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# Draft Broadcasting Law for Mongolia

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## CHAPTER ONE General Provisions

### Article 1. Purpose of the Law

The purpose of this Law is to provide for the regulation of broadcasting in the public interest, including through the establishment of an Independent Broadcasting Council.

### Article 2. Legislation on Broadcasting

- 2.1. The Legislation on Broadcasting shall consist of the Constitution of Mongolia, this Law, the Law on Communications and other legislative acts and regulations consistent with those laws.
- 2.2. If the provisions of any international treaties which Mongolia has ratified are inconsistent with those in this Law, then the provisions of the international treaty shall prevail.

### Article 3. Definitions in this Law

- 3.1. In this Law, the following terms shall be interpreted as follows:
  - 3.1.1. “advertisement” means any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect desired by the advertiser, for which broadcasting time has been given up to the advertiser for remuneration or similar consideration;
  - 3.1.2. “Advertising Code” means a set of standards governing broadcast content which constitutes an advertisement;
  - 3.1.3. “Annual Report” is the report required to be prepared by the Council pursuant to Article 20.
  - 3.1.4. “basic service” means the minimum package of television and/or radio channels which subscribers to a satellite or cable service are required to purchase;
  - 3.1.5. “broadcasting” means the dissemination of broadcast programming, including through terrestrial transmitters, cable, satellite or any other medium, for public consumption and for simultaneous reception, whether or not by subscription, through a radio and/or television broadcast receiver or other related electronic equipment, but does not include communications internal to a private

organisation or government body, such as closed circuit television or internal address systems, or communications disseminated through the Internet;

- 3.1.6. "broadcaster" means an organisation that engages in broadcasting, be it a public service broadcaster, a commercial broadcaster or a community broadcaster;
- 3.1.7. "Broadcasting Frequency Plan" means a plan for the allocation of the broadcasting frequency spectrum among the various uses such as television and radio, national and local licences, and public, commercial and community broadcasters;
- 3.1.8. "broadcasting frequency spectrum" means that part of the electromagnetic wave spectrum which is part of the public domain and which may from time to time be assigned to be used for broadcasting uses, but does not include other frequencies, such as those used for telecommunications purposes;
- 3.1.9. "broadcasting service" means a defined service which consists in the broadcasting of audiovisual or sound material to the public, sections of the public or subscribers to such service;
- 3.1.10. "commercial broadcaster" means a broadcasting organisation that is neither a public broadcaster nor a community broadcaster and which is operated on a for-profit basis;
- 3.1.11. "Commission" or "Communications Regulatory Commission" means the Commission established under the Law on Communications, 2001, to issue communications licences and otherwise regulate communications;
- 3.1.12. "community broadcaster" means a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community;
- 3.1.13. "Council" means the Independent Broadcasting Council established by Article 6;
- 3.1.14. "free-to-air" means terrestrial broadcasting which is provided without a direct charge for reception to the recipient;
- 3.1.15. "independent producer" means an individual or company who produces programmes for radio or television and who is not controlled by any individual broadcaster;
- 3.1.16. "licence" means a licence issued by the Commission for purposes of providing a broadcasting service to the public;
- 3.1.17. "licensee" means an individual or organisation who has been granted a licence to provide a broadcasting service to the public;

- 3.1.18. “local content” means broadcast material produced by a licensee, by a permanent resident of Mongolia or by a company the majority of whose shareholdings are held by permanent residents, or a co-production in which the above mentioned persons have at least a 50% financial interest but does not include advertisements;
- 3.1.19. “Minister” means the minister in charge of the ministry responsible for broadcasting;
- 3.1.20. “Ministry” means the ministry responsible for broadcasting;
- 3.1.21. “Programme Code” means a set of standards relating to general broadcasting content and practices;
- 3.1.22. “Programme Schedule” means a plan indicating the general types of programmes proposed to be broadcast, along with the proportion of broadcasting time to be devoted to such programmes and to advertising, and the target audience, but for cable or satellite services the Programme Schedule means a description of the basic service and of all other services provided;
- 3.1.23. “public broadcaster” means a broadcaster subject to public ownership which has a mandate to broadcast in the public interest;
- 3.1.24. “satellite broadcasting” means the dissemination of a broadcasting service by means of satellite transmission;
- 3.1.25. “sponsorship” means the participation of a natural or legal person who is not engaged in broadcasting activities or the production of audiovisual works in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person;
- 3.1.26. “subscriber” means a person who receives a broadcasting service at a specific location in exchange for a prescribed fee, without further transmitting that service to any other person; and
- 3.1.27. “terrestrial broadcasting” means the dissemination of a broadcasting service via the electromagnetic wave spectrum for direct reception by homes or businesses without needing equipment other than radio or television equipment.

#### **Article 4. Name of this Law**

- 4.1. This Law may be cited as the Mongolian Broadcasting Law 2010.
- 4.2. This Law shall come into operation on such date as the Minister may, by notification published in the Official Gazette, appoint, provided that in the absence of such notification, this Law shall come into effect six months after it has been passed by the Great State Hural.

## **CHAPTER TWO**

### **Broadcasting Policy**

#### **Article 5: Broadcasting Policy**

- 5.1. The airwaves are a public resource which shall be used to promote the public interest and the right of the public to a diverse range of information and ideas.
- 5.2. Broadcast regulation shall seek to promote the following policy goals:
  - 5.2.1. to uphold the Constitution of Mongolia, as well as human rights, democracy and the rule of law;
  - 5.2.2. to protect and promote freedom of expression;
  - 5.2.3. to encourage creative national broadcasting;
  - 5.2.4. to promote a diverse range of quality broadcasting services, including by licensing all three types of broadcaster, namely public, commercial and community;
  - 5.2.5. to enhance the public's right to know through promoting pluralism and a wide variety of programming on matters of public interest;
  - 5.2.6. to prevent monopolisation of ownership and promote fair competition in the broadcasting sector;
  - 5.2.7. to promote accurate, informative and balanced programming;
  - 5.2.8. to encourage the provision of quality educational programming;
  - 5.2.9. to promote the widest possible geographic distribution of broadcasting services;
  - 5.2.10. to develop and promote broadcasting reflecting national and regional culture and identity;
  - 5.2.11. to promote the appropriate use of new technology; and
  - 5.2.12. to enhance the overall financial and competitive viability of broadcasting in Mongolia.

## **CHAPTER THREE**

### **The Independent Broadcasting Council**

#### **Article 6: Establishment of the Council**

- 6.1. The Independent Broadcasting Council is hereby established as a body corporate having perpetual succession and a common seal which may:
  - 6.1.1. sue and be sued;
  - 6.1.2. purchase, acquire, hold or alienate real and personal property; and
  - 6.1.3. do or perform such other things as bodies corporate may by law do or perform.
- 6.2. The Council is an independent institution which is accountable to the people through the Great State Hural.

6.3. The Council shall enjoy operational and administrative autonomy from any other person or entity, except as specifically provided for in this or any other law. This autonomy of the Council shall be respected at all times and no person or entity shall seek to influence its members or staff in the discharge of their duties, or to interfere with its activities, except in the discharge of a specific authority or duty provided for by law.

#### **Article 7: Appointment of Members**

7.1. The Council shall consist of five (5) Members, all of whom shall have some expertise, by virtue of their education or experience, in the areas of broadcasting, policy, law, technology, journalism and/or business and who shall be known for their high moral standards, integrity, impartiality and competence.

7.2. Each of the following bodies shall nominate one member to sit on the Council:

7.2.1. The Bar Association.

7.2.2. The National University of Mongolia.

7.2.3. The Press Institute.

7.2.4. The Gandantegchinlen Khiid Monastery.

7.2.5. Human rights NGOs having been registered and active for at least three years.

[NOTE: THIS IS JUST AN INDICATIVE LIST WHICH SHOULD BE FINALISED TAKING INTO ACCOUNT THE LOCAL SITUATION]

7.3. The bodies listed in sub-article 7.2 shall publish the name of their proposed candidate and the public shall be given an opportunity to make representations concerning that candidate prior to appointment.

7.4. Members shall be appointed by the Prime Minister, provided that if the Prime Minister rejects any member proposed by the bodies listed in sub-article 7.2, he or she shall provide reasons for this and the proposing body shall have the right to nominate another member.

7.5. All Members of the Council shall be independent and impartial in the exercise of their functions, shall represent the public interest and not the body that nominated them or any other particular interest, and shall, at all times, seek to promote broadcasting policy as set out in Article 5.

7.6. Members of the Council must not actively engage in politics.

#### **Article 8: Disqualifications of Members**

8.1. No one shall be appointed as a Member of the Council if he or she:

8.1.1. is not a citizen of Mongolia;

8.1.2. is, or has been within the last two years, employed in the civil service or any other branch of government;

8.1.3. holds, or has held within the last two years, an elected position in the Great State Hural or in any local government, or holds an official

- officein, or is an employee of, a political party;
- 8.1.4. holds, directly or indirectly, significant financial interests in telecommunications or broadcasting;
- 8.1.5. is an undischarged bankrupt or insolvent; or
- 8.1.6. has been convicted of a violent crime and/or a crime of moral turpitudeunless five years has passed since the sentence was discharged.
- 8.2. Where, by virtue of a will, gift or otherwise, a Member obtains an interestnoted in sub-article 8.1.4, he or she shall, within a period of two (2) months,either dispose of the interest or resign from his or her position as Member.
- 8.3. In any case where sub-article 8.2 becomes applicable to a Member, he or sheshall not take part in any decision-making process of the Council until he orshe has disposed of the relevant interest.

#### **Article 9: Tenure and Removal**

- 9.1. Members shall serve on the Council for five (5) years and may be re-appointedto serve a maximum of two terms, provided that the Minister shall identify two(2) individuals from among the original group of appointees whose initial termof office shall be just two (2) years.
- 9.2. A Member may be removed from office only where that individual:
  - 9.2.1. becomes, by virtue of sub-article 8.1, ineligible for appointment to theCouncil, subject to the provisions of sub-article 8.2;
  - 9.2.2. commits a serious violation of his or her responsibilities under this Law,including by failing to promote broadcasting policy as set out in Article 5,by engaging in corrupt practices, or for gross negligence of duty;
  - 9.2.3. is no longer able to perform his or her duties effectively, whether due tophysical or mental disability or any other cause; or
  - 9.2.4. fails, without valid excuse, to attend three consecutive meetings of theCouncil.
- 9.3. The Prime Minister may remove a Member from office but only uponreceiving the agreement of either the body which nominated that Member orthe other four Members.
- 9.4. No Member shall be removed from office without first being given anopportunity to be heard.
- 9.5. Any Member who is removed from office pursuant to this Article shall beprovided with written reasons for his or her removal and shall have the right toappeal his or her removal to the courts.
- 9.6. A Member may at any time resign his or her office by giving notice in writingto the Minister.



9.7. Where a Member is removed from office, or a Member resigns or dies, that Member shall be duly replaced under the same conditions, and in the same manner, as he or she was appointed.

#### **Article 10: Remuneration of Members**

- 10.1. Members of the Council shall be compensated for actual expenses, including travel, accommodation and subsistence, incurred as a result of their duties as members of the Council.
- 10.2. Members of the Council shall receive compensation on an equal basis for attendance at Council meetings, based on a schedule which has been agreed in advance and approved as part of the process for agreeing the Council's budget.

#### **Article 11: Rules of Procedure**

- 11.1. The Council shall appoint its own Chairperson and Vice-Chairperson from among its Members.
- 11.2. The Council shall, subject to this Law, adopt such rules, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions and all business shall be conducted in accordance with such rules.
- 11.3. The Council shall meet as often as it deems necessary and shall, in any case, meet at least once in every two months.
- 11.4. Meetings of the Council shall be convened by the Chairperson, or in his or her absence the Vice-Chairperson, provided that it shall be mandatory to convene a meeting within seven days of a request for such a meeting by not less than two Members.
- 11.5. The Chairperson or, in his or her absence the Vice-Chairperson, shall preside at all meetings of the Council.
- 11.6. The quorum for meetings of the Council shall be three members.
- 11.7. A decision at a meeting of the Council shall be adopted by a simple majority of the Members present and voting except as otherwise decided by the Council. In case of an equality of votes, the Member presiding at the meeting shall have a casting vote in addition to his or her original vote.
- 11.8. Minutes shall be kept in proper form of each meeting of the Council and shall be confirmed by the Council at the next meeting and signed by the Member presiding at the meeting.

#### **Article 12: Disclosure of Interest**

- 12.1. A Member of the Council who has, directly or indirectly, an interest in a matter under discussion by the Council shall disclose that fact and the nature of his or her interest to the Council.

- 12.2. A disclosure under sub-article 12.1 shall be recorded in the minutes of the Council or committee.
- 12.3. After a disclosure under sub-article 12.1, the Member in question:
- 12.3.1. shall not take part in nor be present during any discussion, deliberation or decision of the Council; but
  - 12.3.2. may be counted for the purpose of forming a quorum of the Council.

## **CHAPTER FOUR**

### **Functions, Duties and Powers of the Council**

#### **Article 13: Functions of the Council**

- 13.1. The Council is charged with the oversight of broadcasting, consistent with constitutional and international guarantees of freedom of expression, and with promoting the public interest in the broadcasting sector.
- 13.2. The functions of the Council are:
- 13.2.1. to oversee the development of the Advertising Code and Programme Code;
  - 13.2.2. to oversee the implementation of the Advertising Code and Programme Code; and
  - 13.2.3. to ensure that the other rules provided for in this Law are respected by licensees.
- 13.3. In discharging its responsibilities, the Council shall endeavour to promote broadcasting policy as set out in Article 5.

#### **Article 14: Powers of the Council**

- 14.1. The Council shall have all such powers as may be reasonably necessary for the purpose of carrying out its functions under this Law and of regulating its own procedure.

#### **Article 15: Investigations**

- 15.1. The Council shall have the power to conduct investigations and hold hearings as necessary to discharge its responsibilities under this Law.

#### **Article 16: Appointment of Secretariat**

- 16.1. The Council shall, in accordance with the budget, establish a Secretariat, along with such staff as it considers necessary and appropriate to enable it to perform its functions.
- 16.2. The Secretariat shall be responsible to the Council for the proper administration and management of the functions of the Council in accordance with policy laid down by the Council.
- 16.3. Employees of the Council shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote broadcasting policy

asset out in Article 5.

**Article 17: Limitation of Liability**

- 17.1. No proceedings, civil or criminal, shall lie against the Council for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.
- 17.2. No proceedings, civil or criminal, shall lie against any member, officer or employee of the Council for anything done or said, or any failure to do or say anything in the course of the discharge of his or her duties as a member, officer or employee of the Council, unless it is shown that the person did not act in good faith or with reasonable care.

**CHAPTER FIVE**

**Funding and Accountability of Council**

**Article 18: Fiscal Year**

- 18.1. The Council's fiscal year shall be from the 1st day of January to the 31st day of December of each year.

**Article 19: Funding for the Council**

- 19.1. The Council may receive funds from the following sources:
  - 19.1.1. grants from the general budget;
  - 19.1.2. grants from local or foreign bodies;
  - 19.1.3. loans; and
  - 19.1.4. moneys received from other sources.
- 19.2. Not less than three months prior to the end of each fiscal year, the Council shall submit to the Great State Hural, through the Minister, a budget statement for the following fiscal year, including any operating funds requested by the Council from the general budget.
- 19.3. The Great State Hural may approve or modify the Council's proposed budget, provided that it shall not reduce the funds available to the Council by more than five (5) percent from the previous year.
- 19.4. Upon approval of the Council's budget by the Great State Hural, the Minister of Finance shall include that budget in the general budget and make payments to the Council for its operations on a quarterly basis in advance.
- 19.5. Notwithstanding any contrary provision in any other law, the Council shall not be liable to pay income tax on any property held or received, or on any income earned and the Council is hereby exempted from the payment of such tax.

### **Article 20: Audit and Annual Report**

- 20.1. Within four (4) months after the end of each fiscal year the Council shall prepare a report of its activities during that fiscal year (the Annual Report).
- 20.2. The Council shall maintain accounts of all monies received and spent by it and shall, within four (4) months after the end of each fiscal year, commission an audited statement of accounts, prepared in accordance with generally accepted accounting practice.
- 20.3. The Council shall submit copies of the Annual Report and audited accounts to the Minister, who shall cause them to be laid before the Great State Hural as soon as practicable.
- 20.4. The Annual Report shall include the following information:
  - 20.4.1. a copy of the auditor's report;
  - 20.4.2. a statement of financial performance and of cash flows;
  - 20.4.3. the budget for the current fiscal year;
  - 20.4.4. a description of the activities of the Council during the previous year;
  - 20.4.5. information relating to complaints and research;
  - 20.4.6. a description of any sanctions applied by the Council and the decisions relating thereto;
  - 20.4.7. an analysis of the extent to which the Council has met its objectives of the previous year;
  - 20.4.8. the Council's objectives for the current year; and
  - 20.4.9. any recommendations in the area of broadcasting.
- 20.5. The Council shall publish and distribute widely the Annual Report, along with its audited accounts, including through its website.

## **CHAPTER SIX**

### **Frequency Planning**

#### **Article 21: Broadcasting Frequency Plan**

- 21.1. The Communications Regulatory Commission shall consult with the Council and other key stakeholders to determine which part of the electromagnetic wave spectrum is from time to time assigned to be used for broadcasting uses.
- 21.2. The Commission shall, in close consultation with the Council, as well as with interested stakeholders and the Government, develop and from time to time revise a Broadcasting Frequency Plan, which shall include a locator map, in order to promote the optimal use of these frequencies and the widest possible broadcasting diversity.
- 21.3. The Broadcasting Frequency Plan shall ensure that, in accordance with broadcasting policy as set out in Article 5, the broadcasting

frequency spectrum is shared equitably and in the public interest among the three types of broadcasters, public, commercial and community as well as broadcasters of different geographic reach.

- 21.4. The Broadcasting Frequency Plan, along with any revisions to it, shall be published and disseminated widely.
- 21.5. The Broadcasting Frequency Plan may reserve certain frequencies for future use for specific categories of broadcasters in order to ensure diversity and equitable access to frequencies over time.

## **CHAPTER SEVEN**

### **Licensing by the Commission**

#### **Article 22: New Licences**

- 22.1. The Commission shall, from time to time, determine whether it is in the public interest, based on the Broadcasting Frequency Plan, broadcasting policy, interest by potential broadcasters and market capacity, to issue a competitive tender with a view to issuing an additional licence(s) to provide a broadcasting service(s).
- 22.2. The Commission may also, in lower population density areas, receive applications, in the absence of a call for applications, to provide a broadcasting service.
- 22.3. The Commission shall adopt regulations in advance setting out the process to be followed to apply for a licence, along with a description of what information must be provided and a published schedule of the annual licence fees.
- 22.4. Where a tender is issued pursuant to sub-article 22.1, the Council shall publish widely a notice to that effect, including the information stipulated in sub-article 22.3.
- 22.5. Applicants for a broadcasting service licence must provide at least the following information:
  - 22.5.1. their ownership structure;
  - 22.5.2. their sources of finance and proposed financial plan;
  - 22.5.3. their organisational and management structure, including the personnel and expertise available to deliver the service;
  - 22.5.4. the programme schedule or, in the case of a cable or satellite service, information about the channels proposed to be provided within the basic service, as well as any other channels which may be purchased; and
  - 22.5.5. the technical facilities for delivery of the service.
- 22.6. Applicants for a broadcasting service licence to operate at the sub-national level do not need a letter of endorsement for their application from

the local governor.

### **Article 23: Assessing Licence Applications**

- 23.1. The process by which the Commission assesses licences shall be fair, nondiscriminatory and transparent.
- 23.2. Licence applications shall include consideration of the application by the Commission at a public hearing and anyone may provide written comments on the application.
- 23.3. The Commission shall cause any applications for a broadcasting licence to be published in the Official Gazette at least 60 days prior to the hearing referred to in sub-article 23.2, provided that such publication shall not include sensitive commercial or other information provided by the applicant.
- 23.4. The Commission shall take the following factors into account in deciding whether or not to issue a broadcasting licence:
  - 23.4.1. the technical capacity of the applicant to deliver a quality service, taking into account the nature of the proposed service;
  - 23.4.2. the nature and extent of the financial resources of the applicant and the financial viability of the proposal;
  - 23.4.3. the effect of licensing the proposed service in terms of concentration of ownership, cross ownership and fair competition;
  - 23.4.4. promotion of the widest possible diversity of programming, taking into account the proposed Programme Schedule, the demand and the need for that service, and the broadcasting services already being provided in that area; and
  - 23.4.5. the need to promote locally produced programming which serves the needs and interests of the people of Mongolia.
- 23.5. The Commission shall provide written notice of its decisions to all applicants for broadcasting service licences. Where an application is refused, this notice shall include the reasons for the refusal, as well as information regarding the applicant's right of appeal.
- 23.6. A licence shall not be issued to an individual who is not a resident or citizen of Mongolia, or to an entity which does not have recognised legal status in Mongolia or which is subject to majority control by non-residents or non-citizens.
- 23.7. Upon the grant by the Commission of a licence under this Article, it shall cause notification of that decision to be published in the Official Gazette.

### **Article 24: Licence Renewals**

- 24.1. An application for the renewal of a licence shall be made at least four (4) months before the date of expiry of the existing licence.

- 24.2. A licensee shall be entitled to have its licence renewed, provided that the Commission may refuse to renew a licence where the licensee has operated in significant breach of its licence conditions or where this is clearly in the public interest, based on broadcasting policy as set out in Article 5.
- 24.3. At the time of renewal, either a licensee or the Commission may propose amendments to the licence conditions and the Commission may accept or reject these amendments.
- 24.4. The Commission may, when considering an application for the renewal of a licence, require such new or additional information as it may deem necessary.
- 24.5. If at the expiry of a licence the Commission has not yet reached a decision in respect of an application to renew it, the licence shall continue in effect until the application for its renewal is granted or refused by the Commission.
- 24.6. The Commission shall provide a licensee with written reasons, in advance of a final decision, of any proposed decision not to renew a licence, and shall give the licensee an opportunity to make oral and/or written representations.
- 24.7. Where the Commission does not renew a licence, it shall provide written reasons for its decision.

## **CHAPTER EIGHT**

### **Licence Conditions**

#### **Article 25: General Licence Conditions**

- 25.1. Licences are not transferable without the prior approval of the Commission.
- 25.2. Compliance with all matters specified in the licence application, including the Programme Schedule, is deemed to be a licence condition.
- 25.3. Terrestrial broadcasters are required to keep a master recording of all programmes and advertisements broadcast for at least twenty-eight (28) days after they have been broadcast, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Commission or Council, keep a master recording of that broadcast material until the matter has been fully resolved.
- 25.4. Satellite broadcasters are required to keep a register of the programme channels and advertisements distributed for at least twenty-eight (28) days after they have been distributed, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Commission or Council, keep a

- record of it until the matter has been fully resolved.
- 25.5. If a broadcasting service has not been initiated within six (6) months after the licence is granted, that licence shall lapse.
- 25.6. Licences shall be valid for the following periods of time:
- 25.6.1. three (3) years for a community broadcasting licence;
  - 25.6.2. seven (7) years for a commercial radio broadcasting licence; and
  - 25.6.3. ten (10) years for a commercial television broadcasting licence.
- 25.7. Licensees are required to report annually to the Commission on their activities, including the observance of licence conditions.

#### **Article 26: Copyright**

- 26.1. Broadcasters may only broadcast programmes which they produced or for which they hold broadcasting rights and copyright must be clearly indicated as part of the credits displayed with each programme.
- 26.2. The name of the producer of every programme shall be displayed or read out at the end of the programme.

#### **Article 27: Undue Concentration of Ownership**

- 27.1. No legal or natural person shall exercise direct or indirect control over more than one national free-to-air television service.
- 27.2. No legal or natural person shall exercise direct or indirect control over more than two free-to-air radio services available in one geographical area (i.e. overlapping services).
- 27.3. No legal or natural person shall exercise direct or indirect control over a national free-to-air television service and a national free-to-air radio service.
- 27.4. No legal or natural person shall exercise direct or indirect control over a national free-to-air broadcasting service and a national newspaper.
- 27.5. For purposes of this Article, financial or voting interests of 20% or more shall be deemed to constitute control.

#### **Article 28: Local Content Requirements**

- 28.1. Every licensed broadcaster shall be required to include within each broadcasting service the following minimum quotas of local programming:
- 28.1.1. 20% within 6 months of the coming into force of this Law;
  - 28.1.2. 30% within 2 years of the coming into force of this Law; and
  - 28.1.3. 40% within 3 years of the coming into force of this Law.
- 28.2. In exceptional circumstances, the Commission, after consultation with the Council, may agree to delay or waive the above requirements for a particular broadcasting service.



#### **Article 29: Additional Terms and Conditions**

- 29.1. The Commission may, from time to time, by notification published in the Official Gazette, adopt regulations setting out general licence terms and conditions either of general application for all licensees or for different types of licensees.
- 29.2. Such terms and conditions may, among other things, stipulate:
- 29.2.1. the minimum amount of programming to be commissioned from local independent producers; or
  - 29.2.2. the categories of information that must be provided by licensees in their annual reports to the Commission.

#### **Article 30: Specific Licence Conditions**

- 30.1. The Commission may attach such reasonable conditions to a broadcasting service licence as it deems necessary to promote broadcasting policy as set out in Article 5.

#### **Article 31: Licence Condition Amendments**

- 31.1. Broadcasters may propose amendments to their licences to the Commission, which may approve or refuse such amendments, provided that if the Commission fails to respond to a proposal within 30 working days after receiving it, the Commission shall be deemed to have accepted it.
- 31.2. The Commission may, in respect of any particular licence, and after giving the licence holder an opportunity to make written representations, amend of its own motion any of the prescribed conditions, including adding further conditions:
- 31.2.1. if the Commission is of the opinion that this is necessary to promote broadcasting policy as set out in Article 5; or
  - 31.2.2. in order to give effect to any international treaty governing broadcasting matters to which Mongolia is a party.

#### **Article 32: Restriction on Licence Conditions**

- 32.1. No licence conditions shall be imposed under Articles 29, 30 or 31 unless they:
- 32.1.1. are relevant to broadcasting;
  - 32.1.2. further broadcasting policy as set out in Article 5; and
  - 32.1.3. are reasonable and realistic, given the licensee.

## **CHAPTER NINE**

### **Advertising and Programme Codes**

#### **Article 33: The Advertising and Programme Codes**

- 33.1. The Council shall, in consultation with broadcasters, journalists and other interested stakeholders, draw up, and from time to time review and amend, both an Advertising Code and a Programme Code for broadcasters.
- 33.2. The Codes shall be published and every licensee shall be provided with a copy of each Code.

#### **Article 34: The Advertising Code**

- 34.1. The Advertising Code shall address a range of issues relating to broadcast advertising, including the following:
  - 34.1.1. all advertisements shall be clearly identified as such;
  - 34.1.2. no broadcaster shall carry advertisements for medicines which are available only with a prescription;
  - 34.1.3. the maximum daily and hourly advertising which may be carried by different licensed broadcasting services, which shall in no case exceed 20% of total daily programming, provided that, for this purpose, sponsorship shall not be deemed to constitute advertising;
  - 34.1.4. except in accordance with this Article or any regulations promulgated by the election commissions or pursuant to the Law on the State Great Hural Elections of Mongolia or the Law on the Presidential Elections of Mongolia, no broadcaster shall carry any advertisement for or on behalf of any political party or candidate for election to political office; and
  - 34.1.5. subject to any regulations promulgated by the election commissions or pursuant to the Law on the State Great Hural Elections of Mongolia or the Law on the Presidential Elections of Mongolia, the Council may, by notification published in the Official Gazette, adopt regulations regarding political advertisements during elections, provided that any such regulations shall be based on the principle that parties and candidates should be granted equitable, non-discriminatory access to licensees.
- 34.2. The Advertising Code may also set rules regarding programme sponsorship.

#### **Article 35: The Programme Code**

- 35.1. The Programme Code shall address a range of issues relating to programming including, among other things, the following:
  - 35.1.1. balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;
  - 35.1.2. protection of children;
  - 35.1.3. classification of programmes, including films, according to their recommended age of viewers;
  - 35.1.4. the terms, conduct and editing of interviews;

- 35.1.5. the use of covert recording and subterfuge;
  - 35.1.6. keeping within accepted boundaries of taste and decency, including in relation to the portrayal of sexual conduct and violence, the use of stronger abusive language, and the broadcasting of text messages sent in by viewers or listeners;
  - 35.1.7. the coverage of crime and anti-social behaviour;
  - 35.1.8. distinguishing between factual material and comment;
  - 35.1.9. the treatment of religion, ethnic minorities, women and men, minors and disadvantaged groups;
  - 35.1.10. respect for privacy; and
  - 35.1.11. the use of subliminal images or sounds.
- 35.2. In developing and implementing the Programme Code, the Council shall have due regard to the rightful place in a pluralist democratic society of robust and challenging debate, of the strong expression of personal views, of the need for original, innovative and stimulating programme-making and of the potential for achieving proper balance over a series of programmes, or over time, rather than in every individual programme.

#### **Article 36: Compliance**

- 36.1. Compliance with the Advertising and Programme Codes are deemed to be mandatory licence conditions.

### **CHAPTER TEN Breach of the Codes**

#### **Article 37: Complaints and Monitoring**

- 37.1. Anyone who believes that a licensee has breached the Advertising Code or the Programme Code may lodge a complaint in writing with the Council and the Council shall investigate every such complaint, unless it considers the complaint to be frivolous or manifestly unfounded.
- 37.2. It shall be the duty of the Council to ensure that all licensees comply with the Codes and, to this end, the Council may monitor licensees and undertake an investigation where it believes there may have been a breach.

#### **Article 38: Investigations**

- 38.1. Where it conducts an investigation pursuant to Article 37, the Council shall provide the broadcaster with adequate written notice of any allegation of a breach and with a reasonable opportunity to make representations. In the case of a complaint, the Council shall also provide the complainant with a reasonable opportunity to make representations.
- 38.2. The Council shall, absent exceptional circumstances, come to a decision

in relation to a complaint within two (2) months.

38.3. Where the Council decides that a licensee is in breach of the Advertising or Programme Code, it shall publish its decision, including reasons for its decision, any sanction to be imposed pursuant to Article 39 and notification of the broadcaster's right to appeal from this decision. The Council shall provide the broadcaster and, where relevant the complainant, with a copy of its decision.

### **Article 39: Sanctions**

39.1. Where the Council determines that a licensee is in breach of the Advertising or Programme Code, it may apply one or more of the following sanctions:

39.1.1. issue an internal instruction to the licensee;

39.1.2. issue a public written warning to the broadcaster;

39.1.3. order the broadcaster to broadcast a statement, correction or retraction at a specified time and in a specified form; or

39.1.4. order the broadcaster to take such action or desist from taking such action as it deems necessary to rectify or prevent repetition of the breach.

39.2. In cases of repeated breach of licence conditions, the Council may order a licensee to pay a fine not exceeding 2% of its total revenues for the previous year, provided that such fines shall be paid into general government revenues.

39.3. In cases of repeated and gross breach of licence conditions, the Council may order the suspension of part or all of the Programme Schedule of a licensee, or terminate its licence.

39.4. For breach of a rule relating to broadcast content, the Council shall not impose the sanctions provided for in sub-articles 39.2 or 39.3 except as decided by at least three (3) Members and where other sanctions have failed to prevent further breach.

39.5. Failure to comply with an order of the Council under this Article shall be deemed to be contempt of court and, where a licensee fails within a reasonable time to comply with such an order, the Council may request the prosecutor to institute contempt proceedings.

### **Article 40: Appeals**

40.1. Any person aggrieved by a decision of the Council under this Chapter may appeal to the courts for a review of that decision.

## CHAPTER ELEVEN

### Final Provisions

#### **Article 41: Institutional Arrangements**

- 41.1. Broadcasters already in existence on the date this Law comes into force shall make any necessary adjustments to comply with the provisions of this Law within six (6) months of that date.
- 41.2. The Council shall be established within six (6) months of this Law coming into force.

#### **Article 42: Rules and Regulations**

- 42.1. The Minister may, by notification published in the Official Gazette, make rules and regulations for carrying out the purposes of this Law, provided that such rules and regulations are not inconsistent with this Law.
- 42.2. In particular, the Minister may make rules or regulations relating to:
  - 42.2.1. the manner for appointing and/or removing members of the Council, pursuant to Articles 7 and 9; and
  - 42.2.2. remuneration of members of the Council, pursuant to Article 10.
- 42.3. The Council may, among other things, adopt rules relating to:
  - 42.3.1. its rules of procedure, pursuant to sub-article 11.2;
  - 42.3.2. dealing with conflicts of interest, pursuant to Articles 12;
  - 42.3.3. the conduct of investigations, pursuant to Article 15;
  - 42.3.4. the appointment of the Secretariat, pursuant to sub-article 16.1;
  - 42.3.5. the Advertising or Programme Codes, respectively, pursuant to Article 33;
  - 42.3.6. the process for conducting investigations pursuant to section 38; and
  - 42.3.7. the imposition of sanctions, pursuant to section 39.
- 42.4. The Commission may, among other things, adopt rules relating to:
  - 42.4.1. the tendering process for licences, pursuant to sub-article 22.3;
  - 42.4.2. the process for assessing licence applications, pursuant to Article 23; and
  - 42.4.3. additional licence terms and conditions, pursuant to section 29;

# Law of Mongolia on Copyright and Related Rights

## (Unofficial Translation)

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(Revised text)

January 19, 2006  
Ulaanbaatar city

(Turiin medeel #7, 2006)

### CHAPTER ONE GENERAL PROVISIONS

#### **Article 1. Purpose of the Law**

1.1. The purpose of this law shall be to regulate matters related to the ownership, exploitation, administration and protection of works subject to the protection by copyright and related rights.

#### **Article 2. Legislation on copyright**

- 2.1. The legislation on copyright and related rights shall consist of the Constitution of Mongolia<sup>1</sup>, Civil Code<sup>2</sup>, this law and other legislative acts adopted in conformity with these laws.
- 2.2. If an international treaty to which Mongolia is a party to, provides otherwise than this law, then the provisions of the international treaty shall prevail.

#### **Article 3. Definitions of terms of the law**

- 3.1. The following terms used in this law shall be interpreted as follows:
- 3.1.1. "Author" means an individual who has created a work as a result of his/her creative activity;
  - 3.1.2. "Rightholder" means an individual or a legal entity who holds an exclusive right to exploit the work in respect of the literary and artistic works;
  - 3.1.3. "Performer" means an individual who performs literary and artistic works, as well as expressions of folklore for the purposes of circus, stage, screen and artistic performances through acts such as singing, playing, acting, dancing and declaiming.
  - 3.1.4. "Expression of folklore" means a work of traditional literature and arts

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<sup>1</sup>Constitution of Mongolia . Published in "State Bulletin" Issue No 1, 1992.

<sup>2</sup>Civil Code . Published in "State Bulletin" Issue No 7, 2002.

which is communicated by any means from one generation to another and the author of which is unknown;

- 3.1.5. "Backing track" means the recording of the sounds of a performance, or of a representation of sounds, other than in the form of recording incorporated in a cinematographic or other audiovisual work;
- 3.1.6. "Reproduction of a work" means making one or more copies of the copyrighted work, part of the work directly or indirectly by any means and methods;
- 3.1.7. "Publication" means making works subject to copyright and related rights available to the public with the consent of the rightholder, provided that the copies are offered to the public in a quantity sufficient to meet the public needs;
- 3.1.8. "Distribution" means distribution of works subject to copyright and related rights to the public in a way that the consumer has access to the work by wire and wireless means at the place and time chosen by him/her;
- 3.1.9. "Derivative work" means a work that has been changed, adapted, translated, converted, summarized, compiled or modified in other form through creative activity and based on the pre-existing work;
- 3.1.10. "Work of applied art" means an artistic work for household use, produced by industrial or handicraft methods;
- 3.1.11. "Work subject to related rights" means performance, first recording of audio and video, audiovisual recordings and broadcasts;
- 3.1.12. "Producer of a backing track" means an individual or a legal entity, who or which takes the initiative and has the responsibility for the first recording of the sounds of a performance or other sounds, or the representations of sounds;
- 3.1.13. "Audiovisual work" means a work that can present images along with sounds using equipment regardless of its tangible form.
- 3.1.14. "Rights management information" means information on the work, author, right holder and terms of use of the work contained in the work or marked to distribute the work to the public and the numeric or codified expression of such information.

## **CHAPTER TWO**

### **Authorship and protected works**

#### **Article 4. Copyright holder**

4.1. The following person shall hold the copyright under this law:

- 4.1.1. citizens of Mongolia, foreign nationals and stateless persons permanently residing in Mongolia, who have created work regardless

- of whether their works were published or not;
  - 4.1.2. foreign nationals whose work has been first published in Mongolia;
  - 4.1.3. authors who placed their sculptures, architectural works and/or works of fine arts being component of buildings permanently placed in the territory of Mongolia;
  - 4.1.4. legal persons who are entitled to copyright under the legislation on copyright;
  - 4.1.5. citizens and legal persons of other countries which are parties to international treaties of Mongolia.
- 4.2. A work of a foreign citizen shall be considered as having been first published in Mongolia if it was published within 30 days from the date when it was first published in any other country.
- 4.3. Persons provided in the law shall be entitled to copyright in case of works which were published under a pseudonym or anonymously.

#### **Article 5. Co-authorship**

- 5.1. Co-authors mean two or more persons who produced a work by their joint creative efforts for a common purpose.
- 5.2. Copyright in a joint work shall vest in the co-author jointly unless agreed otherwise in the agreement.

#### **Article 6. Works subject to copyright (Subject matter)**

- 6.1. Any scientific, literary or artistic works involving creative activity of authors shall be considered as works subject to copyright irrespective of their content, purpose, value, importance and methods of expression.
- 6.2. Works subject to copyright shall be expressed in written, verbal, graphic and other tangible forms regardless of whether they were published or not.

#### **Article 7. Works to be protected by copyright**

- 7.1. The following works shall be protected by copyright:
  - 7.1.1. all types of scientific and literary works whether in verbal or written form, including computer programs;
  - 7.1.2. all types of musical works whether with or without lyrics;
  - 7.1.3. all types of works of fine art;
  - 7.1.4. works of decorative, applied and theatrical arts;
  - 7.1.5. works of architecture and sculptures;
  - 7.1.6. all types of choreographic works, works of contortionists and pantomime;
  - 7.1.7. all types of plays and musical works created for the stage art;
  - 7.1.8. all types of photographic works and works created by methods similar to photography;



- 7.1.9. audiovisual works;
- 7.1.10. derivative works;
- 7.1.11. glossaries, references, compilations and databases that are considered to be intellectual works by its structure and contents and have been created through creative activities such as selection and placement of materials;
- 7.1.12. derivative works based on the works of folklore.

#### **Article 8. Works not to be protected by copyright**

- 8.1. The following works shall not be protected by copyright:
  - 8.1.1. texts of laws and other legal acts;
  - 8.1.2. administrative decisions and official documents of legal entities and organizations;
  - 8.1.3. court decisions, resolutions, judge's decrees, other documents and speeches delivered during court hearings;
  - 8.1.4. translation of documents specified in Subsections 8.1.1-8.1.3 of this law;
  - 8.1.5. coats of arms, banners, flags, awards, orders and medals;
  - 8.1.6. any news or information with facts and figures for the purpose of reporting the current events and results thereof;
  - 8.1.7. works of folklore and national traditions;
  - 8.1.8. any ideas, methods, procedures, scientific discoveries and mathematical concepts.

### **CHAPTER THREE TERM OF COPYRIGHT**

#### **Article 9. Establishment and certification of copyright**

- 9.1. Copyright in scientific, literary and artistic works shall start from the actual creation of the work.
- 9.2. No certification is required for establishment and enjoyment of copyright.
- 9.3. The owner of the exclusive rights may use the copyright protection notice for the purposes of information.
- 9.4. In the absence of documents proving the authorship, the author whose name is indicated on the original work or copies thereof shall be considered as the author.
- 9.5. The author may register his work or the agreement related to the transfer of his exclusive rights in the work with the government organization in charge of intellectual property matters (hereinafter to be referred to as "Intellectual Property Office") on the voluntary basis.
- 9.6. The copyright notice specified in Section 9.3 of this law may be expressed as

follows:

- 9.6.1. Latin letter C in a circle;
- 9.6.2. The name of the owner of the exclusive rights;
- 9.6.3. The year of first publication.

#### **Article 10. Rights of authors**

10.1. The author shall have intangible and exclusive rights in respect of his work.

#### **Article 11. Intangible rights of authors**

- 11.1. An author is entitled to the following intangible rights in respect of his work:
- 11.1.1. To publish his work under his real name, a pseudonym or anonymously;
  - 11.1.2. It shall be prohibited to alter or disclose an author's pseudonym without his/her consent;
  - 11.1.3. To require his/her name to be mentioned whenever his/her work is published or exploited;
  - 11.1.4. It shall be prohibited to modify, alter or change a work or its title in any manner or form without the author's consent.

#### **Article 12. Exclusive rights**

- 12.1. An author shall have exclusive rights over the exploitation of his/her work in any manner or form.
- 12.2. The exclusive rights over the exploitation of his/her work shall include the exclusive rights to allow or prohibit the following activities:
- 12.2.1. reproduction of a work;
  - 12.2.2. publication of a work;
  - 12.2.3. distribution of a work;
  - 12.2.4. modification of a work into a derivative work;
  - 12.2.5. rental of a work.
- 12.3. The right specified in Section 12.1 of this law shall be assigned to others only with the author's consent and on the basis of an agreement.

#### **Article 13. Term of copyright**

- 13.1. The term of copyright protection in respect of a particular work shall begin from the day of its creation.
- 13.2. And author shall enjoy the exclusive rights for his/her lifetime and 50 years after his/her death.
- 13.3. The term of intangible rights of an author has no time limitations.
- 13.4. In the case of pseudonymous or anonymous works, the exclusive rights of an author in copyrighted works shall begin from 1st January of the year following the year the first publication of a work and be valid for 75 years.

- 13.5. If the name of the author of a work specified in Section 13.4 of this law is disclosed to the public, the term of copyright shall be determined in accordance with Section 13.2 of this law.
- 13.6. In case of the co-authorship, the copyright shall be protected for the lifetime of the authors and for a period of 50 years from 1st January of the year following the death of the last surviving author.

#### **Article 14. Succession of copyright**

- 14.1. The exclusive rights of an author in a copyrighted work shall pass to his/her heirs in accordance with the rules set forth in the Civil Code of Mongolia.
- 14.2. Succession of exclusive rights in joint works shall start on the day of death of the last surviving author.

### **CHAPTER FOUR PARTICULARITIES OF CERTAIN WORKS**

#### **Article 15. Copyright in derivative works**

- 15.1. Copyright in a derivative work shall not prejudice copyright in the original work and the author shall obtain permission provided in Subsection 12.2.4 of this law.
- 15.2. Copyright in a derivative work shall not prevent other authors from creating other derivative works based on the original work.

#### **Article 16. Copyright in collections and other compiled works**

- 16.1. The compiler of a compilation work shall not prejudice copyright of authors of original works and shall have the consent of authors provided in Subsection 12.2.4 of this law.
- 16.2. Unless otherwise provided in the agreement with the compiler, the authors of any original works shall have right to use his/her own work independently, irrespective of its inclusion in the collection.

#### **Article 17. Copyright in a work created in the course of execution of official duties**

- 17.1. The author of a work created in the course of execution of his/her duties shall enjoy non-economic intangible rights
- 17.2. The employer may have the exclusive rights over the exploitation of the work created as part of the exercise of official duties if not otherwise stipulated in the contract.

#### **Article 18. Commissioned works**

- 18.1. Pursuant to the agreement for a commissioned work, the author shall

- undertake duties to create and submit a work and the person commissioning the work shall undertake duties to pay the remuneration to the author.
- 18.2. The holder of exclusive rights shall be determined by the agreement.

## **CHAPTER FIVE**

### **PROTECTION OF RELATED RIGHTS**

#### **Article 19. Persons entitled to related rights**

- 19.1. According to the provisions of this law, the following persons shall be entitled to related rights:
- 19.1.1. A performer who made performance, broadcasted his/her performance or made first recording of his performance in Mongolia;
  - 19.1.2. A producer of a backing track which has first been fixed and published in Mongolia;
  - 19.1.3. A broadcasting organization the headquarters of which are located in the territory of Mongolia at the time of the broadcasting;
  - 19.1.4. Citizens and legal persons of other countries members of the international treaties to which Mongolia is a party.
- 19.2. The holder of the related rights shall enjoy his\her rights without prejudice to the copyright of original works.
- 19.3. Establishment and enjoyment of related rights shall not be subject to any formalities.

#### **Article 20. Performer's rights**

- 20.1. A performer shall have exclusive rights to authorize or prohibit the following activities in respect of his/her performance:
- 20.1.1. to perform, broadcast or transmit the recording of the performance of works, excluding those broadcasted before;
  - 20.1.2. to make recording of a work;
  - 20.1.3. to make a reproduction of audio and video recording;
  - 20.1.4. to distribute the original and duplicate copies of the performance fixed in backing tracks through sale or assignment of rights;
  - 20.1.5. to rent the recording of a performance;
  - 20.1.6. to assign exclusive rights to others on a basis of an agreement.
- 20.2. A performer shall be entitled to intangible rights to claim authorship of the work as regards to their performances and to prohibit any distortion, mutilation or other modification of, or other derogatory action in relation to the said work, which would be prejudicial to his honor or reputation
- 20.3. The term of protection to be granted to performers shall be 50 years from the date when the performance or the recording of the performance was

made.

#### **Article 21. Rights of producers of backing track**

- 21.1. A producer of backing track shall have exclusive rights to authorize or prohibit the following activities in respect of his/her backing track:
- 21.1.1. to make reproduction of the backing track directly or indirectly;
  - 21.1.2. to publish the original or duplicate copies of the backing track by means of sale or assignment of rights;
  - 21.1.3. to rent the original or duplicate copies of the backing track;
  - 21.1.4. to distribute the backing track;
  - 21.1.5. to assign his/her exclusive rights to others under an agreement.
- 21.2. The term of protection of rights of a producer of backing track shall be 50 years from the date of publication and if is not published, from the date of the first recording of the backing track.

#### **Article 22. Rights of broadcasting organizations**

- 22.1. A broadcasting organization shall have the exclusive rights to prohibit or allow the following activities related to its own programs:
- 22.1.1. to record their broadcasts;
  - 22.1.2. to make reproduction of their broadcasts;
  - 22.1.3. to rebroadcast its programs through wireless communication;
  - 22.1.4. to transmit broadcasts simultaneously.
- 22.2. The term of rights in respect of rights of broadcasting organisations shall last for a period of 50 years from 1st January of the year following the year the first broadcast took place.

### **CHAPTER SIX EXPLOITATION OF COPYRIGHTED WORKS**

#### **Article 23. Assignment of exclusive rights**

- 23.1. The exclusive rights may be assigned fully or partially on a basis of the agreement.
- 23.2. The assignment agreement may consist of following provisions:
- 23.2.1. method and form of exploitation of the work;
  - 23.2.2. duration and covered territories;
  - 23.2.3. regulations over the amount of remuneration, conditions of payment and deadlines;
  - 23.2.4. rights and obligations of the author;
  - 23.2.5. rights and obligations of the assignee;
  - 23.2.6. liabilities of the parties;
  - 23.2.7. dispute resolution.

- 23.3. The amount of royalties due to the author for exploitation of the work may be agreed by the author and assignee depending on the nature, specifics and magnitude of the work, form, quantity and duration for which the work shall be exploited.
- 23.4. It is prohibited to envisage in the assignment agreement any provisions limiting the right of the author to create further works on the same topic or in the same domain.
- 23.5. Author shall enjoy the right to redress rights assigned to the assignee if an infringement occurred as a result of negligence in implementing the obligations of the agreement.

#### **Article 24. Exceptions and limitations**

- 24.1. The following circumstances where the works were used without contradicting the normal exploitation of published works and without affecting the legal interests of the right holders shall not be deemed as copyright infringement:
  - 24.1.1. To quote from published works in order to prepare a press review;
  - 24.1.2. To quote from and to use parts of published works for research works, criticisms and information;
  - 24.1.3. To reproduce parts of works used in the archives, museums and libraries;
  - 24.1.4. To publish or broadcast works on current economic, political and religious issues, which were published in press or broadcasted through media, if the reproduction of such works is not specifically prohibited, and to inform them to the public through wire and wireless communications;
  - 24.1.5. To publish speeches and presentations delivered at meetings for the purpose of information;
  - 24.1.6. To publish works of architecture, fine arts and photography located in public places in order to show the surrounding areas of events while reporting the events to the public;
  - 24.1.7. To use works for the visually impaired and people with hearing problems;
  - 24.1.8. To reproduce works for private use;
  - 24.1.9. To reproduce works for criminal, civil and administrative procedures.
- 24.2. The following conditions shall be considered in determining the circumstances provided in Section 24.1 of this law:
  - 24.2.1. To have a non-profit purpose;
  - 24.2.2. The extent of use and the importance of the used parts;
  - 24.2.3. The value of the work and the effect of the used part on the market.

24.3. The name of the author and source must be mentioned when a work is used under Section 24.1 of this law.

#### **Article 25. Protection of copyright in the Internet**

25.1. An internet service provider shall be obligated to prevent any copyright violation in websites hosted on its own server and provide authors and right holders with the possibility to enforce their rights.

25.2. An internet service provider shall facilitate the receipt of reports on violation of copyrights and related rights and shall be obligated to close the website in question as soon as such violation is reported.

25.3. A judge or a state inspector shall impose liabilities specified in the legislation on an internet service provider, which failed to perform its duties provided in Sections 25.1 and 25.2 of this law.

25.4. The court shall resolve disputes related to closing down of websites.

### **CHAPTER SEVEN COPYRIGHT PROTECTION ORGANIZATION**

#### **Article 26. Intellectual Property Office**

26.1. The Intellectual Property Office shall be responsible for implementation of the public policy to protect copyright and shall perform the following functions:

26.1.1. to organize implementation of the copyright legislation nationwide;

26.1.2. to promote and improve the copyright legislation, to ensure that such legislation conforms with the international treaties and conventions of Mongolia and to develop recommendations to make amendments to the legislation;

26.1.3. to protect the interests of authors and copyright holders, to support their creative activities and to conduct activities to improve legal knowledge of authors;

26.1.4. to provide collective management organization specified in Article 27 of this law with professional and methodological guidance and to cooperate with them;

26.1.5. to register works of copyrights and related rights at the requests of authors and copyright holders, to issue certificates and to establish a database of registered works;

26.1.6. to conduct the state inspection to monitor the implementation of laws and regulations on intellectual property and to employ a state intellectual property inspector;

26.1.7. to conduct activities aimed at eliminating copyright violations and to provide references for resolution of disputes related to

- copyrights;
- 26.1.8. to determine and certify the valuation of works pertaining to copyright;
- 26.1.9. to work with citizens and organizations on protecting works of folklore.
- 26.2. The Intellectual Property office shall be financed from its revenue and the service fee shall be established by the Cabinet Member in charge of intellectual property matters.
- 26.3. The rules of the state intellectual property inspection shall be approved by the Cabinet.

#### **Article 27. Collective management organization**

- 27.1. Authors and right holders may establish a Collective management organization for the purpose of protection of their rights.
- 27.2. The Collective management organization shall be established at the initiative of authors and right holders.
- 27.3. Collective management organization may be specialized in the protection of one or more categories of works
- 27.4. Collective management organization shall operate on the basis of cooperation agreement with Intellectual Property Office.

#### **Article 28. Activities of the collective management organization**

- 28.1. Collective management organization as a representative body of right holders of copyright and related rights shall carry out the following activities within a power of attorney given to them:
  - 28.1.1 to conclude contracts for exploitation of works with member-authors or right holders;
  - 28.1.2. to negotiate the amount of royalties and other conditions with a licensee, to collect the payment;
  - 28.1.3. to distribute collected royalties among right holders of copyright and related rights;
  - 28.1.4. to submit request to the Intellectual property office to take necessary measures for the infringement of rights of their members on the basis of collected information.

#### **Article 29. Obligations of collective management organization**

- 29.1. Collective management organization shall have the following obligations in order to protect the rights and interests of right holders of copyright and related rights:
  - 29.1.1. to provide information on the exploitation of a work in course of distribution of royalties;



29.1.2. to distribute royalties collected on the basis of the license to right holders of copyright and related rights;

29.1.3. to distribute, after deduction of administrative expenses, collected royalties on a regular basis in proportion to the exploitation of a work.

## **CHAPTER EIGHT**

### **PROTECTION OF COPYRIGHT, LIABILITY FOR COPYRIGHT INFRINGEMENT**

#### **Article 30. Protection of intangible rights**

30.1. In the case of infringement of integrity of work or of other intangible rights of an author, the author of a work or his/her heir or successor, or the Intellectual Property Office (if there is no apparent heir or if such heir has waived or has been deprived of his/her right of succession) shall be entitled to demand from the infringer the restoration of the infringed rights and to file a complaint to the court.

#### **Article 31. Liabilities for breach of the law on copyright and related rights**

31.1. If a breach of the legislation on copyright is not to be subjected to criminal liability, it shall be subject to a fine by a judge or a state inspector in the amount of 2-6 times the minimum monthly wage in case of an individual or of 10-25 times the minimum monthly wage in case of a legal entity respectively, or a confinement by a judge of 7-14 days in case of a guilty individual or official, and a state inspector or a judge shall seize the infringing goods, products and items and the illegal income, transfer such income to the state treasury or give such income to the author or right holder and stop such activities.

31.2. If a forgery, fraudulent use, alteration or deletion of a copyright notice on a work, and introduction, smuggling for distribution and distribution of them to the public despite the fact, that the infringer knew or was able to know about unlawful alteration or deletion of the copyright notice on a work, is not to be subjected to criminal liability, it shall be subject to a fine by a judge in the amount of 2-6 times the minimum monthly wage in case of an individual or of 10-25 times the minimum monthly wage in case of a legal entity respectively.

31.3. Compensation for material damages due to an infringement of exclusive rights in copyrighted works shall be decided according to the provisions of the Civil Code of Mongolia.

31.4. If an author or right holder, whose rights were infringed, makes a request, the infringing goods may be given to him/her as compensation for his/her damages and if he/she does not make such request, a judge or a state

inspector shall take an action to destroy the infringing goods.  
31.5. The equipment used in infringement of copyright and reproduction of works that are subject to copyright and related rights shall be seized by a decision of the court or other authorities.

**Article 32. Entry into force**

32.1. This law shall not have retroactive effect.

CHAIRMAN OF THE STATE IKH KHURAL TS. NYAMDORJ

# Patent Law of Mongolia

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June 25, 1993  
Ulaanbaatar  
/"Government Information", 1993, No. 4-5/

## CHAPTER ONE General Provisions

### Article 1. Purpose of the law

The purpose of this law shall be to regulate the matters relating to the protection of the rights of authors of inventions, industrial designs and innovations and of patent owners, and to regulate the matters relating to the use of inventions, industrial designs and innovations.

### Article 2. Legislation on patents

1. The legislation on patents is comprised of the Constitution, the Civil Code, this law and other relevant legislative acts of Mongolia.
2. If an international treaty, to which Mongolia is a party, stipulates otherwise than the patent legislation of Mongolia, then the provisions of the international treaty shall prevail.

### Article 3. Definitions in this law

1. "Invention" means an absolutely new solution that relates to a product or a manufacturing process that has been created for the first time and the essence of which has been discovered based on a law of nature.
2. "Industrial design" means an absolutely new original solution that relates to the form and design of a product, which can be produced by an industrial method.
3. "Innovation" means a new useful solution that can be used in manufacturing and relates to a product, manufacturing process or means, or principal parts or organisation thereof. (This subparagraph was re-edited by Law of May 21, 1999)
4. "Patent" means a document issued by the competent state authority which certifies the recognition of the given solution as an invention or industrial design, and grants the author an exclusive right to own the invention or industrial design for a certain period of time.

5. "Innovation certificate" means a document issued by the competent state authority which registers the innovation in the state register and grants the author an exclusive right to own it for a certain period of time. (This subparagraph was re-edited by Law of May 21, 1999)
6. "License" means permission allowing the others to exploit a patented invention or industrial design.
7. "Filing date" means the date on which an application for an invention or industrial design is filed and registered by the Intellectual Property Office, or the date on which an application for an innovation is filed and registered by a particular entity. (Amendments were introduced by Law of May 21, 1999)
8. "Priority date" means the date on which an application for the same invention or industrial design was filed and registered in any other member state of the Paris Convention for the Protection of Industrial Property prior to the date on which an application is filed under this law. (Amendments were introduced by Law of May 21, 1999)
9. "Patent Owner" means an author who has obtained a patent for an invention or an industrial design, or an innovation certificate, and exclusive rights thereof according to procedures and grounds specified by law, or a person who has obtained such rights from the author.
10. "International Treaties of Mongolia" means the Paris Convention (1883) for the Protection of Industrial Property and additions and amendments thereto, Hague Agreement (1960) Concerning the International Deposit of Industrial Designs, Patent Cooperation Treaty (1970) and WTO Agreement (1994) on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
11. "International Applications Specifying Mongolia Issued in Conformity with the Patent Cooperation Treaty" means applications for inventions and innovations with the priority date of the Convention issued in conformity with the Patent Cooperation Treaty. (Subparagraphs 9, 10 and 11 in this article were added by Law of May 21, 1999)

#### **Article 4. Criteria and eligibility for patents**

1. A patent shall be granted to authors of an absolutely new product or manufacturing process (invention), which involves an inventive step and is industrially applicable, or to individuals or legal entities to whom the author has assigned his/her right.
2. An invention shall be regarded as involving an inventive step if it has advantageous properties that are obvious to a person skilled in the relevant field. An expert appointed by the Intellectual Property Office shall determine the existence of an inventive step. (Amendments were introduced in this paragraph by Law of December 19, 1996)
3. An invention shall be considered industrially applicable if it can be made by

- industrial methods or used in industry.
4. A product or manufacturing process shall be considered absolutely new if it is proved that it has advantages compared to the current technical level.
  5. The following shall not be considered as inventions:
    - 1) discoveries, scientific theories and mathematical methods;
    - 2) computer programs and algorithms;
    - 3) schemes, rules or methods for doing business, performing mental acts or playing games;
    - 4) solutions that are contrary to social order, ethics, environment and human health;
    - 5) methods of treatment and diagnosis of human and animal diseases;  
(This subparagraph was added by Law of December 19, 1996)
    - 6) biological methods for obtaining plant varieties and animal breeds other than microorganisms. These do not include non-biological and microbiological activities. (This subparagraph was added by Law of December 19, 1996 and re-edited by Law of May 21, 1999)
  6. A patent shall be granted to authors of an absolutely new, original solution (industrial design) relating to the form or design of an industrially applicable product that has not been disclosed anywhere in the world by publication or made known in any manner in this country prior to filing an application, or to individuals or legal entities to whom the author has assigned his/her right.

#### **Article 5. Intellectual Property Office**

1. The Intellectual Property Office, an executive agency of the Government, shall be responsible for dealing with matters concerning inventions, industrial designs and innovations within the scope of functions of the Minister of Justice, and will carry out the following functions:
  - 1) receive and review applications for inventions and industrial designs and make decisions on them;
  - 2) grant patents and innovation certificates;
  - 3) maintain a state register of inventions, industrial designs and innovations, trademarks, and license contracts;
  - 4) compile a unified information database of inventions, industrial designs, innovations and trademarks;
  - 5) publish information on inventions, industrial designs, innovations, and trademarks;
  - 6) provide references for settling disputes on patents;
  - 7) determine the design of patents and innovation certificates;
  - 8) notify appropriate organizations if legal entities or individuals are considered to have violated the Patent Law;
  - 9) invalidate a patent according to procedures and grounds specified by law;

- 10) protect and represent the rights of an author or patent owner;
  - 11) initiate measures for the enforcement of the Patent Law within the authority conferred upon it;
  - 12) receive claims and appeals concerning patents and make decisions on them;
  - 13) select and issue permission to an individual or legal entity that intends to practice as a patent attorney;
  - 14) determine the value of an invention, industrial design or innovation at the author's request;
  - 15) employ a state inspector in charge of intellectual property, exercise state control on the fulfillment of the intellectual property legislation. (This subparagraph was added by Law of May 21, 1999)
2. The Intellectual Property Office shall be financed by income from activities. (Paragraphs 1 and 2 of this article were re-edited by Law of December 29, 1996)
  3. The Government shall approve the charter of the Intellectual Property Office. (Amendments were introduced in this paragraph by Law of December 29, 1996)
  4. State central and local administrative bodies shall conduct work in the field of inventions, industrial designs and innovations as part of their technology policies.

## **CHAPTER TWO**

### **Filing and Examining Applications for Inventions, Industrial Designs and for Innovations**

#### **Article 6. Filing applications for inventions and industrial designs**

1. An application for an invention or industrial design shall be filed with the Intellectual Property Office by the author of the invention or industrial design, or by the individual or legal entity to whom the author has assigned his/her right. (Amendments were introduced in this paragraph by Law of December 29, 1996)
2. A separate application shall be filed for each invention. One application may be filed for a group of inventions or industrial designs, which have one purpose and will be used in a combined way. (Amendments were introduced in this paragraph by Law of May 21, 1999)
3. The application for an invention shall consist of a request, a description of the invention, a formulation and a brief explanatory note. If required, appropriate drawings and certificates can be attached to the application. The description of the invention must contain a package of information that explains in a sufficient and fully understandable manner the method for use of an

invention and its advantages to professional users in the sector, to which the solution applies, and specifies the properties of the solution to attain the objectives of the invention that are distinctly different from the previous technical level. The formulation of the invention must be understandable, brief and clear and must specify the distinctly different properties of this invention and establish the right's scope of protection. One invention may have one or several formulations. The description and drawings must explain in details the formulation's contents. The brief explanatory note shall provide only technical information and shall not be used for determining right's scope of protection for the invention. (Amendments were introduced in this paragraph by Law of May 21, 1999)

4. The application for an industrial design shall consist of a request, a description and a drawing of the industrial design. If required, it shall also contain relevant materials concerning the drawing and the description. The application for an industrial design must be submitted by the applicant to the Intellectual Property Office. (Additions to this paragraph were made by Law of May 21, 1999)
5. The application shall state names and addresses of the author of the invention or industrial design, the applicant and their patent attorneys, the filing date of the application, request for a patent and name of the invention or industrial design. If the applicant is not the author of the invention or industrial design, he/she must attach to the application a document evidencing his/her right to obtain a patent for the invention or industrial design. If the invention or industrial design is related to food supply and hygiene of people, a certificate issued by the organisation responsible for epidemiology and hygiene must be attached certifying that the invention or design will not harm the human body or health. (Additions to this paragraph were made by Law of December 29, 1996)
6. In the request, the applicant may claim priority over earlier national, regional or international applications. A copy of the application requesting a priority date filed in a member state of the Paris Convention and the World Trade Organisation must be attached at the request of the Intellectual Property Office. (Amendments were introduced in this paragraph by Law of May 21, 1999)
7. An applicant may be represented by a patent attorney. A patent attorney must be registered with the Intellectual Property Office. The Intellectual Property Office shall establish regulations on the activities of patent attorneys. A patent attorney must be a citizen of Mongolia over the age of 25 years who has worked in the field of intellectual property for at least three years, with higher education and no previous criminal record. The Ministers of Justice and Finance shall jointly determine the amount of remuneration for a patent attorney. Ten percent of the patent attorney's income shall be retained

by the Intellectual Property Office. (This paragraph was re-edited by Law of December 19, 1996)

8. An application shall be executed in the Mongolian language. If it is executed in a language other than Mongolian, the applicant shall furnish a Mongolian translation of the application within two months from the date of receipt of the application by the Intellectual Property Office. If a translation has not been submitted within the prescribed time, the application shall not be considered as submitted. (Amendments were introduced by Law of December 19, 1996)
9. One application may contain up to 50 similar industrial designs that fall under one international category.
10. An applicant may withdraw the application during the period prior to the issuance of a final decision concerning the application. (Paragraphs 9 and 10 were added by Law of May 21, 1999)

#### **Article 6<sup>1</sup>. Filing an international application in conformity with the Patent Cooperation Treaty**

1. The filing date of international applications for inventions or innovations filed with the name of Mongolia shall be determined by this law, or the date of international registration according to the Patent Cooperation Treaty.
2. The Intellectual Property Office or the World Intellectual Property Organisation shall be the receiving organizations for international applications filed by Mongolian citizens or foreign citizens and stateless persons residing in Mongolia.
3. The receiving organisation shall receive an international application in the language specified in the treaty and shall charge a fee.
4. If the applicant specifies Mongolia in his/her application to obtain an invention patent or an innovation certificate, the Intellectual Property Office shall be the specified organisation.
5. If the applicant chooses Mongolia in his/her application to perform a preliminary international certifying examination, the Intellectual Property Office shall be the selected organisation.
6. The selected organisation shall receive the report of a preliminary certifying examination of the application within the period specified in the treaty.
7. In case of an international application selecting Mongolia, the applicant must pay the fee prior to the beginning of examination activities under the Patent Cooperation Treaty.
8. The Intellectual Property Office shall perform all the activities to be done on international applications according to appropriate treaty, rules and guidelines. (This article was added by Law of May 21, 1999)



### **Article 7. Filing applications for innovations**

1. An application for an innovation shall be filed by the author or by the person who has obtained the right from the author and shall be submitted to the Intellectual Property Office. The formulation of an innovation must determine the distinctive properties of this invention and establish the right's scope of protection.
2. If the application does not satisfy the requirements specified in paragraph 1 of this article, or the applicant is not a lawful author or beneficiary of the innovation, the innovation shall not be registered. (This article was re-edited by Law of May 21, 1999)

### **Article 8. Determining the filing date of an application for an invention or industrial design**

1. The Intellectual Property Office shall verify the completeness of the application within 20 days of the date of receipt of the application and shall record the date of receipt of the application as the filing date if the application satisfies the requirements.
2. If the Intellectual Property Office finds that the application does not satisfy the requirements, it shall notify the applicant of the necessity to make the required corrections and amendments.
3. If the applicant files the required corrections and amendments within 3 months from the date of receipt of the notification referred to in paragraph 2 of this article, the Intellectual Property Office shall record as the filing date the initial date of receipt of the application. If no correction or amendment is made within 3 months, the application shall be considered as rejected. (Amendments were introduced to this article by Law of December 19, 1996)

### **Article 9. Determining the filing date of an application for an innovation**

The Intellectual Property Office shall record as filing date the date of receipt of a complete application for an innovation. (This article was re-edited by law of May 21, 1999)

### **Article 10. Examination of applications for inventions and industrial designs**

1. After recording the filing date, the Intellectual Property Office shall examine whether the invention or industrial design satisfies the criteria specified in article 4 of this law.
2. The applicant shall supply to the Intellectual Property Office at its request information on any application for a patent or other form of entitlement to protection, which has been filed by the applicant in any other country and which relates to the same, or essentially the same, invention as the one to

which the application filed with the Intellectual Property Office relates.

3. During the examination procedure, the applicant may introduce corrections or amendments in the application, provided that the correction or amendment shall not go beyond the scope of the initial description. The examination procedure may be postponed at the applicant's request. The duration of any postponement shall be consistent with the time limits provided for in paragraph 5 of this article.
4. During the examination procedure, the applicant may divide the application into two or more applications, provided that each separated application shall not go beyond the scope of the initial description. In this case, the filing date or the priority date of these separated applications shall be determined by the initial application. Prior to the issuance of a final decision, an application for an invention can be converted into an application for obtaining an innovation certificate and vice versa. In this case, the date of the initial application shall remain as the filing date. (Additions to this paragraph were introduced by Law of May 21, 1999)
5. The Intellectual Property Office shall make a decision as to whether or not to grant a patent within 9 months from the filing date of the application based on the examination report. If required, the Intellectual Property Office may extend this period for up to 12 months.
6. If it is decided to grant the patent, the formulation of the invention or the drawing of the industrial design and the particulars concerned shall be published in the Patent Gazette.
7. If the invention or industrial design has not been recognised, a copy of the examination report shall be sent to the applicant within 30 days from the date of issuing the examination report, and the application shall be kept in the patent library.
8. If the industrial design, for which an application is filed, is not distinctly different from the previously known designs or from their distinctive properties, such design shall not be considered as a new and original design. (Additions and amendments to this paragraph were introduced by Law of December 19, 1996 and May 21, 1999)

#### **Article 11. Examination of applications for innovations**

1. An expert shall examine whether the innovation is new within 1 (one) month from the date of receipt of the application, and issue a conclusion.
2. An innovation certificate shall not be issued in the following cases:
  - 1) the given solution has become publicly known in Mongolia prior to registering the innovation;
  - 2) the given solution has been introduced and used in Mongolia, prior to registering the innovation; or

3) has been published in the national and foreign press. (This article was re-edited by Law of May 21, 1999)

### **CHAPTER THREE**

#### **Grant of Patents and Innovation Certificates**

#### **Article 12. Grant of patents for inventions and industrial designs**

1. If, after the expiry of three months from the date of the publication in the Patent Gazette of the formulation of an invention or the drawing of an industrial design together with the particulars concerned, the Intellectual Property Office has received no notice of opposition and no dispute has arisen, it shall grant the patent. The request for a patent should be submitted within 10 years of the filing date of the application. The patent for an invention can be extended for a period of 20 years at the request of its owner.] (Amendments to this paragraph were introduced by Law of December 19, 1996 and May 21, 1999)
2. If a notice of opposition is received or a dispute arises, the grant of the patent shall be deferred until the opposition or dispute is settled in accordance with the established procedure.
3. Patented inventions and industrial designs shall be registered in the state register and applications shall be kept in the patent library.

#### **Article 13. Grant of innovation certificates**

The Intellectual Property Office shall grant a certificate within 1 (one) month from the date of receiving an experts' conclusion to recognise the innovation. (This article was re-edited by Law of May 21, 1999)

#### **Article 14. Validity of patents and innovation certificates**

Patents for inventions and industrial designs shall be valid for terms of 20 and 10 years, respectively, and innovation certificates shall be valid for a term of 7 years, and each such term shall run from the date on which the patent or certificate is granted. (Amendments to this article were introduced by Law of December 19, 1996 and May 21, 1999)

### **Chapter Four**

#### **Rights of Authors of Inventions, Industrial Designs, Innovations and Patent Owners**

#### **Article 15. Rights of authors of inventions or industrial designs**

1. The author of an invention or industrial design shall be entitled to:
  - 1) own his/her invention or industrial design;

- 2) assign his/her right to a patent to others;
  - 3) name his/her invention or industrial design;
  - 4) take part in the drafting of technical documentation, testing and implementation of his/her invention or industrial design during the production process, and exercise author's control;
  - 5) receive an appropriate fee from the profits earned as a result of using his/her invention or industrial design. (This subparagraph was added by Law of December 19, 1996)
2. The right to a patent for an invention or industrial design, which was created jointly, shall belong to all the authors. A joint author may not assign his/her rights to a patent to others without the consent of the other authors.
  3. If two or more persons independently create the same invention or industrial design, the right to a patent shall belong to the author who first submits an application to the Intellectual Property Office. However, if a priority date is filed, the author who first submits an application with a priority date shall have the right to a patent. (Amendments to this paragraph were introduced by Law of December 19, 1996)
  4. (This paragraph was annulled by Law of December 19, 1996)

#### **Article 16. Rights of authors of innovations**

1. Authors of innovations shall be entitled to:
  - 1) own, possess and use his/her innovation;
  - 2) Allow others to use his/her innovation with a charge.
2. In the event several persons jointly hold the innovation certificate, they shall jointly enjoy the ownership right. (This article was re-edited by Law of May 21, 1999)

#### **Article 17. Rights of patent owners**

1. Patent owners shall have the exclusive right to exploit their invention or industrial design.
2. Patented inventions or industrial designs shall be exploited only with the permission of the patent owner.
3. Patent owners shall have the right to assign to others their right to a patent.

### **Chapter Five**

#### **Exploitation of Inventions, Industrial Designs and Innovations**

#### **Article 18. Exploitation of patented inventions and industrial designs**

1. Making a product using an invention or industrial design, selling, using as well as storing or importing an invention or industrial design for such purposes shall be recognised as exploitation of the invention or industrial design.

2. The use of patented inventions or industrial designs in the following ways shall not constitute an infringement of the exclusive rights of the patent owners:
  - 1) use of articles that have been put on the market in this country by the patent owner or by another person with the patent owner's consent;
  - 2) use for scientific research or experimental purposes in Mongolia;
  - 3) use of an invention or industrial design in the transportation means belonging to another country, which have temporarily or accidentally entered the airspace or territory of Mongolia.
3. If another person was using the given invention or industrial design, or has provided in advance all the conditions for use prior to the filing date of the application, he/she may exploit it without the consent of the patent owner. The amount and scope of using the invention or industrial design may not be extended.
4. The Intellectual Property Office shall establish the State Reserve Fund of Inventions to ensure the effective use of patented inventions and industrial designs. Based on the contract signed with the patent owner, the Intellectual Property Office shall hold the patent rights for all inventions, which form part of that fund.] (This paragraph was added by Law of December 19, 1996 and amended by Law of May 21, 1999)

#### **Article 19. License contracts**

1. Any interested person may exploit a patented invention or industrial design by concluding a license contract with the patent owner.
2. The license contract shall specify:
  - 1) the method, scope and term of exploitation of the invention or industrial design;
  - 2) rights and responsibilities of the parties to the contract;
  - 3) the amount of payment for the exploitation of the invention or industrial design and the payment terms.
3. A license contract shall be registered with the Intellectual Property Office. (Amendments to this paragraph were introduced by Law of December 19, 1996)
4. (This paragraph was annulled by Law of May 21, 1999)
5. (This paragraph was annulled by Law of May 21, 1999)
6. The license contract must not contradict the third party interests. The parties to the contract shall keep the contents of the license contract confidential. (This paragraph was re-edited by Law of May 21, 1999)
7. The owner of a patent may submit a request to the Intellectual Property Office to issue to any interested party a license to use his/her invention freely. (This paragraph was added by Law of December 19, 1996)
8. The license contract can not be concluded on conditions restricting fair

competition. (This paragraph was added by Law of May 21, 1999)

#### **Article 20. Compulsory licenses**

1. In accordance with the request of an interested person, a compulsory license in respect of a patented invention can be granted by the decision of the Intellectual Property Office in the following cases:
  - 1) the invention must be used in the public interests such as national security, food supply or health of the population;
  - 2) the invention has not been used at all for a period of four years from the filing date of the patent application or three years from the date of granting the patent (whichever period expires last) and the patent owner fails to prove to the Intellectual Property Office that there have not been circumstances for the use of the invention in Mongolia;
  - 3) the patent owner considers that the way of using the patented invention under the license contract bears the features of unfair competition. (This subparagraph was re-edited by Law of May 21, 1999)
2. If the patent owner disagrees with the decision of the Intellectual Property Office to grant a compulsory license, he/she may appeal to the court.
3. In the event of signing a contract on compulsory use of the license, the party obtaining the license shall pay the patent owner the payment for the use of a patented invention (This paragraph was added by Law of May 21, 1999)

#### **Article 21. Exploitation of innovations**

1. The holder of an innovation certificate shall sign a contract while allowing the others to use this innovation.
2. The contract must specify the terms and conditions of use, scope, duration, payment and procedures for making the payment. (This article was re-edited by Law of May 21, 1999)

#### **Article 22. Obligations of business entities or organisations and patent owner exploiting an invention, industrial design or innovation**

1. A business entity or organisation exploiting an invention, industrial design or innovation shall report the profit earned during the exploitation on its financial statements and shall keep the confidentiality of the production.
2. If the owner of the patent for an invention or industrial design, or the holder of an innovation certificate changes, a written notification thereof must be sent to the Intellectual Property Office. Such a change must not affect the third party interests. (This paragraph was re-edited by Law of May 21, 1999)

**Article 23. Inventions and industrial designs regarded as a state secret**

Relations arising in connection with inventions and industrial designs regarded as a statesecret shall be regulated by an appropriate law.

**Article 24. Patent and license fees**

1. Fees shall be paid for filing an application for an invention, industrial design or innovation, maintaining the validity of the patent and registering the license contract. The fees shall be collected by the Intellectual Property Office. (Additions to this paragraph were introduced by Law of May 21, 1999)
2. The amount of the fee shall be established by law.

**Article 25. Deadline for payment of the fee**

1. The fee for maintaining the validity of the patent shall be paid at fixed intervals.
2. The fee for maintaining the validity of the patent for the first three years shall be paid within six months of the date of the decision to grant the patent. The fee for the subsequent period shall be paid six months prior to the commencement of this period.
3. If the patent owner fails to pay the fee for maintaining the validity of the patent by the deadline specified in paragraph 2 of this article, he/she may pay the fee within six months from the expiry of this period. In this case, a surcharge of the same amount as the fee for that period shall also be paid.
4. A person interested in maintaining the validity of the patent may pay the patent fee with the consent of the patent owner. (This paragraph was added by Law of December 19, 1996)

**Article 26. Invalidation of patents**

1. An interested person may submit to the court an application to invalidate a patent.
2. If the patent is granted in violation of articles 4, 6, 8, 10 and 12 of this law, the court shall invalidate the patent. In this case, the Intellectual Property Office shall record the corresponding changes in the state register of inventions and industrial designs, and shall publish a notice of invalidation in the Patent Gazette. (Amendments to this paragraph were introduced by Law of December 19, 1996)
3. In the event of refusal to own the patent or pay the patent fee, or non-payment of the fee by the deadline specified in paragraph 3 of article 25 of this law, the Intellectual Property Office shall invalidate the patent. In such a case, the right to any patent in respect of an invention or industrial design that must be under state control shall be transferred to an appropriate state administrative authority.
4. If the patent was invalidated due to non-payment of the patent fee, this patent

may be restored at the request of the patent owner within the total period of the patent's validity. (This paragraph was added by Law of December 19, 1996)

## **Chapter Six**

### **Miscellaneous Provisions**

#### **Article 27. Settlement of disputes and complaints**

The Intellectual Property Office shall review within six months a complaint filed in connection with the examination of an application for an invention or industrial design, and shall give a reply in writing. If the disputing party disagrees with this decision, it may appeal to the court within 30 days from the receipt of the decision. (This article was re-edited by Law of December 19, 1996)

#### **Article 28. Liability for violation of the patent legislation and rights of authors and patent owners**

1. If the violation of the patent legislation does not result in criminal liability, a state inspector shall fine an individual for up to 5,000 togrogs and a business entity or organisation for up to 50,000 togrogs and a judge shall fine an individual for up to 50,000 togrogs and a business entity or organisation for up to 250,000 togrogs, or detain an individual or official at fault for up to 7-14 days, and confiscate illegally earned profits in favour of the state, destroy the goods and stop the production. (This paragraph was re-edited by Law of May 21, 1999)
2. A person who infringes the rights of authors and patent owners shall be liable to sanctions under the laws of Mongolia.
3. The procedure for payment of the compensation for material losses caused by infringement of the patent owner's rights shall be determined in accordance with the Civil Code of Mongolia.

#### **Article 29. Entry into force of the law**

1. This law shall come into effect on September 1, 1993.
2. This law shall not apply retrospectively.

Chairman of the State Ih Hural of Mongolia  
N. Bagabandi

General Secretary of the Secretariat of the State Ih Hural of Mongolia  
N. Rinchindorj

Ulaanbaatar  
25 June 1993



# Law on Archives

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1998.01.02  
Ulaanbaatar

## **CHAPTER ONE** **General provisions**

### **Article 1. Purpose of this law**

1.1. The purpose of this law shall be to regulate matters relating to the use, retrieval, preservation and security of archive documents, a fund of National archives and its composition, and establish the principles, management and structure of State archives in Mongolia.

### **Article 2. The legislation on archives**

- 2.1. The legislation on archives is comprised of the Constitution of Mongolia, this law and other relevant legislation, which is consistent with this law.
- 2.2. If an international treaty to which Mongolia is a party is not consistent with this law, then the provisions of the international treaty shall prevail.

### **Article 3. The documents of the archives and their classification**

- 3.1. The "documents" of the archives are all those documents that need to be preserved to be used for cognition, politics and science and which are in permanent storage in the archives.
- 3.2. The documents shall be classified into the uniquely valuable, valuable, ordinary.
- 3.3. The National archives shall establish an index of documents in the archives that are uniquely valuable, valuable and ordinary.

### **Article 4. A fund of archives**

- 4.1. A "fund of archives" means archive documents that have been preserved as a complex of documents correlated by logic and derivation with each other.

### **Article 5. Archives**

- 5.1. The archives are an organization and or entity with the duty to receive, preserve and protect archival documents to be used by others in accordance with the procedure specified in this law.

## **Article 6. The fund of National archives and its composition**

- 6.1. The fund of Mongolian national archives shall consist of all archive documents that have social, political, economic and cultural significance for the life of the Mongolian people, their historical development and for scientific research. State archives shall analyze selections of documents and decide whether or not they relate to the composition of the fund of National archives.
- 6.2. The fund of the National archives of Mongolia shall be under state protection irrespective of the type or source of origin, sectional relationship, type of the information supplier, storage or ownership.
- 6.3. The fund of Mongolian National archives shall be divided into the two parts: State and non-State.
- 6.4. The fund of State archives shall consist of the following documents:
  - 6.4.1. archive documents of the Mongolian President, National Security Council, State Hural and other bodies accountable to it, Government, ministries, agencies, and local self-governing bodies;
  - 6.4.2. archive documents of the Constitutional Court, Court, and Prosecutor's office;
  - 6.4.3. archive documents of organizations within the state budget, wholly and partially state-owned legal entities;
  - 6.4.4. archive documents of political parties and coalitions, which have seats in the State Hural;
  - 6.4.5. archive documents of parties, non-governmental and religious organizations transferred to the state archives;
  - 6.4.6. private documents transferred to the state archives;
  - 6.4.7. archive documents that are created and bought by the state by its own capital and that are presented for preservation by domestic and foreign organizations and citizens;
  - 6.4.8. transcripts of State archives considered as original documents.
- 6.5. The fund of non-State archives shall consist of the following documents:
  - 6.5.1. archive documents of non-governmental organizations;
  - 6.5.2. archive documents of political parties and religious organizations;
  - 6.5.3. archive documents of private business entities;
  - 6.5.4. archive documents of business entities and organizations with foreign investments;
  - 6.5.5. personal documents.

## **Article 7. Right to own archival documents**

- 7.1. The right of the owner of archive documents shall be protected by law.
- 7.2. Documents of the fund of State archives shall be State property.
- 7.3. Documents of the fund of non-State archives shall be the property of the legal

entities referred to in paragraph 6.5. of this law.

- 7.4. If the owner organization has fully achieved its mission and/or the citizen has died and there is no statutory and inherited heir, the fund of the non-State archives shall be transferred and stored in the relevant State archives and become State property.
- 7.5. If archive documents that are uniquely valuable and/or valuable are in a position to be lost or damaged or if the owner refuses to transfer them voluntarily, on request of the State archives the Court shall decide whether to transfer ownership of the archival documents.

## **CHAPTER TWO**

### **Principles, management and structure of activities of the State archives and their rights and duties**

#### **Article 8. General principles of the activities of the State archives**

- 8.1. State archives shall maintain its activities under the following principles:
  - 8.1.1. be open to the public;
  - 8.1.2. be united and centralized;
  - 8.1.3. be independent from political parties;

#### **Article 9. Right of state organizations to keep official work and archives**

- 9.1. State Ih Hural shall have the following rights relating to the maintenance of official writings and archives:
  - 9.1.1. to determine State policy regarding the maintenance of official writings and archives.
  - 9.1.2. to decide matters pertaining to the transfer of ownership rights of documents relating to the fund of State archives to others.
- 9.2. The Government shall have the following rights relating to the maintenance of official writings and archives:
  - 9.2.1. to enforce and monitor legislation on the maintenance of official writings and archives;
  - 9.2.2. to establish a general regulation, in accordance with the law, on the maintenance and monitoring of official writings and archives, storing, furnishing and using documents and information saved in a special carrier and/or installed in a memory;
  - 9.2.3. to take unified measures to finance the improvement of the maintenance of official State writings and the preservation and protection of the archives fund;
  - 9.2.4. to give permission for documents of the State archives to be taken abroad temporary.
- 9.3. The member of the Government responsible for the archives shall have the

following rights:

- 9.3.1. to organize the enforcement and implementation of the legislation and decisions of the Government on the maintenance of official writings and archives;
  - 9.3.2. to appoint and remove the Director of the National Central Archives;
  - 9.3.3. to appoint and remove the Senior Inspector and inspectors of the State office monitoring the maintenance of State official writings and archives;
- 9.4. Agency shall have the following rights relating to the maintenance of official writings and archives:
- 9.4.1. to organize activities to enforce the legislation on the maintenance of official writings and archives by its sub-offices and to monitor their implementation;
  - 9.4.2. to submit annual reports about the composition, modification of and adjustments to documents relating to the fund of State archives;
  - 9.4.3. to provide support for conducting unified statistics on State and non-State archive documents.
- 9.5. Governors of the aimag, capital, soum and district shall have the following rights regarding the maintenance of official writings and archives:
- 9.5.1. to organize activities to enforce legislation and State policy on the maintenance of official writings and archives in their respective territories and to monitor their implementation;
  - 9.5.2. to organize and provide support for conducting unified statistics on State and non-state archives documents as well as provide relevant information and reports.

#### **Article 10. Management of State archives**

- 10.1 The Government agency responsible for the archives - the National Central Archives (hereinafter referred to as "the National archives") shall implement State policy on archives and coordinate the activities of the archives using by professional methodology throughout the territory of the country.
- 10.2. The Agency shall be guided in its activities by this law and other relevant laws.

#### **Article 11. Duty of the National archives**

- 11.1. National archives shall have the following duties:
- 11.1.1. to establish and conform with unified methodological principles and standards the maintenance of official writings and archives, their preservation, protection, use and retrieval of the fund of the National archives in Mongolia;
  - 11.1.2. to organize activities to implement legislation on the maintenance of

- official writings and archives throughout the country;
- 11.1.3. to approve and implement regulations on the activities of State archives;
  - 11.1.4. to provide professional assistance and coordinate the activities on preservation, use, protection and retrieval of archival documents of State organizations at all level;
  - 11.1.5. to provide the State archive with professional staff and train them in their specialties;
  - 11.1.6. to keep State records about documents in the archival fund and to maintain a unified information network on their content, composition and location;
  - 11.1.7. to conduct a unified policy on staff, material supplies and activities of the State archives;
  - 11.1.8. to develop cooperation with foreign countries and international organizations on archival matters;
  - 11.1.9. to organize activities to discover, reproduce and/or purchase archives documents in foreign countries that are relevant to the culture and history of Mongolia.

#### **Article 12. Structure of the State archives**

- 12.1. The structure of State archives shall be comprised of National archive and aimags' and capital city's archives.

#### **Article 13. National archive**

- 13.1. National archive shall be the state central archive with rights and duties to store and use permanently and gather documents related to the state history throughout the country irrespectively of the type of documents and sectional relationship.

#### **Article 14. Branch offices of the National archive**

- 14.1. National archive shall have the following branch offices:
  - 14.1.1. documentation center on geology
  - 14.1.2. documentation center on geodesy and cartography;
  - 14.1.3. documentation center on citizens;
  - 14.1.4. weather and environment information center;
  - 14.1.5. others;

#### **Article 15. Rights and duties of State archives**

- 15.1. State archives shall have the following rights and duties:
  - 15.1.1. to collect, select and investigate archive documents, which have significance for history and scientific research;

- 15.1.2. to retrieve funds;
- 15.1.3. to store archive documents in a designated building in accordance with the appropriate/special instructions;
- 15.1.4. to reinstate and renew archival documents;
- 15.1.5. to reproduce documents that are uniquely valuable and valuable;
- 15.1.6. to categorize and classify documents that are received by the archives and to establish archives funds from these documents;
- 15.1.7. to maintain statistical records on archive documents;
- 15.1.8. to establish an information reference fund exhibiting the content and composition of the archival documents;
- 15.1.9. to study, promote and publish archival documents;
- 15.1.10. to utilize the archival documents of others;
- 15.1.11. to provide methodological and professional assistance to organizations establishing archives funds and to monitor the implementation of legislation on archives;
- 15.1.12. to store and save archival documents in the memory of a special carrier and/or computer.

**Article 16. Appointment and removal of the management of State archives**

- 16.1. The Director of the National Central Archives shall be appointed and removed by the Government member responsible for archives based on the recommendation of the head of the National Archives.
- 16.2. The directors of branches of the National Central Archives shall be appointed and removed by the relevant head of the government agency on the recommendation of the head of the National Archives.
- 16.3. The directors of the aimags and capital city's archives shall be appointed and removed by the aimags and capital city's governor upon consultation with the head of the National Archives.

**Article 17. Financing of the State archive**

- 17.1. Activities of the State archive shall be financed by the state and local budgets.
- 17.2. The source of capital to supply the State archives with designated buildings, equipment, and techniques and to purchase archives documents that are uniquely valuable and valuable shall be reflected every year in the State and local centralized budgets.

**Article 18. Support of non-State archives**

- 18.1. Upon the request of an owner the State archives shall provide methodological and professional advice and organize training on the preservation, protection, retrieval and use of archival documents of non-

- State organizations relating to the fund of the National archives.
- 18.2. Upon the request of a possessor of non-State archive documents, in order to ensure their safety the documents may be transferred to the State archives for preservation.

### **CHAPTER THREE**

#### **Protection, preservation, retrieval and use of archival documents**

##### **Article 19. Protection of archival documents**

- 19.1. Archives security shall guarantee the reliable protection of the fund of the National archives from loss and/or damage by natural disaster, fire, flood and unforeseen danger, attacks and/or other unexpected consequences.
- 19.2. Business entities and organizations other than those engaged in archival services shall be prohibited a place in the building housing of the National archives.
- 19.3. The owner and possessor of documents acquired by contract shall be responsible for the safety of documents relating to the fund of the National archives.
- 19.4. Organizations referred to in paragraphs 6.4.1, 6.4.2 and 6.4.3 of this law shall be responsible for the placement and safety of the archival documents originated in the process of maintaining official writings and for transferring the documents to be preserved permanently by the State archives within the period prescribed by this law.
- 19.5. National Central Archives shall be under State protection.
- 19.6. The member of the government responsible for the archives shall approve a regulation on fire safety of the State archives' fund and the National archives and the State fire department shall supervise its enforcement.
- 19.7. The documents of the State archives shall be preserved in designated buildings, special shelves and bookcases.
- 19.8. For protection, copies of archive documents that are uniquely valuable and valuable shall be made and preserved separately from the original documents.
- 19.9. Documents that are uniquely valuable and valuable related to the fund of the National archives are prohibited from being destroyed or transferring to another's possession without the proper authorization of the National archives and State archives.
- 19.10. The State archives shall purchase any documents of national interest that are being sold by non-State archives.
- 19.11. Original archive documents relating to State property shall be not

privatized, sold and/or givenaway as a present (gift).

19.12. Original documents transferred for permanent preservation in the State archives shall not be removed from the archives building.

#### **Article 20. Preservation of archives documents**

20.1. The documents of the fund of State archives shall be classified and preserved in unified form as archives fund, compilation and safeguarding units in order to provide probability to use in accordance with the national interests, establish unification and provide safety.

20.2. Only the National Central Archive, capital city and aimags' archives shall have the right to preserve permanently the documents of the State archival funds.

20.3. The organizations referred to in paragraphs 6.4.1, 6.4.2 and 6.4.3 of this law shall have the right to preserve the documents of the State archives for the period provided in Article 23 of this law.

20.4. Every organization shall have its own archives so as to enforce standards and regulations for maintaining official writings and archives, and transferring to the State archives after the fixed period prescribed by this law selected documents to be preserved permanently, receive documents, founded during maintenance of state official writings, from the organizing entities and register, classify, and ensure their safety and use in management's activities.

20.5. Organization archives shall be graded as sub-archives and first-level depending upon the peculiarity of the activity, importance and composition of the documents.

20.6. The courts, prosecutor's office and external relations, defense, national security and police departments may have sub-archives to centralize preservation of the original agreements, contracts and relevant documents related to the compilation of court cases, investigations, natural defense, and national security.

20.7. The documents described in this section shall be centrally preserved in the sub-archives by periods as prescribed in paragraph 23.1.12 of this law. Sub-archives shall have the same status as State archives.

#### **Article 21. Retrieval of the archives**

21.1. The fund of National archives shall be entitled to retrieve the documents arising from the activities of the organizations referred to in paragraph 6.4 of this law.

21.2. The archives of the aimags and capital city shall be retrieved by the documents of the local administrative organizations, locally owned legal entities and legal entities with local ownership.



- 21.3. The National archives shall approve regulations for retrieving archive funds by scope and content, composition or by various lists of names of the documents preserved permanently in the State central archives.
- 21.4. In the National interest, individual persons and legal entities may transfer to the National archives archival documents under State protection.
- 21.5. If State organizations or State-owned industries are terminated, reorganized and/or privatized, their documents shall be transferred for preservation to the relevant State archives.
- 21.6. The archives of the museums, libraries, non-State organizations shall be prohibited to be retrieved from the original documents relating to the funds of the State archives.

#### **Article 22. Maintenance of state official writings**

- 22.1. The officer responsible for the maintenance official writings of State and non-State organizations and business entities shall have the following duties:
  - 22.1.1. to supervise maintenance official writings in conformity with established regulations and standards;
  - 22.1.2. to preserve documents in secure condition and ensure their safety;
  - 22.1.3. to compile the records by classifying them according to the list of the names of maintained documents, to put the official writings in order according to established procedures, and to transfer the fully-field documents to the archives of organizations after the period for preservation is over.
- 22.2. Information and documents saved and/or kept in the memory of a special carrier shall have the same value as original archival documents and matters relating to their utilization, preservation and improvement shall be conducted in accordance with regulations approved by the Government in accordance with this law.

#### **Article 23. Duration for preservation of the documents of funds of the State archives in organizational archives**

- 23.1. The duration for the preservation documents in the archives of an organization that have historical and scientific value and are transferred to the State archives shall be accounted from the first day of January of the following the compilation at the documents and be fixed as follows for:
  - 23.1.1. the President and his seal office - 20 years;
  - 23.1.2. the National Security Council - 30 years;
  - 23.1.3. the State Ih Hural (parliament), its seal office - 20 years;
  - 23.1.4. the Constitutional Court - 20 years;
  - 23.1.5. the Government of Mongolia and its Secretariat - 20 years;

- 23.1.6. other bodies accountable to the State Ih Hural - 15 years;
- 23.1.7. Ministries and agencies of government - 15 years;
- 23.1.8. State-owned and partially State owned legal entities and bodies within the state budget - 10 years;
- 23.1.9. local administrative and self-governing bodies - 8 years;
- 23.1.10. project documents of principal organizations - 20 years;
- 23.1.11. documents relating to the science, technology and patents of principal organizations - 15 years;
- 23.1.12. the designated archives of respective organizations - 40 years;
- 23.2. Original copies of the movies, photographs and sound and visual recordings, which are financed from the State budget, shall be transferred to the relevant State archives within a year.

**Article 24. Statistics of the archival documents**

- 24.1. All documents of the State and non-State archives shall be included in the state-unified statistics.  
The National archives shall approve a regulation for requiring the unified statistics to be kept by the funds.
- 24.2. Unified statistics on documents relating to the fund of the State archives shall be compiled once in 4 years.

**Article 25. Use of archival documents**

- 25.1. Persons, business entities and organizations may use documents of the State in accordance with procedures established by the National archives.
- 25.2. Citizens and legal persons shall have rights to use archival documents as follows:
  - 25.2.1. to obtain a copy and reference from archival documents;
  - 25.2.2. to review and study in the reading room;
- 25.3. The archives, at its own initiation, may promote archival documents through use of the mass media.
- 25.4. Citizens and legal persons shall pay a service fee using archival documents of the State archives in accordance with procedures established by the National archives.
- 25.5. Business entities, organizations and persons shall have the right to use without a service fee document they have transferred to the State archives.
- 25.6. Others may use documents of private origin that are preserved in the State archives under contract by permission of the owner and/or possessor.
- 25.7. Documents in the archives relating to State and other secrets and protected by law shall be permitted to be used by the public after 30 years.
- 25.8. Documents relating to the national security and which have significance for State interests shall be made available for use by the public after 50 years, and documents relating to the private life of a citizen and/or to his/her

property shall be available for use by the public after 70 years.

25.9. A person and/or an organization who wishes to publish documents from a State archive shall obtain permission from the State archives and the State archives shall inspect the conformity of the published documents to the originals.

#### **Article 26. Travel aboard of archival documents**

26.1. Unless specified otherwise in international treaties signed by Mongolia, original documents of the State archives and documents that are uniquely valuable, valuable of the non-State archives shall be prohibited to be taken aboard.

26.2. Whether documents referred to in paragraph 3.2 of this law may be taken abroad for a temporary period shall be decided in accordance with the law on the protection of items of the historical and cultural value.

### **CHAPTER FOUR**

#### **Other provisions**

#### **Article 27. Liability for breaches of this legislation**

27.1. Archivists and/or other persons in breach of this legislation on archives shall bear criminal and administrative responsibility depending upon their culpability, the nature of their offence, and the amount of damage caused as a result of the breach.

Chairman of the State Khural of Mongolia R. Gonchigdorj

Ulaanbaatar  
Mongolia

# Law of Mongolia on Trade Names and Trademarks

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## Chapter One General Provisions

### Article 1. Purpose of the law

The purpose of this law is to ensure legal guarantees for trademarks and trade names, to protect the rights and legal interests of their owners, and to regulate relations concerning the ownership, use and disposal of trademarks and trade names.

### Article 2. Legislation on trademarks and trade names

1. The legislation on trademarks and trade names shall consist of the Constitution of Mongolia, the Civil Law, this law and other legislative acts issued in conformity with them.
2. If an international treaty to which Mongolia is party is inconsistent with this law, then the provisions of the international treaty shall prevail.

### Article 3. Definitions in this law

In this law the following terms shall have the following meanings:

- 1) “trademark” means letters, numerals, figurative shapes or a combination of those means of expression which have particular significance and which are used by a legal person or individual who is in the business of production or the provision of services, in order to distinguish that production or service from that of others;
- 2) “collective mark” means a trademark used by members of an association of business entities, which is established in accordance with provisions specified in legislation for carrying out similar production or providing similar services, for goods or services with cooperative characteristics and used under the supervision of the association;
- 3) “place of origin” means the name of the country, city, village or place where goods are produced which have characteristics directly linked with its geographical conditions and the customs of its people;
- 4) “trade name” means a name used by a legal person in accordance with the relevant regulations for carrying out its activities;

- 5) “registered mark” means a trademark or trade name registered in the State register by the Intellectual Property Office and in respect of which a certificate is issued in accordance with relevant procedures;
- 6) “owner of a trademark” means a person who acquires the right to own, use, and charge for the use of a registered mark in accordance with the procedure provided by law;
- 7) “application” means an application along with any other documents required by law which is submitted to the Intellectual Property Office by a legal person or individual in order to register a trademark or trade name;
- 8) “examination” means the check performed by an authorised officer of the relevant organisation on whether a similar trademark or trade name has previously been registered and in respect of which a certificate has been issued;
- 9) “licence” means the permission given by the owner of a trademark or trade name to another person to use the trademark or trade name after registration by the Intellectual Property Office;
- 10) “filing date” means the date on which an application for a trademark or trade name is received by the Intellectual Property Office in accordance with article 7 of this law;
- 11) “priority date” means the date on which a trademark is received for registration in any member State of the Paris Convention for the Protection of Industrial Property or to be given a priority date in accordance with article 4 of that Convention;
- 12) “international categories for trademarks” refers to the Nice Agreement of 1957 concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks and the Vienna Agreement of 1973 establishing an International Classification of the Figurative Elements of Marks.

#### **Article 4. Registrable trademarks and requirements for registration**

1. Trademarks that meet the requirements provided in paragraph 1 of article 3 of this law shall be registered.
2. The following items shall not be considered to be trademarks:
  - 1) words or figurative shapes which represent things and phenomena;
  - 2) common names, formulae, figurative shapes, common geometrical shapes, numerical expressions or indecipherable letters or marks;
  - 3) words or figurative shapes which explain the origin, quantity, weight, quality, purpose or price of goods, the name of the manufacturer or

- the method or date of manufacture;
- 4) anything which could be in any way misleading;
  - 5) place names or abbreviations of them or maps or signs showing locations;
  - 6) human names expressed in an undistinctive manner;
  - 7) common expressions of common undistinctive places.
3. The following marks shall not be registered:
- 1) trademarks that are identical or similar to the national emblem, flags, whole or abbreviated names of mass or international organisations, or official badges of Mongolia or other foreign countries;
  - 2) whole or abbreviated names, portraits, pictures or signatures of famous people used without their permission or that of their heirs;
  - 3) names, pseudonyms, portraits, pictures or titles of imaginative or historical persons of Mongolia used without permission of the competent authorities;
  - 4) words or figurative shapes protected by copyright or industrial design patents of Mongolia used without permission of the author or the owner of rights with respect to them;
  - 5) trademarks which are similar to trademarks used for other goods and services which are registered in Mongolia or which have been submitted for registration;
  - 6) trademarks similar to common trademarks of Mongolia;
  - 7) trademarks whose content is prejudicial to public order and morality.
4. The name of the origin of goods shall be registered only by way of a collective mark.

#### **Article 5. Requirements for the registration of trade names**

1. A business entity shall have a name and the exclusive right to use it.
2. Rights with respect to trade names shall begin after entry in the State register and the issuance of a certificate.
3. A trade name shall not be registered in the following cases;
  - 1) if it is similar/identical to a previously registered trade name;
  - 2) if it expresses the legal status of the business entity;
  - 3) if the business entity is not established and registered in accordance with law;
  - 4) if the trade name is expressed by numbers.
4. A trade name shall be brief and written in Cyrillic script. A business entity may register a trade name written in Cyrillic script together with a trade name

written in the Latin alphabet if it so wishes.

5. The form of the business entity shall be written after the trade name.
6. A trade name consisting of two or more words shall be written in the following way:
  - 1) if the trade name consists of two words and the second one starts with a consonant, it shall join the first word;
  - 2) if the trade name consists of two words and the second one starts with a vowel, it shall be preceded by a hyphen (-) and start with a capital letter;
  - 3) if the trade name consists of three words and the second one starts with a consonant, the first and second words shall be joined and the third word shall be written after a one-letter space, the first letter to be in lower case;
  - 4) if the trade name consists of three words and the second one starts with a vowel, the second and third words shall be written with a one letter space between them and the first letter of the third word shall be in lower case.
7. A trade name need not have any particular meaning or may have a meaning expressed in brief or may consist of a single letter or syllable and in that case its letters shall all be written in capitals. The letters shall be joined with no symbol between them.
8. A business entity may register its trade name as a whole or in an abbreviated form convenient for daily use and may use the shorter form of the trade name as a trademark. In that case, the trade name shall be registered in accordance with the law in the same way as a trademark.

#### **Article 6. Duties of the Intellectual Property Office with respect to trademarks and trade names**

1. The Intellectual Property Office shall carry out the following functions with respect to the registration of trademarks and trade names:
  - 1) receive and decide upon applications for trademarks and trade names;
  - 2) register trademarks and trade names and issue certificates;
  - 3) provide facts for the settlement of disputes by courts with respect to trademarks and trade names;
  - 4) decide on applications and complaints as provided by law;
  - 5) establish a design for certificates of trademarks and trade names;
  - 6) keep a single State register of trademarks, associated contracts and trade names, establish a unified database and publish related information;

- 7) cancel trademarks and trade names for the reasons and on the basis of regulations provided by law;
  - 8) perform the functions set out in sub-paragraphs 8, 10, 11, 13 and 15 of paragraph 1 of article 5 of the Patent Law and sub-paragraphs 11 and 12 of paragraph 1 of article 6 of the Copyright Law.
2. On the request of an author, the Intellectual Property Office may value works related to trademarks and trade names.

## **Chapter Two**

### **Registration of Trademarks and Trade Names and the Issuance of Certificates**

#### **Article 7. Applications for trademarks and trade names**

1. A legal person or individual who wishes to register a trade name or trademark shall make an application with respect to that trademark or trade name to the Intellectual Property Office.
2. An application for a trademark shall consist of the application and 10 copies of a graphical representation of the trademark.
3. An application for a trade name shall consist of the application, an enlargement of the written form of the trade name and a copy of the State registration certificate of the business entity.
4. An application should include the surname and name, address and nationality of the applicant or his authorised representative, the date and number of the application, the type of business of the applicant, a request for registration of the trademark or trade name and a graphical representation of the trademark or trade name.
5. If an applicant wishes to register a sign, a collective mark of form of volume, or of colour, he or she shall address this in the application and shall attach a copy of the procedure for use of the mark to the application.
6. If an applicant wishes to register the name of the origin of the goods, he or she shall address this in the application and attach documents confirming the name of origin and his or her right to use it to the application.
7. If trademarks and trade names are expressed in scripts other than Cyrillic or the Latin alphabet, the script shall be transliterated into the Latin alphabet and included with the application.
8. An application for a trademark may specify one or more international categories of goods or services.



9. Prior to State registration of a trade name, an applicant may inquire whether a selected name is similar/identical to a previously registered name.
10. If the selected trade name is only different from a name previously registered by a legal person by virtue of a marginal sign of type, number, letter, or word showing the form of the business entity, the selected name shall be considered to be similar and shall not be registrable.
11. The provisions of paragraphs 6, 7 and 8 of article 6 of the Patent Law of Mongolia shall also apply.

#### **Article 8. Filing date for applications for trademarks and trade names**

1. Within 20 days of receiving an application for a trade name, the Intellectual Property Office shall examine the materials relevant to the application and, if the application meets the requirements set out in articles 4 and 5 of this law, shall record the date it received the application as the filing date.
2. If the Intellectual Property Office finds that the application does not meet the requirements set out in articles 4 and 5 of this law, it shall require the applicant to make amendments and alterations within 2 months and shall return the application to the applicant. If the applicant makes amendments and alterations during that period and resubmits the application, the Intellectual Property Office shall record the date of that receipt of the application as the filing date.
3. If the required amendments and alterations are not made and submitted to the Office within the period set out in paragraph 2 of this article, the Intellectual Property Office shall refuse to accept the application.
4. If an individual or legal person applies to register a trademark within 6 months from the date of exposing the goods in the following exhibitions, the filing date shall be recorded as the date of exposure of the goods at the exhibition:
  - 1) an exhibition organised by a competent central or local administrative body;
  - 2) an exhibition organised on the authority of a competent central or local administrative body;
  - 3) an exhibition organised in a foreign country;
  - 4) an exhibition organised in the territory of a member country of the Paris Convention by, or with the permission, of the Government of that country.

#### **Article 9. Examination of applications for trademarks and trade names**

1. If the Intellectual Property Office finds that an application meets the necessary requirements, it shall examine whether the symbol may be registered as a trademark or trade name in accordance with this law.
2. While the matter is being examined, an applicant may change the application other than by altering the trademark or trade name or by amending the list of names of goods and services. A new application shall be submitted if any change in the list of names of goods is to be made.
3. While the matter is being examined, the applicant may make a separate application with respect to a different category of goods or services.
4. An applicant may withdraw the application while it is being examined. In that case, the applicant shall lose the right to reapply for that trademark or trade name.
5. If a final decision to reject the application or refuse the registration is made by an expert or a court, it shall be considered that such an application was not submitted.
6. Based on the conclusions of its examination, the Intellectual Property Office shall decide whether to register a trademark or trade name within six months from the filing date of application. If necessary, the Intellectual Property Office may extend the term for up to six months.

#### **Article 10. Registration of trademarks and trade names and the issuance of certificates**

1. If the Intellectual Property Office decides to register a trademark or trade name, that trademark or trade name shall be entered in the State register, a certificate of trademark or trade name shall be issued and the application shall be stored in the database of trademarks and trade names. The application for a trademark or trade name registered by the Intellectual Property Office shall be stored for a period of 10 years from the expiry of the certificate.
2. The surname and name, address, type of business of the owner of the trademark, the main characteristics of the trademark, the number and date of the decision to issue a certificate, the filing date of the application, and the term of validity of the certificate shall be included on the trademark certificate and the member of the Government authorised to do so shall sign and stamp it.
3. The name of the business entity, the type of business it is engaged in, the decision of the authority that issued the certificate, the filing date and the period of validity of the certificate shall be included on the trade name certificate and the member of the Government authorised to do so shall sign and stamp it.

4. If the Intellectual Property Office refuses to register a trademark or trade name, a copy of the application and the conclusion of the examination shall be sent to the applicant within 30 days from the date of the decision. If the applicant does not agree with the decision, he or she may apply to the court within 30 days from the date of receiving the decision refusing registration.
5. The Intellectual Property Office shall publish in the press the bibliography and graphical representations of registered trademarks and trade names.

**Article 11. Term of validity of certificates of trademarks and trade names and their extension**

1. A certificate of trademark or trade name shall be valid for a period of 10 years from the date of its issuance.
2. The period of validity of a certificate of trademark or trade name may be extended on the application of the owner for a period of ten years.
3. An application for extension of the term of validity of a certificate shall be made to the Intellectual Property Office during the last year of validity of the certificate. Unless submitted before expiry of the period, an application may be made within six months from the expiry date.
4. In extending the period of validity of a certificate, the list of categories of goods and services to which the trademark or trade name applies shall not be amended.
5. If the name or address of the owner of a trademark or trade name changes, the Intellectual Property Office must be notified in writing within six months. The Intellectual Property Office shall publish in the press each decision to extend the term of a certificate of trademark or trade name and any change in the State register of trademarks and trade names.

**Article 12. Fees for certificates of trademarks and trade names**

1. For granting or extending the term of a certificate of trademark or trade name, a fee shall be paid in accordance with the rate and amount provided in the Law of Mongolia on Stamp Duties.
2. The fee shall be paid within three months from the date of making the decision to grant the certificate of trademark or trade name or to extend the term of validity of a certificate of trademark or trade name.

## **Chapter Three**

### **Rights of Owners of Trademarks and Trade Names, Ownership, Use and Disposal of Trademarks and Trade Names**

#### **Article 13. Rights of owners of trademarks and trade names**

1. The registration of trademarks and trade names shall give their owners exclusiverights with respect to them.
2. An owner of a trademark or trade name has the following rights:
  - 1) to use the registered trademark or trade name for his or her own goods andservices;
  - 2) to own, exploit, and/or dispose of his or her registered trademarks or tradename;
  - 3) to permit others to use the registered trademark or trade name by way oflicence contract;
  - 4) to transfer the trademark to others;
  - 5) to get information and confirmation from the Intellectual Property Officeon registered trademarks and trade names;
  - 6) if his or her registered trademark or trade name is used unlawfully byothers, to require such to cease and to be protected against breach of his orher rights;
  - 7) to demand cessation of the use of trademarks or trade names that are similar to previously registered trademarks and trade names and to becomecompensated for losses suffered.

#### **Article 14. Use of trademarks**

1. The following actions shall be considered as being appropriate uses of a trademark:
  - 1) use of trademarks for goods, packaging and services;
  - 2) supply of goods with trademarks for trade or supply or storage purposes;
  - 3) the import or export of goods with trademarks;
  - 4) the use of trademarks on official letters, other documents oradvertisements;
  - 5) an owner of a trademark may use Latin letter “c” in circle beside thetrademark to show that the trade mark is registered.
2. If a person uses a trademark which is similar to a registered trademark for similargoods or services without the authority of the owner of that trademark, such shall be considereda breach of the owner’s rights.

3. It shall not be considered to be a breach of ownership rights if registered trademarks are used in the following ways:
  - 1) if the owner of a trademark or a person with the owner's authority uses the trademark in any of the ways set out in paragraph 1 of this article within the country;
  - 2) if the owner of a trademark or a person with the owner's authority uses that trademark in connection with goods if those goods with that trademark are already in the market of that country.

#### **Article 15. Use of trade names**

1. While participating in civil activities, a legal person shall use a trade name to advertise its goods by way of packaging, introductions, official documents and exhibitions.
2. Trade names may be used in the same way as trademarks. If there is a discrepancy between a trademark and a trade name, the trademark shall prevail.

#### **Article 16. Transfer of trademarks to others and termination of rights to own trademarks**

1. An owner of a trademark may transfer, in whole or in part, the right to own the trademark to others by way of inheritance or other means.
2. The right to own a trademark may be transferred by way of contract. The contract shall be in writing and executed with the signature of both parties, and may be certified by notary if they so wish.
3. A contract for transfer of a trademark shall be registered in the Intellectual Property Office.
4. The right to own a trademark shall not be transferred if the type, origin, quality, purpose of goods or services or the name of the place or means of manufacture mislead consumers. The right to own a trademark shall be terminated in the following cases:
  - 1) the complete transfer to others by way of law or contract;
  - 2) the loss of rights of ownership for reasons provided in law;
  - 3) the death of the owner or a declaration that he or she is deceased;
  - 4) the dissolution of a legal person;
  - 5) other reasons provided by law.

### **Article 17. Transfer of trade names**

Transfer of exclusive rights to use trade names shall be prohibited except where a legal person is restructured or wholly transferred to the ownership of others.

### **Article 18. Licence contract**

1. An interested person shall make a licence contract to use a trademark or tradename with its owner. A licence contract shall be recorded in writing and signed by both parties. In case of a use of a trade name under a licence contract, the parties shall agree on measures to prevent the misleading of consumers.
2. The following shall be agreed in the licence contract:
  - 1) the methods, scope and period of use of the trademark or trade name, quality requirements and the inspection of relevant goods or services;
  - 2) the rights and duties of the parties;
  - 3) the amount and procedures for payment of fees for the use of the trademark or trade name;
  - 4) the range of territory where the licence contract is to be effective.
3. A licence contract shall be registered in the Intellectual Property Office.
4. Collective marks and use of the names of the geographical origin of goods shall not be transferred to others by licence contract.

## **Chapter Four**

### **Miscellaneous Provisions**

### **Article 19. Cancellation of certificates of trademarks and trade names and consideration as invalid**

1. If an interested person considers that a trademark has been registered in breach of the provisions of sub-paragraph 1 of article 3 or, if necessary, sub-paragraphs 2 and/or 3 of article 3 and paragraphs 1, 2 and/or 3 of article 4 or a trade name has been registered in breach of the provisions of paragraphs 3-7 of article 5 of this law he or she may request a court to cancel that trademark or trade name.
2. If an interested person considers that a trademark has been registered in breach of the provisions of sub-paragraphs 4, 5 and/or 6 of paragraph 3 of article 4 of this law, he or she may request a court to cancel the certificate within the period of 5 years from the registration date of the trademark.
3. If, after examination, the court considers the request justified, it shall decide

to cancel the registration of the trademark or trade name and shall inform the Intellectual Property Office in writing.

4. The Intellectual Property Office shall treat a certificate of trademark or trade name as invalid in the following cases:
  - 1) if an application to extend its term is not submitted within the period of 6 months from its expiry date;
  - 2) if the fee provided in article 12 of this law is not paid on time;
  - 3) if the owner of the trademark or trade name repudiates in writing their rights of ownership to registered trademarks or trade names;
  - 4) if, on dissolution, the business entity that owns the trademark or trade name does not transfer the right to own that trademark or trade name by way of licence contract;
  - 5) if the owner of the trademark or trade name does not, without any reason, use the trademark for 5 years or trade name for 3 years from its registration.
5. An interested person may apply to the court within 30 days if he or she disagrees with a decision to cancel a certificate of trademark or trade name.
6. An interested person may, with respect to the provisions of sub-paragraph 5 of paragraph 4 of this article, submit an application for cancellation of a certificate of trademark to the Intellectual Property Office.
7. If a certificate of trademark or trade name is cancelled, the Intellectual Property Office shall make any necessary amendments in the State register of trademarks and trade names and shall publish that in the press.

#### **Article 20. Settlement of disputes and grievances**

1. The Intellectual Property Office shall settle the following disputes and grievances with respect to trademarks and trade names:
  - 1) examination of applications for trademarks and trade names;
  - 2) the according of filing and priority dates;
  - 3) rights of authorship.
2. The Intellectual Property Office must settle disputes and grievances and respond within a period of 30 days from the date of their receipt.
3. If the disputing parties disagree with the decision of the Intellectual Property Office, they may apply to the court within 30 days from receiving the decision.
4. The court shall settle all disputes and grievances except those falling within the jurisdiction of the Intellectual Property Office by law.

**Article 21. Liability for breach of legislation on trademarks and trade names**

1. If a breach of the legislation on trademarks and trade names is held not to constitute a criminal offence, a judge shall impose on an offending person a fine of up to 2,000-50,000 togrogs or on an offending business entity or organisation a fine of up to 10,000-250,000 togrogs, profits gained from the unlawful use of a trademark or trade name shall be paid to the owner of the trademark or trade name, profits gained from the sales of goods shall be transferred to the State ownership and production and service activities shall be stopped.

2. A person who breaches the rights of owners of trademarks or trade names shall be liable under the legislation of Mongolia.

**Article 22. Enforcement of the legislation on trademarks and trade names**

Unless it is contrary to the interests of the parties, a court may use the regulation previously enforced with respect to the rights and obligations arising with respect to trademarks and trade names prior to the passage of the Law on Trademarks and Trade Names.

**Article 23. Effective date of the law**

This law shall come into effect on 1 February 1997.

Chairman of the State Khural of Mongolia R. Gonchigdorj