



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

CODE OF INTELLECTUAL PROPERTY
ACT, No. 52 OF 1979

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*Code of Intellectual Property
Act, No. 52 of 1979*

[Certified on 8th August, 1979]

L. D.—O. 53/78.

AN ACT TO REVISE, CONSOLIDATE, AMEND AND EMBODY IN THE FORM OF A CODE THE LAW RELATING TO COPYRIGHT INDUSTRIAL DESIGNS, PATENTS, MARKS, TRADE NAMES AND UNFAIR COMPETITION AND PROVIDE FOR THE BETTER REGISTRATION, CONTROL AND ADMINISTRATION THEREOF AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Code of Intellectual Property Act, No. 52 of 1979, (hereinafter referred to as the "Code") and shall come into operation on such date as the Minister may appoint by Order published in the Gazette (in this Code referred to as the "appointed date").

Short
title
and
date of
operation.

PART I

ADMINISTRATION

CHAPTER I

2. (1) There may be appointed a person to be or to act as Registrar of Patents and Trade Marks of Sri Lanka (hereinafter referred to as the "Registrar").

Appoint-
ment of
Registrar
and his
duties.

(2) In default of such appointment the Registrar of Companies or any person for the time being acting as such shall discharge the duties of the Registrar under this Code.

(3) The Registrar shall, subject to the directions of the Minister, be vested with the general control and superintendence of the registration of industrial designs, patents and marks under the provisions of this Code and of all persons appointed for or engaged in the carrying out of the provisions of this Code.

3. (1) There may from time to time be appointed a fit and proper person, or each of two or more such persons, to be or to act as a Deputy Registrar of Patents and Trade Marks and such other Assistant Registrars as the Minister may consider necessary.

Deputy
Registrars
and
Assistant
Registrars

(2) Any person so appointed may exercise, perform or discharge any power, duty or function expressly conferred or imposed upon the Deputy Registrar or Assistant Registrar, as the case may be, and may, subject to the directions

of the Minister and under the authority and control of the Registrar, exercise, perform or discharge any power, duty or function conferred or imposed upon the Registrar by or under this Code.

(3) In default of any such appointment the Deputy Registrar of Companies or an Assistant Registrar of Companies, as the case may be, shall discharge the duties of the Deputy Registrar of Patents and Trade Marks or an Assistant Registrar of Patents and Trade Marks.

Registry
and
maintenance
of
registers.

4. (1) The Minister may by notification in the Gazette establish an office called the Registry of Patents and Trade Marks (hereinafter referred to as the "Registry") which shall be the only office in Sri Lanka for the registration of industrial designs, patents and marks.

(2) All registers required to be kept and maintained under the provisions of this Code shall be kept and maintained under the supervision of the Registrar at the Registry and such registers shall be the only legally recognized registers for the registration of industrial designs, patents and marks in Sri Lanka.

Registrars
deemed
to be
public
servants.

5. Every Registrar, Deputy Registrar and Assistant Registrar for the time being shall, as long as they hold office, be deemed to be public servants within the meaning of the Penal Code.

PART II

COPYRIGHT

CHAPTER II

Inter-
pretation.

6. For the purposes of this Part—

"broadcasting" means the transmitting, for reception by the general public, by wireless or by means of wire, of sounds or of images and sounds ;

"folklore" means all literary and artistic works created in Sri Lanka by various communities, passed on from generation to generation and constituting one of the basic elements of the traditional cultural heritage ;

"performance" means a public performance or delivery of a work by any means whatsoever ;

“published works” means works published in any manner whatsoever with the consent of their authors provided that the number of copies so published are sufficient to satisfy the reasonable requirements of the public, having regard to the nature of the work ;

“reproduction” means the making of one or more copies of a literary, artistic or scientific work, in any material form including any sound or visual recording ;

“works first published” means works first published in Sri Lanka, or works first published abroad but also published in Sri Lanka within thirty days from the earlier publication ;

“work of joint authorship” means a work created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

7. (1) Authors of original literary, artistic and scientific works shall be entitled to protection of their works under this Part.

Works
protected.

(2) Literary, artistic and scientific works shall include in particular—

- (a) books, pamphlets and other writings ;
- (b) lectures, addresses, sermons and other works of the same nature ;
- (c) dramatic and dramatico-musical works ;
- (d) musical works, whether or not they are in written form and whether or not they include accompanying words ;
- (e) choreographic works and pantomimes ;
- (f) cinematographic, radiophonic and audio-visual works ;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry ;
- (h) photographic works, including works expressed by processes analogous to photography ;
- (i) works of applied art, whether handicraft or produced on an industrial scale ;
- (j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(3) Works shall be protected irrespective of their quality and the purpose for which they were created.

Derivative works.

8. (1) The following shall also be protected as original works—

- (a) translations, adaptations, arrangements and other transformations of literary, artistic or scientific works ;
- (b) collections of literary, artistic or scientific works, such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations ; and
- (c) works derived from Sri Lanka folklore.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work utilized for the making of such work.

Works not protected.

9. Notwithstanding the provisions of sections 7 and 8, protection shall not extend to—

- (a) laws and decisions of courts and administrative bodies, as well as to official translations thereof ; and
- (b) news of the day published, broadcast or publicly communicated by any other means.

Economic rights.

10. Subject to the provisions of sections 12 to 16 the author of a protected work shall have the exclusive right to do or authorize any other person to do the following acts in relation to the whole work or a part thereof—

- (a) reproduce the work ;
- (b) make a translation, adaptation, arrangement, or other transformation of the work ;
- (c) communicate the work to the public by performance, broadcasting, television or any other means.

Moral rights.

11. (1) The author of a protected work shall have the right—

- (a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in section 10, except when the work is included incidentally or accidentally when reporting current events by means of broadcasting or television ;

(b) to object to, and to seek relief in connection with, any distortion, mutilation or other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honour or reputation.

(2) The rights referred to in subsection (1) shall subsist for the life of the author and fifty years thereafter. After his death, the said rights shall be exercisable by his heirs.

(3) The rights referred to in subsection (1) shall be exercisable even where the author or his heirs do not have the rights referred to in section 10.

(4) The rights referred to in subsection (1) shall not be transferable.

12. (1) In the case of works of Sri Lanka folklore, the rights referred to in sections 10 and 11 (1) shall be exercised by the Minister in charge of the subject of Culture.

Works of
Sri Lanka
folklore.

(2) Works of Sri Lanka folklore shall be protected by all means available under this Part, without limitation in time.

(3) Copies of works of Sri Lanka folklore made abroad and copies of translations, adaptations, arrangements, or other transformations of works of Sri Lanka folklore made abroad, without the authorization of the Minister in charge of the subject of Culture, shall be neither imported nor distributed.

13. Notwithstanding the provisions of section 10, the following uses of a protected work, either in the original languages or in translation, shall be permissible without the author's consent—

Fair use.

(a) in the case of any work that has been lawfully published—

(i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal and private use ;

(ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries ;

(iii) the utilization of the work by way of illustration in publications, broadcasts or sound or visual recordings for teaching to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast or televised for use in schools, education, universities and professional training :

Provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, broadcast, television broadcast or recording ;

- (b) in the case of any article published in newspapers or periodicals on current economic, political or religious topics, and in the case of any broadcast or televised work of the same character, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when first published, or the said broadcast or televised work when broadcast or televised, was accompanied by an express condition prohibiting such use, and that the source of the work when used in the said manner is clearly indicated ;
- (c) for the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informatory purpose of any work that can be seen or heard in the course of the said current event ;
- (d) the reproduction of works of art and of architecture in a film or television broadcast, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where they can be viewed by the public or are included in the film or television broadcast only by way of background or as incidental to the essential matters represented ;
- (e) the reproduction, by sound recording, photographic or similar process, by public libraries, non-commercial documentation centres, scientific insti-

tutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public :

Provided that such reproduction and the number of copies made are limited to the needs of their activities, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author ;

(f) the reproduction in the press of—

(i) any political speech delivered in public or any speech delivered during legal proceedings, or

(ii) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purposes of current information,

the author retaining the right to publish a collection of such works.

14. Notwithstanding the provisions of section 10, any broadcasting or television organization may make, for the purpose of its own broadcasts or television broadcasts and by means of its own facilities, an ephemeral recording, in one or several copies, of any work which it is authorized to broadcast or televise. All copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author :

Ephemeral recordings.

Provided, however, that where such recording has an exceptional documentary character, one copy of it may be preserved in official archives, without prejudice to the application of the provisions of section 11.

15. Where any work has not been published in Sinhala or Tamil within ten years from its having been published for the first time in its original language, it shall be lawful to translate the said work into Sinhala or Tamil, as the case may be, and to publish such translation, even without the authorization of, and without any payment to, the owner of the copyright of the work, without prejudice to the application of the provisions of section 11.

Limitation of right of translation.

16. (1) Where the owner of the copyright in a musical work has already authorized a person to make a sound recording of the performance of the work, any other person may, if he cannot agree with the owner to make a sound recording of a performance of the same work, make a new sound recording of a performance of the said work without

Limitation of right of sound recording and broadcasting.

the authorization of the owner, provided that such other person pays to the owner an equitable remuneration which amount shall be fixed by the Secretary to the Ministry of the Minister in charge of the subject of Culture. The foregoing provisions shall apply also to any words accompanying the music.

(2) Where any public broadcasting or television organization operating in and from Sri Lanka cannot agree with the owner of the copyright in any work which it wishes to transmit by broadcasting or television on the conditions on which the work may be broadcast or televised, it shall be entitled to proceed to such broadcasting or television even without the authorization of the owner, provided that it pays to the owner an equitable remuneration which amount shall be fixed by the Secretary to the Ministry of the Minister in charge of the subject of Culture.

(3) The provisions of subsections (1) and (2) shall be without prejudice to the application of the provisions of section 11.

(4) The mode and manner of the assessment and payment of remuneration under subsections (1) and (2) shall be as prescribed.

**Ownership of
copyright.**

17. (1) The rights protected under this Part shall be owned in the first instance by the author or authors who created the work. The authors of a work of joint authorship shall be co-owners of the said rights.

(2) In the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed.

(3) In the case of a work created by an author for any person or body of persons corporate or unincorporate in the course of his employment under a contract of service, or of a work commissioned from the author by such person or body of persons, the rights mentioned in section 10 shall, in the absence of contractual provisions to the contrary, be deemed to be transferred to the employer or to the person commissioning the work.

**Transfer of
copyright.**

18. (1) The rights referred to in section 10 shall be transferable in whole or in part.

(2) Any transfer, other than by operation of law, of a right referred to in section 10 shall be in writing signed by the transferor.

(3) A transfer, in whole or in part of any right referred to in section 10, shall not include or be deemed to include the transfer of any other rights referred to therein.

(4) When a contract provides for the total transfer of one of the rights referred to in section 10, the scope of such contract shall be limited to the exercise of such rights as are provided for in the contract.

(5) The transfer of ownership of the only copy or of one or several copies of a work shall not imply or be deemed to imply the transfer of the copyright in the work.

19. (1) Unless expressly provided otherwise in this Part, the rights referred to in section 10 shall be protected during the life of the author and for fifty years after his death.

Duration of
economic
rights.

(2) In the case of a work of joint authorship the rights referred to in section 10 shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a work published anonymously or under a pseudonym, the rights referred to in section 10 shall be protected until the expiration of fifty years from the date on which such work was first lawfully published :

Provided that where, before the expiration of the said period, the author or the author's identity is revealed or is no longer in doubt, the provisions of subsection (1) or subsection (2) shall apply as the case may be.

(4) In the case of a cinematographic, radiophonic or audiovisual work, the rights referred to in section 10 shall be protected until the expiration of fifty years from the making of the work or, if the work is made available to the public during such period with the consent of the author, fifty years from the date of its communication to the public.

(5) In the case of a photographic work or a work of applied art, the rights referred to in section 10 shall be protected until the expiration of twenty-five years from the making of the work.

(6) Every period under the preceding provisions of this section shall run to the end of the calendar year in which it would otherwise expire.

Sound
recording.

20. (1) The lawful maker of any sound recording shall, for a period of fifty years from the first publication of the sound recording, have the exclusive right to reproduce or authorize the reproduction of the sound recording.

(2) The provisions of sections 14, 18, 19 (6), and 21 shall apply to sound recordings.

Infringe-
ments and
sanctions.

21. (1) Any person who infringes any of the rights protected under this Part may be prohibited by injunction from continuing such infringement and may also be liable in damages.

(2) The provisions of Chapter XXXII relating to infringements shall apply, *mutatis mutandis*, to the rights protected under this Part.

Fields of
application.

22. This Part shall apply to—

- (a) works of authors who are nationals of, or have their habitual residence in, Sri Lanka; and
- (b) works first published in Sri Lanka, irrespective of the nationality or residence of their authors; and
- (c) all works which, by virtue of treaties entered into by Sri Lanka, are to be protected, as well as to works of Sri Lanka folklore.

Abrogation
of common
law
rights.

23. No copyright, or right in the nature of copyright, shall subsist otherwise than by virtue of this Part or of any other enactment made in that behalf.

Rights
under
other laws.

24. The provisions of this Part shall not affect any rights hereinbefore acquired under the common law or any other law.

PART III

INDUSTRIAL DESIGNS

CHAPTER III

Scope of this Part and Definitions

Scope of
this Part.

25. The protection of industrial designs provided under this Part shall be in addition to and not in derogation of any other protection provided under any other written law, in particular under Part II of this Code.

26. The protection provided under this Part shall—

- (1) apply only to new industrial designs ;
- (2) not apply to an industrial design which consists of any scandalous design or is contrary to morality or public order or which, in the opinion of the Registrar or the Court, is likely to offend the religious or racial susceptibilities of any community.

Conditions
for
protection.

27. For the purposes of this Part any composition of lines or colours or any three dimensional form, whether or not associated with lines or colours, that gives a special appearance to a product of industry or handicraft and is capable of serving as a pattern for a product of industry or handicraft shall be deemed to be an industrial design :

Definition
of
industrial
design.

Provided that anything in an industrial design which serves solely to obtain a technical result shall not be protected under this Part.

28. (1) For the purposes of this Part a new industrial design shall mean an industrial design which had not been made available to the public anywhere and at any time whatsoever through description, use or in any other manner before the date of an application for registration of such industrial design or before the priority date validly claimed in respect thereof.

Definition
of novelty.

(2) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of an application for registration, it had appeared in an official or officially recognized international exhibition.

(3) An industrial design shall not be considered a new industrial design solely by reason of the fact that it differs from an earlier industrial design in minor respects or that it concerns a type of product different from a product embodying an earlier industrial design.

CHAPTER IV

Right to protection of industrial design

29. (1) The right to obtain protection of an industrial design belongs to its owner.

Ownership
and right
to protection
of industrial
design.

(2) Subject to section 31 the owner of an industrial design is its creator or his successor in title.

(3) Where two or more persons have jointly created an industrial design, the right to obtain protection shall belong to them jointly :

Provided that a person who has merely assisted in the creation of an industrial design but has made no contribution of a creative nature shall not be deemed to be the creator or a co-creator of such industrial design.

(4) Subject to sections 30 and 31 the person who makes the first application for the registration of an industrial design or the person who first validly claims the earliest priority for his application shall be deemed to be the creator of such industrial design.

Usurpation :
Judicial
assignment of
application
or
registration.

30. Where the essential elements of an industrial design, the subject of an application for registration, have been unlawfully derived from an industrial design for which the right to protection belongs to another person, such other person may apply to Court for an order that the said application or registration be assigned to him :

Provided that where, after an application for the registration of an industrial design has been filed, the person to whom the right to protection belongs gives his consent to the filing of the said application, such consent shall, for all purposes, be deemed to have been effective from the date of filing of such application.

Industrial
design
created by
an employee
or pursuant
to a
commission.

31. (1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the ownership of an industrial design created in the performance of such contract or in the execution of such work shall be deemed to accrue to the employer, or the person who commissioned the work, as the case may be :

Provided that where the industrial design acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the creator shall be entitled to equitable remuneration which may be fixed by the Court in the absence of agreement between the parties.

(2) Where an employee whose contract of employment does not require him to engage in any creative activity creates, in the field of activities of his employer, an industrial design using data or means placed at his disposal by his employer, the ownership of such industrial design shall be deemed to accrue to the employer in the absence of any provision to the contrary in the contract of employment :

Provided that the employee shall be entitled to equitable remuneration which, in the absence of agreement between the parties, may be fixed by the Court taking into account his emoluments, the economic value of the industrial design and any benefit derived from it by the employer.

(3) The rights conferred on the creator of an industrial design by subsections (1) and (2) shall not be restricted by contract.

32. (1) The creator of an industrial design shall be named as such in the registration, unless by a declaration in writing signed by him or on his behalf and submitted to the Registrar he indicates that he does not wish to be so named.

Naming of
creator of
an
industrial
design.

(2) The provisions of subsection (1) shall not be modified by the terms of any contract.

CHAPTER V

Requirements of application and procedure for registration

33. (1) An application for registration of an industrial design shall be made to the Registrar in the prescribed form and shall contain—

Requirements
of
application.

- (a) a request for registration of the industrial design ;
- (b) the name, address and description of the applicant and, if he is resident outside Sri Lanka, a postal address for service in Sri Lanka ;
- (c) a specimen of the article embodying the industrial design or copies of a photographic or graphic representation of the industrial design, in colour where it is in colour, or drawings and tracings of the design ;
- (d) an indication of the kind of products for which the industrial design is to be used and, where the regulations make provision for classification, an indication of the class or classes in which such products are included ;
- (e) a declaration by the applicant that the industrial design is new to the best of his knowledge.

(2) The application for registration may be accompanied by a declaration signed by the creator of the industrial

design, giving his name and address and requesting that he be mentioned as such in the registration.

(3) Where the applicant is not the creator of the industrial design the application shall be accompanied by a statement justifying the applicant's right to obtain registration.

(4) The Registrar shall send a copy of the statement referred to in subsection (3) to the creator of the industrial design who shall have the right to inspect the application and to receive, on payment of the prescribed fee, a copy thereof.

(5) Where the application is filed through an agent, it shall be accompanied by a power of attorney granted to such agent by the applicant :

Provided that legalization or certification of the applicant's signature shall not be necessary.

(6) An application may be made for the registration of any number of industrial designs not exceeding fifty provided that they are of the same class or kind.

Right of
priority.

34. The applicant for registration of an industrial design who wishes to avail himself of the priority of an earlier application filed in a convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the appropriate authority of the country where such earlier application was filed.

Application
fee.

35. An application for registration of an industrial design shall not be entertained unless the prescribed fee has been paid to the Registrar.

Examination
of
application.

36. (1) The Registrar shall examine whether the application for registration complies with sections 26 (2), 33, 34 (where applicable) and 35.

(2) Where the application does not comply with sections 26 (2), 33 and 35, the Registrar shall refuse registration of the industrial design :

Provided that the Registrar shall first notify the applicant of any defect in the application and shall afford him an opportunity to remedy such defect within three months from the date of receipt of such notification.

(3) Where the application does not comply with section 34, the Registrar shall not, in connection with the registration of the industrial design, make any reference to the priority claimed.

(4) Where the application complies with section 34, the Registrar shall, in connection with the registration of the industrial design, record the priority claimed.

(5) Where the Registrar refuses to register an industrial design he shall, if required by the applicant, state in writing the grounds of his decision.

37. Where the application complies with sections 26(2), 33 and 35, the industrial design shall, notwithstanding the provisions of section 26 (1), be registered without further examination.

Registration.

38. Upon the registration of an industrial design, the Registrar shall issue to the registered owner thereof a certificate of registration and shall, at the request of the registered owner, send such certificate to him by registered post at his last recorded postal address in Sri Lanka or, if he is resident outside Sri Lanka, to his last recorded postal address for service in Sri Lanka.

Issue of
certificate
of
registration.

39. (1) The Registrar shall keep and maintain a register called the Register of Industrial Designs wherein shall be recorded, in the order of their registration, all registered industrial designs and such other particulars relating to industrial designs as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

Register of
Industrial
Designs.

(2) The registration of an industrial design shall include a representation of the industrial design and shall specify its number, the name and address of the registered owner and, if the registered owner is resident outside Sri Lanka, a postal address for service in Sri Lanka; the dates of application and registration; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed; the kinds and classes of products referred to in

section 33 (1) (d), and the name and address of the creator of the industrial design, if he has requested that he be mentioned as such in the registration.

Examination of register and certified copies.

40. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Publication of registered industrial designs.

41. The Registrar shall cause to be published in the *Gazette*, in the prescribed form, all registered industrial designs in the order of their registration, including in respect of each industrial design so published reference to such particulars as may be prescribed.

CHAPTER VI

Duration of registration

Duration of registration.

42. Subject and without prejudice to other provisions of this Part, registration of an industrial design shall expire five years after the date of receipt of the application for registration.

Renewal.

43. (1) Registration of an industrial design may be renewed for two consecutive periods of five years each on payment of the prescribed fee.

(2) The renewal fee shall be paid within the twelve months preceding the date of expiration of the period of registration :

Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(3) The Registrar shall record in the register and cause to be published in the *Gazette* in the prescribed form all renewals of registration.

(4) Where the renewal fee has not been paid within such period or such extended period specified in subsection (2), the Registrar shall remove the registration of the industrial design from the register.

CHAPTER VII

Rights of registered owner of industrial design

44. (1) Subject and without prejudice to other provisions of this Part, the registered owner of an industrial design shall have the following exclusive rights in relation to the industrial design :—

Rights of registered owner of industrial design.

- (a) to reproduce and embody such industrial design in making a product ;
- (b) to import, offer for sale, sell or use a product embodying such industrial design ;
- (c) to stock, for the purpose of offering for sale, selling or using, a product embodying such industrial design ;
- (d) to assign or transmit the registration of the industrial design ;
- (e) to conclude licence contracts.

(2) No person shall do any of the acts referred to in subsection (1) without the consent of the registered owner of the industrial design.

(3) The acts referred to in subsection (1), if done by any unauthorized person, shall not be lawful solely by reason of the fact that the reproduction of the registered industrial design differs from the registered industrial design in minor respects or that the reproduction of the registered industrial design is embodied in a type of product different from a product embodying the registered industrial design.

45. The provisions of section 44(1) shall—

Limitation of registered owner's rights.

- (1) extend only to acts done for industrial or commercial purposes ;
- (2) not preclude third parties from doing any of the acts referred to therein in respect of a product embodying the registered industrial design after the said product has been lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka.

CHAPTER VIII

Assignment and transmission of applications and registrations

Assignment and transmission of applications and registrations.

46. (1) An application for registration or the registration of an industrial design may be assigned or transmitted.

(2) Any person becoming entitled by assignment or transmission to an application for registration or the registration of an industrial design may apply to the Registrar in the prescribed manner to have such assignment or transmission recorded in the register.

(3) No such assignment or transmission shall be recorded in the register unless—

- (a) the prescribed fee has been paid to the Registrar ;
- (b) in the case of an assignment, it is in writing signed by or on behalf of the contracting parties.

(4) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

Joint ownership of applications and registration.

47. In the absence of any agreement to the contrary between the parties, joint owners of an application for registration or the registration of an industrial design may, separately, assign or transmit their rights in the application or registration, use the industrial design and exercise the exclusive rights referred to in section 44 (1) (a) to (c), but may only jointly withdraw the application, renounce the registration or conclude a licence contract.

CHAPTER IX

Licence Contracts

Interpretation.

48. For the purposes of this Part licence contract means any contract by which the registered owner of an industrial design ("the licensor") grants to another person or enterprise ("the licensee") a licence to do any or all of the acts referred to in section 44 (1) (a) to (c).

Form and record of licence contract.

49. (1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Registrar shall on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded :

Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

50. (1) In the absence of any provision to the contrary in the licence contract, the licensee shall—

Rights of licensee.

(a) be entitled to do any or all of the acts referred to in section 44 (1) (a) to (c) within the whole geographical area of Sri Lanka, during the whole period of registration of the industrial design, including renewals, and through any application of the industrial design ;

(b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licenses to third parties.

(2) The provisions of this Chapter shall apply, *mutatis mutandis*, to assignments and sub-licenses.

51. (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same industrial design or himself do any or all of the acts referred to in section 44 (1) (a) to (c).

Rights of licensor.

(2) Where the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licences to third parties in respect of the same industrial design or himself do any of the acts referred to in section 44 (1) (a) to (c).

52. Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee, in the industrial or commercial field, restrictions not derived from the rights conferred by this Part on the registered owner of an industrial design, or unnecessary for the safeguarding of such rights :

Invalid clauses in licence contracts.

Provided that—

(a) restrictions concerning the scope, extent, or duration of use of the industrial design, or the geographical area in or the quality or quantity of the products in connection with which the industrial design may be used, and

(b) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the industrial design.

shall not be deemed to constitute such restrictions.

Effect of nullity of registration of licence contract.

53. Where, before the expiration of the licence contract, the registration is declared null and void the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made :

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such repayment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

Expiry, termination or invalidation of licence contract.

54. The Registrar shall—

- (1) if he is satisfied that a recorded licence contract has expired or been terminated, record that fact in the register upon a request in writing to that effect signed by or on behalf of the parties thereto ;
- (2) record in the register the expiry, termination or invalidation of a licence contract under any provision of this Part.

Licence contracts involving payments abroad.

55. (1) Where the Registrar has reasonable cause to believe that any licence contract or any amendment or renewal thereof—

- (a) which involves the payment of royalties abroad ; or
- (b) which by reason of other circumstances relating to such licence contract,

is detrimental to the economic development of Sri Lanka he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Registrar in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Registrar shall cancel and invalidate the record of such contract in the register.

CHAPTER X

Renunciation and nullity of registration

Renunciation of registration.

56. (1) The registered owner of an industrial design may renounce the registration by a declaration in writing signed by him or on his behalf and submitted to the Registrar.

(2) The Registrar shall, on receipt of the said declaration, record it in the register and cause such record to be published in the *Gazette*.

(3) The renunciation shall take effect from the date that the Registrar receives the said declaration.

(4) Where a licence contract in respect of an industrial design is recorded in the register the Registrar shall not, in the absence of provision to the contrary in such licence contract, accept or record the said renunciation except upon receipt of a signed declaration by which every licensee or sub-licensee on record consents to the said renunciation, unless the requirement of his consent is expressly waived in the licence contract.

57. (1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Registrar, to which the registered owner of the industrial design and every assignee, licensee or sub-licensee on record shall be made party, declare the registration of the industrial design null and void on any one or more of the following grounds:—

Nullity of
registration

(a) that the provisions of sections 26, 27 and 28 have not been satisfied :

Provided, however, that the grounds of nullity referred to in section 26 (2) shall not be taken into account if they do not exist at the date of the application to Court ;

(b) that the identical industrial design has been previously registered upon a prior application or has been conferred earlier priority by virtue of an application in that behalf upon the ground of prior registration in another country ;

(c) that the essential elements of the registered industrial design have been unlawfully derived from the creation of another person within the meaning of section 30.

(2) Where an application under subsection (1) relates to several industrial designs, included in the registration and the ground or grounds for nullity apply to some but not to all such industrial designs, the Court shall declare such registration null and void in so far as it relates to the industrial design in respect of which the ground or grounds for nullity apply.

Date and
effect of
nullity.

58. (1) Upon a final decision of the Court declaring total or partial nullity of the registration of an industrial design, the registration shall be deemed to have been null and void totally or partially, as the case may be, from the date of such registration.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Registrar who shall record the said declaration in the register and cause it to be published in the *Gazette*.

PART IV

PATENTS

CHAPTER XI

Definitions

Definition
of
invention.

59. (1) For the purposes of this Part, "invention" means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.

(2) An invention may be, or may relate to, a product or process.

(3) The following, notwithstanding they are inventions within the meaning of subsection (1), shall not be patentable—

- (a) discoveries, scientific theories and mathematical methods ;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals, other than micro-biological processes and the products of such processes ;
- (c) schemes, rules, or methods for doing business, performing purely mental acts or playing games ;
- (d) methods for the treatment of the human or animal body by surgery or therapy, and diagnostic methods practised on the human or animal body :

Provided, however, that this paragraph shall not apply to the products used in any such methods.

Patentable
inventions.

60. An invention is patentable if it is new, involves an inventive step and is industrially applicable.

Novelty.

61. (1) An invention is new if it is not anticipated by prior art.

(2) Prior art shall consist of—

(a) everything disclosed to the public, anywhere in the world, by written publication or, in Sri Lanka, by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, priority date of the patent application claiming the invention;

(b) the contents of a domestic patent application having an earlier filing or, where appropriate, priority date than the patent application referred to in paragraph (a), to the extent that such contents are included in the patent granted on the basis of the said domestic patent application.

(3) A disclosure made under subsection (2) (a) shall be disregarded—

(a) if such disclosure occurred within one year preceding the date of the patent application and if such disclosure was by reason or in consequence of acts committed by the applicant or his predecessor in title;

(b) if such disclosure occurred within six months preceding the date of the patent application and if such disclosure was by reason or in consequence of any abuse of the rights of the applicant or his predecessor in title.

62. An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the patent application claiming the invention, such inventive step would not have been obvious to a person having ordinary skill in the art.

Inventions
step.

63. An invention shall be considered industrially applicable if it can be made or used in any kind of industry.

Industrial
application.

CHAPTER XII

Right to a Patent

64. (1) Subject to section 65 the right to a patent shall belong to the inventor.

Right
to a
patent.

(2) Where two or more persons have jointly made an invention, the right to a patent shall belong to them jointly.

65. Where the essential elements of the invention claimed in a patent application or patent have been unlawfully derived from an invention for which the right

Usurpation:
Judicial
assignment
of patent
application
or patent.

to the patent belongs to another person, such other person may apply to the Court for an order that the said patent application or patent be assigned to him :

Provided that where, after a patent application has been filed, the person to whom the right to the patent belongs gives his consent to the filing of the said patent application, such consent shall, for all purposes, be deemed to have been effective from the date of filing of such application :

Provided also that the Court shall not entertain an application for the assignment of a patent after five years from the date of grant of the patent.

Inventions
made
by an
employee
or
pursuant
to a
commission.

66. (1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the right to a patent for an invention made in the performance of such contract of employment or in the execution of such work shall be deemed to accrue to the employer, or the person who commissioned the work, as the case may be :

Provided that where the invention acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the inventor shall be entitled to equitable remuneration which may be fixed by the Court in the absence of agreement between the parties.

(2) Where an employee whose contract of employment does not require him to engage in any inventive activity makes, in the field of activities of his employer, an invention using data or means placed at his disposal by his employer, the right to the patent for such invention shall be deemed to accrue to the employer, in the absence of any provision to the contrary in the contract of employment :

Provided that the employee shall be entitled to equitable remuneration which, in the absence of agreement between the parties, may be fixed by the Court taking into account his emoluments, the economic value of the invention and any benefit derived from it by the employer.

(3) The rights conferred on the inventor under subsections (1) and (2) shall not be restricted by contract.

67. (1) The inventor shall be named as such in the patent, unless by a declaration in writing signed by him or on his behalf and submitted to the Registrar he indicates that he does not wish to be so named.

Naming of
inventor.

(2) The provisions of subsection (1) shall not be modified by the terms of any contract.

CHAPTER XIII

Requirements of Application and Procedure for Grant

68. (1) (a) An application for the grant of a patent shall be made to the Registrar in the prescribed form and shall contain—

Require-
ments of
application.

- (i) a request for the grant of the patent;
- (ii) a description;
- (iii) a claim or claims;
- (iv) a drawing or drawings, where required;
- (v) an abstract.

(b) Where the applicant's ordinary residence or principal place of business is outside Sri Lanka, he shall be represented by an agent resident in Sri Lanka whose name and address shall be given in the application, and the application shall be accompanied by a power of attorney granted to such agent by the applicant:

Provided that legalization or certification of the applicant's signature shall not be necessary.

(c) The application may be accompanied by a declaration signed by the inventor, giving his name and address and requesting that he be named as such in the patent.

(2) (a) The request shall contain—

- (i) a petition that the patent be granted;
- (ii) the title of the invention;
- (iii) the name, address, description and any other prescribed information concerning the applicant, the inventor and the agent, if any.

(b) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

(c) The Registrar shall send a copy of the statement referred to in paragraph (b) to the inventor who shall have the right to inspect the application and to receive, on payment of the prescribed fee, a copy thereof.

(3) The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be evaluated, and to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate the best mode known to the applicant for carrying out the invention.

(4) The claim or claims shall be clear, concise and supported by the description.

(5) Drawings shall be required when they are necessary for the understanding of the invention.

(6) The terms of the claim or claims shall determine the scope and extent of the protection afforded by the patent, and the description and drawings may be used to interpret the claim or claims.

(7) The abstract shall serve the purpose of technical information and shall not be used for the purpose of determining or interpreting the scope and extent of the protection afforded by the patent.

Application
fee.

69. An application for the grant of a patent shall not be entertained unless the prescribed fee has been paid to the Registrar.

Search
report.

70. (1) Every applicant shall furnish, within the prescribed period, a report, which if not in English shall be accompanied by a translation thereof in English, of an international-type search as may be prescribed:

Provided, however, that in lieu of the said international-type search an applicant may request the Registrar to refer the application to a local examiner who shall examine the application on the basis of the claim or claims, with due regard to the description and the drawings, if any, and furnish a report to the Registrar, within the prescribed period, on the relevant prior art, after endeavouring to discover as much of the relevant prior art as facilities permit; and for this purpose the local examiner shall in any case consult all documentation on prior art available to him.

(2) The applicant shall, in the event of his requesting the Registrar to refer his application to a local examiner, forward the prescribed fee to the Registrar.

(3) In this section "local examiner" means any skilled person or persons to whom the Registrar may refer questions concerning patents.

71. An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Unity of invention.

72. (1) An applicant may amend the application provided that the amendment shall not go beyond the disclosure in the initial application.

Amendment and division of application.

(2) (a) An applicant may divide the application into two or more applications ("divisional applications") provided that each divisional application shall not go beyond the disclosure in the initial application.

(b) Each divisional application shall be entitled to the filing or, where applicable, priority date of the initial application.

73. (1) An application may contain a declaration claiming the priority, pursuant to the Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention.

Right of priority.

(2) Where the application contains a declaration under subsection (1), the Registrar may require that the applicant furnish, within the prescribed time, a copy of the earlier application, certified as correct by the Office with which it was filed or, where the earlier application is an international application filed under the Patent Co-operation Treaty, by the International Bureau of the World Intellectual Property Organization.

(3) The effect of the declaration referred to in subsection (1) shall be as provided in the Convention referred to therein.

(4) Where any of the requirements of this section or any regulations pertaining thereto have not been complied with the declaration referred to in subsection (1) shall be deemed to be null and void.

Filing date.

74. (1) The Registrar shall record as the filing date the date of receipt of the application :

Provided that the application contains—

- (a) the name and address of the applicant ;
- (b) the name and address of the inventor and, where the applicant is not the inventor, the statement referred to in section 68 (2) (b) ;
- (c) a description ;
- (d) a claim or claims :

Provided also that at the time of receipt of the application the prescribed fee has been paid.

(2) Where the Registrar finds that, at the time of receipt of the application, the provisions of subsection (1) are not fulfilled, he shall request the applicant to file the required correction.

(3) Where the applicant complies with the request referred to in subsection (2), the Registrar shall record as the filing date the date of receipt of the required correction ; where the applicant does not so comply the Registrar shall treat the application as null and void.

(4) Where the application refers to drawings which in fact are not included in the application, the Registrar shall request the applicant to furnish the missing drawings.

(5) Where the applicant complies with the request referred to in subsection (4), the Registrar shall record as the filing date the date of receipt of the missing drawings ; where the applicant does not so comply the Registrar shall record as the filing date the date of receipt of the application and shall make no reference to the said drawings.

Examination.

75. (1) The Registrar shall examine the application and shall be satisfied that the following conditions are fulfilled—

- (a) where applicable, the requirements of section 68 (1) (b) ;
- (b) the request complies with the requirements of section 68 (2) (a) ;
- (c) where applicable, the requirements of section 68 (2) (b) ;

- (d) the description, the claims and, where applicable, the drawings comply with the prescribed requirements;
- (e) the application contains an abstract;
- (f) the search report referred to in section 70 has been submitted.

(2) Where the Registrar finds that the conditions referred to in subsection (1) are not fulfilled he shall request the applicant to file the required correction; where the applicant does not so comply the application shall, subject to the provisions of subsection (3), be rejected.

(3) Where no abstract is provided in response to a request under subsection (2), the Registrar shall, on payment of the prescribed fee within the prescribed period, prepare the abstract; where the prescribed fee is not paid within the prescribed period the application shall be rejected.

(4) The Registrar shall notify the applicant of any decision under subsections (2) and (3), and any decision rejecting the application shall be in writing and state the reasons for such rejection.

76. (1) The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the performance of any act in respect of the claimed invention is prohibited by any law or regulation, except where the performance of that act would be contrary to public order.

Grant of
patent.

(2) Where the Registrar is satisfied that the application complies with section 75 (1) he shall grant the patent, and shall forthwith—

(a) issue to the applicant a certificate of the grant of the patent and a copy of the patent together with a copy of the search report; and

(b) record the patent in the register.

(3) As soon as possible thereafter the Registrar shall—

(a) cause to be published in the *Gazette* a reference to the grant of the patent;

(b) make available to the public, on payment of the prescribed fee, copies of the patent together with copies of the search report.

(4) The patent shall be deemed to be granted on the date that the Registrar performs the acts referred to in subsection (2).

Register of
patents.

77. The Registrar shall keep and maintain a register called the Register of Patents wherein all patents shall be recorded, in the order of their grant, specifying the number of the patent, the name and address of the grantee and, if the grantee is resident outside Sri Lanka, a postal address for service in Sri Lanka; the dates of application and grant; any change in the ownership of a patent application or patent; the amendment or division of a patent application; the assignment or transmission of a patent application or patent; any valid claim to priority; the surrender or revocation of a patent and such other matters relating to patents as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

Examination
of register
and certified
copies.

78. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Inspection
of files.

79. (1) Any person may, after the grant of a patent, inspect the file relating to the patent and, subject to subsection (2), the file relating to any patent application, and may obtain certified extracts therefrom on payment of the prescribed fee.

(2) The file relating to a patent application may be inspected before the grant of the patent only with the written permission of the applicant:

Provided that before the grant of the patent the Registrar may divulge the following information to any person:—

- (a) the name, address and description of the applicant and the name and address of the agent, if any;
- (b) the number of the application;
- (c) the filing date of the application and, if priority is claimed, the priority date, the number of the earlier application and the name of the State in which the earlier application was filed or, where the earlier application is a regional or an international application, the name of the State or States for which and the Office with which it was filed;
- (d) the title of the invention;
- (e) any change in the ownership of the application and any reference to a licence contract appearing in the file relating to the application.

(3) No person employed in or at the Registry may make a patent application or be granted a patent or acquire or hold in any manner whatsoever any rights relating to a patent during the period of his employment in or at the Registry and for one year after the termination of such employment.

CHAPTER XIV

Duration of Patent

80. (1) Subject and without prejudice to other provisions of this Part a patent shall expire fifteen years after the date of its grant. Duration of patent.

(2) Where a patentee intends at the expiration of the second year from the date of grant of the patent to keep the same in force he shall, twelve months before the date of expiration of the second and each succeeding year during the term of the patent, pay the prescribed annual fee :

Provided, however, that a period of grace of six months shall be allowed after the date of such expiration, upon payment of such surcharge as may be prescribed :

Provided also that the patentee may pay in advance the whole or any portion of the aggregate of the prescribed annual fees.

CHAPTER XV

Rights of Owner of Patent

81. (1) Subject and without prejudice to other provisions of this Part, the owner of a patent shall have the following exclusive rights in relation to the patented— Rights of owner of patent.

(a) to exploit the patent invention ;

(b) to assign or transmit the patent ;

(c) to conclude licence contracts.

(2) No person shall do any of the acts referred to in subsection (1) without the consent of the owner of the patent.

(3) For the purposes of this Part "exploitation" of a patented invention means any of the following acts in relation to a patent:—

- (a) when the patent has been granted in respect of a product—
 - (i) making, importing, offering for sale, selling and using the product ;
 - (ii) stocking such product for the purpose of offering for sale, selling or using ;
- (b) when the patent has been granted in respect of a process—
 - (i) using the process ;
 - (ii) doing any of the acts referred to in paragraph (a), in respect of a product obtained directly by means of the process.

Limitation of
owner's
rights.

82. The provisions of section 81 shall—

- (1) extend only to acts done for industrial or commercial purposes and in particular not to acts done only for scientific research ;
- (2) not preclude a person having the rights referred to in section 83 or a licensee from exploiting the patented invention ;
- (3) not extend to the presence or use of products on foreign vessels, aircraft, spacecraft, or land vehicles which temporarily or accidentally enter the waters, airspace or territory of Sri Lanka.

Rights
derived from
prior
manufacture
or use.

83. (1) Where a person at the filing or, where applicable, the priority date of the patent application—

- (a) was in good faith in Sri Lanka making the product or using the process which is the subject of the invention claimed in such application ;
- (b) had in good faith in Sri Lanka made serious preparations toward the making of the product or using the process referred to in paragraph (a),

he shall have the right, despite the grant of the patent, to exploit the patented invention :

Provided that the product in question is made, or the process in question is used by the said person in Sri Lanka :

Provided further than he can prove, if the invention was disclosed under the circumstances referred to in section 61 (3) (a) or (b), that his knowledge of the invention was not a result of such disclosure.

(2) The right referred to in subsection (1) shall not be assigned or transmitted except as part of the business of the person concerned.

CHAPTER XVI

Assignment and transmission of patent applications and patents

84. (1) A patent application or patent may be assigned or transmitted.

Assignment and transmission of patent applications and patents.

(2) Any person becoming entitled by assignment or transmission to a patent application or patent may apply to the Registrar in the prescribed manner to have such assignment or transmission recorded in the register.

(3) No such assignment or transmission shall be recorded in the register unless—

(a) the prescribed fee has been paid to the Registrar ;

(b) in the case of an assignment, it is in writing signed by or on behalf of the contracting parties.

(4) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

85. In the absence of any agreement to the contrary between the parties, joint owners of a patent application or patent may, separately, assign or transmit their rights in the patent application or patent, exploit the patented invention and take action against any person exploiting the patented invention without their consent, but may only jointly withdraw the patent application, surrender the patent or conclude a licence contract.

Joint ownership of patent applications or patents.

CHAPTER XVII

*Licence Contracts*Interpre-
tation.

86. For the purposes of this Part licence contract means any contract by which the owner of a patent ("the licensor") grants to another person or enterprise ("the licensee") a licence to do any or all of the acts referred to in section 81 (1) (a) and (3).

Form and
record of
licence
contract.

87. (1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Registrar shall, on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded :

Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

Rights of
licensee.

88. (1) In the absence of any provision to the contrary in the licence contract, the licensee shall—

(a) be entitled to do any or all of the acts referred to in section 81 (1) (a) and (3) within the whole geographical area of Sri Lanka, without limitation as to time and through any application of the patented invention ;

(b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licences to third parties.

(2) The provisions of this Chapter shall apply, *mutatis mutandis*, to assignments and sub-licences.

Rights of the
licensor.

89. (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same patent or himself do any or all of the acts referred to in section 81 (1) (a) and (3).

(2) Where the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licences to third parties in respect of the same patent or himself do any of the acts referred to in section 81 (1) (a) and (3).

90. Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee, in the industrial or commercial field, restrictions not derived from the rights conferred by this Part on the owner of the patent, or unnecessary for the safeguarding of such rights :

Invalid
clauses in
licence
contracts.

Provided that—

- (a) restrictions concerning the scope, extent or duration of exploitation of the patented invention, or the geographical area in or the quality or quantity of the products in connection with which the patented invention may be exploited ; and
- (b) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the patent,

shall not be deemed to constitute such restrictions.

91. Where, before the expiration of the licence contract, any of the following events occur in respect of the patent application or patent referred to in such contract—

Effect of
patent
application
not being
granted or
patent being
declared
null and void.

- (a) the patent application is withdrawn ;
- (b) the patent application is finally rejected ;
- (c) the patent is surrendered ;
- (d) the patent is declared null and void ; or
- (e) the registration of the licence contract is invalidated,

the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made :

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such repayment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

Expiry
termination,
or invalida-
tion of
licence
contract.

92. The Registrar shall—

- (a) if he is satisfied that a recorded licence contract has expired or been terminated, record that fact in the register upon a request in writing to that effect signed by or on behalf of the parties thereto;
- (b) record in the register the expiry, termination or invalidation of a licence contract under any provision of this Part.

Licence
contracts
involving
payments
abroad.

93. (1) Where the Registrar has reasonable cause to believe that any licence contract or any amendment or renewal thereof—

- (a) which involves the payment of royalties abroad; or
- (b) which by reason of other circumstances relating to such licence contract,

is detrimental to the economic development of Sri Lanka, he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Registrar in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Registrar shall cancel and invalidate the record of such contract in the register.

CHAPTER XVIII

Surrender and Nullity of Patent

Surrender
of patent.

94. (1) The registered owner of a patent may surrender the patent by a declaration in writing signed by him or on his behalf and submitted to the Registrar.

(2) The surrender may be limited to one or more claims of the patent.

(3) The Registrar shall, on receipt of the said declaration record it in the register and cause such record to be published in the *Gazette*.

(4) The surrender shall take effect from the date that the Registrar receives the said declaration.

(5) Where a licence contract in respect of a patent is recorded in the register, the Registrar shall not, in the absence of provision to the contrary in such licence contract, accept or record the said surrender except upon receipt of a signed declaration by which every licensee or sub-licensee on record consents to the said surrender, unless the requirement of his consent is expressly waived in the licence contract.

95. (1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Registrar, to which the owner of the patent and every assignee, licensee or sub-licensee on record shall be made party, declare the patent null and void on any one or more of the following grounds:—

Nullity of
patent.

(a) that what is claimed as an invention in the patent is not an invention within the meaning of section 59 (1), or is excluded from protection under section 59 (3) or section 76 (1) or is not patentable because it does not comply with the requirements of sections 60 to 63 ; or

(b) that the description or the claims do not comply with the requirements of section 68 (3) and (4) ; or

(c) that any drawings which are necessary for the understanding of the claimed invention have not been furnished ; or

(d) that the right to the patent does not belong to the person to whom the patent was granted :
Provided that the patent has not been assigned to the person to whom the right to the patent belongs.

(2) (a) Where the provisions of subsection (1) apply only to some of the claims or some parts of a claim, such claims or parts of a claim may be declared null and void by the court.

(b) The nullity of part of a claim shall be declared in the form of a corresponding limitation of the claim in question.

(3) (a) An assignee, licensee or sub-licensee, as the case may be, who has been made party to the application under subsection (1) shall be entitled to join in the proceedings in the absence of any provision to the contrary in any contract or agreement with the owner of the patent.

(b) Where the application to Court is on the ground referred to in subsection (1) (d), the applicant shall give notice of the application to the person to whom the right to the patent is alleged to belong.

Date and
effect of
nullity.

96. (1) Upon a final decision of the Court declaring total or partial nullity of a patent, the patent shall be deemed to have been null and void totally or partially, as the case may be, from the date of the grant of the patent.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Registrar who shall record the said declaration in the register and cause it to be published in the *Gazette*.

PART V

MARKS, TRADE NAMES AND UNFAIR COMPETITION

CHAPTER XIX

Definitions

Definitions.

97. For the purposes of this Part, unless the context otherwise requires—

“appellation of origin” means the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors ;

“collective mark” means any visible sign designated as such and serving to distinguish the origin or any other common characteristic of goods or services of different enterprises which use the mark under the control of the registered owner ;

“enterprise” means any business, industry or other activity carried on by an individual, partnership, company, or co-operative society wherever registered or incorporated and whether registered or not under any law for the time being in force relating to companies, co-operative societies or businesses engaged in or proposing to engage in any business and includes any business undertaking of the Government or any State corporation whether carrying on business in Sri Lanka or otherwise ;

“false trade description” means a trade description which is false or misleading in a material respect as regards the goods or services to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Part ;

“goods” means anything which is the subject of trade, manufacture or merchandise and includes services ;

“indication of source” means any expression or sign used to indicate that a product or service originates in a given country or group of countries, region, or locality ;

“mark” means a trade mark or service mark ;

“name” includes any abbreviation of a name ;

“person”, “manufacturer, dealer, or trader”, and “owner” include any body of persons corporate or unincorporate ;

“service mark” means any visible sign serving to distinguish the services of one enterprise from those of other enterprises ;

“trade description” means any description, statement or other indication, direct or indirect—

- (a) as to the number, quantity, measure, gauge, or weight of any goods ; or
- (b) as to the place or country in which any goods were made or produced ; or
- (c) as to the mode of manufacturing or producing any goods ; or
- (d) as to the material of which any goods are composed ; or
- (e) as to any goods being the subject of an existing copyright, industrial design or patent ; or
- (f) as to the quality, kind or nature of the services ; or
- (g) as to the standard of quality of any goods, according to a classification commonly used or recognized in the trade ; or

(h) as to the fitness for purpose, strength, performance or behaviour of any goods,

and the use of any figure, word or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Part ;

“trade mark” means any visible sign serving to distinguish the goods of one enterprise from those of other enterprises ; and

“trade name” means the name or designation identifying the enterprise of a natural or legal person.

CHAPTER XX

Admissibility of Marks

Admissibility
of marks.

98. (1) The exclusive right to a mark conferred by this Part shall be acquired, subject to the following provisions, by registration.

(2) Registration of a mark may be granted only to the person who has first fulfilled the conditions for valid application or who is the first validly to claim the earliest priority for his application.

(3) Provided that they are not inadmissible under sections 99 and 100 marks may consist, in particular, of arbitrary or fanciful designations, names, pseudonyms, geographical names, slogans, devices, reliefs, letters, numbers, labels, envelopes, emblems, prints, stamps, seals, vignettes, selvages, borders and edgings, combinations or arrangements of colours and shapes of goods or containers.

Marks in-
admissible
on objective
grounds.

99. (1) A mark shall not be registered—

(a) which consists of shapes or forms imposed by the inherent nature of the goods or services or by their industrial function ;

(b) which consists exclusively of a sign or indication which may serve, in the course of trade, to designate the kind, quality, quantity, intended purpose, value, place of origin or time of production, or of supply, of the goods or services concerned ;

- (c) which consists exclusively of a sign or indication which has become, in the current language or in the bona fide and established practices of the trade of Sri Lanka, a customary designation of the goods or services concerned ;
- (d) which, for other reasons, is incapable of distinguishing the goods or services of one enterprise from those of other enterprises ;
- (e) which consists of any scandalous design or is contrary to morality or public order or which, in the opinion of the Registrar or the Court, is likely to offend the religious or racial susceptibilities of any community ;
- (f) which is likely to mislead trade circles or the public as to the nature, the source, the manufacturing process, the characteristics, or the suitability for their purpose, of the goods or services concerned ;
- (g) which does not represent in a special or particular manner the name of an individual or enterprise ;
- (h) which is, according to its ordinary signification, a geographical name or surname ;
- (i) which reproduces or imitates armorial bearings, flags or other emblems, initials, names or abbreviated names of any State or any inter-governmental international organization or any organization created by international convention, unless authorized by the competent authority of that State or international organization ;
- (j) which reproduces or imitates official signs or hallmarks of a State, unless authorized by the competent authority of that State ;
- (k) which resembles in such a way as to be likely to mislead the public, a mark or a collective mark the registration of which has expired and has not been renewed or where its renunciation, removal or nullity has been recorded in the register during a period of two years preceding the filing of the mark in question ;
- (l) which consists of any other words or definitions as may be prescribed.

(2) The Registrar shall in applying the provisions of paragraphs (b), (c), (d), (f), (g) and (h), of subsection (1), have regard to all the factual circumstances and, in

particular, the length of time the mark has been in use in Sri Lanka or in other countries and the fact that the mark is held to be distinctive in other countries or in trade circles.

Marks
inadmissible
by reason
of
third-party
rights.

100. (1) A mark shall not be registered—

- (a) which resembles, in such a way as to be likely to mislead the public, a mark already validly filed or registered by a third party, or subsequently filed by a person validly claiming priority in respect of the same goods or services or of other goods or services in connection with which use of such mark may be likely to mislead the public ;
- (b) which resembles, in such a way as to be likely to mislead the public, an unregistered mark used earlier in Sri Lanka by a third party in connection with identical or similar goods or services, if the applicant is aware, or could not have been unaware, of such use ;
- (c) which resembles, in such a way as to be likely to mislead the public, a trade name already used in Sri Lanka by a third party, if the applicant is aware, or could not have been unaware, of such use ;
- (d) which constitutes a reproduction in whole or in part, an imitation, translation or transcription, likely to mislead the public, of a mark or trade name which is well known in Sri Lanka and belongs to a third party ;
- (e) which infringes other third party rights or is contrary to the provisions of Chapter XXIX relating to the prevention of unfair competition ;
- (f) which is filed by the agent or representative of a third party who is the owner of such mark in another country, without the authorization of such owner, unless the agent or representative justifies his action.

(2) The Registrar shall, in applying the provisions of paragraphs (a) to (e) of subsection (1), have regard to the fact that the third parties referred to therein have consented to the registration of such mark.

101. There shall not be entered in the register notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Trust not to be entered in register.

CHAPTER XXI

Requirements of Application and Procedure for Registration

102. (1) An application for registration of a mark shall be made to the Registrar in the prescribed form and shall contain—

Requirements of application.

- (a) a request for the registration of the mark ;
- (b) the name, address and description of the applicant and, if he is resident outside Sri Lanka, a postal address for service in Sri Lanka ;
- (c) four copies of a representation of the mark ;
- (d) a clear and complete list of the particular goods or services in respect of which registration of the mark is requested, with an indication of the corresponding class or classes in the international classification, as may be prescribed.

(2) Where the application is filed through an agent, it shall be accompanied by a power of attorney granted to such agent by the applicant :

Provided that legalization or certification of the applicant's signature shall not be necessary.

103. An applicant for registration of a mark who wishes to avail himself of the priority of an earlier application filed in a Convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the appropriate authority of the country where such earlier application was filed.

Right of Priority.

Temporary
protection
of mark
exhibited at
international
exhibition.

104. (1) An applicant for registration of a mark who has exhibited goods bearing the mark or rendered services under the mark at an official or officially recognized international exhibition and who applies for registration of the mark within six months from the date on which the goods bearing the mark or services under the mark were first exhibited or rendered at such exhibition shall, on request, be deemed to have applied for registration of that mark on the date on which the goods bearing the mark or the services rendered under the mark were first exhibited or rendered at such exhibition.

(2) Evidence of the exhibition of the goods bearing the mark or the services rendered under the mark shall be by a certificate issued by the competent authority of the exhibition stating the date on which the mark was first used at such exhibition in connection with such goods or services.

(3) The provisions of subsections (1) and (2) shall not extend any other period of priority claimed by the applicant.

Application
fee.

105. An application for registration of a mark shall not be entertained unless the prescribed fee has been paid to the Registrar.

Examination
of applica-
tion as to
form.

106. (1) The Registrar shall examine whether the application for registration complies with sections 102 and 105 and, where applicable, sections 103 and 104.

(2) Where the application does not comply with sections 102 and 105, the Registrar shall refuse registration of the mark :

Provided that the Registrar shall first notify the applicant of any defect in the application and shall afford him an opportunity to remedy such defect within three months from the date of receipt of such notification.

(3) Where the application does not comply with section 103 or 104, the Registrar shall not, in connection with the registration of the mark, make any reference to the priority claimed.

(4) Where the application complies with sections 103 and 104, the Registrar shall in connection with the registration of the mark record the priority claimed or the date of the certified use of the mark at an international exhibition.

(5) Where the Registrar refuses to register a mark, he shall, if required by the applicant, state in writing the grounds of his decision.

Registration
of mark
after
further
examination
and
publication
of mark.

107. (1) Where the application complies with sections 102 and 105, the Registrar shall examine the mark in relation to the provisions of sections 99 and 100.

(2) Where the mark is inadmissible under section 99 or 100 the Registrar shall notify the applicant accordingly stating in writing the grounds on which registration of the mark is refused.

(3) Where the applicant is dissatisfied with all or any of the grounds stated by the Registrar in the notification referred to in subsection (2) he may, within a period of one month from the date of such notification, make his submissions in writing to the Registrar against such refusal.

(4) On receipt of any such submissions the Registrar may grant the applicant a hearing and inform him of the date and time of such hearing.

(5) The Registrar may, after such inquiry as he thinks fit, refuse to accept the application for registration of the mark, or may accept it absolutely or subject to conditions, amendments or modifications, or to such limitations, if any, as to the mode or place of user or otherwise as he may think fit to impose.

(6) In case of any refusal or conditional acceptance of an application for registration of a mark, the Registrar shall, if required by the applicant, state in writing the grounds of his decision.

(7) Where the Registrar is of the opinion that the mark is admissible under section 99 or 100 he may request the applicant to pay within a period of two months the prescribed fee for publication of the application.

(8) Where the fee for publication of the application is not paid within the prescribed period registration of the mark may be refused.

(9) If the fee for publication is paid within the prescribed period the Registrar shall proceed to publish the application setting out the date of application, the representation of the mark, the goods or services in respect of which registration of the mark is requested with an indication of the corresponding class or classes, the name and address of the applicant and, if the applicant is resident outside Sri Lanka, a postal address for service in Sri Lanka, the priority claimed, if any, or the date of certified use of the mark at an international exhibition.

(10) Where any person considers that the mark is inadmissible on one or more of the grounds referred to in section 99 or 100 he may, within a period of three months from the date of publication of the application, give to the Registrar in the prescribed form, and together with the prescribed fee, notice of opposition to such registration stating his grounds of opposition.

(11) Where notice of opposition has not been received by the Registrar within the period specified in subsection (10) the Registrar shall register the mark.

(12) Where, within the period specified in subsection (10) notice of opposition in the prescribed form is received by the Registrar, together with the prescribed fee, he shall serve a copy of such grounds of opposition on the applicant and shall request him to present his observations on those grounds in writing within a period of three months.

(13) On receipt of the observations of the applicant the Registrar shall after hearing the parties, if he considers such hearing necessary, decide, as expeditiously as possible, whether or not the mark may be registered. If he decides that the mark is registrable he shall accordingly register such mark.

(14) The Registrar may allow a reasonable extension of the prescribed period within which any act has to be done or any fee has to be paid under this section.

Non-
completion
of
registration.

108. Where, by reason of default on the part of the applicant, registration of a mark is not completed within twelve months from the date of receipt by the Registrar of the application, the Registrar may, after giving notice of non-completion to the applicant in writing in the prescribed form, treat the application as abandoned, unless it is completed within the time specified in that behalf in such notice.

Register
of marks
and issue
of
certificate.

109. (1) The Registrar shall keep and maintain a register called the Register of Marks wherein shall be recorded, in the order of their registration, all registered marks and such other matters relating to marks as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

(2) The registration of a mark shall include a representation of the mark and shall specify its number, the name and address of the registered owner and, if the registered

owner's address is outside Sri Lanka, a postal address for service in Sri Lanka ; the dates of application and registration ; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed ; if a valid certificate has been filed relating to the use of a mark at an international exhibition, the contents of such certificate ; the list of goods and services in respect of which registration of the mark has been granted with an indication of the corresponding class or classes.

(3) Upon the registration of a mark the Registrar shall issue to the registered owner thereof a certificate of registration and shall, at the request of the registered owner, send such certificate to him by registered post at his last recorded postal address in Sri Lanka or, if he is resident outside Sri Lanka, at his last recorded postal address for service in Sri Lanka.

110. The Registrar shall cause to be published in the *Gazette*, in the prescribed form, all registered marks in the order of their registration, including in respect of each mark so published reference to such particulars as may be prescribed.

Publication
of registered
marks.

111. Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Examination
of register
and
certified
copies.

112. Where application is made for the registration of a mark identical with or so closely resembling a mark of the applicant already on the register for the same goods or description of goods as to be likely to mislead or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that such marks shall be entered on the register as associated marks.

Associated
marks.

113. Associated marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate marks :

Assignment
and user of
associated
marks.

Provided that where under the provisions of this Part user of a registered mark is required to be proved for any purpose, the Registrar may, if and so far as is considered right, accept user of an associated registered mark, or of the mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

CHAPTER XXII

*Duration of Registration***Duration of
registration.**

114. (1) Subject and without prejudice to other provisions of this Part, registration of a mark shall expire ten years after the date of registration.

(2) A mark when registered shall be registered as of the date of receipt by the Registrar of the application for registration, and such date shall be deemed for the purposes of this Part to be the date of registration.

Renewal.

115. (1) Registration of a mark may be renewed for consecutive periods of ten years each on payment of the prescribed fee.

(2) Renewal of registration of a mark shall not be subject to any further examination of the mark by the Registrar or to opposition by any person.

(3) The renewal fee shall be paid within the twelve months preceding the date of expiration of the period of registration :

Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(4) The Registrar shall record in the register and cause to be published in the *Gazette* in the prescribed form all renewals of registration stating any elimination from the lists of goods or services.

(5) Where the renewal fee has not been paid within such period or such extended period specified in subsection (3), the Registrar shall remove the mark from the register.

**Alteration of
registered
mark.**

116. The registered owner of any mark may apply in the prescribed manner to the Registrar for leave to add to or alter such mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of user as he may think fit. If leave be granted, the mark as altered shall be published in the prescribed manner.

CHAPTER XXIII

Rights of registered owner of mark

117. (1) Subject and without prejudice to other provisions of this Part, the registered owner of a mark shall have the following exclusive rights in relation to the mark:—

Rights of
registered
owner.

- (a) to use the mark ;
- (b) to assign or transmit the registration of the mark ;
- (c) to conclude licence contracts.

(2) Without the consent of the registered owner of the mark third parties are precluded from the following acts:—

- (a) any use of the mark, or of a sign resembling it, in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered, or for other goods or services in connection with which the use of the mark or sign is likely to mislead the public; and
- (b) any other use of the mark, or of a sign or trade name resembling it, without just cause and in conditions likely to be prejudicial to the interests of the registered owner of the mark.

118. The registration of the mark shall not confer on its registered owner the right to preclude third parties—

Limitation
of
registered
owner's
rights.

- (a) from using bona fide their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production or of supply of their goods and services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services ;
- (b) from using the mark in relation to goods lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka under that mark, provided that such goods have not undergone any change.

CHAPTER XXIV

*Assignment and Transmission of Applications and
Registrations*

Assignment
and
transmission
of
applications
and
registrations.

119. (1) An application for registration or the registration of a mark may be assigned or transmitted independently of the transfer of all or part of the enterprise using the mark, in respect of all or part of the goods or services for which the application was filed or the mark registered.

(2) Such assignment or transmission shall be invalid if the purpose or effect thereof is to mislead the public, in particular in respect of the nature, source, manufacturing process, characteristics or suitability for their purpose of the goods or services to which the mark is applied.

(3) Any person becoming entitled by assignment or transmission to an application for registration or the registration of a mark may apply to the Registrar in the prescribed manner to have such assignment or transmission recorded in the register.

(4) No such assignment or transmission shall be recorded in the register unless—

(a) the prescribed fee has been paid to the Registrar ;

(b) in the case of an assignment, it is in writing signed by or on behalf of the contracting parties.

(5) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

CHAPTER XXV

Licence Contracts

Inter-
pretation.

120. (1) For the purposes of this Part licence contract means any contract by which the registered owner of a mark ("the licensor") grants to another person or enterprise ("the licensee") a licence to use the mark for all or part of the goods or services in respect of which the mark is registered.

(2) Use of the mark by the licensee shall be deemed to be use of the mark by the registered owner.

121. (1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

Form and
record of
licence
contract.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Registrar shall, on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded :

Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

122. (1) In the absence of any provision to the contrary in the licence contract, the licensee shall—

Rights of
licensee.

(a) be entitled to use the mark within the whole geographical area of Sri Lanka, during the whole period of registration of the mark, including renewals, in respect of all the goods or services for which the mark is registered ;

(b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licences to third parties.

(2) The provisions of this Chapter shall apply, *mutatis mutandis*, to assignments and sub-licences.

123. (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same mark or himself use the mark.

Rights of
licensor.

(2) Where the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licences to third parties in respect of the same mark or himself use the mark.

124. (1) A licence contract shall be null and void in the absence of stipulations ensuring effective control by the licensor of the quality of the goods or services in respect of which the mark may be used.

Nullity of
licence
contract
and
certain
clauses.

(2) Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee restrictions not derived from the rights conferred by this Part on the registered owner of the mark, or unnecessary for the safeguarding of such rights :

Provided that—

- (a) restrictions concerning the scope, extent, duration of use of the mark or the geographical area in or the quality or quantity of the goods or services in connection with which the mark may be used ;
- (b) restrictions justified by the stipulations referred to in subsection (1) ; and
- (c) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the mark,

shall not be deemed to constitute such restrictions.

**Cancellation
of licence
contracts.**

125. The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Registrar, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, annul and cancel the said contract if—

- (a) the licensor has lost effective control over the quality of the goods or services in respect of which the mark is used ;
- (b) the licensee has used the mark in such a way as to mislead or confuse the public.

**Licence
contracts
involving
payments
abroad.**

126. (1) Where the Registrar has reasonable cause to believe that any licence contract or any amendment or renewal thereof—

- (a) which involves the payment of royalties abroad ; or
- (b) which by reason of other circumstances relating to such licence contract ;

is detrimental to the economic development of Sri Lanka he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Registrar in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Registrar shall cancel and invalidate the record of such contract in the Register.

127. Where, before the expiration of the licence contract, the registration is declared null and void the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made :

Effect of
nullity of
registration
on licence
contract.

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such repayment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

128. The Registrar shall—

(a) if he is satisfied that a recorded licence contract has expired or been terminated, record that fact in the register upon a request in writing to that effect signed by or on behalf of the parties thereto ;

(b) record in the register the expiry, termination, annulment or invalidation of a licence contract under any provision of this Part.

Expiry,
termination
or
invalidation
of
licence
contract.

CHAPTER XXVI

Renunciation and Nullity of Registration

129. (1) The registered owner of a mark may renounce the registration, either wholly or in respect of part of the goods or services for which the mark is registered, by a declaration in writing signed by him or on his behalf and submitted to the Registrar.

Renunciation
of
registration.

(2) The Registrar shall, on receipt of the said declaration, record it in the register and cause such record to be published in the *Gazette*.

(3) The renunciation shall take effect from the date that the Registrar receives the said declaration.

(4) Where a licence contract in respect of a mark is recorded in the register the Registrar shall not, in the absence of provision to the contrary in such licence contract, accept or record the said renunciation except upon receipt of a signed declaration by which any assignee, licensee or sub-licensee on record consents to the renunciation, unless his consent is expressly waived in the licence contract.

**Nullity of
registration.**

130. (1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Registrar, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, declare the registration of the mark null and void if its registration is precluded under the provisions of sections 99 and 100 :

Provided, however, that grounds of nullity which do not exist at the date of the application to Court shall not be taken into account.

(2) Where the grounds for nullity of registration of the mark exist in respect of only part of the goods or services for which the mark is registered, nullity of the registration shall be declared for that part only of such goods or services.

(3) An application for a declaration of nullity based on any of the grounds specified in section 100 (1) shall be made within five years from the date of registration of the mark.

**Date and
effect of
nullity.**

131. (1) Upon a final decision of the Court declaring total or partial nullity of registration of a mark, the registration shall be deemed to have been null and void totally or partially, as the case may be, from the date of such registration.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Registrar who shall record the said declaration in the register and cause it to be published in the *Gazette*.

CHAPTER XXVII

Removal of mark

132. (1) The Court may on the application of any person showing a legitimate interest, or of any competent authority including the Registrar, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, remove any registered mark from the register :—

Removal of
mark.

(a) if the registered owner has, without valid grounds, failed to use the mark within Sri Lanka or cause it to be used within Sri Lanka by virtue of a licence, during five consecutive years immediately preceding the date of the application to Court ;

(b) if the registered owner has caused, provoked or tolerated the transformation of the mark into a generic name for one or more of the goods or services in respect of which the mark is registered so that in trade circles and in the eyes of the public its significance as a mark has been lost.

(2) In any application under subsection (1) (a) the Court may take into account the fact that non-use of the mark was due to circumstances beyond the control of the registered owner. The Court shall not take into account the lack of funds of the registered owner as a ground for non-use of the mark.

(3) The use of a mark—

(a) in a form differing, in elements which do not alter the distinctive character of the mark, from the form in which it was registered, shall not be a ground for removal of the mark ;

(b) in connection with one or more of the goods or services belonging to any given class in respect of which the mark is registered, shall suffice to prevent the removal of the mark in respect of all the other goods or services of the same class.

Date and
effect of
removal of
mark

133. Upon a final decision of the Court removing any registered mark from the register—

- (1) the Court may, taking into account the date of the events and other circumstances which occasion the removal of the mark, determine the date on which the registration of the mark shall be deemed to have ceased to have any legal effect ;
- (2) the Registrar of the Court shall communicate the decision of the Court to the Registrar who shall, if the Court decides that the mark be removed, enter in the register a record of such removal and cause the decision of the Court to be published in the *Gazette*.

CHAPTER XXVIII

Collective marks

Collective
marks.

134. Sections 102, 116, 118, 119, and 129 to 133 of this Part shall apply to collective marks.

Application
for registra-
tion of
collective
mark.

135. (1) An application for registration of a collective mark shall not be filed unless in the said application the mark is designated as a collective mark and unless the application is accompanied by a copy of such conditions as may be prescribed governing the use of the mark duly certified by the applicant.

(2) The conditions prescribed under subsection (1) shall define the common characteristics or quality of the goods or services which the collective mark shall designate and the conditions in which and the person by whom it may be used. They shall also provide for the exercise of effective control of the use of the mark and shall specify proper sanctions for the use of the mark contrary to the said conditions.

Registration
and publica-
tion of
collective
marks.

136. (1) Registration of a collective mark shall be in such part of the register as the Registrar may decide and a copy of the conditions governing the use of the mark shall be appended to the registration.

(2) The publication of an application for a collective mark in accordance with section 107 (9) shall include a summary of the conditions to be appended to the registration.

(3) When so registered under subsection (1) a collective mark shall be deemed in all respects to be a registered mark.

137. (1) The registered owner of a collective mark shall notify the Registrar in the prescribed manner of any changes effected in the conditions governing the use of the mark.

Changes in conditions governing use of collective mark.

(2) Any notification of such change shall be recorded in the register on payment of the prescribed fee. Any change in the conditions shall be effectual only if they have been so recorded.

(3) The Registrar shall cause to be published in the *Gazette* a summary of the changes so recorded in the register.

138. The provisions of sections 117 to 133 shall apply, *mutatis mutandis*, to collective marks.

Use of collective marks and other matters.

CHAPTER XXIX

Trade Names and Unfair Competition

139. A name or designation shall not be admissible as a trade name if, by reason of its nature or the uses to which it may be put, it is contrary to morality or public order or is likely to offend the religious or racial susceptibilities of any community or is likely to mislead trade circles or the public as to the nature of the enterprise identified by that name.

Prohibited trade names.

140. (1) Notwithstanding the provisions of any written law providing for the registration of a trade name, such name shall be protected, even prior to or without registration, against any unlawful act committed by a third party.

Protection of trade names.

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

(3) Section 118 of this Part shall apply to trade names.

141. (1) A trade name may be assigned or transmitted together with the assignment or transmission of the enterprise or part of the enterprise identified by that name.

Assignment and transmission of trade names.

(2) The provisions of section 119 shall apply, *mutatis mutandis*, to trade names.

Unfair
competition.

142. (1) Any act of competition contrary to honest practices in industrial or commercial matters shall constitute an act of unfair competition.

(2) Acts of unfair competition shall include the following:—

- (a) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods, services or the industrial or commercial activities of a competitor;
- (b) a false allegation in the course of trade of such a nature as to discredit the establishment, the goods, services or the industrial or commercial activities of a competitor;
- (c) any indication of source or appellation of origin the use of which in the course of trade is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for their purpose or the quantity of goods;
- (d) making direct or indirect use of a false or deceptive indication of the source of goods or services or of the identity of their producer, manufacturer or supplier;
- (e) making direct or indirect use of a false or deceptive appellation of origin or imitating an appellation of origin even if the true origin of the product is indicated, or using the appellation in translated form or accompanied by terms such as "kind", "type", "mark", "imitation" or the like.

(3) Any person or association of producers, manufacturers or traders aggrieved by any of the acts referred to in subsection (2) may institute proceedings in Court to prohibit the continuance of such acts, and the provisions of Chapter XXXII relating to infringements shall apply, *mutatis mutandis*, to such proceedings.

PART VI

OFFENCES AND PENALTIES

CHAPTER XXX

143. Any person who makes or causes to be made a false entry in any of the registers kept under this Code, or a writing falsely purporting to be a copy of an entry in any such register, or produces, or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false shall be guilty of an offence and shall be liable on conviction after trial to imprisonment for a term not exceeding seven years.

Falsification
of entries
in any
register.

144. (1) Any person who wilfully infringes any of the rights protected under Part II of this Code shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

Infringement
of
copyright.

(2) The Magistrate may, whether the alleged offender is convicted or not, order that all copies of the work and all implements used for the infringement, or all plates in the possession of the alleged offender, which appear to him to be infringing copies or plates for the purpose of making infringing copies, shall be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Magistrate may think fit.

145. Any person who wilfully infringes the rights of any registered owner, assignee or licensee of an industrial design shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

Infringement
of
industrial
designs.

False
representa-
tions
regarding
industrial
designs.

146. (1) Any person who, for industrial or commercial purposes, makes a representation—

- (a) with respect to an industrial design not being a registered industrial design to the effect that it is a registered industrial design ;
- (b) to the effect that a registered industrial design is registered in respect of any products in respect of which it is not registered ; or
- (c) to the effect that the registration of an industrial design gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that an industrial design is registered if he uses in connection with the industrial design the word "registered", or any word or words expressing or implying that registration has been obtained for the industrial design.

Infringement
of patents.

147. Any person who wilfully infringes the rights of any registered owner, assignee or licensee of a patent shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

False
representa-
tions
regarding
patents.

148. (1) Any person who, for industrial or commercial purposes, makes a representation—

- (a) with respect to a patent not being a registered patent to the effect that it is a registered patent ;
- (b) to the effect that a registered patent is registered in respect of any product or process in respect of which it is not registered ; or

- (c) to the effect that the registration of a patent gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations recorded in the register, the registration does not give that right,

shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that a patent is registered if he uses in connection with the patent the word "registered", or any word or words expressing or implying that registration has been obtained for the patent.

149. Any person who being or having been employed in or at the Registry, communicates any information relating to patents or matters connected therewith obtained by him during the course of his employment in or at the Registry to any person not entitled or authorized to receive such information, or discloses such information to the public or makes any other unlawful use of such information shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

Unlawful disclosure of information relating to patents.

150. Any person who wilfully infringes the rights of any registered owner, assignee or licensee of a mark shall be guilty of an offence, and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

Infringement of marks.

151. (1) Any person who, for industrial or commercial purposes, makes a representation—

False representations regarding marks.

- (a) with respect to a mark not being a registered mark to the effect that it is a registered mark ;
- (b) to the effect that a registered mark is registered in respect of any goods or services in respect of which it is not registered ; or

- (c) to the effect that the registration of a mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitation recorded in the register, the registration does not give that right,

shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

(2) A person shall be deemed to represent that a mark is registered if he uses in connection with the mark the word "registered", or any word or words expressing or implying that registration has been obtained for the mark.

Other offences as to marks and trade descriptions.

152. (1) Any person who—

- (a) forges any mark ; or
- (b) falsely applies to goods any mark or marks so nearly resembling a registered mark as to be likely to mislead ; or
- (c) makes any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a mark ; or
- (d) applies any false trade description to goods ; or
- (e) disposes of, or has in his possession, any die, block, machine, or other instrument for the purpose of forging a mark ; or
- (f) cause to be done any of the things referred to above in this subsection,

shall, subject to the provisions of this Part, and unless he proves that he acted without intent to defraud, be guilty of an offence.

(2) Any person who sells or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged mark or false trade description is applied, or to which any mark so nearly resembling a registered mark as to be likely to mislead, is falsely applied, as the case may be, shall, unless he proves—

- (a) that having taken all reasonable precautions against committing an offence he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark, or trade description : and

(b) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things ; or

(c) that otherwise he had acted innocently,

he guilty of an offence.

(3) Any person who imports any piece-goods ordinarily sold by length or by the piece, manufactured beyond the limits of Sri Lanka, or who sells or exposes for, or has in his possession for, sale, or any purpose of trade, any piece-goods ordinarily sold as aforesaid, whether manufactured within or beyond the limits of Sri Lanka, which have not conspicuously stamped in English numerals on each piece the length thereof in standard metres, or in standard metres and a fraction of such a metre, according to the real length of the piece, shall be guilty of an offence :

Provided that nothing in this subsection contained shall apply to any piece-goods manufactured within the limits of Sri Lanka by hand labour only.

(4) Any person found guilty of an offence under this section after trial before a Magistrate shall be liable on conviction to a fine not exceeding twenty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment, and in the case of a second or subsequent conviction the above fine or term of imprisonment or both may be doubled.

(5) The Magistrate may, whether the alleged offender is convicted or not, order that every chattel, article, instrument or thing by means of or in relation to which the offence has or might have been committed shall be destroyed or declared forfeit to the State or otherwise dealt with as he may think fit.

153. Where an offence under this Code has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body or was obliged to act in any such capacity, shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence having regard to the nature of his functions in that capacity and to all the circumstances.

Offences
by bodies
corporate.

Interpreta-
tion.

154. For the purposes of this Part, the definitions contained in section 97 shall apply, unless the context otherwise requires.

False
name or
initials.

155. (1) The provisions of this Part respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods—

(a) of any such figures, words, marks or arrangement or combination thereof, whether including a registered mark or not, as are likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are ;

(b) of any false name or initials of a person and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purposes of this Part the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(i) are not a mark, or part of a mark ; and

(ii) are identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials ; and

(iii) are either those of a fictitious person or of some person not bona fide carrying on business in connection with such goods.

(2) A trade description which denotes or implies that there are contained in any goods to which it is applied more metres or standard metres than there are contained therein, is a false trade description.

Forging
marks.

156. A person shall be deemed to forge a mark who either—

(a) without the assent of the owner of the mark makes that mark, or a mark so nearly resembling that mark as to be likely to mislead ; or

(b) falsifies any genuine mark, whether by alteration, addition, effacement or otherwise,

and any mark so made or falsified is in this Part referred to as a forged mark :

Provided that in any prosecution for forging a mark the burden of proving the assent of the owner shall lie on the accused.

157. (1) A person shall be deemed to apply a mark or trade description to goods who—

Applying
marks and
descriptions.

- (a) applies it to the goods themselves ; or
- (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture ; or
- (c) places, encloses, or annexes any goods which are sold or exposed, or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a mark or trade description has been applied ; or
- (d) uses a mark, or trade description in any manner likely to lead to the belief that the goods in connection with which it is used are designated or described by that mark, or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper ; and the expression "label" includes any band or ticket.

(3) A mark, or trade description shall be deemed to be applied whether it is woven, impressed, stamped, branded, or otherwise worked into or annexed, or affixed to the goods, or any covering, label, reel, or other thing.

(4) A person shall be deemed to falsely apply to goods a mark who, without the assent of the owner of a mark, applies such mark or any mark so nearly resembling it as to be likely to mislead, but in any prosecution for falsely applying a mark to goods the burden of proving the assent of the owner shall lie on the accused.

158. Where a person is charged with making any die, block, machine, or other instrument for the purpose of forging or being used for forging, a mark, or with falsely applying to goods any mark or any mark so nearly resembling a mark as to be likely to mislead, or with applying to goods any false trade description or causing any of the things in this section mentioned to be done, and proves—

Exemption
of certain
persons
employed in
ordinary
course of
business.

- (a) that in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making.

or being used in making, marks, or as the case may be, to apply marks or descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in Sri Lanka, and was not interested in the goods by way of profit or commission dependent on the sale of such goods ; and

- (b) that he took reasonable precautions against committing the offence charged ; and
- (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or trade description ; and
- (d) that he gave to the prosecutor all the information in his power with respect to the person on whose behalf the mark or description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he has given due notice to him that he will rely on the above defence.

Watches.

159. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall, prima facie, be deemed to be a description of that country within the meaning of this Part, and the provisions of this Part with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for, sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

Mark how described in pleading.

160. In any indictment, charge, proceeding, or document in which any mark or forged mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that mark or forged mark to be a mark or forged mark.

Rules as to evidence.

161. In any prosecution for an offence under this Part—

- (a) an accused, and his wife or her husband, as the case may be, may, if the accused thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness ;

- (b) in the case of imported goods evidence of the port of shipment shall be prima facie evidence of the place or country in which the goods were made or produced.

162. Any person who, being within Sri Lanka, abets the commission, outside Sri Lanka, of any act which, if committed within Sri Lanka, would under this Part be an offence, shall be deemed guilty of that offence, and be liable to be indicted, proceeded against, tried and convicted in any district or place in Sri Lanka in which he may be as if the offence had been there committed.

Punishment
of
accessories.

163. (1) Where, upon information of an offence under this part, a Magistrate has issued either a summons requiring the person charged by such information to appear to answer to the same, or a warrant for the arrest of such person, and either the said Magistrate on or after issuing the summons or warrant, or any other Magistrate, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of, or in relation to, which such offence has been committed are in any house or premises of the person charged by such information, or otherwise in his possession or under his control, in any place, such Magistrate may issue a warrant under his hand, by virtue of which it shall be lawful for any police officer, or other person named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search therefor and seize and take away such goods or things; and any goods or things seized under any such warrant shall be brought before a Magistrate's Court for the purpose of its being determined whether the same are or are not liable to forfeiture under this Part.

Search
warrant.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Part, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a Magistrate's Court may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows sufficient cause to the contrary, may order such goods or things or any of them to be forfeited, and every such order shall be subject to appeal.

(3) Any goods or things forfeited under this section, or under any other provisions of this Part, may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct, and such Court may, out of any proceeds which may be realized by the disposition of such goods (all marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Costs of
defence
and of
prosecution.

164. In any prosecution under this Part the Court may order costs to be paid to the accused by the prosecutor or to the prosecutor by the accused, having regard to the information given by, and the conduct of, the accused and prosecutor respectively, and the sum so awarded as costs shall be recoverable as if it were a fine.

Limitation of
prosecution.

165. No prosecution for an offence under this Part shall be commenced after the expiration of three years next after the commission of the offence or one year next after the first discovery thereof by the prosecutor, which ever expiration first happens.

Prohibition
on
importation.

166. (1) All goods which, if sold, would be liable to forfeiture under this Part, and also all goods made or produced beyond the limits of Sri Lanka, and having applied thereto any name or mark being, or purporting to be, or being a colourable imitation of, the name or mark of any manufacturer, dealer, or trader in Sri Lanka, unless such name or mark is accompanied by a definite indication, indicated in letters as large and conspicuous as any letter in the name or mark, of the place and country in which the goods were made or produced, and also all piece-goods such as are ordinarily sold by the length or by the piece, which have not conspicuously stamped in English numerals on each piece the length thereof in standard metres or in standard metres and a fraction of such a metre according to the real length of the piece, are hereby prohibited to be imported into Sri Lanka, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were referred to in section 43 of the Customs Ordinance, and included in Schedule B to that Ordinance.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the customs, the Principal Collector of Customs, or other officer specially appointed in that behalf by the Minister in charge of the subject of Finance may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Principal Collector of Customs may from time to time, with the sanction of the Minister in charge of the subject of Finance, make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of giving such evidence.

(4) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in Sri Lanka, that name, unless accompanied in equally large and conspicuous letters by the name of the country in which such place is situate, shall be treated, for the purposes of this section, as if it were the name of a place in Sri Lanka.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(6) The regulations may provide for the informant reimbursing the Principal Collector of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.

(7) All regulations under this section shall be published in the *Gazette*.

(8) This section shall have effect as if it formed part of the Customs Ordinance.

Implied
warranty
on sale of
marked goods

167. On the sale, or in the contract for the sale, of any goods to which a mark, or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Part, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to, and accepted by, the vendee.

Provisions
as to false
description
not to apply
in certain
cases.

168. Where, on the commencement of this Code, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Part with respect to false trade descriptions shall not apply to such trade description when so applied :

Provided that where such trade description includes the name of a place or country, and is likely to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings.

169. (1) This Part shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Part, be brought against him.

(2) Nothing in this Part shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence under this Part.

(3) Nothing in this Part shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Sri Lanka who bona fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

170. All offences under this Part are hereby declared to be "cognizable" and "bailable", within the meaning of those terms as defined in the Code of Criminal Procedure Act, No. 15 of 1979.

Cognizable
and
bailable
offences.

PART VII

MISCELLANEOUS

CHAPTER XXXI

Regulations

171. (1) The Minister may from time to time make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Code and in particular in respect of any matter required under this Code to be prescribed.

Regulations.

(2) Without prejudice to the generality of the powers conferred by subsection (1) the Minister may make regulations in respect of any or all of the following matters :—

- (a) the practice of registration ;
- (b) the classification of goods and services for the purposes of registration ;
- (c) the fees payable in respect of registration and other matters ;
- (d) the forms to be used ;
- (e) all matters which under Parts III, IV and V of this Code have been placed under the direction or control of the Registrar.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.

(4) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before the Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *Gazette*.

CHAPTER XXXII

*Applications to, and proceedings before, the
Registrar and Court*

Correction
and
rectification
of
register.

172. (1) The Registrar may, on application in the prescribed manner by or on behalf of the registered owner of an industrial design, patent or mark, correct any error or enter any change—

(a) in the name, address or description of the registered owner of any industrial design, patent or mark;
or

(b) concerning any other particulars relating to the registration of an industrial design, patent or mark as may be permitted by regulation.

(2) Subject and without prejudice to other provisions of this Code—

(a) the Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from any register, of any entry, or by any entry made in any register without sufficient cause, or by any entry wrongly remaining on any register, or by any error or defect in any entry in any register, make such order for making, expunging, or varying such entry, as it may fit;

(b) the Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of any register;

(c) in case of fraud in the registration, assignment or transmission of any registered industrial design, patent or mark, the Registrar may himself apply to the Court under the provisions of this section.

(3) In any proceedings under this Code in which the relief sought includes correction, alteration or rectification of any register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office

in like cases, or of such other matters relevant to the issue, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceedings.

(4) The Court, in dealing with any question of the correction, alteration or rectification of any register, shall have power to review any decision of the Registrar relating to the entry in question or the correction, alteration or rectification sought to be made.

173. (1) Where the Registrar is satisfied that any volume of any register kept under this Code has been so damaged as to render that volume incapable of being mended, he may cause a copy thereof to be made and authenticated in such manner as he may direct.

Power to make copies of damaged volumes of any register, to prepare and insert reconstructed folios.

(2) Any copy made and authenticated under the provisions of subsection (1) shall replace the volume of which it is a copy, and shall for all purposes be deemed to have the same legal force and effect as the volume which such copy replaces.

(3) The Registrar shall cause every damaged volume of which a copy has been made under the provisions of subsection (1) to be preserved as long as it is reasonably practicable for any reference which may be necessary.

(4) Where the Registrar, after due investigation, is satisfied that any folio of any volume of any register has been lost and cannot be recovered or that any such folio has been permanently mutilated or so obliterated or damaged as to render the entries or any material part of the entries therein illegible he may cause a reconstructed folio to be prepared.

(5) No folio shall be reconstructed as provided in subsection (4) except in accordance with regulations providing—

(a) for evidence to be admitted and used by the Registrar in ascertaining the particulars originally contained in the lost or mutilated or damaged folio ;

(b) for the giving of notice by the Registrar of the preparation of the reconstructed folio ;

(c) for the lodging of objections by any person affected by any of the particulars contained in the reconstructed folio ; and

(d) for the inquiry into any such objections by the Registrar.

(6) Where any folio has been reconstructed by the Registrar in accordance with the preceding provisions of this section, the Registrar shall authenticate the reconstructed folio in the prescribed manner and shall thereafter cause the reconstructed folio to be inserted in the appropriate volume of the register in the place formerly occupied by the lost folio or in place of the mutilated or damaged folio, or in a copy of a volume prepared under the provisions of this section, as the case may be, and the reconstructed folio, when so authenticated and inserted, shall for all purposes be deemed to have the same legal force and effect as the folio which such reconstructed folio replaces.

(7) The Registrar may, after such inquiry as he may deem necessary, correct any clerical error or omission which may be discovered in any entry in any register or in any certificate kept or issued under the provisions of this Code and for that purpose may recall any such certificate and amend the same or issue a fresh certificate in its place.

Certificate of Registrar to be evidence.

174. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorized by this Code or regulations made thereunder to make or do, shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Certified copies to be evidence.

175. Printed, mechanically produced, typed or written copies or extracts, purporting to be certified by the Registrar, of or from any document, register, or other book filed or kept under this Code in the Registry shall be admitted in evidence in all Courts in Sri Lanka, and in all proceedings, without further proof or production of the originals.

Mode of giving evidence.

176. (1) In any proceeding under this Code before the Registrar or the Court, the evidence shall be given by affidavit in the absence of directions to the contrary. But, in any case in which the Registrar or the Court shall think it right so to do, the Registrar or the Court may take evidence *viva voce* in lieu of or in addition to evidence by affidavit.

(2) In case any part of the evidence is taken *viva voce*, the Registrar may exercise the powers conferred on a commission appointed under the provisions of the Commissions of Inquiry Act for compelling the attendance of witnesses and the production of documents and for administering oaths to all persons who shall be examined before him.

177. Where any discretionary or other power is given to the Registrar by this Code or regulations made thereunder, he shall not exercise that power adversely to the applicant for registration or the registered owner of an industrial design, patent or mark without (if duly required so to do within the prescribed time) giving such applicant or registered owner an opportunity of being heard.

Exercise of discretionary power by Registrar.

178. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Code, apply to the Attorney-General or Solicitor-General for directions in the matter.

Registrar may take directions of law officers.

179. Where the registered owner of an industrial design, patent or mark proves that any person is threatening to infringe or has infringed the said industrial design, patent or mark, as the case may be, or is performing acts which make it likely that infringement will occur, the Court may grant an injunction restraining any such person from committing or continuing such infringement or performing such acts and may award damages and such other relief as to the Court appears just and appropriate :

Infringement proceedings by registered owner of industrial design, patent or mark.

Provided that the defendant may in the same proceedings request the Court to declare the registration of the said industrial design, patent or mark, as the case may be, or any part of it, null and void, in which event the provisions of sections 57, 58, 95, 96, 130 and 131 shall apply as appropriate.

180. In the absence of any provision to the contrary in a licence contract relating to an industrial design, patent or mark, the licensee may—

Infringement proceedings by or at request of licensee.

(a) in respect of the threatened infringement, infringement or acts referred to in section 179 request the registered owner of the industrial design, patent or mark to apply for an injunction :