the staff clerk shall cause a notice of the date of its trial to be served upon the parties within three (3) days by the process server.

Sec. 3. Continuous Trial. — All hearings shall be continuous until the case is terminated subject to exceptions provided under Section 2 of Rule 9.

Sec. 4. Raffle of Cases. — Actions which are to be conducted before this Bureau shall be raffled to the different Hearing Officers who shall thereafter handle the proceeding from its commencement until its final resolution. However, should the Hearing Officer to whom the case was raffled be unavailable during any scheduled hearing, upon request of either counsel, the Director shall designate an appropriate officer to preside or conduct the proceedings.

### **Rule 8**

#### **DEPOSITIONS AND DISCOVERIES**

Section 1. Deposition pending action. — By leave of the Hearing Officer after the Answer has been filed, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon written interrogatories. The attendance of witness through a subpoena may be compelled under Section 2(d) of Rule VI.

Sec. 2. Effect of Taking Deposition. — A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

Sec. 3. Stipulation Regarding Taking of Deposition. — If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at anytime or place, in accordance with the Rules of Court, and when so taken may be used like other depositions.

Sec. 4. Period Within Which to Submit Answers to Written Interrogatories. — Should a party request to take the deposition of a non-resident in a foreign land, the answer to such written interrogatories must be submitted to the Hearing Officer handling the case within six (6) months from the date of issuance of the Letters Commission, without extension. Failure to submit the same within the period shall result in the striking off of said deposition and the affidavits of such deponent.

## **Rule 9** **HEARING**

Section 1. Trial of Cases. — The Hearing Officer shall, as far as practicable, set the for successive and continuous daily hearing for the reception not only of the evidence in chief but also on any provisional remedy prayed for in the complaint or petition: Provided, however, that the hearing of the case on the merits or the reception of evidence of the parties shall be terminated within ninety (90) days, thirty (30) days to be allotted to complainant's or petitioner's evidence, thirty (30) days for respondent, and thirty (30) days for any rebuttal and sur-rebuttal evidence. In the case of provisional remedies, the hearings or reception of evidence thereof shall be terminated within thirty (30) days.

Sec. 2. Postponement of Hearings. — Postponement of hearings shall be allowed only on extremely meritorious grounds provided, that the reception of evidence of the parties shall not exceed the periods provided under the preceding section.

Sec. 3. Order of Trial. — Unless the Hearing Officer, for special reasons, otherwise directs, the order of trial shall be as follows:

- (a) The complainant or petitioner must produce evidence in support of his allegations in the complaint or petition. The affiant/witnesses whose affidavits submitted must be subject to a cross examination by the opposing counsel on the basis of their affidavits.
- (b) The respondent shall then offer evidence in support of his defense, counterclaim, cross-claim, and third-party claim subject to cross-examination by complainant or petitioner or his counsel.
- (c) The third party-respondent, if any, shall introduce evidence of his defense, counterclaim, cross-claim and third party claim.
- (d) The fourth party, and so forth, if any, shall introduce evidence of the material facts pleaded by him.
- (e) The parties against whom any counterclaim or cross-claim has been pleaded shall introduce evidence in support of their defense, in the order to be prescribed by the Hearing Officer.

- (f) The parties may then respectively offer rebutting evidence only, unless the Hearing Officer, for good reasons, in the furtherance of justice, permits them to offer additional evidence pertinent to the original issue.
- (g) When the presentation of evidence is concluded, the parties may submit their respective memoranda within ten (10) days from date of the last hearing. Unless otherwise provided for by special laws, the appropriate final pleading required of the parties to be submitted shall include a draft of the decision/resolution they seek, stating clearly and distinctly the facts and the law upon which it is based. The Hearing Officer may adopt, in whole or in part, either of the parties' draft decisions/resolutions, or reject both. This requirement shall likewise be applied to orders other than final judgment.

Sec. 4. Agreed Statements of Facts.

- (a) The complainant and the respondent may agree in writing upon the facts involved in the action, and ask judgment upon the facts agreed upon, without the introduction of evidence. The Hearing Officer shall immediately prepare the decision and submit it to the Division Chief of the Administrative Complaints Division who shall recommend the same to the Director for his approval, if the agreed statement of facts is sufficient to support a decision.
- (b) If the parties can agree only on some of the facts in issue, a hearing shall be held as to the others.

Sec. 5. Period for Resolving Cases. — Unless a different period is fixed by special laws, all contested cases or any incident thereof shall be decided or resolved within thirty (30) calendar days from submission for decision or resolution by the Bureau.

Sec. 6. Consolidation. — When actions involving a common question of law or fact are pending before the Bureau, the Hearing Officer may order a joint hearing or trial on any or all the matters in issue in the actions. It may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

## **Rule 10** EVIDENCE

Section 1. Evidence Required. — Substantial evidence shall be sufficient to support decision or order. A fact may be deemed established if it is supported by substantial evidence. It means such relevant evidence which a reasonable mind might accept as adequate to support or justify a conclusion.



- Sec. 2. Documentary Evidence. — Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the custody of a public officer, a certified copy thereof may be accepted.
- Sec. 3. Director or Hearing Officer not Bound by Technical Rules of Evidence. — The Director or Hearing Officer shall receive relevant and material evidence, rule on offer of evidence and exclude all irrelevant matters, and shall act according to justice and fairness. The Bureau, in the exercise of its power to hear cases within its jurisdiction shall not be strictly bound by the technical rules of evidence. The Bureau shall, however, take judicial cognizance of the official acts of the legislative, executive and the judicial departments of the Philippines, the laws of nature, scientific facts as published in treatises, periodicals, or pamphlets and other facts which are of public knowledge or general knowledge as would enable the Director or Hearing Officer to rule upon the technical issues in the case.
- Sec. 4. Burden of Proof in Process Patents. — If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the Director shall adopt measures to protect, as far as practicable, his manufacturing and business secrets.
- Sec. 5. Power to Stop Further Evidence. — The Hearing Officer may stop the introduction of further testimony upon any particular point when the evidence is already so full that more witness to the same point cannot be reasonably expected to be additionally persuasive. The Hearing Officer, however, should exercise this power with caution so as not to cause manifest injustice to the parties.
- Sec. 6. Equitable Principles to Govern Proceedings. — In all cases involving intellectual property rights, the equitable principles of laches, estoppel, and acquiescence where applicable, may be considered and applied.

## **Rule 11**

### **DECISIONS AND ORDERS**

#### Section 1. Rendition of Decision.

- (a) The case is deemed submitted for resolution upon termination of the period for reception of evidence provided in Section 1 of Rule 9 and the

evidence formally offered. Whether or not the parties submit a final pleading such as memorandum, the case shall be decided by the Bureau within thirty (30) calendar days from submission as provided herein.

All decisions determining the merits of cases shall be in writing, stating clearly and distinctly the facts and law on which they are based and signed by the Director.

- (b) Decisions and final orders shall be saved by mail, personal service or publication as the case may require.

## **Rule 12**

### **ADMINISTRATIVE PENALTIES AND SANCTIONS**

Section 1. Administrative Penalties Imposable. — After formal investigation, the Director, may impose one (1) or more of the following administrative penalties:

- (a) Issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the Order;
- (b) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

- (i) An assurance to comply with the provisions of the Intellectual Property Law violated;
- (ii) An assurance to refrain from engaging in unlawful and unfair acts and subject of the formal investigations;
- (iii) An assurance to recall, replace, repair or refund the money value of defective goods distributed in commerce;
- (iv) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau.

The Director may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking.

- (c) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director, such as by sale, donation to distressed local government units or charitable or relief institutions, exportation recycling into other goods, or any combination thereof, under such guidelines as he may provide;
- (d) The forfeiture of paraphernalia and all real and personal properties which been used in the commission of the offense.
- (e) The imposition of administrative fines in such amount as deemed reasonable by the Director, which shall in no case be less than Five Thousand Pesos (P5,000.00) nor more than One Hundred Fifty

Thousand Pesos (P150,000.00). In addition, an additional fine of not more than One Thousand Pesos (P1,000.00) shall be imposed for each day of continuing violation;

- (f) The cancellation of any permit, license, authority, or registration which may be granted by the Office, or the suspension of the validity thereof for such period of time as the Director may deem reasonable which shall not exceed one (1) year.
- (g) The withholding of any permit, license, authority or registration which is secured by the respondent from the Office;
- (h) The assessment and award of damages;
- (i) Censure
- (j) Other analogous penalties or sanctions such as those provided under Section 21 of Republic Act No. 8293.

### **Rule 13**

#### **JUDGMENTS, FINAL ORDERS AND ENTRY THEREOF**

Section 1. Rendition of Judgment and Final Orders. — A judgment or final order determining the merits of the case shall be in writing, stating clearly and distinctly the facts and the law on which it is based, signed by the Director, and filed with the appropriate Register of the Office.

Sec. 2. Entry of judgments and Final Orders. — If no appeal is filed within the time provided in these Regulations, the Director shall forthwith cause the entry of the judgment or final order in the appropriate Register of the Office. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the Director, with a certificate that such judgment or final order has become final and executory.

Sec. 3. Order and Writ of Execution. — As soon as a decision or order has become final and executory, the Director shall, motu proprio or on motion of the interested party issue an order of execution deputizing and requiring the appropriate officer or of the office, or such other duly authorized government agent, officer, or personnel, to execute and enforce said decision or order.

Sec. 4. Execution Pending Appeal. — On motion of the prevailing party with notice to the adverse party or motu proprio and upon filing of an approved bond, the Director may, in his discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in the order. The execution pending appeal may be stayed by the filing of an approved counterbond in an amount to be fixed by the Director.

**Rule 14**  
**APPEAL**

Section 1. Finality of Decision and Order.

- (a) The decision and order of the Director shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party affected unless within the said period an appeal to the Director General has been perfected.
- (b) Decisions of the Director-General shall be final and executory unless an appeal to the Court of Appeals or Supreme Court is perfected in accordance with the Rules of Court applicable to appeals from decision of Regional Trial Courts.
- (c) Interlocutory orders shall not be appealable.
- (d) No motion for reconsideration of the decision of the Director General shall be allowed.

Sec. 2. Appeal, How Perfected. — Appeal may be perfected by filing a Notice of Appeal with the Director General and the Director and a copy thereof served upon the adverse party within fifteen (15) days from receipt of the order or Decision and upon payment of the corresponding docket fee.

**FINAL PROVISIONS**

Section 1. Separability. — If any provision in these Regulations or application of such provision to any circumstances is held invalid, the remainder of these Regulations shall not be affected thereby.

Sec. 2. Furnishing of Certified Copies. — Mr. Eduardo Joson, Records Officer II, is hereby directed to immediately file three (3) certified copies of these Regulations with the University of the Philippines Law Center, and one (1) certified copy each to the Office of the President, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines, and the National Library.

Sec. 3. Effectivity. — These rules and regulations shall take effect fifteen (15) days Done this 28th day of March 2001.

Approved:

EMMA C. FRANCISCO

Director General

Recommended By:

ESTRELLITA BELTRAN-ABELARDO  
Director, Bureau of Legal Affairs

# INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES

[Republic Act No. 8293]

An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, providing for its powers and functions, and for other purpose

---

## PART I THE INTELLECTUAL PROPERTY OFFICE

Section 1. Title. - This Act shall be known as the "Intellectual Property Code of the Philippines."

Sec. 2. Declaration of State Policy. - The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

Sec. 3. International Conventions and Reciprocity. - Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)

#### Sec. 4. Definitions. -

- 4.1. The term "intellectual property rights" consists of:
  - [a] Copyright and Related Rights;
  - [b] Trademarks and Service Marks;
  - [c] Geographic Indications;
  - [d] Industrial Designs;
  - [e] Patents;
  - [f] Layout-Designs (Topographies) of Integrated Circuits; and
  - [g] Protection of Undisclosed Information (n) [TRIPS].
- 4.2. The term "technology transfer arrangements" refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market.
- 4.3. The term "Office" refers to the Intellectual Property Office created by this Act.
- 4.4 The term "IPO Gazette" refers to the gazette published by the Office under this Act. (n)

#### Sec. 5. Functions of the Intellectual Property Office (IPO). -

- 5.1. To administer and implement the State policies declared in this Act, there is hereby created the Intellectual Property Office (IPO) which shall have the following functions:
  - [a] Examine applications for grant of letters patent for inventions and register utility models and industrial designs;
  - [b] Examine applications for the registration of marks, geographic indication, integrated circuits;
  - [c] Register technology transfer arrangements and settle disputes involving technology transfer payments covered by the provisions of Part II, Chapter IX on Voluntary Licensing and develop and implement strategies to promote and facilitate technology transfer;
  - [d] Promote the use of patent information as a tool for technology development;
  - [e] Publish regularly in its own publication the patents, marks, utility models and industrial designs, issued and approved, and the technology transfer arrangements registered;
  - [f] Administratively adjudicate contested proceedings affecting intellectual property rights; and

[g] Coordinate with other government agencies and the private sector efforts to formulate and implement plans and policies to strengthen the protection of intellectual property rights in the country.

5.2. The Office shall have custody of all records, books, drawings, specifications, documents, and other papers and things relating to intellectual property rights applications filed with the Office. (n)

Sec. 6. The Organizational Structure of the IPO. - 6.1. The Office shall be headed by a Director General who shall be assisted by two (2) Deputies Director General.

6.1. The Office shall be divided into six (6) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

[a] The Bureau of Patents;

[b] The Bureau of Trademarks;

[c] The Bureau of Legal Affairs;

[d] The Documentation, Information and Technology Transfer Bureau;

[e] The Management Information System and EDP Bureau; and

[f] The Administrative, Financial and Personnel Services Bureau.

6.2. The Director General, Deputies Director General, Directors and Assistant Directors shall be appointed by the President, and the other officers and employees of the Office by the Secretary of Trade and Industry, conformably with and under the Civil Service Law. (n)

Sec. 7. The Director General and Deputies Director General. -

7.1. Functions. - The Director General shall exercise the following powers and functions:

[a] Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: Provided, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry;



[b] Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, and the Director of Trademarks shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and

[c] Exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author's right to public performance or other communication of his work. The decisions of the Director General in these cases shall be appealable to the Secretary of Trade and Industry.

7.2. Qualifications. - The Director General and the Deputies Director General must be natural born citizens of the Philippines, at least thirty-five (35) years of age on the day of their appointment, holders of a college degree, and of proven competence, integrity, probity and independence: Provided, That the Director General and at least one (1) Deputy Director General shall be members of the Philippine Bar who have engaged in the practice of law for at least ten (10) years: Provided further, That in the selection of the Director General and the Deputies Director General, consideration shall be given to such qualifications as would result, as far as practicable, in the balanced representation in the Directorate General of the various fields of intellectual property.

7.3. Term of Office. - The Director General and the Deputies Director General shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment only once: Provided, That the first Director General shall have a first term of seven (7) years. Appointment to any vacancy shall be only for the unexpired term of the predecessor.

7.4. The Office of the Director General. - The Office of the Director General shall consist of the Director General and the Deputies Director General, their immediate staff and such Offices and Services that the Director General will set up to support directly the Office of the Director General. (n)

Sec. 8. The Bureau of Patents. - The Bureau of Patents shall have the following functions:

8.1 Search and examination of patent applications and the grant of patents;

8.2 Registration of utility models, industrial designs, and integrated circuits; and

8.3 Conduct studies and researches in the field of patents in order to assist the Director General in formulating policies on the administration and examination of patents. (n)

Sec. 9. The Bureau of Trademarks. - The Bureau of Trademarks shall have the following functions:

9.1 Search and examination of the applications for the registration of marks, geographic indications and other marks of ownership and the issuance of the certificates of registration; and

9.2 Conduct studies and researches in the field of trademarks in order to assist the Director General in formulating policies on the administration and examination of trademarks. (n)

Sec. 10. The Bureau of Legal Affairs. - The Bureau of Legal Affairs shall have the following functions:

10.1. Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;

10.2. (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights: Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000): Provided, further, That availment of the provisional remedies may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings. (n)

(b) After formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

(i) The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

(ii) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(1) An assurance to comply with the provisions of the intellectual property law violated;

(2) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;

- (3) An assurance to recall, replace, repair, or refund the money value of defective goods distributed in commerce; and
- (4) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking;

- (i) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;
  - (ii) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;
  - (iii) The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five thousand pesos (P5,000) nor more than One hundred fifty thousand pesos (P150,000). In addition, an additional fine of not more than One thousand pesos (P1,000) shall be imposed for each day of continuing violation;
  - (iv) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one (1) year;
  - (v) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;
  - (vi) The assessment of damages;
  - (vii) Censure; and
  - (viii) Other analogous penalties or sanctions. (Secs. 6, 7, 8, and 9, Executive Order No. 913 [1983]a)
- 10.3. The Director General may by Regulations establish the procedure to govern the implementation of this Section (n)

Sec. 11. The Documentation, Information and Technology Transfer Bureau. - The Documentation, Information and Technology Transfer Bureau shall have the following functions:

11.1. Support the search and examination activities of the Office through the following activities:

(a) Maintain and upkeep classification systems whether they be national or international such as the International Patent Classification (IPC) system;

(b) Provide advisory services for the determination of search patterns;

(c) Maintain search files and search rooms and reference libraries; and

(d) Adapt and package industrial property information.

11.2. Establish networks or intermediaries or regional representatives;

11.3. Educate the public and build awareness on intellectual property through the conduct of seminars and lectures, and other similar activities;

11.4. Establish working relations with research and development institutions as well as with local and international intellectual property professional groups and the like;

11.5. Perform state-of-the-art searches;

11.6. Promote the use of patent information as an effective tool to facilitate the development of technology in the country;

11.7. Provide technical, advisory, and other services relating to the licensing and promotion of technology, and carry out an efficient and effective program for technology transfer; and

11.8. Register technology transfer arrangements, and settle disputes involving technology transfer payments. (n)

Sec.12. The Management Information Services and EDP Bureau. - The Management Information Services and EDP Bureau shall:

12.1. Conduct automation planning, research and development, testing of systems, contracts with firms, contracting, purchase and maintenance of equipment, design and maintenance of systems, user consultation, and the like; and

12.2. Provide management information support and service to the Office. (n)

Sec.13. The Administrative, Financial and Human Resource Development Service Bureau. -

- 13.1. The Administrative Service shall:
- (a) Provide services relative to procurement and allocation of supplies and equipment, transportation, messengerial work, cashiering, payment of salaries and other Office's obligations, office maintenance, proper safety and security, and other utility services; and comply with government regulatory requirements in the areas of performance appraisal, compensation and benefits, employment records and reports;
  - (b) Receive all applications filed with the Office and collect fees therefor; and
  - (c) Publish patent applications and grants, trademark applications, and registration of marks, industrial designs, utility models, geographic indication, and lay-out designs of integrated circuits registrations.
- 13.2. The Patent and Trademark Administration Services shall perform the following functions among others:
- (a) Maintain registers of assignments, mergings, licenses, and bibliographic on patents and trademarks;
  - (b) Collect maintenance fees, issue certified copies of documents in its custody and perform similar other activities; and
  - (c) Hold in custody all the applications filed with the office, and all patent grants, certificate of registrations issued by the office, and the like.
- 13.3. The Financial Service shall formulate and manage a financial program to ensure availability and proper utilization of funds; provide for an effective monitoring system of the financial operations of the Office; and
- 13.4. The Human Resource Development Service shall design and implement human resource development plans and programs for the personnel of the Office; provide for present and future manpower needs of the organization; maintain high morale and favorable employee attitudes towards the organization through the continuing design and implementation of employee development programs. (n)

Sec. 14. Use of Intellectual Property Rights Fees by the IPO. -

- 14.1. For a more effective and expeditious implementation of this Act, the Director General shall be authorized to retain, without need of a separate approval from any government agency, and subject only to the existing accounting and auditing rules and regulations, all the fees, fines, royalties and other charges, collected by the Office under this Act and the other laws that the Office will be mandated to administer, for use in its operations, like upgrading of its facilities, equipment outlay, human

resource development, and the acquisition of the appropriate office space, among others, to improve the delivery of its services to the public. This amount, which shall be in addition to the Office's annual budget, shall be deposited and maintained in a separate account or fund, which may be used or disbursed directly by the Director General.

14.2. After five (5) years from the coming into force of this Act, the Director General shall, subject to the approval of the Secretary of Trade and Industry, determine if the fees and charges mentioned in Subsection 14.1 hereof that the Office shall collect are sufficient to meet its budgetary requirements. If so, it shall retain all the fees and charges it shall collect under the same conditions indicated in said Subsection 14.1 but shall forthwith, cease to receive any funds from the annual budget of the National Government; if not, the provisions of said Subsection 14.1 shall continue to apply until such time when the Director General, subject to the approval of the Secretary of Trade and Industry, certifies that the above-stated fees and charges the Office shall collect are enough to fund its operations. (n)

Sec. 15. Special Technical and Scientific Assistance. - The Director General is empowered to obtain the assistance of technical, scientific or other qualified officers and employees of other departments, bureaus, offices, agencies and instrumentalities of the Government, including corporations owned, controlled or operated by the Government, when deemed necessary in the consideration of any matter submitted to the Office relative to the enforcement of the provisions of this Act. (Sec. 3, R. A. No. 165a)

Sec. 16. Seal of Office. - The Office shall have a seal, the form and design of which shall be approved by the Director General. (Sec. 4, R. A. No. 165a)

Sec. 17. Publication of Laws and Regulations. - The Director General shall cause to be printed and make available for distribution, pamphlet copies of this Act, other pertinent laws, executive orders and information circulars relating to matters within the jurisdiction of the Office. (Sec. 5, R. A. No. 165a)

Sec. 18. The IPO Gazette. - All matters required to be published under this Act shall be published in the Office's own publication to be known as the IPO Gazette. (n)

Sec. 19. Disqualification of Officers and Employees of the Office. - All officers and employees of the Office shall not apply or act as an attorney or patent agent of an application for a grant of patent, for the registration of a utility model, industrial design or mark nor acquire, except by hereditary succession, any patent or utility model, design registration, or mark or

any right, title or interest therein during their employment and for one (1) year thereafter. (Sec. 77, R. A. No. 165a)

# INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES

[Republic Act No. 8293]

An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, providing for its powers and functions, and for other purpose

---

## PART II THE LAW ON PATENTS

### Chapter I GENERAL PROVISIONS

Sec. 20. Definition of Terms Used in Part II, The Law on Patents. -- As used in Part II, the following terms shall have the following meanings:

- 20.1. Bureau means the Bureau of Patents;
- 20.2. Director means the Director of Patents;
- 20.3. Regulations means the Rules of Practice in Patent Cases formulated by the Director of Patents and promulgated by the Director General;
- 20.4. Examiner means the patent examiner;
- 20.5. Patent application or application means an application for a patent for an invention except in Chapters XII and XIII, where application means an application for a utility model and an industrial design, respectively; and
- 20.6. Priority date means the date of filing of the foreign application for the same invention referred to in Section 31 of this Act. (n)

### Chapter II PATENTABILITY

Sec. 21. Patentable Inventions. - Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable. It may be, or may relate to, a



product, or process, or an improvement of any of the foregoing. (Sec. 7, R. A. No. 165a)

Sec. 22. Non-Patentable Inventions. - The following shall be excluded from patent protection:

- 22.1. Discoveries, scientific theories and mathematical methods;
- 22.2. Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;
- 22.3. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body. This provision shall not apply to products and composition for use in any of these methods;
- 22.4. Plant varieties or animal breeds or essentially biological process for the production of plants or animals. This provision shall not apply to micro-organisms and non-biological and microbiological processes.

Provisions under this subsection shall not preclude Congress to consider the enactment of a law providing sui generis protection of plant varieties and animal breeds and a system of community intellectual rights protection:

- 22.5. Aesthetic creations; and
- 22.6. Anything which is contrary to public order or morality. (Sec. 8, R. A. No. 165a)

Sec. 23. Novelty. - An invention shall not be considered new if it forms part of a prior art. (Sec. 9, R. A. No. 165a)

Sec. 24. Prior Art. - Prior art shall consist of:

- 24.1. Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention; and
- 24.2. The whole contents of an application for a patent, utility model, or industrial design registration, published in accordance with this Act, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application: Provided, That the application which has validly claimed the filing date of an earlier application under Section 31 of this Act, shall be prior art with effect as of the filing date of such earlier application: Provided further, That the

applicant or the inventor identified in both applications are not one and the same. (Sec. 9, R. A. No. 165a)

Sec. 25. Non-Prejudicial Disclosure. -

25.1. The disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by:

(a) The inventor;

(b) A patent office and the information was contained (a) in another application filed by the inventor and should not have been disclosed by the office, or (b) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor; or (c) A third party which obtained the information directly or indirectly from the inventor.

25.2. For the purposes of Subsection 25.1, "inventor" also means any person who, at the filing date of application, had the right to the patent. (n)

Sec. 26. Inventive Step. - An invention involves an inventive step if, having regard to prior art, it is not obvious to a person skilled in the art at the time of the filing date or priority date of the application claiming the invention. (n)

Sec. 27. Industrial Applicability. - An invention that can be produced and used in any industry shall be industrially applicable. (n)

### **Chapter III**

#### **RIGHT TO A PATENT**

Sec. 28. Right to a Patent. - The right to a patent belongs to the inventor, his heirs, or assigns. When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly. (Sec. 10, R. A. No. 165a)

Sec. 29. First to File Rule. - If two (2) or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who filed an application for such invention, or where two or more applications are filed for the same invention, to the applicant who has the earliest filing date or, the earliest priority date. (3rd Sentence, Sec. 10, R. A. No. 165a.)

Sec. 30. Inventions Created Pursuant to a Commission. -

- 30.1. The person who commissions the work shall own the patent, unless otherwise provided in the contract.
- 30.2. In case the employee made the invention in the course of his employment contract, the patent shall belong to:
- (a) The employee, if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
  - (b) The employer, if the invention is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary. (n)
- Sec. 31. Right of Priority. - An application for patent filed by any person who has previously applied for the same invention in another country which by treaty, convention, or law affords similar privileges to Filipino citizens, shall be considered as filed as of the date of filing the foreign application: Provided, That: (a) the local application expressly claims priority; (b) it is filed within twelve (12) months from the date the earliest foreign application was filed; and (c) a certified copy of the foreign application together with an English translation is filed within six (6) months from the date of filing in the Philippines. (Sec. 15, R. A. No. 165a)

#### **Chapter IV** **PATENT APPLICATION**

- Sec. 32. The Application. -
- 32.1. The patent application shall be in Filipino or English and shall contain the following:
- (a) A request for the grant of a patent;
  - (b) A description of the invention;
  - (c) Drawings necessary for the understanding of the invention;
  - (d) One or more claims; and
  - (e) An abstract.
- 32.2. No patent may be granted unless the application identifies the inventor. If the applicant is not the inventor, the Office may require him to submit said authority. (Sec. 13, R. A. No. 165a)

- Sec. 33. Appointment of Agent or Representative. - An applicant who is not a resident of the Philippines must appoint and maintain a resident agent or representative in the Philippines upon whom notice or process for judicial or administrative procedure relating to the application for patent or the patent may be served. (Sec. 11, R. A. No. 165a)
- Sec. 34. The Request. - The request shall contain a petition for the grant of the patent, the name and other data of the applicant, the inventor and the agent and the title of the invention. (n)
- Sec. 35. Disclosure and Description of the Invention. -
- 35.1. Disclosure. - The application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Where the application concerns a microbiological process or the product thereof and involves the use of a micro-organism which cannot be sufficiently disclosed in the application in such a way as to enable the invention to be carried out by a person skilled in the art, and such material is not available to the public, the application shall be supplemented by a deposit of such material with an international depository institution.
- 35.2. Description. - The Regulations shall prescribe the contents of the description and the order of presentation. (Sec. 14, R. A. No. 165a)
- Sec. 36. The Claims. -
- 36.1. The application shall contain one (1) or more claims which shall define the matter for which protection is sought. Each claim shall be clear and concise, and shall be supported by the description.
- 36.2. The Regulations shall prescribe the manner of the presentation of claims. (n)
- Sec. 37. The Abstract. - The abstract shall consist of a concise summary of the disclosure of the invention as contained in the description, claims and drawings in preferably not more than one hundred fifty (150) words. It must be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention. The abstract shall merely serve for technical information. (n)
- Sec. 38. Unity of Invention. -
- 38.1. The application shall relate to one invention only or to a group of inventions forming a single general inventive concept.

- 38.2. If several independent inventions which do not form a single general inventive concept are claimed in one application, the Director may require that the application be restricted to a single invention. A later application filed for an invention divided out shall be considered as having been filed on the same day as the first application: Provided, That the later application is filed within four (4) months after the requirement to divide becomes final, or within such additional time, not exceeding four (4) months, as may be granted: Provided further, That each divisional application shall not go beyond the disclosure in the initial application.
- 38.3. The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention shall not be a ground to cancel the patent. (Sec. 17, R. A. No. 165a)
- Sec. 39. Information Concerning Corresponding Foreign Application for Patents. - The applicant shall, at the request of the Director, furnish him with the date and number of any application for a patent filed by him abroad, hereafter referred to as the "foreign application," relating to the same or essentially the same invention as that claimed in the application filed with the Office and other documents relating to the foreign application. (n)

## **Chapter V**

### **PROCEDURE FOR GRANT OF PATENT**

- Sec. 40. Filing Date Requirements. -
- 40.1. The filing date of a patent application shall be the date of receipt by the Office of at least the following elements:
- (a) An express or implicit indication that a Philippine patent is sought;
  - (b) Information identifying the applicant; and
  - (c) Description of the invention and one (1) or more claims in Filipino or English.
- 40.2. If any of these elements is not submitted within the period set by the Regulations, the application shall be considered withdrawn. (n)
- Sec. 41. According a Filing Date. - The Office shall examine whether the patent application satisfies the requirements for the grant of date of filing as provided in Section 40 hereof. If the date of filing cannot be accorded, the applicant shall be given an opportunity to correct the deficiencies in

accordance with the implementing Regulations. If the application does not contain all the elements indicated in Section 40, the filing date should be that date when all the elements are received. If the deficiencies are not remedied within the prescribed time limit, the application shall be considered withdrawn. (n)

Sec. 42. Formality Examination. -

42.1. After the patent application has been accorded a filing date and the required fees have been paid on time in accordance with the Regulations, the applicant shall comply with the formal requirements specified by Section 32 and the Regulations within the prescribed period, otherwise the application shall be considered withdrawn.

42.2. The Regulations shall determine the procedure for the re-examination and revival of an application as well as the appeal to the Director of Patents from any final action by the examiner. (Sec. 16, R. A. No. 165a)

Sec. 43. Classification and Search. - An application that has complied with the formal requirement shall be classified and a search conducted to determine the prior art. (n)

Sec. 44. Publication of Patent Application. -

44.1. The patent application shall be published in the IPO Gazette together with a search document established by or on behalf of the Office citing any documents that reflect prior art, after the expiration of eighteen (18) months from the filing date or priority date.

44.2. After publication of a patent application, any interested party may inspect the application documents filed with the Office.

44.3. The Director General, subject to the approval of the Secretary of Trade and Industry, may prohibit or restrict the publication of an application, if in his opinion, to do so would be prejudicial to the national security and interests of the Republic of the Philippines. (n)

Sec. 45. Confidentiality Before Publication. - A patent application, which has not yet been published, and all related documents, shall not be made available for inspection without the consent of the applicant. (n)

Sec.46. Rights Conferred by a Patent Application After Publication. - The applicant shall have all the rights of a patentee under Section 76 against any person who, without his authorization, exercised any of the rights conferred under Section 71 of this Act in relation to the invention claimed in the published patent application, as if a patent had been granted for that invention: Provided, That the said person had:

- 46.1. Actual knowledge that the invention that he was using was the subject matter of a published application; or
- 46.2. Received written notice that the invention that he was using was the subject matter of a published application being identified in the said notice by its serial number: Provided, That the action may not be filed until after the grant of a patent on the published application and within four (4) years from the commission of the acts complained of. (n)
- Sec. 47. Observation by Third Parties. - Following the publication of the patent application, any person may present observations in writing concerning the patentability of the invention. Such observations shall be communicated to the applicant who may comment on them. The Office shall acknowledge and put such observations and comment in the file of the application to which it relates. (n)
- Sec. 48. Request for Substantive Examination. -
- 48.1. The application shall be deemed withdrawn unless within six (6) months from the date of publication under Section 41, a written request to determine whether a patent application meets the requirements of Sections 21 to 27 and Sections 32 to 39 and the fees have been paid on time.
- 48.2. Withdrawal of the request for examination shall be irrevocable and shall not authorize the refund of any fee. (n)
- SEC. 49. Amendment of Application. - An applicant may amend the patent application during examination: Provided, That such amendment shall not include new matter outside the scope of the disclosure contained in the application as filed. (n)
- Sec. 50. Grant of Patent. -
- 50.1. If the application meets the requirements of this Act, the Office shall grant the patent: Provided, That all the fees are paid on time.
- 50.2. If the required fees for grant and printing are not paid in due time, the application shall be deemed to be withdrawn.
- 50.3. A patent shall take effect on the date of the publication of the grant of the patent in the IPO Gazette. (Sec. 18, R. A. No. 165a)
- Sec. 51. Refusal of the Application. -

51.1. The final order of refusal of the examiner to grant the patent shall be appealable to the Director in accordance with this Act.

51.2. The Regulations shall provide for the procedure by which an appeal from the order of refusal from the Director shall be undertaken. (n)

Sec. 52. Publication Upon Grant of Patent. -

52.1. The grant of the patent together with other related information shall be published in the IPO Gazette within the time prescribed by the Regulations.

52.2. Any interested party may inspect the complete description, claims, and drawings of the patent on file with the Office. (Sec. 18, R. A. No. 165a)

Sec. 53. Contents of Patent. - The patent shall be issued in the name of the Republic of the Philippines under the seal of the Office and shall be signed by the Director, and registered together with the description, claims, and drawings, if any, in books and records of the Office. (Secs. 19 and 20, R. A. No. 165a)

Sec. 54. Term of Patent. - The term of a patent shall be twenty (20) years from the filing date of the application. (Sec. 21, R. A. No. 165a)

Sec. 55. Annual Fees. -

55.1. To maintain the patent application or patent, an annual fee shall be paid upon the expiration of four (4) years from the date the application was published pursuant to Section 44 hereof, and on each subsequent anniversary of such date. Payment may be made within three (3) months before the due date. The obligation to pay the annual fees shall terminate should the application be withdrawn, refused, or cancelled.

55.2. If the annual fee is not paid, the patent application shall be deemed withdrawn or the patent considered as lapsed from the day following the expiration of the period within which the annual fees were due. A notice that the application is deemed withdrawn or the lapse of a patent for non-payment of any annual fee shall be published in the IPO Gazette and the lapse shall be recorded in the Register of the Office.

55.3. A grace period of six (6) months shall be granted for the payment of the annual fee, upon payment of the prescribed surcharge for delayed payment. (Sec. 22, R. A. No. 165a)

Sec. 56. Surrender of Patent. -



- 56.1. The owner of the patent, with the consent of all persons having grants or licenses or other right, title or interest in and to the patent and the invention covered thereby, which have been recorded in the Office, may surrender his patent or any claim or claims forming part thereof to the Office for cancellation.
- 56.2 A person may give notice to the Office of his opposition to the surrender of a patent under this section, and if he does so, the Bureau shall notify the proprietor of the patent and determine the question.
- 56.3. If the Office is satisfied that the patent may properly be surrendered, he may accept the offer and, as from the day when notice of his acceptance is published in the IPO Gazette, the patent shall cease to have effect, but no action for infringement shall lie and no right compensation shall accrue for any use of the patented invention before that day for the services of the government. (Sec. 24, R. A. No. 165a)
- Sec. 57. Correction of Mistakes of the Office. - The Director shall have the power to correct, without fee, any mistake in a patent incurred through the fault of the Office when clearly disclosed in the records thereof, to make the patent conform to the records. (Sec. 25, R. A. No. 165)
- Sec. 58. Correction of Mistake in the Application. - On request of any interested person and payment of the prescribed fee, the Director is authorized to correct any mistake in a patent of a formal and clerical nature, not incurred through the fault of the Office. (Sec. 26, R. A. No. 165a)
- Sec. 59. Changes in Patents. -
- 59.1. The owner of a patent shall have the right to request the Bureau to make the changes in the patent in order to:
- (a) Limit the extent of the protection conferred by it;
  - (b) Correct obvious mistakes or to correct clerical errors; and
  - (c) Correct mistakes or errors, other than those referred to in letter (b), made in good faith: Provided, That where the change would result in a broadening of the extent of protection conferred by the patent, no request may be made after the expiration of two (2) years from the grant of a patent and the change shall not affect the rights of any third party which has relied on the patent, as published.
- 59.2. No change in the patent shall be permitted under this section, where the change would result in the disclosure contained in the patent going beyond the disclosure contained in the application filed.

59.3. If, and to the extent to which the Office changes the patent according to this section, it shall publish the same. (n)

Sec. 60. Form and Publication of Amendment. - An amendment or correction of a patent shall be accomplished by a certificate of such amendment or correction, authenticated by the seal of the Office and signed by the Director, which certificate shall be attached to the patent. Notice of such amendment or correction shall be published in the IPO Gazette and copies of the patent kept or furnished by the Office shall include a copy of the certificate of amendment or correction. (Sec. 27, R. A. No. 165)

## **Chapter VI**

### **CANCELLATION OF PATENTS AND SUBSTITUTION OF PATENTEE**

Sec. 61. Cancellation of Patents. -

61.1. Any interested person may, upon payment of the required fee, petition to cancel the patent or any claim thereof, or parts of the claim, on any of the following grounds:

- (a) That what is claimed as the invention is not new or patentable;
- (b) That the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by any person skilled in the art; or
- (c) That the patent is contrary to public order or morality.

61.2. Where the grounds for cancellation relate to some of the claims or parts of the claim, cancellation may be effected to such extent only. (Secs. 28 and 29, R. A. No. 165a)

Sec. 62. Requirement of the Petition. - The petition for cancellation shall be in writing, verified by the petitioner or by any person in his behalf who knows the facts, specify the grounds upon which it is based, include a statement of the facts to be relied upon, and filed with the Office. Copies of printed publications or of patents of other countries, and other supporting documents mentioned in the petition shall be attached thereto, together with the translation thereof in English, if not in English language. (Sec. 30, R. A. No. 165)

Sec. 63. Notice of Hearing. - Upon filing of a petition for cancellation, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patentee and all persons having grants or licenses, or any other right, title or interest in and to the patent and the invention covered thereby, as appears of record in the Office, and of notice of the date of hearing

thereon on such persons and the petitioner. Notice of the filing of the petition shall be published in the IPO Gazette. (Sec. 31, R. A. No. 165a)

Sec. 64. Committee of Three. - In cases involving highly technical issues, on motion of any party, the Director of Legal Affairs may order that the petition be heard and decided by a committee composed of the Director of Legal Affairs as chairman and two (2) members who have the experience or expertise in the field of technology to which the patent sought to be cancelled relates. The decision of the committee shall be appealable to the Director General. (n)

Sec. 65. Cancellation of the Patent. -

65.1. If the Committee finds that a case for cancellation has been proved, it shall order the patent or any specific time, the patent should be revoked.

65.2. If the patent is amended under Subsection 65.2 hereof, the Bureau shall, at the same time as it publishes the mention of the cancellation decision, publish the abstract, representative claims and drawings indicating clearly what the amendments consist of. (n)

Sec. 66. Effect of Cancellation of Patent or Claim. - The rights conferred by the patent or any specified claim or claims cancelled shall terminate. Notice of the cancellation shall be published in the IPO Gazette. Unless restrained by the Director General, the decision or order to cancel by Director of Legal Affairs shall be immediately executory even pending appeal. (Sec. 32, R. A. No. 165a)

## **Chapter VII**

### **REMEDIES OF A PERSON WITH A RIGHT TO A PATENT**

Sec. 67. Patent Application by Persons Not Having the Right to a Patent. -

67.1. If a person referred to in Section 29 other than the applicant, is declared by final court order or decision as having the right to the patent, such person may, within three (3) months after the decision has become final:

- (a) Prosecute the application as his own application in place of the applicant;
- (b) File a new patent application in respect of the same invention;
- (c) Request that the application be refused; or
- (d) Seek cancellation of the patent, if one has already been issued.

- 67.2. The provisions of Subsection 38.2 shall apply mutatis mutandis to a new application filed under Subsection 67.1(b). (n)
- Sec. 68. Remedies of the True and Actual Inventor. - If a person, who was deprived of the patent without his consent or through fraud is declared by final court order or decision to be the true and actual inventor, the court shall order for his substitution as patentee, or at the option of the true inventor, cancel the patent, and award actual and other damages in his favor if warranted by the circumstances. (Sec. 33, R. A. No. 165a)
- Sec. 69. Publication of the Court Order. - The court shall furnish the Office a copy of the order or decision referred to in Sections 67 and 68, which shall be published in the IPO Gazette within three (3) months from the date such order or decision became final and executory, and shall be recorded in the register of the Office. (n)
- Sec. 70. Time to File Action in Court. - The actions indicated in Sections 67 and 68 shall be filed within one (1) year from the date of publication made in accordance with Sections 44 and 51, respectively. (n)

### **Chapter VIII**

#### **RIGHTS OF PATENTEES AND INFRINGEMENT OF PATENTS**

Sec. 71. Rights Conferred by Patent. -

71.1. A patent shall confer on its owner the following exclusive rights:

- (a) Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- (b) Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2. Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same. (Sec. 37, R. A. No. 165a)

Sec. 72. Limitations of Patent Rights. - The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

72.1 Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent,

insofar as such use is performed after that product has been so put on the said market;

- 72.2. Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, That it does not significantly prejudice the economic interests of the owner of the patent;
- 72.3. Where the act consists of making or using exclusively for the purpose of experiments that relate to the subject matter of the patented invention;
- 72.4. Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;
- 72.5. Where the invention is used in any ship, vessel, aircraft, or land vehicle of any other country entering the territory of the Philippines temporarily or accidentally: Provided, That such invention is used exclusively for the needs of the ship, vessel, aircraft, or land vehicle and not used for the manufacturing of anything to be sold within the Philippines. (Secs. 38 and 39, R. A. No. 165a)

Sec. 73. Prior User. -

- 73.1. Notwithstanding Section 72 hereof, any prior user, who, in good faith was using the invention or has undertaken serious preparations to use the invention in his enterprise or business, before the filing date or priority date of the application on which a patent is granted, shall have the right to continue the use thereof as envisaged in such preparations within the territory where the patent produces its effect.
- 73.2. The right of the prior user may only be transferred or assigned together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made. (Sec. 40, R. A. No. 165a)

Sec. 74. Use of Invention by Government. -

- 74.1. A Government agency or third person authorized by the Government may exploit the invention even without agreement of the patent owner where:
  - (a) the public interest, in particular, national security, nutrition, health or the development of other sectors, as determined by the appropriate agency of the government, so requires; or

(b) A judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or his licensee, is anti-competitive.

74.2. The use by the Government, or third person authorized by the Government shall be subject, *mutatis mutandis*, to the conditions set forth in Sections 95 to 97 and 100 to 102. (Sec. 41, R. A. No. 165a)

#### Sec. 75. Extent of Protection and Interpretation of Claims. -

75.1. The extent of protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings.

75.2. For the purpose of determining the extent of protection conferred by the patent, due account shall be taken of elements which are equivalent to the elements expressed in the claims, so that a claim shall be considered to cover not only all the elements as expressed therein, but also equivalents. (n)

#### Sec. 76. Civil Action for Infringement. -

76.1. The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee constitutes patent infringement.

76.2. Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before a court of competent jurisdiction, to recover from the infringer such damages sustained thereby, plus attorney's fees and other expenses of litigation, and to secure an injunction for the protection of his rights.

76.3. If the damages are inadequate or cannot be readily ascertained with reasonable certainty, the court may award by way of damages a sum equivalent to reasonable royalty.

76.4. The court may, according to the circumstances of the case, award damages in a sum above the amount found as actual damages sustained: Provided, That the award does not exceed three (3) times the amount of such actual damages.

76.5. The court may, in its discretion, order that the infringing goods, materials and implements predominantly used in the infringement be disposed of outside the channels of commerce or destroyed, without compensation.

- 76.6. Anyone who actively induces the infringement of a patent or provides the infringer with a component of a patented product or of a product produced because of a patented process knowing it to be especially adopted for infringing the patented invention and not suitable for substantial non-infringing use shall be liable as a contributory infringer and shall be jointly and severally liable with the infringer. (Sec. 42, R. A. No. 165a)
- Sec. 77. Infringement Action by a Foreign National. - Any foreign national or juridical entity who meets the requirements of Section 3 and not engaged in business in the Philippines, to which a patent has been granted or assigned under this Act, may bring an action for infringement of patent, whether or not it is licensed to do business in the Philippines under existing law. (Sec. 41-A, R. A. No. 165a)
- Sec. 78. Process Patents; Burden of Proof. - If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the court shall adopt measures to protect, as far as practicable, his manufacturing and business secrets. (n)
- Sec. 79. Limitation of Action for Damages. - No damages can be recovered for acts of infringement committed more than four (4) years before the institution of the action for infringement. (Sec. 43, R. A. No. 165)
- Sec. 80. Damages; Requirement of Notice. - Damages cannot be recovered for acts of infringement committed before the infringer had known; or had reasonable grounds to know of the patent. It is presumed that the infringer had known of the patent if on the patented product, or on the container or package in which the article is supplied to the public, or on the advertising material relating to the patented product or process, are placed the words "Philippine Patent" with the number of the patent. (Sec. 44, R. A. No. 165a)
- Sec. 81. Defenses in Action for Infringement. - In an action for infringement, the defendant, in addition to other defenses available to him, may show the invalidity of the patent, or any claim thereof, on any of the grounds on which a petition of cancellation can be brought under Section 61 hereof. (Sec. 45, R. A. No. 165)

Sec. 82. Patent Found Invalid May be Cancelled. - In an action for infringement, if the court shall find the patent or any claim to be invalid, it shall cancel the same, and the Director of Legal Affairs upon receipt of the final judgment of cancellation by the court, shall record that fact in the register of the Office and shall publish a notice to that effect in the IPO Gazette. (Sec. 46, R. A. No. 165a)

Sec. 83. Assessor in Infringement Action. -

83.1. Two (2) or more assessors may be appointed by the court. The assessors shall be possessed of the necessary scientific and technical knowledge required by the subject matter in litigation. Either party may challenge the fitness of any assessor proposed for appointment.

83.2. Each assessor shall receive a compensation in an amount to be fixed by the court and advanced by the complaining party, which shall be awarded as part of his costs should he prevail in the action. (Sec. 47, R. A. No. 165a)

Sec. 84. Criminal Action for Repetition of Infringement. - If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three (3) years and/or a fine of not less than One hundred thousand pesos (P100,000) but not more than Three hundred thousand pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribed in three (3) years from date of the commission of the crime. (Sec. 48, R. A. No. 165a)

## **Chapter IX**

### Voluntary Licensing

Sec. 85. Voluntary License Contract. - To encourage the transfer and dissemination of technology, prevent or control practices and conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition and trade, all technology transfer arrangements shall comply with the provisions of this Chapter. (n)

Sec. 86. Jurisdiction to Settle Disputes on Royalties. - The Director of the Documentation, Information and Technology Transfer Bureau shall exercise quasi-judicial jurisdiction in the settlement of disputes between parties to a technology transfer arrangement arising from



technology transfer payments, including the fixing of appropriate amount or rate of royalty. (n)

Sec. 87. Prohibited Clauses. - Except in cases under Section 91, the following provisions shall be deemed prima facie to have an adverse on competition and trade:

- 87.1. Those which impose upon the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials, and other technologies, or of permanently employing personnel indicated by the licensor;
- 87.2. Those pursuant to which the licensor reserves the right to fix the sale or resale prices of the products manufactured on the basis of the license;
- 87.3. Those that contain restrictions regarding the volume and structure of production;
- 87.4. Those that prohibit the use of competitive technologies in a non-exclusive technology transfer agreement;
- 87.5. Those that establish a full or partial purchase option in favor of the licensor;
- 87.6. Those that obligate the licensee to transfer for free to the licensor the inventions or improvements that may be obtained through the use of the licensed technology;
- 87.7. Those that require payment of royalties to the owners of patents for patents which are not used;
- 87.8. Those that prohibit the licensee to export the licensed product unless justified for the protection of the legitimate interest of the licensor such as exports to countries where exclusive licenses to manufacture and/or distribute the licensed product(s) have already been granted;
- 87.9. Those which restrict the use of the technology supplied after the expiration of the technology transfer arrangement, except in cases of early termination of the technology transfer arrangement due to reason(s) attributable to the licensee;
- 87.10. Those which require payments for patents and other industrial property rights after their expiration, termination arrangement;
- 87.11. Those which require that the technology recipient shall not contest the validity of any of the patents of the technology supplier;

87.12. Those which restrict the research and development activities of the licensee designed to absorb and adapt the transferred technology to local conditions or to initiate research and development programs in connection with new products, processes or equipment;

87.13. Those which prevent the licensee from adapting the imported technology to local conditions, or introducing innovation to it, as long as it does not impair the quality standards prescribed by the licensor;

87.14. Those which exempt the licensor for liability for non-fulfillment of his responsibilities under the technology transfer arrangement and/or liability arising from third party suits brought about by the use of the licensed product or the licensed technology; and

87.15. Other clauses with equivalent effects. (Sec. 33-C[2], R. A. 165a)

Sec. 88. Mandatory Provisions. - The following provisions shall be included in voluntary license contracts:

88.1. That the laws of the Philippines shall govern the interpretation of the same and in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office;

88.2. Continued access to improvements in techniques and processes related to the technology shall be made available during the period of the technology transfer arrangement;

88.3. In the event the technology transfer arrangement shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country; and

88.4. The Philippine taxes on all payments relating to the technology transfer arrangement shall be borne by the licensor. (n)

Sec. 89. Rights of Licensor. - In the absence of any provision to the contrary in the technology transfer arrangement, the grant of a license shall not prevent the licensor from granting further licenses to third person nor from exploiting the subject matter of the technology transfer arrangement himself. (Sec. 33-B, R. A. 165a)

Sec. 90. Rights of Licensee. - The licensee shall be entitled to exploit the subject matter of the technology transfer arrangement during the whole term of the technology transfer arrangement. (Sec. 33-C (1), R. A. 165a)

- Sec. 91. Exceptional Cases. - In exceptional or meritorious cases where substantial benefits will accrue to the economy, such as high technology content, increase in foreign exchange earnings, employment generation, regional dispersal of industries and/or substitution with or use of local raw materials, or in the case of Board of Investments, registered companies with pioneer status, exemption from any of the above requirements may be allowed by the Documentation, Information and Technology Transfer Bureau after evaluation thereof on a case by case basis. (n)
- Sec. 92. Non-Registration with the Documentation, Information and Technology Transfer Bureau. - Technology transfer arrangements that conform with the provisions of Sections 86 and 87 need not be registered with the Documentation, Information and Technology Transfer Bureau. Non-conformance with any of the provisions of Sections 87 and 88, however, shall automatically render the technology transfer arrangement unenforceable, unless said technology transfer arrangement is approved and registered with the Documentation, Information and Technology Transfer Bureau under the provisions of Section 91 on exceptional cases. (n)

## **Chapter X** COMPULSORY LICENSING

- Sec. 93. Grounds for Compulsory Licensing. - The Director of Legal Affairs may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention, under any of the following circumstances:
- 93.1. National emergency or other circumstances of extreme urgency;
  - 93.2. Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the appropriate agency of the Government, so requires; or
  - 93.3. Where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive; or
  - 93.4. In case of public non-commercial use of the patent by the patentee, without satisfactory reason;

93.5. If the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason: Provided, That the importation of the patented article shall constitute working or using the patent. (Secs. 34, 34-A, and 34-B, R. A. No. 165a)

Sec. 94. Period for Filing a Petition for a Compulsory License. -

94.1. A compulsory license may not be applied for on the ground stated in Subsection 93.5 before the expiration of a period of four (4) years from the date of filing of the application or three (3) years from the date of the patent whichever period expires last.

94.2. A compulsory license which is applied for on any of the grounds stated in Subsections 93.2, 93.3, and 93.4 and Section 97 may be applied for at any time after the grant of the patent. (Sec. 34[1], R. A. No. 165)

Sec. 95. Requirement to Obtain a License on Reasonable Commercial Terms. -

95.1. The license will only be granted after the petitioner has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions but such efforts have not been successful within a reasonable period of time.

95.2. The requirement under Subsection 95.1 shall not apply in the following cases:

(a) Where the petition for compulsory license seeks to remedy a practice determined after judicial or administrative process to be anti-competitive;

(b) In situations of national emergency or other circumstances of extreme urgency;

(c) In cases of public non-commercial use.

95.3. In situations of national emergency or other circumstances of extreme urgency, the right holder shall be notified as soon as reasonably practicable.

95.4. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly. (n)

Sec. 96. Compulsory Licensing of Patents Involving Semi-Conductor Technology. -  
In the case of compulsory licensing of patents involving semi-conductor

technology, the license may only be granted in case of public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. (n)

Sec. 97. Compulsory License Based on Interdependence of Patents. - If the invention protected by a patent, hereafter referred to as the "second patent," within the country cannot be worked without infringing another patent, hereafter referred to as the "first patent," granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

97.1. The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

97.2. The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

97.3. The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

97.4. The terms and conditions of Sections 95, 96 and 98 to 100 of this Act. (Sec. 34-C, R. A. No. 165a)

Sec. 98. Form and Contents of Petition. - The petition for compulsory licensing must be in writing, verified by the petitioner and accompanied by payment of the required filing fee. It shall contain the name and address of the petitioner as well as those of the respondents, the number and date of issue of the patent in connection with which compulsory license is sought, the name of the patentee, the title of the invention, the statutory grounds upon which compulsory license is sought, the ultimate facts constituting the petitioner's cause of action, and the relief prayed for. (Sec. 34-D, R. A. No. 165)

Sec. 99. Notice of Hearing. -

99.1. Upon filing of a petition, the Director of Legal Affairs shall forthwith serve notice of the filing thereof upon the patent owner and all persons having grants or licenses, or any other right, title or interest in and to the patent and invention covered thereby as appears of record in the Office, and of notice of the date of hearing thereon, on such persons and petitioner. The resident agent or representative appointed in accordance with Section 33 hereof, shall be bound to accept service of notice of the filing of the petition within the meaning of this Section.

99.2. In every case, the notice shall be published by the said Office in a newspaper of general circulation, once a week for three (3) consecutive weeks and once in the IPO Gazette at applicant's expense. (Sec. 34-E, R. A. No. 165)

Sec. 100. Terms and Conditions of Compulsory License. - The basic terms and conditions including the rate of royalties of a compulsory license shall be fixed by the Director of Legal Affairs subject to the following conditions:

100.1. The scope and duration of such license shall be limited to the purpose for which it was authorized;

100.2. The license shall be non-exclusive;

100.3. The license shall be non-assignable, except with that part of the enterprise or business with which the invention is being exploited;

100.4. Use of the subject matter of the license shall be devoted predominantly for the supply of the Philippine market: Provided, That this limitation shall not apply where the grant of the license is based on the ground that the patentee's manner of exploiting the patent is determined by judicial or administrative process, to be anti-competitive.

100.5. The license may be terminated upon proper showing that circumstances which led to its grant have ceased to exist and are unlikely to recur: Provided, That adequate protection shall be afforded to the legitimate interest of the licensee; and

100.6. The patentee shall be paid adequate remuneration taking into account the economic value of the grant or authorization, except that in cases where the license was granted to remedy a practice which was determined after judicial or administrative process, to be anti-competitive, the need to correct the anti-competitive practice may be taken into account in fixing the amount of remuneration. (Sec. 35-B, R. A. No. 165a)

Sec. 101. Amendment, Cancellation, Surrender of Compulsory License.

101.1. Upon the request of the patentee or the licensee, the Director of Legal Affairs may amend the decision granting the compulsory license, upon proper showing of new facts or circumstances justifying such amendment.

101.2. Upon the request of the patentee, the said Director may cancel the compulsory license:

- (a) If the ground for the grant of the compulsory license no longer exists and is unlikely to recur;
- (b) If the licensee has neither begun to supply the domestic market nor made serious preparation therefor;
- (c) If the licensee has not complied with the prescribed terms of the license;

101.3. The licensee may surrender the license by a written declaration submitted to the Office.

101.4. The said Director shall cause the amendment, surrender, or cancellation in the Register, notify the patentee, and/or the licensee, and cause notice thereof to be published in the IPO Gazette. (Sec. 35-D, R. A. No. 165a)

Sec. 102. Licensee's Exemption from Liability. - Any person who works a patented product, substance and/or process under a license granted under this Chapter, shall be free from any liability for infringement: Provided however, That in the case of voluntary licensing, no collusion with the licensor is proven. This is without prejudice to the right of the rightful owner of the patent to recover from the licensor whatever he may have received as royalties under the license. (Sec. 35-E, R. A. No. 165a)

## **Chapter XI**

### **ASSIGNMENT AND TRANSMISSION OF RIGHTS**

Sec. 103. Transmission of Rights. -

103.1 Patents or applications for patents and invention to which they relate, shall be protected in the same way as the rights of other property under the Civil Code.

103.2. Inventions and any right, title or interest in and to patents and inventions covered thereby, may be assigned or transmitted by inheritance or bequest or may be the subject of a license contract. (Sec. 50, R. A. No. 165a)

Sec. 104. Assignment of Inventions. - An assignment may be of the entire right, title or interest in and to the patent and the invention covered thereby, or of an undivided share of the entire patent and invention, in which event the parties become joint owners thereof. An assignment may be limited to a specified territory. (Sec. 51, R. A. No. 165)

Sec.105. Form of Assignment. - The assignment must be in writing, acknowledged before a notary public or other officer authorized to administer oath or

perform notarial acts, and certified under the hand and official seal of the notary or such other officer. (Sec. 52, R. A. No. 165)

Sec. 106. Recording. -

106.1. The Office shall record assignments, licenses and other instruments relating to the transmission of any right, title or interest in and to inventions, and patents or application for patents or inventions to which they relate, which are presented in due form to the Office for registration, in books and records kept for the purpose. The original documents together with a signed duplicate thereof shall be filed, and the contents thereof should be kept confidential. If the original is not available, an authenticated copy thereof in duplicate may be filed. Upon recording, the Office shall retain the duplicate, return the original or the authenticated copy to the party who filed the same and notice of the recording shall be published in the IPO Gazette.

106.2. Such instruments shall be void as against any subsequent purchaser or mortgagee for valuable consideration and without notice, unless, it is so recorded in the Office, within three (3) months from the date of said instrument, or prior to the subsequent purchase or mortgage. (Sec. 53, R. A. No. 165a)

Sec. 107. Rights of Joint Owners. - If two (2) or more persons jointly own a patent and the invention covered thereby, either by the issuance of the patent in their joint favor or by reason of the assignment of an undivided share in the patent and invention or by reason of the succession in title to such share, each of the joint owners shall be entitled to personally make, use, sell, or import the invention for his own profit: Provided, however, That neither of the joint owners shall be entitled to grant licenses or to assign his right, title or interest or part thereof without the consent of the other owner or owners, or without proportionally dividing the proceeds with such other owner or owners. (Sec. 54, R. A. No. 165)

## **Chapter XII** REGISTRATION OF UTILITY MODELS

Sec. 108. Applicability of Provisions Relating to Patents. -

108.1. Subject to Section 109, the provisions governing patents shall apply, mutatis mutandis, to the registration of utility models.

108.2. Where the right to a patent conflicts with the right to a utility model registration in the case referred to in Section 29, the said provision shall apply as if the word patent were replaced by the words "patent or utility model registration." (Sec. 55, R. A. No. 165a)



Sec. 109. Special Provisions Relating to Utility Models. -

109.1 (a) An invention qualifies for registration as a utility model if it is new and industrially applicable.

(b) Section 21, "Patentable Inventions", shall apply except the reference to inventive step as a condition of protection.

109.2. Sections 43 to 49 shall not apply in the case of applications for registration of a utility model.

109.3. A utility model registration shall expire, without any possibility of renewal, at the end of the seventh year after the date of the filing of the application.

109.4. In proceedings under Sections 61 to 64, the utility model registration shall be canceled on the following grounds:

(a) That the claimed invention does not qualify for registration as a utility model and does not meet the requirements of registrability, in particular having regard to Subsection 109.1 and Sections 22, 23, 24 and 27;

(b) That the description and the claims do not comply with the prescribed requirements;

(c) That any drawing which is necessary for the understanding of the invention has not been furnished;

(d) That the owner of the utility model registration is not the inventor or his successor in title. (Secs. 55, 56, and 57, R.A. No. 165a)

Sec. 110. Conversion of Patent Applications or Applications for Utility Model Registration. -

110.1. At any time before the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his application into an application for registration of a utility model, which shall be accorded the filing date of the initial application. An application may be converted only once.

110.2. At any time before the grant or refusal of a utility model registration, an applicant for a utility model registration may, upon payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the initial application. (Sec. 58, R. A. No. 165a)

Sec. 111. Prohibition against Filing of Parallel Applications. - An applicant may not file two (2)\_ applications for the same subject, one for utility model registration and the other for the grant of a patent whether simultaneously or consecutively. (Sec. 59, R. A. No. 165a)

### **Chapter XIII** Industrial Design

Sec.112. Definition of Industrial Design. - An industrial design is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; Provided, That such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft. (Sec. 55, R. A. No. 165a)

Sec. 113. Substantive Conditions for Protection. -

113.1. Only industrial designs that are new or original shall benefit from protection under this Act.

113.2. Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected. (n)

Sec. 114. Contents of the Application. -

114.1. Every application for registration of an industrial design shall contain:

- (a) A request for registration of the industrial design;
- (b) Information identifying the applicant;
- (c) An indication of the kind of article of manufacture or handicraft to which the design shall be applied;
- (d) A representation of the article of manufacture or handicraft by way of drawings, photographs or other adequate graphic representation of the design as applied to the article of manufacture or handicraft which clearly and fully discloses those features for which design protection is claimed; and
- (e) The name and address of the creator, or where the applicant is not the creator, a statement indicating the origin of the right to the industrial design registration.

114.2. The application may be accompanied by a specimen of the article embodying the industrial design and shall be subject to the payment of the prescribed fee. (n)

Sec. 115. Several Industrial Designs in One Application. - Two (2) or more industrial designs may be the subject of the same application: Provided, That they relate to the same sub-class of the International Classification or to the same set or composition of articles. (n)

Sec. 116. Examination. -

116.1. The Office shall accord as the filing date the date of receipt of the application containing indications allowing the identity of the applicant to be established and a representation of the article embodying the industrial design or a pictorial representation thereof.

116.2. If the application does not meet these requirements the filing date should be that date when all the elements specified in Section 105 are filed or the mistakes corrected. Otherwise if the requirements are not complied within the prescribed period, the application shall be considered withdrawn.

116.3. After the application has been accorded a filing date and the required fees paid on time, the applicant shall comply with the requirements of Section 114 within the prescribed period, otherwise the application shall be considered withdrawn.

116.4. The Office shall examine whether the industrial design complies with requirements of Section 112 and Subsections 113.2 and 113.3. (n)

Sec. 117. Registration. -

117.1. Where the Office finds that the conditions referred to in Section 113 are fulfilled, it shall order that registration be effected in the industrial design register and cause the issuance of an industrial design certificate of registration; otherwise, it shall refuse the application.

117.2. The form and contents of an industrial design certificate shall be established by the Regulations: Provided, That the name and address of the creator shall be mentioned in every case.

117.3. Registration shall be published in the form and within the period fixed by the Regulations.

117.4. The Office shall record in the register any change in the identity of the proprietor of the industrial design or his representative, if proof thereof is furnished to it. A fee shall be paid, with the request to record the

change in the identity of the proprietor. If the fee is not paid, the request shall be deemed not to have been filed. In such case, the former proprietor and the former representative shall remain subject to the rights and obligations as provided in this Act.

117.5. Anyone may inspect the Register and the files of registered industrial designs including the files of cancellation proceedings. (n)

Sec. 118. The Term of Industrial Design Registration. -

118.1. The registration of an industrial design shall be for a period of five (5) years from the filing date of the application.

118.2. The registration of an industrial design may be renewed for not more than two (2) consecutive periods of five (5) years each, by paying the renewal fee.

118.3. The renewal fee shall be paid within twelve (12) months preceding the expiration of the period of registration. However, a grace period of six (6) months shall be granted for payment of the fees after such expiration, upon payment of a surcharge.

118.4. The Regulations shall fix the amount of renewal fee, the surcharge and other requirements regarding the recording of renewals of registration.

Sec. 119. Application of Other Sections and Chapters. -

119.1. The following provisions relating to patents shall apply mutatis mutandis to an industrial design registration:

Section 21 - Novelty;

Section 24 - Prior art; Provided, That the disclosure is contained in printed documents or in any tangible form;

Section 25 - Non-prejudicial Disclosure;

Section 27 - Inventions Created Pursuant to a Commission;

Section 28 - Right to a Patent;

Section 29 - First to File Rule;

Section 31 - Right of Priority: Provided, That the application for industrial design shall be filed within six (6) months from the earliest filing date of the corresponding foreign application;

Section 33 - Appointment of Agent or Representative;

Section 51 - Refusal of the Application;

Sections 56 to 60 - Surrender, Correction of and Changes in Patent;

### **Chapter VII**

Remedies of a Person with a Right to Patent;

### **Chapter VIII**

Rights of Patentees and Infringement of Patents; and

### **Chapter XI**

Assignment and Transmission of Rights.

119.2. If the essential elements of an industrial design which is the subject of an application have been obtained from the creation of another person without his consent, protection under this Chapter cannot be invoked against the injured party. (n)

Sec. 120. Cancellation of Design Registration. -

120.1. At any time during the term of the industrial design registration, any person upon payment of the required fee, may petition the Director of Legal Affairs to cancel the industrial design on any of the following grounds:

- (a) If the subject matter of the industrial design is not registrable within the terms of Sections 112 and 113;
- (b) If the subject matter is not new; or
- (c) If the subject matter of the industrial design extends beyond the content of the application as originally filed.

120.2. Where the grounds for cancellation relate to a part of the industrial design, cancellation may be effected to such extent only. The restriction may be effected in the form of an alteration of the effected features of the design. (n)

## **PART III**

### **THE LAW ON TRADEMARKS, SERVICE MARKS AND TRADE NAMES**

Sec. 121. Definitions. - As used in Part III, the following terms have the following meanings:

121.1. "Mark" means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods; (Sec. 38, R. A. No. 166a)

121.2. "Collective mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark; (Sec. 40, R. A. No. 166a)

121.3. "Trade name" means the name or designation identifying or distinguishing an enterprise; (Sec. 38, R. A. No. 166a)

121.4. "Bureau" means the Bureau of Trademarks;

121.5. "Director" means the Director of Trademarks;

121.6. "Regulations" means the Rules of Practice in Trademarks and Service Marks formulated by the Director of Trademarks and approved by the Director General; and

121.7. "Examiner" means the trademark examiner. (Sec. 38, R. A. No. 166a)

Sec. 122. How Marks are Acquired. - The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R. A. No. 166a)

Sec. 123. Registrability. -

123.1. A mark cannot be registered if it:

(a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

(c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or

portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;

- (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
  - (i) The same goods or services, or
  - (ii) Closely related goods or services, or
  - (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;
- (e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;
- (f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;
- (g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;
- (h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;
- (i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;
- (j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value,

geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;

(k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;

(l) Consists of color alone, unless defined by a given form; or

(m) Is contrary to public order or morality.

123.2. As regards signs or devices mentioned in paragraphs (j), (k), and (l), nothing shall prevent the registration of any such sign or device which has become distinctive in relation to the goods for which registration is requested as a result of the use that have been made of it in commerce in the Philippines. The Office may accept as prima facie evidence that the mark has become distinctive, as used in connection with the applicant's goods or services in commerce, proof of substantially exclusive and continuous use thereof by the applicant in commerce in the Philippines for five (5) years before the date on which the claim of distinctiveness is made.

123.3. The nature of the goods to which the mark is applied will not constitute an obstacle to registration. (Sec. 4, R. A. No. 166a)

#### Sec. 124. Requirements of Application. -

124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

(a) A request for registration;

(b) The name and address of the applicant;

(c) The name of a State of which the applicant is a national or where he has domicile; and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;

(d) Where the applicant is a juridical entity, the law under which it is organized and existing;

(e) The appointment of an agent or representative, if the applicant is not domiciled in the Philippines;

(f) Where the applicant claims the priority of an earlier application, an indication of:



- (i) The name of the State with whose national office the earlier application was filed or it filed with an office other than a national office, the name of that office,
- (ii) The date on which the earlier application was filed, and
- (iii) Where available, the application number of the earlier application;
- (g) Where the applicant claims color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;
- (h) Where the mark is a three-dimensional mark, a statement to that effect;
- (i) One or more reproductions of the mark, as prescribed in the Regulations;
- (j) A transliteration or translation of the mark or of some parts of the mark, as prescribed in the Regulations;
- (k) The names of the goods or services for which the registration is sought, grouped according to the classes of the Nice Classification, together with the number of the class of the said Classification to which each group of goods or services belongs; and (l) A signature by, or other self-identification of, the applicant or his representative.

124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

124.3. One (1) application may relate to several goods and/or services, whether they belong to one (1) class or to several classes of the Nice Classification.

124.4. If during the examination of the application, the Office finds factual basis to reasonably doubt the veracity of any indication or element in the application, it may require the applicant to submit sufficient evidence to remove the doubt. (Sec. 5, R. A. No. 166a)

Sec. 125. Representation; Address for Service. - If the applicant is not domiciled or has no real and effective commercial establishment in the Philippines, he shall designate by a written document filed in the office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark. Such notices or services may be served upon the person so designated by leaving a copy thereof at

the address specified in the last designation filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director. (Sec. 3, R. A. No. 166a)

Sec. 126. Disclaimers. - The Office may allow or require the applicant to disclaim an unregistrable component of an otherwise registrable mark but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor shall disclaimer prejudice or affect the applicant's or owner's right on another application of later date if the disclaimed matter became distinctive of the applicant's or owner's goods, business or services. (Sec. 13, R. A. No. 166a)

Sec. 127. Filing Date. -

127.1. Requirements. - The filing date of an application shall be the date on which the Office received the following indications and elements in English or Filipino:

- (a) An express or implicit indication that the registration of a mark is sought;
- (b) The identity of the applicant;
- (c) Indications sufficient to contact the applicant or his representative, if any;
- (d) A reproduction of the mark whose registration is sought; and
- (e) The list of the goods or services for which the registration is sought.

127.2 No filing date shall be accorded until the required fee is paid. (n)

Sec. 128. Single Registration for Goods and/or Services. - Where goods and/or services belonging to several classes of the Nice Classification have been included in one (1) application, such an application shall result in one registration. (n)

Sec. 129. Division of Application. - Any application referring to several goods or services, hereafter referred to as the "initial application," may be divided by the applicant into two (2) or more applications, hereafter referred to as the "divisional applications," by distributing among the latter the goods or services referred to in the initial application. The divisional applications shall preserve the filing date of the initial application or the benefit of the right of priority. (n)

Sec. 130. Signature and Other Means of Self-Identification. -

130.1. Where a signature is required, the Office shall accept:

- (a) A hand-written signature; or
- (b) The use of other forms of signature, such as a printed or stamped signature, or the use of a seal, instead of a hand-written signature: Provided, That where a seal is used, it should be accompanied by an indication in letters of the name of the signatory.

130.2. The Office shall accept communications to it by telecopier, or by electronic means subject to the conditions or requirements that will be prescribed by the Regulations. When communications are made by telefacsimile, the reproduction of the signature, or the reproduction of the seal together with, where required, the indication in letters of the name of the natural person whose seal is used, appears. The original communications must be received by the Office within thirty (30) days from date of receipt of the telefacsimile.

130.3. No attestation, notarization, authentication, legalization or other certification of any signature or other means of self-identification referred to in the preceding paragraphs, will be required, except, where the signature concerns the surrender of a registration. (n)

Sec. 131. Priority Right. -

131.1. An application for registration of a mark filed in the Philippines by a person referred to in Section 3, and who previously duly filed an application for registration of the same mark in one of those countries, shall be considered as filed as of the day the application was first filed in the foreign country.

131.2. No registration of a mark in the Philippines by a person described in this section shall be granted until such mark has been registered in the country of origin of the applicant.

131.3. Nothing in this section shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country: Provided, That, notwithstanding the foregoing, the owner of a well-known mark as defined in Section 123.1(e) of this Act, that is not registered in the Philippines, may, against an identical or confusingly similar mark, oppose its registration, or petition the cancellation of its registration or sue for unfair competition, without prejudice to availing himself of other remedies provided for under the law.

131.4. In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent

regularly filed application in the same foreign country: Provided, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority. (Sec. 37, R. A. No. 166a)

Sec. 132. Application Number and Filing Date. -

132.1. The Office shall examine whether the application satisfies the requirements for the grant of a filing date as provided in Section 127 and Regulations relating thereto. If the application does not satisfy the filing requirements, the Office shall notify the applicant who shall within a period fixed by the Regulations complete or correct the application as required, otherwise, the application shall be considered withdrawn.

132.2. Once an application meets the filing requirements of Section 127, it shall be numbered in the sequential order, and the applicant shall be informed of the application number and the filing date of the application will be deemed to have been abandoned. (n)

Sec. 133. Examination and Publication. -

133.1. Once the application meets the filing requirements of Section 127, the Office shall examine whether the application meets the requirements of Section 124 and the mark as defined in Section 121 is registrable under Section 123.

133.2. Where the Office finds that the conditions referred to in Subsection 133.1 are fulfilled, it shall, upon payment of the prescribed fee. Forthwith cause the application, as filed, to be published in the prescribed manner.

133.3. If after the examination, the applicant is not entitled to registration for any reason, the Office shall advise the applicant thereof and the reasons therefor. The applicant shall have a period of four (4) months in which to reply or amend his application, which shall then be re-examined. The Regulations shall determine the procedure for the re-examination or revival of an application as well as the appeal to the Director of Trademarks from any final action by the Examiner.

133.4. An abandoned application may be revived as a pending application within three (3) months from the date of abandonment, upon good cause shown and the payment of the required fee.

- 133.5. The final decision of refusal of the Director of Trademarks shall be appealable to the Director General in accordance with the procedure fixed by the Regulations. (Sec. 7, R. A. No. 166a)
- Sec. 134. Opposition. - Any person who believes that he would be damaged by the registration of a mark may, upon payment of the required fee and within thirty (30) days after the publication referred to in Subsection 133.2, file with the Office an opposition to the application. Such opposition shall be in writing and verified by the oppositor or by any person on his behalf who knows the facts, and shall specify the grounds on which it is based and include a statement of the facts relied upon. Copies of certificates of registration of marks registered in other countries or other supporting documents mentioned in the opposition shall be filed therewith, together with the translation in English, if not in the English language. For good cause shown and upon payment of the required surcharge, the time for filing an opposition may be extended by the Director of Legal Affairs, who shall notify the applicant of such extension. The Regulations shall fix the maximum period of time within which to file the opposition. (Sec. 8, R. A. No. 165a)
- Sec. 135. Notice and Hearing. - Upon the filing of an opposition, the Office shall serve notice of the filing on the applicant, and of the date of the hearing thereof upon the applicant and the oppositor and all other persons having any right, title or interest in the mark covered by the application, as appear of record in the Office. (Sec. 9 R. A. No. 165)
- Sec. 136. Issuance and Publication of Certificate. - When the period for filing the opposition has expired, or when the Director of Legal Affairs shall have denied the opposition, the Office upon payment of the required fee, shall issue the certificate of registration. Upon issuance of a certificate of registration, notice thereof making reference to the publication of the application shall be published in the IPO Gazette. (Sec. 10, R. A. No. 165)
- Sec. 137. Registration of Mark and Issuance of a Certificate to the Owner or his Assignee. -
- 137.1. The Office shall maintain a Register in which shall be registered marks, numbered in the order of their registration, and all transactions in respect of each mark, required to be recorded by virtue of this law.
- 137.2. The registration of a mark shall include a reproduction of the mark and shall mention: its number; the name and address of the registered owner and, if the registered owner's address is outside the country, his address for service within the country; the dates of application and registration; if priority is claimed, an indication of this fact, and the number, date and country of the application, basis of the priority claims;

the list of goods or services in respect of which registration has been granted, with the indication of the corresponding class or classes; and such other data as the Regulations may prescribe from time to time.

137.3. A certificate of registration of a mark may be issued to the assignee of the applicant: Provided, That the assignment is recorded in the Office. In case of a change of ownership, the Office shall at the written request signed by the owner, or his representative, or by the new owner, or his representative and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

137.4. The Office shall record any change of address, or address for service, which shall be notified to it by the registered owner.

137.5. In the absence of any provision to the contrary in this Act, communications to be made to the registered owner by virtue of this Act shall be sent to him at his last recorded address and, at the same, at his last recorded address for service. (Sec. 19, R. A. No. 166a)

Sec. 138. Certificates of Registration. - A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 20, R. A. No. 165)

Sec. 139. Publication of Registered Marks; Inspection of Register. -

139.1. The Office shall publish, in the form and within the period fixed by the Regulations, the mark registered, in the order of their registration, reproducing all the particulars referred to in Subsection 137.2.

139.2. Marks registered at the Office may be inspected free of charge and any person may obtain copies thereof at his own expense. This provision shall also be applicable to transactions recorded in respect of any registered mark. (n)

Sec. 140. Cancellation upon Application by Registrant; Amendment or Disclaimer of Registration. - Upon application of the registrant, the Office may permit any registration to be surrendered for cancellation, and upon cancellation the appropriate entry shall be made in the records of the Office. Upon application of the registrant and payment of the prescribed fee, the Office for good cause may permit any registration to be amended or to be disclaimed in part: Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Office upon the

certificate of registration or, if said certificates is lost or destroyed, upon a certified copy thereof. (Sec. 14, R. A. No. 166)

Sec. 141. Sealed and Certified Copies as Evidence. - Copies of any records, books, papers, or drawings belonging to the Office relating to marks, and copies of registrations, when authenticated by the seal of the Office and certified by the Director of the Administrative, Financial and Human Resource Development Service Bureau or in his name by an employee of the Office duly authorized by said Director, shall be evidence in all cases wherein the originals would be evidence; and any person who applies and pays the prescribed fee shall secure such copies. (n)

Sec. 142. Correction of Mistakes Made by the Office. - Whenever a material mistake in a registration incurred through the fault of the Office is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake shall be issued without charge, recorded and a printed copy thereof shall be attached to each printed copy of the registration. Such corrected registration shall thereafter have the same effect as the original certificate; or in the discretion of the Director of the Administrative, Financial and Human Resource Development Service Bureau a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the Regulations and the registration to which they are attached shall have the same force and effect as if such certificates and their issuance had been authorized by this Act. (n)

Sec. 143. Correction of Mistakes Made by Applicant. - Whenever a mistake is made in a registration and such mistake occurred in good faith through the fault of the applicant, the Office may issue a certificate upon the payment of the prescribed fee: Provided, That the correction does not involve any change in the registration that requires republication of the mark. (n)

Sec. 144. Classification of Goods and Services. -

144.1. Each registration, and any publication of the Office which concerns an application or registration effected by the Office shall indicate the goods or services by their names, grouped according to the classes of the Nice Classification, and each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs, presented in the order of the classes of the said Classification.

144.2. Goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification. (Sec. 6, R. A. No. 166a)

Sec. 145. Duration. - A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. (Sec. 12, R. A. No. 166a)

Sec. 146. Renewal. -

146.1. A certificate of registration may be renewed for periods of ten (10) years at its expiration upon payment of the prescribed fee and upon filing of a request. The request shall contain the following indications:

- (a) An indication that renewal is sought;
- (b) The name and address of the registrant or his successor-in-interest, hereafter referred to as the "right holder";
- (c) The registration number of the registration concerned;
- (d) The filing date of the application which resulted in the registration concerned to be renewed;
- (e) Where the right holder has a representative, the name and address of that representative;
- (f) The names of the recorded goods or services for which the renewal is requested or the names of the recorded goods or services for which the renewal is not requested, grouped according to the classes of the Nice Classification to which that group of goods or services belongs and presented in the order of the classes of the said Classification; and
- (g) A signature by the right holder or his representative.

146.2. Such request shall be in Filipino or English and may be made at any time within six (6) months before the expiration of the period for which the registration was issued or renewed, or it may be made within six (6) months after such expiration on payment of the additional fee herein prescribed.

146.3. If the Office refuses to renew the registration, it shall notify the registrant of his refusal and the reasons therefor.

146.4. An applicant for renewal not domiciled in the Philippines shall be subject to and comply with the requirements of this Act. (Sec. 15, R. A. No. 166a)



Sec. 147. Rights Conferred. -

- 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use, of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.
- 147.2. The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: Provided, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: Provided, further, That the interests of the owner of the registered mark are likely to be damaged by such use. (n)

Sec. 148. Use of Indications by Third Parties for Purposes Other than those for which the Mark is Used. - Registration of the mark shall not confer on the registered owner the right to preclude third parties from using bona fide their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, or time of production or of supply, of their goods or services: Provided, That such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services. (n)

Sec. 149. Assignment and Transfer of Application and Registration. -

- 149.1. An application for registration of a mark, or its registration, may be assigned or transferred with or without the transfer of the business using the mark. (n)
- 149.2. Such assignment or transfer shall, however, be null and void if it is liable to mislead the public, particularly as regards the nature, source, manufacturing process, characteristics, or suitability for their purpose, of the goods or services to which the mark is applied.
- 149.3. The assignment of the application for registration of a mark, or of its registration, shall be in writing and require the signatures of the contracting parties. Transfers by mergers or other forms of succession may be made by any document supporting such transfer.

149.4. Assignments and transfers of registration of marks shall be recorded at the Office on payment of the prescribed fee; assignment and transfers of applications for registration shall, on payment of the same fee, be provisionally recorded, and the mark, when registered, shall be in the name of the assignee or transferee.

149.5. Assignments and transfers shall have no effect against third parties until they are recorded at the Office. (Sec. 31, R. A. No. 166a)

Sec. 150. License Contracts. -

150.1. Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control, or if such quality control is not effectively carried out, the license contract shall not be valid.

150.2. A license contract shall be submitted to the Office which shall keep its contents confidential but shall record it and publish a reference thereto. A license contract shall have no effect against third parties until such recording is effected. The Regulations shall fix the procedure for the recording of the license contract. (n)

Sec. 151. Cancellation. -

151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act.

(b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be

the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. (n)

- (c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.

151.2. Notwithstanding the foregoing provisions, the court or the administrative agency vested with jurisdiction to hear and adjudicate any action to enforce the rights to a registered mark shall likewise exercise jurisdiction to determine whether the registration of said mark may be cancelled in accordance with this Act. The filing of a suit to enforce the registered mark with the proper court or agency shall exclude any other court or agency from assuming jurisdiction over a subsequently filed petition to cancel the same mark. On the other hand, the earlier filing of petition to cancel the mark with the Bureau of Legal Affairs shall not constitute a prejudicial question that must be resolved before an action to enforce the rights to same registered mark may be decided. (Sec. 17, R. A. No. 166a)

Sec. 152. Non-use of a Mark When Excused. -

- 152.1. Non-use of a mark may be excused if caused by circumstances arising independently of the will of the trademark owner. Lack of funds shall not excuse non-use of a mark.
- 152.2. The use of the mark in a form different from the form in which it is registered, which does not alter its distinctive character, shall not be ground for cancellation or removal of the mark and shall not diminish the protection granted to the mark.
- 152.3. The use of a mark in connection with one or more of the goods or services belonging to the class in respect of which the mark is registered shall prevent its cancellation or removal in respect of all other goods or services of the same class.
- 152.4. The use of a mark by a company related with the registrant or applicant shall inure to the latter's benefit, and such use shall not affect the validity of such mark or of its registration: Provided, That such mark is not used in such manner as to deceive the public. If use of a mark by a person is controlled by the registrant or applicant with respect to the nature and quality of the goods or services, such use shall inure to the benefit of the registrant or applicant. (n)

Sec. 153. Requirements of Petition; Notice and Hearing. - Insofar as applicable, the petition for cancellation shall be in the same form as that provided in Section 134 hereof, and notice and hearing shall be as provided in Section 135 hereof.

Sec. 154. Cancellation of Registration. - If the Bureau of Legal Affairs finds that a case for cancellation has been made out, it shall order the cancellation of the registration. When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate. Notice of cancellation shall be published in the IPO Gazette. (Sec. 19. R. A. No. 166a)

Sec. 155. Remedies; Infringement. - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection

155.3 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material. (Sec. 22, R. A. No 166a)

Sec. 156. Actions, and Damages and Injunction for Infringement. -

156.1. The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable

percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party. (Sec. 23, First Par., R. A. No. 166a)

156.2. On application of the complainant, the court may impound during the pendency of the action, sales invoices and other documents evidencing sales. (n)

156.3. In cases where actual intent to mislead the public or to defraud the complainant is shown, in the discretion of the court, the damages may be doubled. (Sec. 23, First Par., R. A. No. 166)

156.4. The complainant, upon proper showing, may also be granted injunction. (Sec. 23, Second Par., R. A. No. 166a)

Sec. 157. Power of Court to Order Infringing Material Destroyed. -

157.1. In any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the court may order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or destroyed; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed.

157.2. In regard to counterfeit goods, the simple removal of the trademark affixed shall not be sufficient other than in exceptional cases which shall be determined by the Regulations, to permit the release of the goods into the channels of commerce. (Sec. 24, R. A. No. 166a).

Sec.158. Damages; Requirement of Notice. - In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives notice that his mark is registered by displaying with the mark the words "Registered Mark" or the letter R within a circle or if the defendant had otherwise actual notice of the registration. (Sec. 21, R. A. No. 166a)

Sec.159. Limitations to Actions for Infringement. - Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

159.1 Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

159.2 Where an infringer who is engaged solely in the business of printing the mark or other infringing materials for others is an innocent infringer, the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing.

159.3. Where the infringement complained of is contained in or is part of paid advertisement in a newspaper, magazine, or other similar periodical or in an electronic communication, the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers: Provided, That such injunctive relief shall not be available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter where restraining the dissemination of such infringing matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication is customarily conducted in accordance with the sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter. (n)

Sec.160. Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action. - Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R. A. No. 166a)

Sec. 161. Authority to Determine Right to Registration. - In any action involving a registered mark, the court may determine the right to registration, order the cancellation of a registration, in whole or in part, and otherwise rectify the register with respect to the registration of any party to the action in the exercise of this. Judgment and orders shall be

certified by the court to the Director, who shall make appropriate entry upon the records of the Bureau, and shall be controlled thereby. (Sec. 25, R. A. No. 166a)

Sec.162. Action for False or Fraudulent Declaration. - Any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof. (Sec. 26, R. A. No. 166)

Sec.163. Jurisdiction of Court. - All actions under Sections 150, 155, 164, and 166 to 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws. (Sec. 27, R. A. No. 166)

Sec.164. Notice of Filing Suit Given to the Director. - It shall be the duty of the clerks of such courts within one (1) month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this Act, to notify the Director in writing setting forth: the names and addresses of the litigants and designating the number of the registration or registrations and within one (1) month after the judgment is entered or an appeal is taken, the clerk of court shall give notice thereof to the Office, and the latter shall endorse the same upon the filewrapper of the said registration or registrations and incorporate the same as a part of the contents of said filewrapper. (n)

Sec. 165. Trade Names or Business Names. -

165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2. (a) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(b) In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

165.3. The remedies provided for in Sections 153 to 156 and Sections 166 and 167 shall apply *mutatis mutandis*.

165.4. Any change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name. The provisions of Subsections 149.2 to 149.4 shall apply mutatis mutandis.

Sec.166. Goods Bearing Infringing Marks or Trade Names. - No article of imported merchandise which shall copy or simulate the name of any domestic product, or manufacturer, or dealer, or which shall copy or simulate a mark registered in accordance with the provisions of this Act, or shall bear a mark or trade name calculated to induce the public to believe that the article is manufactured in the Philippines, or that it is manufactured in any foreign country or locality other than the country or locality where it is in fact manufactured, shall be admitted to entry at any customhouse of the Philippines. In order to aid the officers of the customs service in enforcing this prohibition, any person who is entitled to the benefits of this Act, may require that his name and residence, and the name of the locality in which his goods are manufactured, a copy of the certificate of registration of his mark or trade name, to be recorded in books which shall be kept for this purpose in the Bureau of Customs, under such regulations as the Collector of Customs with the approval of the Secretary of Finance shall prescribe, and may furnish to the said Bureau facsimiles of his name, the name of the locality in which his goods are manufactured, or his registered mark or trade name, and thereupon the Collector of Customs shall cause one (1) or more copies of the same to be transmitted to each collector or to other proper officer of the Bureau of Customs. (Sec. 35, R. A. No. 166)

Sec. 167. Collective Marks. -

167.1. Subject to Subsections 167.2 and 167.3, Sections 122 to 164 and 166 shall apply to collective marks, except that references therein to "mark" shall be read as "collective mark."

167.2 (a) An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the agreement, if any, governing the use of the collective mark.

(b) The registered owner of a collective mark shall notify the Director of any changes made in respect of the agreement referred to in paragraph (a).

167.3. In addition to the grounds provided in Section 149, the Court shall cancel the registration of a collective mark if the person requesting the cancellation proves that only the registered owner uses the mark, or that he uses or permits its use in contravention of the agreements referred to in Subsection 166.2 or that he uses or permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.



167.4. The registration of a collective mark, or an application therefor shall not be the subject of a license contract. (Sec. 40, R. A. No. 166a)

Sec. 168. Unfair Competition, Rights, Regulation and Remedies. -

168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

- (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;
- (b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or
- (c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*. (Sec. 29, R. A. No. 166a)

Sec. 169. False Designations of Origin; False Description or Representation. -

169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(a) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(b) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or likely to be damaged by such act.

169.2. Any goods marked or labeled in contravention of the provisions of this Section shall not be imported into the Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (Sec. 30, R. A. No. 166a)

Sec.170. Penalties. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code)

**PART IV**  
**THE LAW ON COPYRIGHT**

**Chapter I**  
**PRELIMINARY PROVISIONS**

Sec. 171. Definitions. - For the purpose of this Act, the following terms have the following meaning:

- 171.1. "Author" is the natural person who has created the work;
- 171.2. A "collective work" is a work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified;
- 171.3. "Communication to the public" or "communicate to the public" means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;
- 171.4. A "computer" is an electronic or similar device having information-processing capabilities, and a "computer program" is a set of instructions expressed in words, codes, schemes or in any other form, which is capable when incorporated in a medium that the computer can read, or causing the computer to perform or achieve a particular task or result;
- 171.5. "Public lending" is the transfer of possession of the original or a copy of a work or sound recording for a limited period, for non-profit purposes, by an institution the services of which are available to the public, such as public library or archive;
- 171.6. "Public performance," in the case of a work other than an audiovisual work, is the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; in the case of an audiovisual work, the showing of its images in sequence and the making of the sounds accompanying it audible; and, in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or at different times, and where the performance can be perceived without the need for communication within the meaning of Subsection 171.3;
- 171.7. "Published works" means works, which, with the consent of the authors, are made available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them: Provided, That availability of such copies has been such, as to satisfy the reasonable requirements of the public, having regard to the nature of the work;

- 171.8. "Rental" is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time, for profit-making purposes;
- 171.9. "Reproduction" is the making of one (1) or more copies of a work or a sound recording in any manner or form (Sec. 41 [E], P.D. No. 49a);
- 171.10. A "work of applied art" is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;
- 171.11. A "work of the Government of the Philippines" is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties.

## **CHAPTER II**

### **ORIGINAL WORKS**

#### Sec. 172. Literary and Artistic Works. -

- 172.1 Literary and artistic works, hereinafter referred to as "works", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:
- (a) Books, pamphlets, articles and other writings;
  - (b) Periodicals and newspapers;
  - (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
  - (d) Letters;
  - (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
  - (f) Musical compositions, with or without words;
  - (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;

- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
  - (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
  - (j) Drawings or plastic works of a scientific or technical character;
  - (k) Photographic works including works produced by a process analogous to photography; lantern slides;
  - (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audiovisual recordings;
  - (m) Pictorial illustrations and advertisements;
  - (n) Computer programs; and
  - (o) Other literary, scholarly, scientific and artistic works.
- 172.2. Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. (Sec. 2, P. D. No. 49a)

### **Chapter III** DERIVATIVE WORKS

#### Sec. 173. Derivative Works. -

- 173.1. The following derivative works shall also be protected by copyright:
- (a) Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
  - (b) Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P. D. No. 49)
- 173.2. The works referred to in paragraphs (a) and (b) of Subsection 173.1 shall be protected as a new works: Provided however, That such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply

any right to such use of the original works, or to secure or extend copyright in such original works. (Sec. 8, P. D. 49; Art. 10, TRIPS)

Sec. 174. Published Edition of Work. - In addition to the right to publish granted by the author, his heirs or assigns, the publisher shall have a copy right consisting merely of the right of reproduction of the typographical arrangement of the published edition of the work. (n)

#### **Chapter IV** WORKS NOT PROTECTED

Sec. 175. Unprotected Subject Matter. - Notwithstanding the provisions of Sections 172 and 173, no protection shall extend, under this law, to any idea, procedure, system method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof. (n)

Sec. 176. Works of the Government. -

176.1. No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. (Sec. 9, First Par., P. D. No. 49)

176.2. The Author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs shall have the exclusive right of making a collection of his works. (n)

176.3. Notwithstanding the foregoing provisions, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the government in a public document of any work in which copy right is subsisting be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owners. (Sec. 9, Third Par., P. D. No. 49)

#### **CHAPTER V**

## COPYRIGHT OR ECONOMIC RIGHTS

Sec. 177. Copy or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- 177.1. Reproduction of the work or substantial portion of the work;
- 177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- 177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- 177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)
- 177.5. Public display of the original or a copy of the work;
- 177.6. Public performance of the work; and
- 177.7. Other communication to the public of the work (Sec. 5, P. D. No. 49a)

## CHAPTER VI OWNERSHIP OF COPYRIGHT

Sec. 178. Rules on Copyright Ownership. - Copyright ownership shall be governed by the following rules:

- 178.1. Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;
- 178.2. In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;
- 178.3. In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

(b) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

178.4. In the case of a work-commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

178.5. In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producers shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and

178.6. In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code. (Sec. 6, P. D. No. 49a)

Sec. 179. Anonymous and Pseudonymous Works. - For purposes of this Act, the publishers shall be deemed to represent the authors of articles and other writings published without the names of the authors or under pseudonyms, unless the contrary appears, or the pseudonyms or adopted name leaves no doubts as to the author's identity, or if the author of the anonymous works discloses his identity. (Sec. 7, P. D. 49)

## **CHAPTER VII**

### **TRANSFER OR ASSIGNMENT OF COPYRIGHT**

Sec. 180. Rights of Assignee. -

180.1. The copyright may be assigned in whole or in part. Within the scope of the assignment, the assignee is entitled to all the rights and remedies which the assignor had with respect to the copyright.

180.2. The copyright is not deemed assigned inter vivos in whole or in part unless there is a written indication of such intention.



- 180.3. The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners. (Sec. 15, P. D. No. 49a)
- Sec. 181. Copyright and Material Object. - The copyright is distinct from the property in the material object subject to it. Consequently, the transfer or assignment of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer or assignment of the copyright. (Sec. 16, P. D. No. 49)
- Sec. 182. Filing of Assignment of License. - An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette. (Sec. 19, P. D. No. 49a)
- Sec. 183. Designation of Society. - The copyright owners or their heirs may designate a society of artists, writers or composers to enforce their economic rights and moral rights on their behalf. (Sec. 32, P. D. No. 49a)

## **CHAPTER VIII**

### **LIMITATIONS ON COPYRIGHT**

- Sec. 184. Limitations on Copyright. -
- 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:
- (a) the recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; (Sec. 10(1), P. D. No. 49)
  - (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned; (Sec. 11, Third Par., P. D. No. 49)

- (c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated; (Sec. 11, P. D. No. 49)
- (d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (Sec. 12, P. D. No. 49)
- (e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;
- (f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
- (g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
- (h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;
- (i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations; (n)
- (j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That either the work has been published, or, that original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interest.

Sec. 185. Fair Use of a Copyrighted Work. -

185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

- (a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit education purposes;
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2 The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Sec. 186. Work of Architecture. - Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which the copyright relates. (n)

Sec. 187. Reproduction of Published Work. -

187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural

person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- (a) A work of architecture in form of building or other construction;
- (b) An entire book, or a substantial part thereof, or of a musical work in which graphics form by reprographic means;
- (c) A compilation of data and other materials;
- (d) A computer program except as provided in Section 189; and
- (e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (n)

Sec. 188. Reprographic Reproduction by Libraries. -

188.1. Notwithstanding the provisions of Subsection 177.6, any library or archive whose activities are not for profit may, without the authorization of the author of copyright owner, make a single copy of the work by reprographic reproduction:

- (a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- (b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them; when this is considered expedient, to person requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- (c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock; Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a

published work which is considered necessary for the collection of the library but which is out of stock. (Sec. 13, P. D. 49a)

Sec. 189. Reproduction of Computer Program. -

189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:

- (a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- (b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate. (n)

Sec. 190. Importation for Personal Purposes. -

190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

- (a) When copies of the work are not available in the Philippines and:
  - (i) Not more than one (1) copy at one time is imported for strictly individual use only; or
  - (ii) The importation is by authority of and for the use of the Philippine Government; or
  - (iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the encouragement of the fine arts, or for any state school, college, university, or free public library in the Philippines.

(b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, That such copies do not exceed three (3).

190.2. Copies imported as allowed by this Section may not lawfully be used in any way to violate the rights of owner the copyright or annul or limit the protection secured by this Act, and such unlawful use shall be deemed an infringement and shall be punishable as such without prejudice to the proprietor's right of action.

190.3. Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation of articles the importation of which is prohibited under this Section and under treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported. (Sec. 30, P. D. No. 49)

## **CHAPTER IX**

### **DEPOSIT AND NOTICE**

Sec. 191. Registration and Deposit with National Library and the Supreme Court Library.- After the first public dissemination of performance by authority of the copyright owner of a work falling under Subsections 172.1, 172.2 and 172.3 of this Act, there shall, for the purpose of completing the records of the National Library and the Supreme Court Library, within three (3) weeks, be registered and deposited with it, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the directors of said libraries may prescribe. A certificate of deposit shall be issued for which the prescribed fee shall be collected and the copyright owner shall be exempt from making additional deposit of the works with the National Library and the Supreme Court Library under other laws. If, within three (3) weeks after receipt by the copyright owner of a written demand from the directors for such deposit, the required copies or reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to pay a fine equivalent to the required fee per month of delay and to pay to the National Library and the Supreme Court Library the amount of the retail price of the best edition of the work. Only the above mentioned classes of work shall be accepted for deposit by the National Library and the Supreme Court Library. (Sec. 26, P. D. No. 49a)

Sec. 192. Notice of Copyright. - Each copy of a work published or offered for sale may contain a notice bearing the name of the copyright owner, and the

year of its first publication, and, in copies produced after the creator's death, the year of such death. (Sec. 27, P. D. No. 49a)

## **Chapter X** **MORAL RIGHTS**

Sec. 193. Scope of Moral Rights. - The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such right, have the right:

193.1. To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;

193.2. To make any alterations of his work prior to, or to withhold it from publication;

193.3. To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and

193.4. To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work. (Sec. 34, P. D. No. 49)

Sec. 194. Breach of Contract. - An author cannot be compelled to perform his contract to create a work or for the publication of his work already in existence. However, he may be held liable for damages for breach of such contract. (Sec. 35, P. D. No. 49)

Sec. 195. Waiver of Moral Rights. - An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:

195.1. To use the name of the author, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or

195.2. To use the name of the author with respect to a work he did not create. (Sec. 36, P. D. No. 49)

Sec. 196. Contribution to Collective Work. - When an author contributes to a collective work, his right to have his contribution attributed to him is deemed waived unless he expressly reserves it. (Sec. 37, P. D. No. 49)

Sec. 197. Editing, Arranging and Adaptation of Work. - In the absence of a contrary stipulation at the time an author licenses or permits another to use his work, the necessary editing, arranging or adaptation of such work, for publication, broadcast, use in a motion picture, dramatization, or mechanical or electrical reproduction in accordance with the reasonable and customary standards or requirements of the medium in which the work is to be used, shall not be deemed to contravene the author's rights secured by this chapter. Nor shall complete destruction of a work unconditionally transferred by the author be deemed to violate such rights. (Sec. 38, P. D. No. 49)

Sec. 198. Term of Moral Rights. -

198.1. The rights of an author under this chapter shall last during the lifetime of the author and for fifty (50) years after his death and shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in writing to be filed with the National Library. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of the National Library.

198.2. For purposes of this Section, "Person" shall mean any individual, partnership, corporation, association, or society. The Director of the National Library may prescribe reasonable fees to be charged for his services in the application of provisions of this Section. (Sec. 39, P. D. No. 49)

Sec. 199. Enforcement Remedies. - Violation of any of the rights conferred by this Chapter shall entitle those charged with their enforcement to the same rights and remedies available to a copyright owner. In addition, damages which may be availed of under the Civil Code may also be recovered. Any damage recovered after the creator's death shall be held in trust for and remitted to his heirs, and in default of the heirs, shall belong to the government. (Sec. 40, P. D. No. 49)

## **Chapter XI** RIGHTS TO PROCEEDS IN SUBSEQUENT TRANSFERS

Sec. 200. Sale or Lease of Work. - In every sale or lease of an original work of painting or sculpture or of the original manuscript of a writer or composer, subsequent to the first disposition thereof by the author, the author or his heirs shall have an inalienable right to participate in



the gross proceeds of the sale or lease to the extent of five percent (5%). This right shall exist during the lifetime of the author and for fifty (50) years after his death. (Sec. 31, P. D. No. 49)

Sec. 201. Works Not Covered. - The provisions of this Chapter shall not apply to prints, etchings, engravings, works of applied art, or works of similar kind wherein the author primarily derives gain from the proceeds of reproductions. (Sec. 33, P. D. No. 49)

## **Chapter XII**

### **RIGHTS OF PERFORMERS, PRODUCERS OF SOUNDS RECORDINGS AND BROADCASTING ORGANIZATIONS**

Sec. 202. Definitions. - For the purpose of this Act, the following terms shall have the following meanings:

- 202.1. "Performers" are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work;
- 202.2. "Sound recording" means the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;
- 202.3. An "audiovisual work or fixation" is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;
- 202.4. "Fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
- 202.5. "Producer of a sound recording" means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representation of sounds;
- 202.6. "Publication of a fixed performance or a sound recording" means the offering of copies of the fixed performance or the sound recording to the public, with the consent of the right holder: Provided, That copies are offered to the public in reasonable quality;
- 202.7. "Broadcasting" means the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also "broadcasting" where the means for

decrypting are provided to the public by the broadcasting organization or with its consent;

202.8. "Broadcasting organization" shall include a natural person or a juridical entity duly authorized to engage in broadcasting; and

202.9. "Communication to the public of a performance or a sound recording" means the transmission to the public, by any medium, otherwise than by broadcasting, of sounds of a performance or the representations of sounds fixed in a sound recording. For purposes of Section 209, "communication to the public" includes making the sounds or representations of sounds fixed in a sound recording audible to the public.

Sec. 203. Scope of Performers' Rights. - Subject to the provisions of Section 212, performers shall enjoy the following exclusive rights:

203.1. As regards their performances, the right of authorizing:

(a) The broadcasting and other communication to the public of their performance; and

(b) The fixation of their unfixed performance.

203.2. The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form;

203.3. Subject to the provisions of Section 206, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recording through sale or rental or other forms of transfer of ownership;

203.4. The right of authorizing the commercial rental to the public of the original and copies of their performances fixed in sound recordings, even after distribution of them by, or pursuant to the authorization by the performer; and

203.5. The right of authorizing the making available to the public of their performances fixed in sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them. (Sec. 42, P. D. No. 49a)

Sec. 204. Moral Rights of Performers. -

204.1. Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings, have the right to claim to be identified as the performer of

his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

204.2. The rights granted to a performer in accordance with Subsection 203.1 shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed. (Sec. 43, P. D. no. 49)

Sec. 205. Limitation on Right. -

205.1. Subject to the provisions of Section 206, once the performer has authorized the broadcasting or fixation of his performance, the provisions of Sections 203 shall have no further application.

205.2. The provisions of Section 184 and Section 185 shall apply *mutatis mutandis* to performers. (n)

Sec.206. Additional Remuneration for Subsequent Communications or Broadcasts.

- Unless otherwise provided in the contract, in every communication to the public or broadcast of a performance subsequent to the first communication or broadcast thereof by the broadcasting organization, the performer shall be entitled to an additional remuneration equivalent to at least five percent (5%) of the original compensation he or she received for the first communication or broadcast. (n)

Sec. 207. Contract Terms. - Nothing in this Chapter shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of any use of their performance. (n)

### **Chapter XIII** **PRODUCERS OF SOUND RECORDINGS**

Sec. 208. Scope of Right. - Subject to the provisions of Section 212, producers of sound recordings shall enjoy the following exclusive rights:

208.1. The right to authorize the direct or indirect reproduction of their sound recordings, in any manner or form; the placing of these reproductions in the market and the right of rental or lending;

208.2. The right to authorize the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and

208.3. The right to authorize the commercial rental to the public of the original and copies of their sound recordings, even after distribution by them by or pursuant to authorization by the producer. (Sec. 46, P. D. No. 49a)

Sec. 209. Communication to the Public. - If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or for other communication to the public, or is publicly performed with the intention of making and enhancing profit, a single equitable remuneration for the performer or performers, and the producer of the sound recording shall be paid by the user to both the performers and the producer, who, in the absence of any agreement shall share equally. (Sec. 47, P. D. No. 49a)

Sec. 210. Limitation of Right. - Sections 184 and 185 shall apply mutatis mutandis to the producer of sound recordings. (Sec. 48, P. D. No. 49a)

#### **Chapter XIV** BROADCASTING ORGANIZATIONS

Sec. 211. Scope of Right. - Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1. The rebroadcasting of their broadcasts;

211.2. The recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of television broadcasts of the same; and

211.3. The use of such records for fresh transmissions or for fresh recording. (Sec. 52, P. D. No. 49)

#### **Chapter XV** LIMITATIONS ON PROTECTION

Sec. 212. Limitations on Rights. - Sections 203, 208 and 209 shall not apply where the acts referred to in those Sections are related to:

212.1. The use by a natural person exclusively for his own personal purposes;

212.2. Using short excerpts for reporting current events;

212.3. Use solely for the purpose of teaching or for scientific research; and

212.4. Fair use of the broadcast subject to the conditions under section 185. (Sec. 44, P. D. No. 49a)

## **Chapter XVI**

### **TERM OF PROTECTION**

Sec. 213. Term of Protection. - 213.1. Subject to the provisions of Subsections 213.2 to 213.5, the copyright in works under Sections 172 and 173 shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works. (Sec. 21, First Sentence, P. D. No. 49a)

213.1. In case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his death. (Sec. 21, Second Sentence, P.D. No. 49)

213.2. In case of anonymous or pseudonymous works, the copyright shall be protected for fifty (50) years from the date on which the work was first lawfully published: Provided, That where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the provisions of Subsections 213.1 and 213.2 shall apply, as the case may be: Provided, further, That such works if not published before shall be protected for fifty (50) years counted from the making of the work. (Sec. 23, P. D. No. 49)

213.3. In case of works of applied art the protection shall be for a period of twenty-five (25) years from the date of making. (Sec. 24(B), P. D. No. 49a)

213.4. In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making. (Sec. 24(C), P. D. 49a)

213.5. In case of audio-visual works including those produced by process analogous to photography or any process for making audio-visual recordings, the term shall be fifty (50) years from date of publication and, if unpublished, from the date of making. (Sec. 24(C), P. D. No. 49a)

Sec. 214. Calculation of Term. - The term of protection subsequent to the death of the author provided in the preceding Section shall run from the date of his death or of publication, but such terms shall always be deemed to

begin on the first day of January of the year following the event which gave rise to them. (Sec. 25, P. D. No. 49)

Sec. 215. Term of Protection for Performers, Producers and Broadcasting Organizations. -

215.1. The rights granted to performers and producers of sound recordings under this law shall expire:

- (a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and
- (b) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

215.2. In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law. (Sec. 55, P. D. No. 49a)

**Chapter XVII**  
**INFRINGEMENT**

Sec. 216. Remedies for Infringement. -

216.1. Any person infringing a right protected under this law shall be liable:

- (a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.
- (b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.
- (c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their

packaging alleged to infringe a copyright and implements for making them.

- (d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.
- (e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

216. 2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings. (Sec. 28, P. D. No. 49a)

Sec. 217. Criminal Penalties. -

217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

- (a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.
- (b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.
- (c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos (P1,500,000) for the third and subsequent offenses.
- (d) In all cases, subsidiary imprisonment in cases of insolvency.

217.2. In determining the number of years of imprisonment and the amount of fine, the court shall consider the value of the infringing materials that the defendant has produced or manufactured and the damage that the copyright owner has suffered by reason of the infringement.

217.3. Any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

- (a) Selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;
- (b) Distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or
- (c) Trade exhibit of the article in public, shall be guilty of an offense and shall be liable on conviction to imprisonment and fine as above mentioned. (Sec. 29, P. D. No. 49a)

Sec. 218. Affidavit Evidence. -

218.1. In an action under this Chapter, an affidavit made before a notary public by or on behalf of the owner of the copyright in any work or other subject matter and stating that:

- (a) At the time specified therein, copyright subsisted in the work or other subject matter;
- (b) He or the person named therein is the owner of the copyright; and
- (c) The copy of the work or other subject matter annexed thereto is a true copy thereof, shall be admitted in evidence in any proceedings for an offense under this Chapter and shall be prima facie proof of the matters therein stated until the contrary is proved, and the court before which such affidavit is produced shall assume that the affidavit was made by or on behalf of the owner of the copyright.

218.2. In an action under this Chapter.

- (a) Copyright shall be presumed to subsist in the work or other subject matter to which the action relates if the defendant does not put in issue the question whether copyright subsists in the work or other subject matter; and
- (b) Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership.
- (c) Where the defendant, without good faith, puts in issue the questions of whether copyright subsists in a work or other subject matter to which the action relates, or the ownership of copyright in such work or subject matter, thereby occasioning unnecessary costs or delay in the proceedings, the court may direct that any costs to the defendant in respect of the action shall not be allowed by him and that any costs



occasioned by the defendant to other parties shall be paid by him to such other parties. (n)

Sec. 219. Presumption of Authorship. -

219.1. The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

219.2. The person or body, corporate whose name appears on an audio-visual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work. (n)

Sec. 220. International Registration of Works. - A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved except:

220.1. Where the statement cannot be valid under this Act or any other law concerning intellectual property.

220.2. Where the statement is contradicted by another statement recorded in the international register. (n)

**Chapter XVIII**  
SCOPE OF APPLICATION

Sec. 221. Points of Attachment for Works under Sections 172 and 173. -

221.1. The protection afforded by this Act to copyrightable works under Sections 172 and 173 shall apply to:

- (a) Works of authors who are nationals of, or have their habitual residence in the Philippines;
- (b) Audio-visual works the producer of which has his headquarters or habitual residence in the Philippines;
- (c) Works of architecture erected in the Philippines or other artistic works incorporated in a building or other structure located in the Philippines;
- (d) Works first published in the Philippines; and

(e) Works first published in another country but also published in the Philippines within thirty days, irrespective of the nationality or residence of the authors.

221.2. The provisions of this Act shall also apply to works that are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

Sec. 222. Points of Attachment for Performers. - The provisions of this Act on the protection of performers shall apply to:

222.1. Performers who are nationals of the Philippines;

222.2. Performers who are not nationals of the Philippines but whose performances:

(a) Take place in the Philippines; or

(b) Are incorporated in sound recordings that are protected under this Act; or

(c) Which has not been fixed in sound recording but are carried by broadcast qualifying for protection under this Act. (n)

Sec. 223. Points of Attachment for Sound Recordings. - The provisions of this Act on the protection of sound recordings shall apply to:

223.1. Sound recordings the producers of which are nationals of the Philippines; and

223.2. Sound recordings that were first published in the Philippines. (n)

Sec. 224. Points of Attachment for Broadcasts. -

224.1. The provisions of this Act on the protection of broadcasts shall apply to:

(a) Broadcasts of broadcasting organizations the headquarters of which are situated in the Philippines; and

(b) Broadcasts transmitted from transmitters situated in the Philippines.

224.2. The provisions of this Act shall also apply to performers who, and to producers of sound recordings and broadcasting organizations which, are to be protected by virtue of and in accordance with any international convention or other international agreement to which the Philippines is a party. (n)

**Chapter XIX**  
INSTITUTION OF ACTIONS

Sec. 225. Jurisdiction. - Without prejudice to the provisions of Subsection 7.1(c), actions under this Act shall be cognizable by the courts with appropriate jurisdiction under existing law. (Sec. 57, P. D. No. 49a)

Sec. 226. Damages. - No damages may be recovered under this Act after four (4) years from the time the cause of action arose. (Sec. 58, P. D. No. 49)

**Chapter XX**  
MISCELLANEOUS PROVISIONS

Sec. 227. Ownership of Deposit and Instruments. - All copies deposited and instruments in writing filed with the National Library and the Supreme Court Library in accordance with the provisions of this Act shall become the property of the Government. (Sec. 60, P. D. No. 49)

Sec. 228. Public Records. - The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The Director of the National Library is empowered to issue such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act. (Sec. 61, P. D. No. 49)

Sec. 229. Copyright Division Fees. - The Copyright Section of the National Library shall be classified as a Division upon the effectivity of this Act. The National Library shall have the power to collect, for the discharge of its services under this Act, such fees as may be promulgated by it from time to time subject to the approval of the Department Head. (Sec. 62, P. D. 49a)

**PART V**  
**Final Provisions**

Sec. 230. Equitable Principles to Govern Proceedings. - In all inter partes pro

Sec. 231. Reverse Reciprocity of Foreign Laws. - Any condition, restriction, limitation, diminution, requirement, penalty or any similar burden imposed by the law of a foreign country on a Philippine national seeking protection of intellectual property rights in that country, shall reciprocally be enforceable upon nationals of said country, within Philippine jurisdiction. (n)

Sec. 232. Appeals. -

232.1 Appeals from decisions of regular courts shall be governed by the Rules of Court. Unless restrained by a higher court, the judgment of the trial court shall be executory even pending appeal under such terms and conditions as the court may prescribe.

232.2. Unless expressly provided in this Act or other statutes, appeals from decisions of administrative officials shall be provided in the Regulations.  
(n)

Sec. 233. Organization of the Office; Exemption from the Salary Standardization Law and the Attrition Law. -

233.1. The Office shall be organized within one (1) year after the approval of this Act. It shall not be subject to the provisions of Republic Act No. 7430.

233.2. The Office shall institute its own compensation structure: Provided, That the Office shall make its own system conform as closely as possible with the principles provided for under Republic Act No. 6758.  
(n)

Sec. 234. Abolition of the Bureau of Patents, Trademarks, and Technology Transfer. - The Bureau of Patents, Trademarks, and Technology Transfer under the Department of Trade and Industry is hereby abolished. All unexpended funds and fees, fines, royalties and other charges collected for the calendar year, properties, equipment and records of the Bureau of Patents, Trademarks and Technology Transfer, and such personnel as may be necessary are hereby transferred to the Office. Personnel not absorbed or transferred to the Office shall enjoy the retirement benefits granted under existing law, otherwise, they shall be paid the equivalent of one month basic salary for every year of service, or the equivalent nearest fractions thereof favorable to them on the basis of the highest salary received. (n)

Sec. 235. Applications Pending on Effective Date of Act. -

235.1. All applications for patents pending in the Bureau of Patents, Trademarks and Technology Transfer shall be proceeded with and patents thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued to be enforced, to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof: Provided, That applications for utility models or industrial designs pending at the effective date of this Act, shall be proceeded with in accordance with the provisions of this Act,

unless the applicants elect to prosecute said applications in accordance with the Acts under which they were filed.

235.2. All applications for registration of marks or trade names pending in the Bureau of Patents, Trademarks and Technology Transfer at the effective date of this Act may be amended, if practicable to bring them under the provisions of this Act. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts hereby continued in force to this extent for this purpose only, notwithstanding the foregoing general repeal thereof. (n)

Sec. 236. Preservation of Existing Rights. - Nothing herein shall adversely affect the rights on the enforcement of rights in patents, utility models, industrial designs, marks and works, acquired in good faith prior to the effective date of this Act. (n)

Sec. 237. Notification on Berne Appendix. - The Philippines shall by proper compliance with the requirements set forth under the Appendix of the Berne Convention (Paris Act, 1971) avail itself of the special provisions regarding developing countries, including provisions for licenses grantable by competent authority under the Appendix. (n)

Sec. 238. Appropriations. - The funds needed to carry out the provisions of this Act shall be charged to the appropriations of the Bureau of Patents, Trademarks, and Technology Transfer under the current General Appropriations Act and the fees, fines, royalties and other charges collected by the Bureau for the calendar year pursuant to Sections 14.1 and 234 of this Act. Thereafter such sums as may be necessary for its continued implementations shall be included in the annual General Appropriations Act. (n)

Sec. 239. Repeals. -

239.1. All Acts and parts of Acts inconsistent herewith, more particularly Republic Act No. 165, as amended; Republic Act no. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed.

239.2. Marks registered under Republic Act No. 166 shall remain in force but shall be deemed to have been granted under this Act and shall be due for renewal within the period provided for under this Act and, upon renewal, shall be reclassified in accordance with the International

Classification. Trade names and marks registered in the Supplemental Register under Republic Act No. 166 shall remain in force but shall no longer be subject to renewal.

239.3. The provisions of this Act shall apply to works in which copyright protection obtained prior to the effectivity of this Act is subsisting: Provided, That the application of this Act shall not result in the diminution of such protection. (n)

Sec. 240. Separability. - If any provision of this Act or the application of such provision to any circumstances is held invalid, the remainder of the Act shall not be affected thereby. (n)

Sec. 241. Effectivity. - This Act shall take effect on 1 January 1998. (n)

This Act, which is a consolidation of S. No. 1719 and H. No. 8098, was finally passed by the Senate and the House of Representatives on June 4, 1997 and June 5, 1997, respectively.

Approved: 06 June 1997

## Amending Certain Sections of Republic of Act

[Presidential Decree No. 374]  
January 10, 1974

Otherwise Known as the 'Cultural Properties Preservation and Protection Act'

---

WHEREAS, the National Museum has the difficult task, under existing laws and regulations, of preserving and protecting the cultural properties of the nation;

WHEREAS, innumerable sites all over the country have since been excavated for cultural relics, which have passed on to private hands, representing priceless cultural treasures that properly belongs to the Filipino people as their heritage;

WHEREAS, it is perhaps impossible now to find an area in the Philippines, whether government or private property, which has not been disturbed by commercial-minded diggers and collectors, literally destroying part of our historic past;

WHEREAS, because of this the Philippines has been charged as incapable of preserving and protecting her cultural legacies;

WHEREAS, the commercialization of Philippine relics from the contact period, the Neolithic Age, and the Paleolithic Age, has reached a point perilously placing beyond reach of savants the study and reconstruction of Philippine prehistory; and

WHEREAS, it is believed that more stringent regulation on movement and a limited form of registration of important cultural properties and of designated national cultural treasures is necessary, and that regardless of the item, any cultural property exported or sold locally must be registered with the National Museum to control the deplorable situation regarding our national cultural properties and to implement the Cultural Properties Law;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated

September 22, 1972, do hereby decree, order and make as part of the law of the land the following:

Sec. 1. Section 2 to 22 of Republic Act No. 4846 are hereby amended to read as follows:

Sec. 2. It is hereby declared to be the policy of the state to preserve and protect the important cultural properties and National Cultural Treasures of the nation and to safeguard their intrinsic value."

Sec. 3.

- a. Cultural properties are old buildings, monuments, shrines, documents, and objects which may be classified as antiques, relics, or artifacts, landmarks, anthropological and historical sites, and specimens of natural history which are of cultural, historical, anthropological or scientific value and significance to the nation; such as physical, anthropological, archeological and ethnographical materials, meteorites and tektites; historical objects and manuscripts; household and agricultural implements; decorative articles or personal adornment; works of art such as paintings, sculptures, carvings, jewelry, music, architecture, sketches, drawings, or illustrations in part or in whole; works of industrial and commercial art such as furniture, pottery, ceramics, wrought iron, gold, bronze, silver, wood or other heraldic items, metals, coins, medals, badges, insignias, coat of arms, crests, flags, arms, and armor; vehicles or ships or boats in part or in whole.
- b. Cultural properties which have been singled out from among the innumerable cultural properties as having exceptional historical and cultural significance to the Philippines, but are not sufficiently outstanding to merit the classification of "National Cultural Treasures" are important cultural properties.
- c. A National Cultural Treasure is a unique object found locally, possessing outstanding historical, cultural, artistic and/or scientific value which is highly significant and important to this country and nation.
- d. Antiques are cultural properties found locally which are one hundred years or more in age or even less but their production having ceased, they have, therefore, become or are becoming rare.
- e. Relics are cultural properties which, either as a whole or in fragments, are left behind after the destruction or decay of the rest of its parts and which are intimately associated with important beliefs, practices, customs and traditions, periods and personages.
- f. Artifacts are articles which are products of human skills or workmanship, especially in the simple product of primitive arts or industry representing past eras or periods.
- g. Natural History Specimens are live or preserved specimens of plants and animals, fossils, rocks and minerals. Only types, presently irreplaceable specimens and those in danger of extinction shall be embraced in this Act.
- h. Type as mentioned in Section seven-b in the context of this Act is a specimen selected as the best to represent a kind or class of objects



consisting of any but almost identical individuals or pieces. In the case of specimen which was used as the basis of description establishing the species, in accordance with the rules of nomenclature.

- i. A historical site is any place, province, city, town and/or any location and structure which has played a significant and important role in the history of our country and nation. Such significance and importance may be cultural, political, sociological or historical.
- j. An archeological site is any place which may be underground or on the surface, underwater or at sea level which contains fossils, artifacts and other cultural, geological, botanical, zoological materials which depict and document evidences of paleontological and pre-historic events.
- k. An anthropological area is any place where studies of specific cultural groups are being/or should be undertaken in the field of anthropology. Anthropology in this case is descriptive, interpretative and comparative study of all aspects of various cultural linguistic groups including the collection and analysis of their particular material culture.
- l. Collector is any person or institution who acquires cultural properties and national Cultural Treasures for purposes other than sale.
- m. Dealers are persons or enterprises who acquire cultural properties for the purpose of engaging in the acquisition and resale of the same.
- n. Exporters are dealers who engage in the business of exporting cultural properties.
- o. For purposes of Republic Act No. 4846 government property covers all lands and marine areas including those covered by licenses or special permits and those owned or administered by government-owned or controlled corporations, institutions or agencies."

Sec. 4. The National Museum, hereinafter referred to as the Museum shall be the agency of the government which, shall implement the provisions of this Act."

Sec. 5. The Director of the Museum, hereinafter referred to as the Director, shall undertake a census of the important cultural properties of the Philippines, keep a record of their ownership, location, and condition, and maintain an up-to-date register of the same. Private collectors and owners of important cultural properties and public and private schools in possession of these items, shall be required to register their collections with the Museum when required by the Director and to report to the same office when required by the Director any new acquisitions, sales, or transfer thereof."

Sec. 6. The Director is authorized to convene panels of experts, as often as the need for their services may arise, each to be composed of three competent men in the specialized fields of anthropology, natural sciences, history and archives, fine arts, philately and numismatics, and shrines and monuments,

etc. Each panel shall, after careful study and deliberation, decide which among the cultural properties in their field of specialization shall be designated as 'National Cultural Treasures' or 'Important Cultural Properties.' The Director is further authorized to convene panels of experts to declassify designated 'National Cultural Treasures.'

"The Director shall within ten days of such action by the panel transmit their decision and cause the designation-list to be published in at least two newspapers of general circulation. The same procedure shall be followed in the declassification of important cultural properties and national cultural treasures."

Sec. 7. In the designation of a particular cultural property as a 'national cultural treasure', the following procedure shall be observed:

- a. Before the actual designation, the owner, if the property is privately owned, shall be notified at least fifteen days prior to the intended designation, and he shall be invited to attend the deliberation, and given a chance to be heard. Failure on the part of the owner to attend the deliberation shall not bar the panel to render its decision. Decision shall be given by the panel within a week after its deliberation. In the event that the owner desires to seek reconsideration of the designation made by the panel, he may do so within thirty days from the date that the decision has been rendered. If no request for reconsideration is filed after this period, the designation is then considered final and executory. Any request for reconsideration filed within thirty days and subsequently again denied by the panel, may be further appealed to another panel chaired by the Secretary of Education, with two experts as members appointed by the Secretary of Education. Their decision shall be final and binding.
- b. Within each kind or class of objects, only the rare and unique objects may be designated as 'National Cultural Treasures.' The remainder, if any, shall be treated as cultural property.
- c. Designated 'National Cultural Treasures' shall be marked, described, and photographed by the National Museum. The owner retains possession of the same but the Museum shall keep record containing such information as: name of article, owner, period, source, location, condition, description, photograph, identifying marks, approximate value, and other pertinent data."

Sec. 8. National Cultural treasures shall not change ownership, except by inheritance or sale approved by the Director of the National Museum, without the prior notification to and notations made by the Museum in the records. They may not be taken out of the country for reasons of inheritance. Where there is no heir, National Cultural Treasures shall revert to the National Museum or to any other state museum."

Sec. 9. National Cultural Treasures may be taken out of the country only with written permit from the Director of the National Museum, and only for the purpose of exchange programs or for scientific scrutiny, but shall be returned immediately after such exhibition or study: Provided, that the Director of the National Museum shall require that the cultural treasures be adequately insured against loss or damage by the owners thereof, and shall be properly accompanied by a duly authorized representative of the National Museum and/or protected.

Sec. 10. It shall be unlawful to export or to cause to be taken out of the Philippines any of the cultural properties defined in Section three of this Act, without previous registration of the objects with the National Museum and a written permit from the Director of the National Museum: Provided, however, that in the granting or the withholding of the permit, the provisions of Section seven of this Act shall have been satisfied."

Sec. 11. No cultural property may be imported without an official certification of exportation from the country of origin."

Sec. 12. It shall be unlawful to explore, excavate or make diggings on archaeological or historical sites for the purpose of obtaining materials of cultural historical value without the prior written authority from the Director of the National Museum. No excavation or diggings shall be permitted without the supervision of an archaeologist certified as such by the Director of the National Museum, or of such other person who, in the opinion of the Director, is competent to supervise the work, and who shall, upon completion of the project, deposit with the Museum a catalogue of all the materials found thereon, and a description of the archaeological context in accordance with accepted archaeological practices. When excavators shall strike upon any buried cultural property, the excavation shall be suspended and the matter reported immediately to the Director of the National Museum who shall take the appropriate steps to have the discovery investigated and to insure the proper and safe removal thereof, with the knowledge and consent of the owner. The suspension shall not be lifted until the Director of the National Museum shall so allow it.

All exploration, excavation, or diggings on government and private property for archaeological or historical purposes shall be undertaken only by the National Museum, or any institution duly authorized by the Director of the National Museum."

Sec. 13. All restorations, reconstructions, and preservations of government historical buildings, shrines, landmarks, monuments, and sites, which have been designated as 'National Cultural Treasures' and 'important cultural properties' shall only be undertaken with the written permission of the Director of the National Museum who shall designate the supervision of the same.

- Sec. 14. Any donation or support by private individuals or institutions to the National Museum, and any investment for the purchase of cultural properties registered with the National Museum or for the support of scientific and cultural expeditions, explorations, or excavations when so certified by the Director of the National Museum shall be tax exempt and deductible from the income tax returns of the individual or institution. Donations of National Cultural Treasures and important cultural properties to the National Museum or any accredited institution for preservation for posterity, or of any monetary contribution to the National Museum or any accredited institution for the purchase of National Cultural Treasures and important cultural properties shall also be deductible from the income tax returns: Provided, that such donations are duly acknowledged and receipted by the recipient and certified by the Director of the National Museum."
- Sec. 15. Any cultural property for sale as allowed under this Act, should be registered with the National Museum and the proceeds thereof shall be considered as income and therefore subject to taxation; Provided, however, that the Government shall be given the first option for three months to buy these cultural properties when placed on sale."
- Sec. 16. All dealers of cultural properties shall secure a license as a dealer in cultural properties from the Director of the National Museum."
- Sec. 17. All dealers engaged in the business of exporting cultural properties shall secure a license as exporter of cultural properties from the Director of the National Museum.
- Sec. 18. The Director of the National Museum is hereby empowered to promulgate rules and regulations for the implementation of the provisions of this Act, which rules and regulations shall be given the widest publicity and also shall be given directly to known collectors, excavators, archaeologists, dealers, exporters and others affected by this Act. Such rules and regulations shall be approved by the Secretary of Education."
- Sec. 19. The Museum may collect fees for registration, licenses, inspections, certifications, authorizations, and permits in compliance with the provisions of this Act: Provided, that the objects or materials attempted to be concealed from registration or those intended to be exported in violation of this Act or those intended to be exported in violation of this Act shall be confiscated and forfeited to the Government: Provided, further, that if the violation is committed by a juridical person, the manager, representative, director, agent, or employee of said juridical person responsible for the Act shall be liable to the penalties provided herein."

Sec. 20. Penal Provisions. Any violation of the provisions of this Act shall, upon conviction, subject the offender to a fine of not more than ten thousand pesos or imprisonment for a term of not more than two years or both upon the discretion of the court: Provided, that objects or materials attempted to be concealed from registration or those intended to be exported or excavated in violation of this Act shall be summarily confiscated and forfeited to the National Museum: Provided, further, that if the violation is committed by a juridical person, the manager, representative, director, agent, or employee of said juridical person responsible for the act shall also be liable to the penalties provided herein."

Sec. 21. There shall be created a division of cultural properties in the national Museum clothed with adequate police power to prosecute violators of this Act."

Sec. 22. The sum of one hundred thousand pesos (P100,000) is hereby appropriated annually out of any funds in the National Treasury, not otherwise appropriated, to carry out the provisions of this Act."

Sec. 23. Any provisions of existing law, rules and regulations inconsistent with the provisions of this Decree are hereby repealed and modified accordingly.

Sec. 24. This Decree shall take effect fifteen (15) days after publication in the Official Gazette.

Done in the City of Manila, this 10th day of January, in the year of Our Lord, nineteen hundred and seventy-four.

## **Granting certain privileges and honors to National Artists and creating a special fund for the purpose**

[Presidential Decree 208]

---

Whereas, the arts and letters are under the patronage of the State, as embodied in the Constitution;

Whereas, the arts and letters are truly reflective of the national genius, in the manner that they give expression by artists who can retrieve, for the nation, what is true and what is beautiful in Philippine culture;

Whereas, it is the policy of the Government to grant special privileges to National Artists, in recognition of their contributions to the cultural heritage of the country, as well as in encouragement of a spirit of excellence in the arts and letters;

Now therefore, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, and in furtherance of Proclamation No. 1144 dated May 15, 1973, do hereby order and decree:

The following privileges and honors, among others, shall henceforth be made available to National Artists:

1. A cash award of ten thousand pesos (P 10,000) upon conferment of the award and decoration of National Artist;
2. A life pension of two thousand pesos (P 2,000) payable monthly;
3. Medical and hospitalization benefits;
4. Coverage by lifetime insurance policy in the amount of fifty thousand pesos (P50,000) by the Government Service Insurance System and /or private insurance companies from date of conferment of the award, in the event the National Artist is insurable, the premiums for which shall be paid by the National Government or by donation from any governmental or private entities;

5. A place of honor in state functions, national commemoration ceremonies and all other cultural presentations; and
6. A state funeral, the arrangements for and the expenses of which shall be borne by the Government, upon the death of the National Artist.

In addition, the National Artists Awards Committee, composed of the members of the Board of Trustees of the Cultural Center of the Philippines created to administer the Award authorize the disbursement of funds for the travel expenses of National Artists to and from the places where their works of art may be on official exhibition, for the benefit of the Philippine public.

Any person who has been conferred the award and decoration of National Artist shall, as a condition for the retention of such award and decoration, and the privileges and honors decreed hereunder, remain a citizen of the Philippines.

There is hereby created a Special Account in the annual General Appropriations Act, with an initial appropriation of Five Hundred Thousand Pesos which is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated to carry out the purposes of this Decree. Thereafter, such sum as may be necessary to replenish said Special Account shall be included in the annual General Appropriations Act.

The National Artists Awards Committee shall make and supervise the disbursement of funds in the Special Account: Provided, That the disbursements shall be subject to audit by the Commission on Audit: And provided, further, That a report of such disbursements shall be submitted to the Office of the President of the Philippines once every six months.

This Decree is hereby made part of the laws of the land and shall take effect immediately.

Done in the City of Manila, this 7<sup>th</sup> day of June, in the year of Our Lord, nineteen hundred and seventy-three.

## Creating the award and decoration of international artist

[Proclamation No. 1151]

---

Whereas, it is the declared policy of the State to promote the arts and letters under the Constitution, giving due recognition to those who have made profound contributions to the development of the artistic and cultural heritage of the Philippines;

Whereas, it becomes immediately apparent that such persons are not limited to citizens of the Philippines, the arts and letters being a universal medium of expressions free of the restricting confines of geography and nationality;

Now, therefore, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby create an Award and Decoration to be known as International Artist, to be conferred upon artists of foreign nationality who have contributed to the advancement of the arts and of the culture of the Philippines.

An International Artists Awards Committee is hereby created to administer the conferment of the category of International Artist upon those deserving thereof. The Committee, which, as in the case of the National Artists Awards Committee, shall be composed of the members of the Board of Trustees of the Cultural Center of the Philippines, shall organize itself immediately and shall draft the rules to guide its deliberation of International Artists. These rules shall ensure that only such foreign artists who are of exceptional excellence in their chosen careers, are of world acceptance and acclaim, and through the use of the arts for international peace and progress, have promoted international unity and understanding, shall receive the award.

Whenever practicable, International Artists shall be accorded the same privileges and honors given National Artists under Presidential Decree No. 208 dated June 7, 1973, during their stay in the Philippines.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.



Done in the City of Manila, this 7<sup>th</sup> day of June in the year of Our Lord, nineteen hundred and seventy-three.

## **The Rules and Regulations on the Selection of Manlilikha ng Bayan as Amended**

[March 14, 2000]

Pursuant to the provisions of Section 7 of Republic Act No. 7355, otherwise known as the “Manlilikha ng Bayan Act”, the following Rules and Regulations governing the selection of the Manlilikha ng Bayan are hereby adopted and promulgated.

---

### **RULE I.**

#### **PURPOSE AND INTERPRETATION**

- Section 1. These Rules and Regulations shall prescribe the methodology for the search, screening and selection of the candidates for the National Living Treasures Award or “Gawad sa Manlilikha ng Bayan” in contemplation of the provisions of Republic Act No. 7355.
- Section 2. This set of Rules and Regulations shall be interpreted in the light of the declaration of policy of the State as set forth in Section 2 of RA 7355 “to preserve and promote its traditional folk arts whether visual, performing, or literary, for their cultural value, and to honor and support traditional folk artists for their contribution to the national heritage by ensuring that the artistic skills which they have painstakingly cultivated and preserved are encouraged and passed on to future generations of Filipinos.”
- Section 3. A Gawad sa Manlilikha ng Bayan Committee shall be created by the National Commission for Culture and the Arts (NCCA) in accordance with Section 7 of Republic Act No. 7355. (Annex A)

### **RULE II.**

#### **THE GAWAD SA MANLILIKHA NG BAYAN AND ITS AIMS**

- Section 4. In contemplation of the law, the Gawad sa Manlilikha ng Bayan has been instituted as a national tribute to the creative and technical genius of the Filipino traditional artist and more specifically aims to –
- a. to acknowledge the importance of the traditional folk artist as singular conduit between skills of the past and the future and to highlight the significance of Filipino traditional arts and cultures, indigenous or syncretized, in defining Filipino identity and enhancing contemporary life;

- b. to revitalize a community’s artistic tradition thereby protecting a valuable facet of Philippine culture and to strengthen worthy traditions threatened by extinction;
- c. to recognize the vital role of the traditional artist in preserving and developing our indigenous artistic heritage;
- d. to accord the Filipino traditional artists the highest honors and respect for their consummate technical skills and outstanding creativity;
- e. to create opportunities for popularizing their works locally and internationally; and
- f. to ensure a system for identifying and providing adequate support to traditional artists who qualify as national living treasures so as to enable them to bequeath their precious knowledge to succeeding generations of Filipinos.

**RULE III.**  
DEFINITIONS OF TERMS

Section 5. For purposes of these Rules and Regulations, the following terms shall be taken and understood in the sense indicated hereunder:

- a. “Manlilikha ng Bayan” refers to national living treasures entitled to the recognition provided by RA 7355. As envisioned under said law, this term shall mean a citizen or group of citizens engaged in any traditional art uniquely Pilipino whose distinctive skills have reached such a high level of technical and artistic excellence and have been passed on to and widely practiced by the present generation in his/her/their community with the same degree of technical and artistic competence.
- b. “Traditional Folk Art” refers to expressions of distinctiveness and artistic quality created to serve a decorative, aesthetic, and/or utilitarian or socio-economic function of traditional folk artists commonly known for such works.
- c. “Citizen” is a citizen of the Philippines pursuant to the 1987 Constitution of the Philippines.
- d. “Awardee” refers to the Manlilikha ng Bayan who is the recipient of the Gawad sa Manlilikha ng Bayan.

- e. "Documentation" refers to the continuous process of substantiating or recording the existence of the works, including work methods and tools, of the Manlilikha ng Bayan through appropriate methods and techniques.
- f. "Indigenous/Traditional Cultural Communities" are intimately structured societies composed of citizens with a shared set of values, norms, languages and practices.
- g. "Group" is a structured aggrupment of craftsmen/artists who are specialists in a particular folk art tradition.

#### **RULE IV.**

#### **CRITERIA AND QUALIFICATIONS FOR SELECTION OF AWARDEES**

**Section 6.** To become a Manlilikha ng Bayan, the candidate must possess the following qualifications:

- a. He/she/group is an inhabitant of an indigenous/traditional cultural community anywhere in the Philippines that has preserved indigenous customs, beliefs, rituals and traditions and/or has syncretized whatever external elements that have influenced it.
- b. He/she/group must have engaged in a folk art tradition that has been in existence and documented for at least fifty (50) years.
- c. He/she/group must have consistently performed or produced over a significant period, works of superior and distinctive quality.
- d. He/she/group must possess a mastery of the tools and materials needed by the art, and must have an established reputation in the art as master and maker of works of extraordinary technical quality.
- e. He/she/group must have passed on and/or will pass on to other members of the community their skills in the folk art for which the community is traditionally known.

**Section 7.** Groups of persons nominated for collective recognition must have the following qualifications in addition to those prescribed in the preceding section.

- a. The group must excel in a distinctive folk art tradition.
- b. The group must be willing to be organized for the purpose of receiving and for the administration of the award.

Section 8. A traditional artist who possesses all the qualities of a Manlilikha ng Bayan candidate, but due to age or infirmity has left him/her incapable of teaching further his/her craft, may still be recognized as a Manlilikha ng Bayan if:

- a. He/she has created a significant body of works and/or has consistently displayed excellence in the practice of his/her art, thus achieving important contributions for its development.
- b. He/she has been instrumented in the revitalization of his/her community's artistic tradition.
- c. He/she has passed on to other members of the community skills in the folk art for which the community is traditionally known.
- d. His/her community has recognized him/her as master and teacher of his/her craft.

#### **RULE V.**

#### **TRADITIONAL FOLK ARTS CATEGORIES**

Section 9. For purposes of the Gawad sa Manlilikha ng Bayan, the award shall be given in each of, but not limited to the following categories of traditional folk arts, viz.: folk architecture, maritime transport, weaving, carving, performing arts, literature, graphic and plastic arts, ornament, textile or fiber art, pottery and other artistic expressions of traditional culture. Consideration shall be given to geographical distribution and balance of artistic categories.

#### **RULE VI.**

#### **THE SEARCH AND SELECTION PROCESS**

Section 10. To ensure a fair selection of the potential awardees, the Gawad sa Manlilikha ng Bayan Committee shall be assisted by an Ad Hoc Panel of Experts consisting of experts in the traditional folk arts categories listed in the preceding section. The names of those selected to become members of the Ad Hoc Panel of Experts shall be submitted to the NCCA Board of Commissioners for proper designation. The Ad Hoc Panel of Experts may be composed of the members of the Gawad sa Manlilikha ng Bayan Committee, one representative from each of the committees of the Subcommission on Cultural Communities and Traditional Arts, representatives from the Office of Muslim Affairs (OMA), National Commission on Indigenous

People (NCIP), and representatives from other government and non-government instrumentalities or other appropriate institutions whose representation shall be instituted by NCCA Board from time to time. The term of the members shall expire upon completion of the search and selection process.

Section 11. The Ad Hoc Panel of Experts shall constitute from among themselves Ad Hoc Search Committees, that shall be deployed to the various parts of the country, after determining the priority areas, to conduct a thorough search and documentation of candidates for the awards in the traditional folk arts category respectively assigned to them.

Section 12. Nominations may come from the members of the Ad Hoc Panel of Experts based on their knowledge and expertise. Additional nominations may come from the Subcommission on Cultural Communities and Traditional Arts, cultural, government and private institutions, local cultural offices, universities and other persons knowledgeable in any of the identified categories.

Section 13. In the process of their search, the Ad Hoc Search Committees may identify additional nominees.

Section 14. The duration of the nomination process ends upon submission of the final list of nominees of the Ad Hoc Search Committees to the Ad Hoc Panel of Experts.

Section 15. In conducting the search, the Ad Hoc Search Committees shall be guided by and shall faithfully adhere to the criteria and qualifications for becoming a Manlilikha ng Bayan.

Section 16. The Ad Hoc Panel of Experts shall then constitute an Ad Hoc Screening Committee who shall recommend nominees for the award to an Ad Hoc Panel of Reviewers.

Section 17. The Gawad sa Manlilikha ng Bayan Committee and Ad Hoc Panel of Experts shall constitute from among scholars, practitioners and experts in the field of traditional arts a Ad Hoc Panel of Reviewers that shall review the recommendations of the Ad Hoc Screening Committee and evaluate their qualifications. The documentation previously undertaken by the Ad Hoc Search Committees shall be a key factor in the evaluation process.

Section 18. The Gawad sa Manlilikha ng Bayan Committee shall submit to the NCCA the recommendations of the Ad Hoc Panel of Reviewers for appropriate action.

Section 19. The names of the awardees approved by the NCCA Board shall be submitted to the president of the Philippines for proclamation.

Section 20. The awardee(s) shall forthwith be notified of the award. The travel expenses of the awardee, one member of his/her family and/or local coordinator if culturally appropriate, shall be charged to the Gawad sa Manlilikha ng Bayan funds.

Section 21. Before the conferment of the award, he/she/they shall be informed of the meaning, significance and implications of the award, the incentives to be enjoyed as well as the duties and responsibilities expected of him/her/them as an awardee. A Memorandum of Agreement between the awardee and the NCCA shall be signed to be witnessed by the Head of the Gawad sa Manlilikha ng Bayan Committee, the local coordinator, a member of his/her family and a member of the NCCA Secretariat.

Section 22. The Gawad sa Manlilikha ng Bayan shall be formally presented to the awardee(s) by the President of the Philippines at appropriate public ceremonies in Metro Manila. Appropriate provincial ceremonies shall follow in the home province of the awardee(s).

#### **RULE VII.** DUTIES AND RESPONSIBILITIES

**Section 23.** The Manlilikha ng Bayan is a link between the past, in which his/her/their traditional folk art found fertile soil for growth, and the future, during which he/she/they seek his/her/their art to be permanently sustained. It becomes his/her/their responsibilities therefore to undertake the following:

- a. to transfer the skills of his/her/their traditional folk art to the younger generation through apprenticeship and such other training methods as are found to be effective;
- b. to cooperate with the implementing agency, as provided for in Section 7 of RA 7355, in the promotion and propagation of his/her/their traditional folk arts; and
- c. to donate to the National Museum a sample, copy or documentation of his/her/their work.

**RULE VIII.**  
CANCELLATION OF MONTHLY GRANT

Section 24. An awardee who refuses to comply with the duties and responsibilities of a Manlilikha ng Bayan despite due notice shall have his monthly grant forfeited by the NCCA upon the recommendation of the Gawad sa Manlilikha ng Bayan Committee.

**RULE IX.**  
EFFECTIVITY

Section 25. These Rules and Regulations as amended shall take effect immediately upon approval by the NCCA Board of Commissioners.



# Gawad Sa Manlilikha ng Bayan

[Committee Membership Rules]

---

## 1.0 Background

- 1.1 Republic Act No. 7355, the law creating the Gawad sa Manlilikha ng Bayan, mandated the National Commission for Culture and the Arts (NCCA) to develop and implement a program to effectuate the provisions of said Act and promulgate such rules, regulations and criteria that will govern the selection of the Manlilikha ng Bayan.
- 1.2 The Gawad sa Manlilikha ng Bayan Committee was created by the Commission to make policy recommendations, implement plans and programs and conduct the search and selection of potential awardees. The Committee shall be composed of five (5) individual members designated by the Commission. A Chairman shall be elected from among them.
- 1.3 To ensure a fair search and selection process, an Ad Hoc Panel of Experts will be convened for the selection of the awardees, using the criteria and qualifications cited in the law and the Rules and Regulations on the Selection of the Manlilikha ng Bayan.

## 2.0 Committee Membership

- 2.1 New members of the Gawad sa Manlilikha ng Bayan Committee shall consist of experts invited by the incumbent members of the Gawad sa Manlilikha ng Bayan Committee and designated by the NCCA Board of Commissioners.
- 2.2 To qualify for Committee membership, the individual:
  - a. should demonstrate interest and willingness to serve the indigenous peoples, cultural communities and traditional arts;
  - b. should be recognized authorities in the study of indigenous peoples, cultural communities and traditional arts, as proven by their accomplishments in these fields;

- c. must be willing to devote sufficient time and effort to the work of the Committee specifically on planning and formulation of policies and projects; and
- d. must not have been convicted with finality of any crime by a court of justice or dismissed for cause by any organization, whether public or private.

2.3 Committee membership shall begin immediately following the designation of the individual by the Commission with the following terms of office:

- a. **Chairman.** A Chairman shall be elected from among the members of the Committee through secret ballot during a meeting called especially for this purpose. A majority of the members of the Committee may validly call for an election by notifying the Secretariat in writing and requesting the Secretariat to set a meeting for that purpose.

In event that a member is not able to attend the elections personally, he may designate in writing a proxy. The person with the highest number of votes shall be declared elected.

The Chairman shall hold office for five (5) years, after which he shall serve as consultant to the Committee for one (1) year, to begin after the expiration of his five-year term.

In case of vacancy due to the Chairman's death, resignation, or incapacity, the remaining members of the Committee will elect a Chairman from among themselves. The person thus elected shall serve the remainder of the term. He may be elected for another term if he may be elected for another term if he served less than three (3) years.

A Chairman who resigns from or otherwise leaves the Committee after serving for more than half of a term shall be considered having served his full term.

- b. **Consultant.** After the end of the term of the Chairman, he/she shall sit in the Committee for one year, to be counted from the expiration of his five-year term, as a Consultant to facilitate the smooth turn over duties and responsibilities to the in-coming Chairman. The Consultant shall not have any voting power.
- c. **Committee Members.** Committee members shall hold office for five (5) years on a staggered basis and may be recommended for a second term only. A Committee member who resigns from or otherwise

leaves the Committee after serving for more than half of a term shall be considered having served his full term.

c. 1 Vacancies on the Committee due to death, resignation, incapacity, removal or other reason may be filled by majority vote of the remaining Committee members from among qualified Ad Hoc Panel of Experts members. The name of the newly elected Committee member shall be submitted to the Commission for his formal designation.

c. 2 The persons thus designated as new members of the Committee shall serve for the remainder of the term and may be recommended for a second term only if he served less than three (3) years.

#### **2.4 Removal from Committee Membership**

a. Committee membership may be terminated upon the recommendation of at least three (3) members of the Committee.

b. The bases for removal shall include: conduct deleterious to the welfare of the Committee and the *Manlilikha ng Bayan* awardees, misrepresentations and/or abuse of position, misuse of funds, failure to perform his/her duties and responsibilities as may be assigned to him/her; acting in conflict of interest, failure to protect the welfare of the NCCA, the Committee, traditional artists and generally, violation of the NCCA Code of Ethics.

c. The grounds for removal shall be stated in writing. The person concerned shall be advised of the reasons for the proposed removal and shall be given the opportunity to be heard by the Committee members. The body shall decide on the proposed removal by majority vote. Any member removed may appeal the decision to the Commission, whose decision shall be final.

#### **3.0 Ad Hoc Panel of Experts**

3.1 An Ad Hoc Panel of Experts shall be convened to conduct a thorough search, fair selection and careful review of the nominees for the Award.

3.2 The Ad Hoc Panel of Experts may be composed of the following persons:

a. members of the *Manlilikha ng Bayan* Committee

b. one representative from each of the committees of the Subcommission on Cultural Communities and Traditional Arts.

- c. one representative each from the Office of Muslim Affairs and National Commission on Indigenous People, and
  - d. representatives from other government and non-government instrumentalities or other appropriate institutions whose representation shall be instituted by the NCCA Board from time to time.
- 3.3 The names of those selected to become members of the Ad Hoc Panel of Experts shall be submitted to the Commission for proper designation. Their term shall expire upon completion of the search and selection process.
- 3.4 A member may be eligible to be part of Panels to be constituted in the future.
- 3.5 To qualify for the membership in the Ad Hoc Panel of Experts, the person:
- a. should be a Filipino citizen of good standing in his community or the sector which he represents;
  - b. demonstrates interest, experience/service in his community/sector;
  - c. should have achieved authority and credibility through personal achievement in his field of expertise;
  - d. is willing to support the Committee in conducting the whole search and selection process; and
  - e. must not have been convicted with finality of any crime by a court of justice or dismissed for cause by any organization, whether public or private.
- 3.6 The Ad Hoc Panel of Experts shall constitute from among themselves Ad Hoc Search Committees which shall be deployed to the various parts of the country, after determining the priority areas, to conduct the search and documentation of candidates for the awards in the traditional folk arts category respectively assigned to them. At least two experts shall be assigned for each area.
- 3.7 The Ad Hoc Panel of Experts shall constitute from among themselves an Ad Hoc Screening Committee composed of five (5) members who shall recommend nominees for the award to an Ad Hoc Panel of Reviewers.

#### **4.0 Ad Hoc Panel of Reviewers**

4.1 The Ad Hoc Panel of Reviewers shall be composed of the five (5) members of the Gawad sa Manlilikha ng Bayan Committee and four (4) individuals identified by the Committee from among scholars, practitioners and experts in the field of traditional arts. The Ad Hoc Panel of Reviewers shall review the recommendations of the Screening Committee and evaluate the qualifications of the candidate/s. The recommendations of the Ad Hoc Panel of Reviewers shall be submitted to the NCCA Board of Commissioners for appropriate action.

#### **5.0 Meetings**

5.1 All Committee members shall attend the regular monthly or special meetings of the Committee. A Committee Secretary shall be elected from among them to do the minutes of the meeting.

5.2 During election of the Chairman, a written notice shall be sent to all Committee members at least 15 days prior to the date of the election. Elections shall be held at the NCCA office in the presence of an NCCA representative designated by the Executive Director. A Committee member shall be entitled to only one vote. In the event that a member is not able to attend the elections personally, he may designate a proxy in writing. The person with the highest number of votes shall be declared elected.

5.3 A Committee member may be removed on the same grounds and following the same procedure prescribed for removal from Committee membership.

5.4 Committee meetings shall be held at least once a month, preferably at a set and announced date. A simple majority (50% +1) of the membership of the Committee shall be considered a quorum.

5.5 A secretariat shall be assigned to assist the Committee in all matters pertaining to the administration of the Gawad sa Manlilikha ng Bayan.

#### **6.0 Conflict of Interest Provisions**

6.1 Committee members shall desist from participating in any way in the analysis, evaluation and approval of any project in which they have a direct or indirect interest, whether professional or financial, or personal and which proposal is made by themselves or by organizations of which they are Directors or Trustees or Officers.

- 6.2 Committee members, although part of the Ad Hoc Panel of Experts, shall desist from becoming members of the Ad Hoc Search and Screening Committees.
- 6.3 Any member of the Committee, Ad Hoc Panel of Experts and Ad Hoc Panel of Reviewers who has a nominee, related to a nominee up to the second degree of consanguinity or affinity or is a member of the community where there is a nominee shall inhibit himself from joining the screening and selection process.