

**The Intellectual Property Bill, 2020**



**THE REPUBLIC OF KENYA**

**LAWS OF KENYA**

**INTELLECTUAL PROPERTY BILL, 2020**

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**ARRANGEMENT OF CLAUSES**

*Clauses.*

## The Intellectual Property Bill, 2020

### THE INTELLECTUAL PROPERTY BILL, 2020

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| <b>A BILL for</b>  |   |
| <b>AN ACT</b> of Parliament to consolidate the laws relating to intellectual property, to provide for the establishment of the Intellectual Property Office of Kenya; to provide for its functions, organisation and administration; and for connected purposes. |   |
| <b>ENACTED</b> by the Parliament of Kenya as follows—  |   |
| <b>PART I — PRELIMINARY</b>  |   |
| Short title and commencement   | 1. This Act may be cited as the Intellectual Property Office of Kenya Act, 2020 and shall commence upon assent.   |
| Interpretation   | 2. In this Act, unless the context otherwise requires—  |
| Act to prevail   | 3. (1) If there is a conflict between this Act and any other Act, this Act shall prevail on the following matters—<br>(a) administration and management of intellectual property matters; and<br>(b) enforcement of intellectual property rights<br><br>(2) Save where this Act expressly provides otherwise, any license granted or anything done under this Act shall not affect the right, privilege, obligation or liability acquired by any licensee or other person in any contract or under any written law prior to the commencement of this Act. |
| Guiding principles   | 4. The principles of this Act shall be —<br><br>(a) observance and compliance good governance in accordance with Article 10 of the Constitution;<br><br>(b) ensuring public participation and community involvement in the management of intellectual property;<br><br>(c) consultation and co-operation between the national government and relevant stakeholders;<br><br>(d) the values and principles of public service in accordance with Article 232 of the Constitution;<br><br>(e) protection and promotion of intellectual property rights; and   |

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|  | <p>(f) adoption and implementation international best practices in administration and management of intellectual property.</p>   |
| <p>National Intellectual Property Policy</p>   | <p>5. (1) The Cabinet Secretary shall, in consultation with the relevant stakeholders, develop a national intellectual property policy to reinforce the intellectual property framework and create public awareness about the economic, social and cultural benefits of intellectual property rights.</p> <p>(2) At least once in every five years, the Cabinet Secretary shall cause the intellectual property policy to be reviewed in consultation with the relevant stakeholders.</p>  |
| <p>National Intellectual Property Strategy</p> | <p>6. (1) The Cabinet Secretary shall, within one year of the commencement of this Act and every five years thereafter, following public participation, formulate a national intellectual property strategy.</p> <p>(2) The object of the Intellectual Property Strategy shall be to provide the state's plans and programs for the promotion and protection, of the intellectual property rights of the people of Kenya.</p> <p>(3) The Intellectual Property Strategy shall contain, among other things, details of—</p> <ul style="list-style-type: none"> <li>(a) generation, protection, commercialization and enforcement of intellectual property rights;</li> <li>(b) integration of intellectual property into national and sectoral policies, strategies and plans;</li> <li>(c) linkage between national, regional and international intellectual property systems;</li> <li>(d) use of the intellectual property system to support local technology development and technology transfer.</li> <li>(e) any other matters the Cabinet Secretary considers necessary.</li> </ul> <p>(4) The Cabinet Secretary shall—</p> <ul style="list-style-type: none"> <li>(a) prepare and issue an annual report on the state of intellectual property and intellectual property rights in Kenya; and</li> <li>(b) may direct any lead agency to prepare and submit to it, a report on the state of intellectual property and intellectual property rights under the administration of that lead agency.</li> </ul> |

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|   | (5) The Cabinet Secretary shall review the Intellectual Property Strategy every three years.   |
| <b>PART II – ESTABLISHMENT AND ADMINISTRATION OF THE OFFICE</b> |  |
| Establishment of the Intellectual Property Office of Kenya      | <p>7. (1) There is established an office to be known as the Intellectual Property Office of Kenya.</p> <p>(2) The Office shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—</p> <ul style="list-style-type: none"><li>(a) suing and being sued;</li><li>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;</li><li>(c) entering into contracts; and</li><li>(d) undertaking or performing all other activities necessary for the proper performance of its functions under this Act that may lawfully be done or performed by a body corporate.</li></ul>   |
| Functions of the Office   | <p>8. The functions of the Office shall be to—</p> <ul style="list-style-type: none"><li>(a) inform and raise public awareness on intellectual property information;</li><li>(b) combat counterfeiting, trade and other dealings in counterfeit goods in Kenya in accordance with this Act;</li><li>(c) organize and conduct training relating to intellectual property matters at all levels in Kenya, in collaboration or association with other relevant institutions, where necessary;</li><li>(d) collaborate with national, regional or international organizations on intellectual property matters;</li><li>(e) mainstreaming intellectual property knowledge;</li><li>(f) advise the government through the Cabinet Secretary on relevant policies and measures on intellectual property;</li><li>(g) carry out inquiries studies and research into matters relating to protection of intellectual property rights;</li><li>(h) consider applications for and grant or register intellectual property rights;</li><li>(i) vet and verify technology transfer agreements for (security);</li><li>(j) grant and issue licenses;</li><li>(k) provide to the public intellectual property information for technological and economic development;</li><li>(l) promote inventiveness and innovativeness;</li></ul> |

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|             | <ul style="list-style-type: none"> <li>(m) establish and maintain a Presidential awards system and any other competitions and contests subject to prescribed conditions;;</li> <li>(n) co-ordinate and oversee the implementation of laws and international treaties and conventions to which Kenya is a party and which relate to intellectual property rights and ensure the observance thereof;</li> <li>(o) license and supervise the activities of collective management organizations as provided under this Act;</li> <li>(p) initiate and monitor legislation and legislative proposals relating to intellectual property matters;</li> <li>(q) establish and maintain relevant repositories, data bases and registers on intellectual property information;</li> <li>(r) administer and enforce intellectual property rights in Kenya;</li> <li>(s) undertake valuation and commercialization of intellectual property;</li> <li>(t) protect genetic resources from waste; and</li> <li>(u) perform any other functions necessary.</li> </ul> |
| The Council | <p>9. (1) There is established the Council of the Intellectual Property Office of Kenya.</p> <p>(2) The Council shall comprise of—</p> <ul style="list-style-type: none"> <li>(a) a non-executive chairperson, appointed by the President;</li> <li>(b) the Principal Secretary responsible for intellectual property matters or a designated representative;</li> <li>(c) the Principal Secretary responsible for Information, Communications and Technology or a designated representative</li> <li>(d) the Principal Secretary responsible for National Treasury or a designated representative;</li> <li>(e) the Director of Public Prosecutions or a designated representative;</li> <li>(f) the Attorney-General or a designated representative;</li> <li>(g) three other members, not being public officers, to be appointed by the Cabinet Secretary,</li> </ul>   |

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|  | <p>(h) the Director-General of the Office, who shall be the secretary to the Council.</p> <p>(3) A person shall be qualified for appointment as chairperson to the Council if such person —</p> <p>(a) holds a minimum of a bachelor's degree from a university recognized in Kenya;</p> <p>(b) has knowledge and experience of at least ten years in matters relating to intellectual property;</p> <p>(c) satisfies the requirements of Chapter six of the Constitution.</p> <p>(4) A person shall be qualified for appointment under section 9(1) (f) such person —</p> <p>(a) holds a minimum of a bachelor's degree from a university recognized in Kenya;</p> <p>(b) has knowledge and experience of at least five years in matters relating to intellectual property or law or applied sciences or information technology or economics or creative arts;</p> <p>(c) satisfies the requirements of Chapter six of the Constitution.</p> <p>(5) The members of the Council under subsection (1) (a) and (1)(g) shall hold office for a period of three years and shall be eligible for re-appointment for a further term of three years.</p> <p>(6) A person shall not be appointed to the Council if the person—</p> <p>(a) has been convicted of a criminal offence and imprisoned for a term exceeding six months without the option of a fine;</p> <p>(b) is a member of a governing body of a political party;</p> <p>(c) has previously been removed from public office for contravention of the provisions of the Constitution or any other written law;</p> <p>(d) is an un-discharged bankrupt; and</p> <p>(e) violates the Constitution or any other written law.</p> |
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|                       | <p>(7) The appointment of the chairperson and the members appointed under subsection (1) (g) shall be by name and by notice in the Gazette.</p> <p>(7) In appointing the members under subsection (1) (a) and (g) the appointing authorities shall—</p> <p>(a) ensure that not more than two-thirds of the members are of the same gender;</p> <p>(b) observe the principle of regional and ethnic balance; and</p> <p>(c) have due regard to the principle of fair representation for youth and persons with disabilities.</p> <p>(8) A member of the Council shall be paid such allowances as the Cabinet Secretary may in consultation with the Salaries and Remuneration Commission determine.</p> <p>(9) A member of the Council shall not trade directly or indirectly with the Office.</p> <p>(10) The Chairperson or member of the Council, may be removed from office on account of any of the following—</p> <p>(a) violation of the Constitution or any other law;</p> <p>(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;</p> <p>(c) physical or mental incapacity to perform the functions of office;</p> <p>(d) being absent from three consecutive meetings of the Council, as the case may be, without reasonable cause;</p> <p>(e) failure to disclose to the Council any interest in any contract or matter before the Council;</p> <p>(f) being convicted of a criminal offence;</p> <p>(g) incompetence; or</p> <p>(h) bankruptcy.</p> |
| Powers of the Council | <p><b>10.</b> The Council shall have all the powers necessary for the proper performance of the functions of the Office under this Act and, in particular, the Council shall have power to—</p> <p>(a) invest any moneys of the Office not immediately required for the purposes of this Act;</p> <p>(b) co-operate with other organizations undertaking functions similar to its own, whether within Kenya or otherwise;</p>   |

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|   | <p>(c) *****;</p> <p>(d) offer services to any person upon such terms as the Council may from time to time determine.</p>   |
| <p>Committees of the Council</p>                      | <p><b>11.</b> (1) The Council may from time to time establish committees for the better carrying out of its functions.</p> <p>(2) The Council may, with the approval of the Cabinet Secretary, co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Council.</p> <p>(3) The Council may, by resolution either generally or in any particular case, delegate to any committee of the Council or to any member, officer, employee or agent of the Council, the exercise of any of the powers of the Council or the performance of any of the functions or duties of the Council.</p>   |
| <p>Conduct of business and affairs of the Council</p> | <p><b>12.</b> The business and affairs of the Council shall be conducted in accordance with the First Schedule to this Act.</p>   |
| <p>The Director General of the Office</p>             | <p><b>13.</b> (1) (a) There shall be a Director General of the Office who shall be competitively recruited and appointed by the Council and whose terms and condition of service shall be determined by the Council in the instrument of appointment.</p> <p>(b) (i) The Director General shall be the Registrar for the purposes of this Act;</p> <p>(ii) The Council may appoint such number of Deputy Registrars as may be necessary to assist the Registrar in the performance and exercise of the Registrar's functions and powers under this Act.</p> <p>(2) A person shall be qualified for appointment as the Director General of the Office if the person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) satisfies the requirements of Chapter six of the Constitution;</p> |

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|  | <p>(c) holds a degree from a university recognized in Kenya or its equivalent in the fields of law, science, economics; information and communication technology and</p> <p>(d) has at least ten years professional experience in the relevant field at management level.</p> <p>(3)The Director General shall hold office for a term of four years, and be eligible for re-appointment for a further term of four years.</p> <p>(4)The Director General shall, subject to the direction of the Council, be responsible for the day to day management of the Office including the directorates.</p> <p>(5) The Director General shall, subject to the direction of the Council, be responsible for the direction of the affairs and transactions of the Office and the exercise, discharge and performance of its objectives, functions and duties.</p> |
| <p>Director-General may delegate powers or functions</p> | <p><b>14.</b> (1) The Director-General may, in writing, delegate the performance of any function or exercise of a power conferred on him or her by this Act or any other written law to an officer in the Office.</p> <p>(2) A delegation under this section —</p> <p>(a) shall be subject to any conditions the Director-General may impose;</p> <p>(b) shall not relieve the Director-General of responsibility concerning the exercise of the delegated function or performance of the delegated power; and</p> <p>(c) may be withdrawn or varied by the Director-General at any time.</p>   |
| <p>Removal from office of Director General</p>           | <p><b>15.</b> (1) The Director General, may be removed from office by the appointing authority in accordance with the terms and conditions of service only for—</p> <p>(a) inability to perform the functions of the Office arising out of physical or mental incapacity;</p> <p>(b) gross misconduct or misbehaviour;</p> <p>(c) incompetence or neglect of duty;</p> <p>(d) violation of the Constitution or any other law;</p> <p>(e) bankruptcy; or</p> <p>(f) any other ground that would justify removal from office under the terms and conditions of service.</p>   |

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|  | <p>(2) Before the Director General, is removed under subparagraph (1), he or she shall be given—</p> <p>(a) sufficient notice of the allegations made against him or her; and<br/>(b) an opportunity to present his or her defence against the allegations.</p>   |
| <p>Organization of the secretariat of the Office</p> | <p><b>16.</b> (1) The Office shall organize its secretariat into such directorates as the Office, with the approval of the Cabinet Secretary, may determine taking into account the functions of the Office under this Act and any other Act of Parliament.</p> <p>(2) Each directorate of the Office shall report to the Director General and may have such autonomy as to enable it discharge its professional mandate.</p> <p>(3) Without prejudice to the general power of the Office to establish directorates as contemplated under subsection (1), the Office may establish directorates for each category or type of intellectual property or intellectual property rights as may be necessary to enable the carrying out of any specialized activities with respect to the promotion, protection or management of that intellectual property</p>   |
| <p>Staff of the Office</p>                           | <p><b>17.</b> The Council may appoint such officers and other staff of the Office as are necessary upon such terms and conditions of service as the Council, on the recommendation of the Salaries and Remuneration Commission, may determine.</p>  |
| <p>Protection from personal liability</p>            | <p><b>18.</b> (1) No matter or thing done by any member of the Council, officer, employee or agent of the Office shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Office, render the member, officer, employee, agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.</p> <p>(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Council, shall if the court holds that such act was done in good faith, be paid out of the funds of the Office, unless such expenses are recovered by him or her in such suit or prosecution.</p> <p>(3) For the avoidance of doubt, nothing in this section shall exempt a member of the Council, officer, employee or agent of the Office from individual responsibility for unlawful or criminal acts committed by that member of the Council, officer, employee or agent of the Office.</p> |

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| The Common seal of the Office          | <p><b>19.</b> (1) The common seal of the Office shall be kept in the custody of the Director-General or of such other person as the Council may direct, and shall not be used except upon the order of the Council.</p> <p>(2) The common seal of the Office, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been duly given.</p> <p>(3) The common seal of the Office shall be authenticated by the signature of the chairperson of the Council and the Director-General.</p> <p>(4) The Council shall, in the absence of either the chairperson or the Director-General, in any particular matter, nominate one member of the Council to authenticate the seal of the Office on behalf of either the chairperson or the Director-General.</p> |
| Liability of the Office to pay damages | <p><b>20.</b> This Act shall not relieve the Office of the liability to pay compensation or damages to any person for any injury to that person, that person's property or any of that person's interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.</p>   |
| Decisions of the Office                | <p><b>21.</b> (1) The Office shall within sixty days from the date of receipt of a request by any applicant, make its decision on any matter before it.</p> <p>(2) A decision of the Office shall be in writing and any order given and reasons thereof shall be served upon all parties to the proceedings, and may be published in the Gazette or Journal as may be prescribed.</p> <p>(3) The Office shall, within seven days of making a decision, communicate such decision to the parties involved.</p> <p>(4) All orders of the Office shall become effective on the date of entry thereof, and shall be complied with within the time prescribed therein.</p> <p>(5) Where the Office does not make a decision as provided in subsection (1) the appellant may appeal to the Tribunal within seven days of the expiry of the prescribed period.</p>   |

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| <p>Appeal against a decision of the office</p> | <p><b>22.</b> (1) A person aggrieved by a decision of the Office may appeal to the Tribunal within thirty days of receipt of the decision.</p> <p>(2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.</p>   |
| <p><b>PART III – FINANCIAL PROVISIONS</b></p>  |   |
| <p>Funds of the Office</p>                     | <p><b>23.</b> (1) The funds and assets of the Office shall consist of—</p> <p>(a) such moneys as may be appropriated by Parliament for the purposes of the Office;</p> <p>(b) licence fees;</p> <p>(c) levies; (confirm)</p> <p>(a) any revenues generated from any proprietary interest held by the Office whether movable or immovable;</p> <p>(b) interest from bank deposits;</p> <p>(c) such gifts as may be given to the Authority;</p> <p>(d) all moneys from any other lawful source provided, donated or lent to the Office.</p> <p>(2) Notwithstanding the provisions of subsection (1), all levies imposed under the Act on any intellectual property, shall be applied towards the sustenance, development, provision and for the benefit of the intellectual property in respect of which the levies are imposed.</p> <p>(3) All levies imposed under the Act shall be collected and remitted to the respective directorate responsible for the intellectual property and if not remitted on or before the date prescribed by the notice, the amount due shall be a civil debt recoverable summarily by the Office.</p> <p>(4) A percentage of any levy imposed under the Act as shall be gazetted by the Cabinet Secretary and which shall not exceed twenty percent of the levy shall be remitted to the Council.</p> <p>(5) One half of all fines imposed and recovered by a competent court in respect of the contravention of any of the provisions of this</p> |

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|                  | <p>Act or of any regulations made thereunder shall be paid into the revenues of the Office and the other half shall be paid into the general revenues of Kenya. (KECOBO give us progress on this and re-word)</p> <p>(6) Any funds retained by the Office shall make part of the funds of the Office by way of appropriation.</p> <p>(7) There shall be paid out of the funds of the Office, all expenditure incurred by the Office in the exercise of its powers or the performance of its functions under this Act.</p>   |
| Annual estimates | <p><b>24.</b> (1) At least three months before the commencement of each financial year, the Office shall cause to be prepared estimates of the revenue and expenditure of the Office for that year.</p> <p>(2) The annual estimates shall make provision for all estimated expenditure of the Office for the financial year and in particular, the estimates shall provide for the—</p> <p>(a) payment of the salaries, allowances and other charges in respect of the staff of the Office;</p> <p>(b) payment of allowances and other charges in respect of members of the Council;</p> <p>(c) payment of pensions, gratuities and other charges in respect of members of the Council and staff of the Office;</p> <p>(d) proper maintenance of the buildings and grounds of the Office;</p> <p>(e) maintenance, repair and replacement of the equipment and other property of the Office; and</p> <p>(f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Council may deem appropriate.</p> <p>(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.</p> <p>(4) No expenditure shall be incurred for the purposes of the Office except in accordance with the annual estimates approved under</p> |

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|   | subsection (3), or in pursuance of an authorization of the Council given with prior written approval of the Cabinet Secretary.  |
| Accounts and audit                                  | <p><b>25.</b> (1) The Council shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Office.</p> <p>(2) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor-General the accounts of the Office together with—</p> <p>(a) a statement of the income and expenditure of the Office during that year; and</p> <p>(b) a balance sheet of the Office on the last day of that year.</p> <p>(3) The accounts of the Office shall be audited and reported upon in accordance with the Constitution, the Public Audit Act and any other relevant legislation.</p> |
| Investment of funds                                 | <p><b>26.</b> (1) The Council may invest any of the funds of the Office in securities in which trustees may by law invest trust funds, or in any other securities which the Treasury may, from time to time, approve for that purpose.</p> <p>(2) The Council may, subject to the approval of the Treasury, place on deposit with such bank or banks as it may determine, any monies not immediately required for the purposes of the Office.</p>   |
| <b>PART IV – INTELLECTUAL PROPERTY TRIBUNAL</b>     |   |
| Establishment of the Intellectual Property Tribunal | <p><b>27.</b> There is established the Intellectual Property Tribunal, hereinafter referred to as the Tribunal for the purpose of hearing and determining disputes and appeals in accordance with this Act or any other written law.</p>  |
| Members of the Tribunal                             | <p><b>28.</b> (1) The Tribunal shall consist of not more than seven members as follows—</p> <p>(a) a chairperson who shall be appointed by the President from among persons qualified to be judges of the High Court and who has at least five years' experience in intellectual property matters; and</p> <p>(b) six other persons who shall be appointed by the Cabinet Secretary and who are not public officers.</p>  |

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|  | <p>(2) The members of the Tribunal shall at the first meeting of the Tribunal elect a vice-chairperson who shall be a person qualified to be a judge of the High Court possessing at least five years' experience in intellectual property matters.</p> <p>(3) A person shall be qualified for appointment under subsection (1) if that person—</p> <ul style="list-style-type: none"><li>(a) is a citizen of Kenya;</li><li>(b) holds a degree in law, science, intellectual property or a relevant area from a university recognized in Kenya;</li><li>(c) is a member in good standing of the relevant professional association;</li><li>(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.</li></ul> <p>(4) The Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.</p> <p>(5) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of a member of the Tribunal, the Cabinet Secretary shall—</p> <ul style="list-style-type: none"><li>(a) by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Tribunal, and invite applications from qualified persons; and</li><li>(b) convene a selection panel for the purpose of selecting suitable candidates for appointment as members of the Tribunal.</li></ul> <p>(7) The selection panel shall at its first meeting appoint a chairperson and a vice-chairperson.</p> <p>(8) An application in respect of a vacancy declared under subsection (5) shall be forwarded to the selection panel within fourteen days of the publication of the notice.</p> <p>(9) The selection panel shall subject to this section determine its procedure and the Cabinet Secretary shall provide it with such facilities and other support as it may require for the discharge of its functions.</p> <p>(10) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and at least two daily newspapers of national circulation seven days from the</p> |
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|  | <p>expiry of the deadline of receipt of applications under subsection (7).</p> <p>(11) The selection panel shall interview the shortlisted applicants fourteen days from the date of publication of the list of short listed applicants under subsection (9).</p> <p>(12) After carrying out the interviews, the selection panel shall select three persons qualified to be appointed as members of the Tribunal, for each vacant position, and forward the names to the Cabinet Secretary.</p> <p>(13) The Cabinet Secretary shall within seven days of receiving the names, by notice in the Gazette, appoint a member or members to the Tribunal.</p> <p>(14) Where the Cabinet Secretary rejects the list of names forwarded under subsection (11) he shall submit a notice of rejection within seven days of receipt of the names.</p> <p>(15) Upon the receipt of the notice of rejection under subsection (13), the selection panel shall submit fresh nominations and the procedure set out in this section shall with the necessary modifications apply.</p> <p>(16) Notwithstanding any provision in this section, the Cabinet Secretary may by notice in the Gazette extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.</p> <p>(17) In selecting, nominating, approving or appointing the members of the Tribunal, the selection panel and the Cabinet Secretary shall—</p> <p>(a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;</p> <p>(b) ensure equal opportunities for persons with disabilities and other marginalized communities; and</p> <p>(c) ensure that no more than two-thirds of the members shall be of the same gender.</p> <p>(18) The selection panel shall stand dissolved upon the appointment of the members of the Tribunal.</p> |
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|                         | <p>(19) The members of the Tribunal shall hold office for a period of three years, but shall be eligible for reappointment for one further term.</p>  |
| Vacancy in the Tribunal | <p>29. (1) The office of a member of the Tribunal shall become vacant—</p> <ul style="list-style-type: none"><li>(a) at the expiration of three years from the date of appointment;</li><li>(b) if the member accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible for appointment to the office of member of the Tribunal;</li><li>(c) if he or she is removed from membership of the Tribunal by the Cabinet Secretary on the recommendation of a tribunal set up for that purpose under subsection (3); or</li><li>(d) if he or she dies or resigns from office.</li></ul> <p>(2) A person desiring the removal of a member of the Tribunal on the grounds specified in subsection 1(c) may present a complaint under oath to the Cabinet Secretary setting out the alleged facts constituting that ground.</p> <p>(3) The Cabinet Secretary shall consider the complaint and if satisfied that it discloses a ground under subsection 1(c)—</p> <ul style="list-style-type: none"><li>(a) may suspend the member pending the outcome of the complaint; and</li><li>(b) shall appoint a committee in accordance with subsection (4).</li></ul> <p>(4) The committee appointed under subsection (3) (b) shall consist of -</p> <ul style="list-style-type: none"><li>(a) a person who holds or has held office of a judge of a superior court, who shall be the chairperson;</li><li>(b) at least two persons who are qualified to be appointed as judge of the high court; and</li><li>(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.</li></ul> <p>(20) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the Cabinet Secretary who shall act in accordance with the recommendation within thirty days.</p> |

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| Oath of Office            | <p><b>30.</b> A person who is appointed a member of the Tribunal shall, before assuming the duties of the office, take and subscribe to the oath of allegiance to the office.</p>   |
| Disclosure of interest    | <p><b>31.</b> Where a member of the Tribunal, as constituted for the purposes of a proceeding, has any interest, direct or indirect, that could conflict with the proper performance of the member's functions, he or she shall disclose the interest to the parties to the proceeding and shall not be present during any deliberations on the matter by the Tribunal or take part in a decision of the Tribunal on the matter.</p>  |
| Secretary and other staff | <p><b>32.</b> (1) The Cabinet Secretary shall appoint the secretary to the Tribunal.</p> <p>(2) A person shall be qualified to be appointed to hold office as secretary to the Tribunal under subsection (1) if such a person is an advocate of the High Court of Kenya of not less than seven years standing.</p> <p>(3) The Secretary shall be responsible for the day to day management of the Tribunal.</p> <p>(4) The Tribunal may appoint such other staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.</p>  |
| Common seal               | <p><b>33.</b> (1) The common seal of the Tribunal shall be kept in the custody of the Secretary or of such other person as the Tribunal may direct, and shall not be used except upon the order of the Tribunal.</p> <p>(2) The common seal of the Tribunal, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Tribunal under this section shall be presumed to have been duly given.</p> <p>(3) The common seal of the Tribunal shall be authenticated by the signature of the chairperson of the Tribunal and the Secretary.</p> <p>(4) The Tribunal shall, in the absence of either the chairperson or the Secretary, in any particular matter, nominate one member of the Tribunal to authenticate the seal of the Tribunal on behalf of either the chairperson or the Secretary.</p> |
| Funds of the Tribunal     | <p><b>34.</b> (1) The funds of the Tribunal shall consist of—</p>   |

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|                  | <p>(a) such monies as may, from time to time, be appropriated by Parliament for that purpose;</p> <p>(b) interest from bank deposits; and</p> <p>(c) grants as may approved by the Judicial Service Commission.</p> <p>(2) There shall be paid out of the funds of the Tribunal, all expenditure incurred by the Tribunal in the exercise of its powers or the performance of its functions under this Act.</p>   |
| Annual estimates | <p>35. (1) At least three months before the commencement of each financial year, the Tribunal shall cause to be prepared estimates of the revenue and expenditure of the Tribunal for that year.</p> <p>(2) The annual estimates shall make provision for all estimated expenditure of the Tribunal for the financial year and in particular, the estimates shall provide for the—</p> <p>(a) payment of the salaries, allowances and other charges in respect of the staff of the Tribunal;</p> <p>(b) payment of allowances and other charges in respect of members of the Tribunal;</p> <p>(c) payment of pensions, gratuities and other charges in respect of members and staff of the Tribunal;</p> <p>(d) proper maintenance of the buildings and grounds of the Tribunal;</p> <p>(e) maintenance, repair and replacement of the equipment and other property of the Tribunal; and</p> <p>(f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Tribunal may deem appropriate.</p> <p>(3) The annual estimates shall be approved by the Tribunal before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.</p> <p>(4) No expenditure shall be incurred for the purposes of the Tribunal except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization of the Tribunal given with prior written approval of the Cabinet Secretary.</p> |

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| Accounts and audit                             | <p><b>36.</b> (1) The Tribunal shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Tribunal.</p> <p>(2) Within a period of three months after the end of each financial year, the Tribunal shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Tribunal together with—</p> <p>(a) a statement of the income and expenditure of the Tribunal during that year; and</p> <p>(b) a balance sheet of the Tribunal on the last day of that year.</p> <p>(3) The accounts of the Tribunal shall be audited and reported upon in accordance with the Constitution and any other relevant legislation.</p>   |
| Arrangement of business                        | <p><b>37.</b> (1) The Chairperson shall be responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.</p> <p>(2) Without limiting the operation of subsection (1), the Chairperson shall give directions relating to the—</p> <p>(a) arrangement of the business of Tribunal;</p> <p>(b) places at which the Tribunal may sit generally; and</p> <p>(c) procedure of the Tribunal at a particular place.</p> <p>(3) The times and places of the hearings of the Tribunal shall be determined by the Chairperson with a view to securing a reasonable opportunity for applicants to appear before the Tribunal with as little inconvenience and expense as is practicable.</p> <p>(4) The rules of procedure of the Tribunal shall be published in the Gazette by the Chairperson.</p> |
| Quorum and conduct of business at the Tribunal | <p><b>38.</b> (1) The Chairperson shall preside at all sittings of the Tribunal at which he or she is present and in the absence of the Chairperson the Vice-Chairperson shall preside.</p> <p>(2) The quorum of the Tribunal shall be three members including the Chairperson or the Vice-Chairperson as the case may be.</p>   |

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| <p>Technical advice</p>                          | <p><b>39.</b> (1) The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings.</p> <p>(2) The persons referred to in subsection (1) persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.</p>   |
| <p>Remuneration</p>                              | <p><b>40.</b> (1) The Tribunal shall, in consultation with the Cabinet Secretary and upon the advice of the Salaries and Remuneration Commission, pay its members such remuneration, fees or allowances for expenses as it may determine from time to time.</p> <p>(2) Any person who gives technical advice to the Tribunal in accordance with section 40 shall be paid such allowance as may be determined by the Tribunal.</p> <p>(3) The members of the Tribunal shall serve on part-time basis.</p>   |
| <p>Jurisdiction of the Tribunal</p>              | <p><b>41.</b> (1) The Tribunal shall have original civil jurisdiction to hear and determine all matters referred to it, relating to intellectual property arising under this Act or any other Act.</p> <p>(2) The jurisdiction of the Tribunal shall not include the trial of any criminal offence.</p> <p>(3) The Tribunal shall have original civil jurisdiction on any dispute between a licensee and a third party or between licensees.</p> <p>(4) The Tribunal shall have appellate jurisdiction over the decisions of the Office and any licensing authority and in exercise of its functions may refer any matter back to the Office or any licensing authority for re-consideration.</p> <p>(5) The Tribunal shall have power to grant equitable reliefs including but not limited to injunctions, penalties, damages, specific performance.</p> <p>(6) The Tribunal shall hear and determine matters referred to it expeditiously.</p> |
| <p>Power of review and appeals from Tribunal</p> | <p><b>42.</b> (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.</p>  |

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|  | <p>(2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law.</p> <p>(3) Any person aggrieved by a decision of the Tribunal may, within sixty days from the date of the decision or order, appeal to the High Court.</p> <p>(4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.</p>  |
| <p>Procedure of the Tribunal</p>                         | <p>43. (1) The Tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.</p> <p>(2) Unless a unanimous decision is reached, a decision on any matter before the Tribunal shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.</p> <p>(3) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice and rules of evidence of a similar nature.</p> <p>(4) Except as prescribed in this Act, the Tribunal shall regulate its own procedure.</p>  |
| <p>Appeals from decisions of the Office</p>              | <p>44. Where under this Act the provision is made for appeals from the decisions of the Office or any licensing authority, all such appeals shall be made to the Tribunal, in accordance with the provisions of this Act.</p>  |
| <p>Reference to the Tribunal by the Director General</p> | <p>45. (1) When any matter to be determined by the Director General under this Act appears to him to involve a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties refer the matter to the Tribunal for a general direction and shall, thereafter in relation to such matter, act in accordance with the general direction of the Tribunal or any direction substituted thereafter on appeal to the High Court.</p> <p>(2) Where any matter has been referred to the Tribunal in terms of subsection (1), the Director General and the parties thereto shall be entitled to be heard by the Tribunal before any decision is made in such matter and may appear or be represented by an advocate.</p> |

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| Protection from personal liability     | <p>46. A matter or thing or act done by a member of the Tribunal or any officer, employee or agent of the Tribunal shall not, if the matter or thing is done bona fide for executing the functions, powers or duties of the Tribunal, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.</p>  |
| <b>PART V - PATENTS: PATENTABILITY</b> |  |
| Meaning of "invention"                 | <p>47. (1) For the purposes of this Part, "invention" means a solution to a specific problem in the field of technology.</p> <p>(2) Subject to subsection (3), an invention may be, or may relate to, a product or a process.</p> <p>(3) The following shall not be regarded as inventions and shall be excluded from patent protection—</p> <p>(a) discoveries, scientific theories and mathematical methods;</p> <p>(b) schemes, rules or methods for doing business, performing purely mental acts or playing games;</p> <p>(c) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised in relation thereto, except products for use in any such methods;</p> <p>(d) mere presentation of information; and</p> <p>(e) public health related methods of use or uses of any molecule or other substance whatsoever used for the prevention or treatment of any disease which the Cabinet Secretary responsible for matters relating to Health may designate as a serious health hazard or as a life threatening disease.</p> |
| Patentable inventions                  | <p>48. An invention is patentable if it is new, involves an inventive step and, is industrially applicable.</p>  |
| Novelty                                | <p>49. (1) An invention is new if it is not anticipated by prior art.</p> <p>(2) For the purposes of this Act, everything made available to the public anywhere in the world by means of written disclosure including drawings and other illustrations or, by oral disclosure, use, exhibition or other non-written means shall be considered prior art.</p>   |

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|   | <p>(3) Despite the generality of subsection (2), provided such disclosure occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof.</p> <p>(4) For the purpose of the evaluation of novelty, an application for the grant of a patent or a utility model certificate in Kenya shall be considered to have been comprised in the prior art as from the filing date of the application, or if priority is claimed, as from the date of its validly claimed priority, to the extent to which its content is available, or is later made available, to the public in accordance with this Act or in accordance with the Patent Co-operation Treaty.</p> <p>(5) For the purposes of subsection (2), a disclosure of the invention shall not be taken into consideration if it occurred not earlier than twelve months before the filing date or, where applicable, the priority date of the application and if it was by reason or in consequence of—</p> <p>(a) acts committed by the applicant or his predecessor in title; or</p> <p>(b) an evident abuse committed by a third party in relation to the applicant or his predecessor in title.</p> |
| Inventive step  | <p><b>50.</b> An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention, it would not have been obvious to a person skilled in the art to which the invention pertains on the date of the filing of the application or, if priority is claimed, on the priority date validly claimed in respect thereof.</p>  |
| Industrial application  | <p><b>51.</b> An invention shall be considered industrially applicable if, according to its nature, it can be made or used in any kind of industry, including agriculture, medicine, fishery and other services.</p>  |
| Non-patentable inventions                                       | <p><b>52.</b> The following shall not be patentable—</p> <p>(a) plant varieties as provided for in the Seeds and Plant Varieties Act (Cap. 326), but not parts thereof or products of biotechnological processes; and (policy direction on whether this Act should be brought under this regime)</p> <p>(b) inventions contrary to public order, morality, public health and safety, principles of humanity and environmental conservation.</p>   |
| Information prejudicial to defence of Kenya or safety of public | <p><b>53.</b> (1) Where an application for a patent is filed with the Office under this Act or under any international convention to which Kenya is a party, and it appears to the Director General that the application</p>  |

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contains information of a description notified to him by the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary as being information the publication of which might be prejudicial to the defence of Kenya, the Director General may give directions prohibiting or restricting the publication of that information or its communication to any specified person or persons.

(2) If it appears to the Director General that any application so filed contains information the publication of which might be prejudicial to the safety of the public, he or she may give directions prohibiting or restricting the publication of that information or its communication to any specified person or persons until the end of a period not exceeding three months from the end of the period prescribed for the purposes of section 68.

(3) Where directions under this section are in force with respect to any application—

(a) if the application is made under this Act, it may be processed to the stage where it is in order for the grant of a patent, but shall not be published and any information relating thereto shall not be communicated and no patent shall be granted in pursuance of the application:

(b) if it is an application for an ARIPO patent, it shall not be sent to the ARIPO Office; and

(c) if it is an international application for a patent, a copy thereof it shall not be sent to the International Bureau or to any international searching authority appointed under the Patent Co-operation Treaty. (unclear)

(4) Where the Director General gives instructions under this section with respect to any application, he shall give notice of the application and of the directions to the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary and the following provisions shall then have effect—

(a) the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary shall, on receipt of the notice, consider whether the publication of the application or the publication or communication of the information in question would be prejudicial to the defence of Kenya or the safety of the public;

(b) if the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary determines that the publication of the application or the

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| <p>publication or communication of the information would be prejudicial to the safety of the public, he shall notify the Director General, who shall continue his directions under subsection (2) until they are revoked under paragraph (e);</p> <p>(c) if the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary determines that the publication of the application, or the publication or communication of the information would be prejudicial to the Defence of Kenya or the safety of the public, he or she shall unless a notice under paragraph (d) has previously been given by the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary to the Director General reconsider that question during the period of nine months from the date of filing the application and at least once in every subsequent period of twelve months;</p> <p>(d) if on the consideration of an application at any time it appears to the Cabinet Secretary responsible for defence or the concerned Cabinet Secretary that the publication of the application, or the publication or communication of the information, contained in it would not, or would no longer, be prejudicial to the defence of Kenya or the safety of the public, he shall give notice to the Director General to that effect; and</p> <p>(e) on receipt of a notice under paragraph (d), the Director General shall revoke the directions and may, subject to such conditions as he may deem fit, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time had previously expired.</p> <p>(5) The Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary may, in determining a question under paragraph (c) of subsection (4)—</p> <p>(a) at any time after, or, with the consent of the applicant, before the expiry of the period prescribed for the purposes of section 68, consider the application and any documents submitted in relation thereto; or</p> <p>(b) where the application contains information relating to the production or use of atomic energy or research into matters connected with such production or use, authorize the National Commission for Science Technology and Innovation or its successor, to study the application and any documents sent to the Director General in connection therewith and report to him as soon as reasonably practicable on the utility or otherwise of the patent applied for.</p> <p>(6) Where directions have been given under this section in respect of an application for a patent for an invention and the period prescribed in</p> |
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|   | <p>relation thereto expires, and while such directions are still in force, an application is brought for the grant of a patent, then—</p> <p>(a) if while the directions are in force, the invention is used by or with the written authorization of or on the order of a Government Ministry, Department or agency, the provisions of section 105 shall apply as if—</p> <p>(i) the use was made pursuant to the provisions of that section;</p> <p>(ii) the application had been published at the end of that period; and</p> <p>(iii) a patent had been granted for the invention at the time the application is brought for the grant of a patent (taking the terms of the patent to be those of the application as at the time it was so brought) (check brackets; and</p> <p>(b) if it appears to the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary that the applicant for the patent has suffered hardship by reason of the continuation in force of the directions, he or she may, with the consent of the Cabinet Secretary responsible for Finance, make such payment by way of compensation to the applicant, as appears to be reasonable having regard to the inventive merit and utility of the invention, the purpose for which it is designed and any other relevant circumstances.</p> <p>(7) If the applicant is dissatisfied with the amount of compensation paid to him under subsection (6), he or she may appeal to the Tribunal.</p> <p>(8) Where a patent is granted in pursuance of an application in respect of which directions have been given under this section, no renewal fees shall be payable in respect of any period during which those directions remain in force.</p> <p>(9) A person who fails to comply with any direction under this section shall be liable, on conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding twenty thousand shillings, or to both. (review penalty)</p> |
| <p>Restrictions on applications abroad by Kenya residents</p> | <p><b>54.</b> Subject to the provisions of this section, no person resident in Kenya shall, without written authority granted by the Director General, file or cause to be filed outside Kenya, an application for a patent for invention, unless—(note restriction for utility model)</p>   |

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|                                   | <p>(a) an application for a patent for the same invention has been filed with the Office not less than six weeks before the filing of the application outside Kenya; and</p> <p>(b) either no directions have been given under section 53 (confirm new section) in relation to the application in Kenya or any such directions have been revoked.</p> <p>(2) Subsection (1) shall not apply to an application for a patent for an invention in respect of which an application for a patent has first been filed in a country outside Kenya by a person resident outside Kenya.</p> <p>(3) A person who files or causes to be filed an application for the grant of a patent in contravention of this section shall be liable on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both. (review penalty)</p>   |
| Patents relating to living matter | <p>55. (1) If an invention concerns a micro-biological process or the product thereof and involves the use of a micro-organism which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed if a culture of the micro-organism has been deposited with a depository institution as prescribed by the regulations.</p> <p>(2) The information referred to in subsection (1) may be submitted within a period of sixteen months after the date of filing of the application or, if priority is claimed, after the priority date.</p> <p>(3) The deposited culture shall be made available upon request of any person having the right to inspect the files.</p> <p>(4) If a deposited micro-organism ceases to be available from the institution with which it was deposited because—</p> <p>(a) the micro-organism is no longer viable; or</p> <p>(b) for any other reason the depository institution is unable to supply samples, and if the micro-organism has not been transferred to another depository institution from which it continues to be available, an interruption in availability shall not be deemed to have occurred if a new deposit of the micro-organism originally deposited is made within a period of three months from the date on which the depositor was notified of the interruption by the depository institution and a copy of the receipt of the deposit issued by the institution is forwarded to the Office within four</p> |

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|   | <p>months from the date of the new deposit stating the number of the application or of the patent. (break it down too wordy)</p> <p>(5) A new deposit shall be accompanied by a statement signed by the depositor indicating that the newly deposited micro-organism is the same as originally deposited.</p>   |
| <p><b>PART VI – RIGHT TO INVENTIONS AND NAMING OF INVENTOR</b></p>      |   |
| <p>Right to a patent</p>  | <p>56. (1) Subject to this section, the right to a patent shall belong to the inventor.</p> <p>(2) If two or more persons have jointly made an invention the right to the patent shall belong to them jointly.</p> <p>(3) If and to the extent to which two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date, or if priority is claimed, the earliest validly claimed priority date that leads to the grant of a patent shall have the right to the patent.</p> <p>(4) The right to a patent may be assigned or may be transferred by succession.</p> <p>(5) Sections 90 to 104 shall apply with necessary modifications to contracts assigning the right to a patent.</p> |
| <p>Unauthorized application based on an invention of another person</p> | <p>57. Where the applicant has obtained the essential elements of the invention which is the subject of his or her application from the invention of another person, he or she shall, unless authorized by the person who has the right to the patent or who owns the patent, be obliged to assign to such person the application or, where the patent has already been granted, the patent.</p>  |
| <p>Inventions made in execution of commission or by employee</p>        | <p>58. (1) Notwithstanding section 56 and in the absence of contractual provisions to the contrary, the right to a patent for an invention made in execution of a commission or of an employment contract shall belong to the person having commissioned the work or to the employer.</p> <p>(2) Despite the generality of subsection (1), where the invention is of exceptional importance the employee shall have a right to equitable remuneration taking into consideration his or her salary and the benefit derived by the employer from the said invention.</p>  |

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|   | <p>(3) The provisions of subsection (1) shall apply where an employment contract does not require the employee to exercise any inventive activity but when the employee has made the invention by using data or means available to him during his employment.</p> <p>(4) In the circumstances provided for in subsection (3), the employee shall have a right to equitable remuneration taking into account his salary, the importance of the invention and any benefit derived from the invention by the employer.</p> <p>(5) In the absence of an agreement between the parties, the remuneration shall be fixed by the Tribunal.</p> <p>(6) Inventions made without any relation to an employment or service contract and without the use of the employer's resources, data, means, materials, installations or equipment shall belong solely to the employee or the person commissioned.</p> <p>(7) This section shall, where relevant, apply directly or indirectly to public and private institutions.</p> |
| <p>Naming of inventor</p>   | <p>59. The inventor shall be named as such in the patent application and in the patent unless in a special written declaration addressed to the Director General he or she indicates that he or she wishes not to be named and any promise or undertaking by the inventor made to any person to the effect that he or she will make such declaration shall be without legal effect.</p>  |
| <p align="center"><b>PART VII – APPLICATION, GRANT AND REFUSAL OF GRANT OF PATENT</b></p> |  |
| <p>Application for a patent</p>   | <p>60. (1) An application for a patent shall be filed with the Director General and shall contain—</p> <ul style="list-style-type: none"> <li>(a) a request;</li> <li>(b) a description;</li> <li>(c) one or more claims;</li> <li>(d) one or more drawings (where necessary); and</li> <li>(e) an abstract.</li> </ul> <p>(2) Where the applicant's ordinary residence or principal place of business is outside Kenya, he or she shall be represented by an agent who shall be a citizen of Kenya admitted to practice before the Office.</p>  |

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|  | <p>(3) The request shall state the name of, and prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention; and where the applicant is not the inventor the request shall be accompanied by a statement justifying the applicant's right to the patent.</p> <p>(4) The appointment of an agent shall be indicated by furnishing a power of attorney signed by the applicant.</p> <p>(5) The description shall disclose the invention and the best mode for carrying out the invention, in full, clear, concise and exact terms as to enable a person skilled in the art to make, use or evaluate the invention and that description shall include any drawing and relevant deposits as in the case of microorganisms and self-replicable material which are essential for the understanding of the invention.</p> <p>(6) The claim or claims shall define the matter for which protection is sought and shall be clear and concise and fully supported by the description.</p> <p>(7) The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection sought.</p> <p>(8) The details of the requirements with which the application must comply shall be prescribed by regulations made under this Act.</p> |
| <p>Unity of invention</p>                    | <p><b>61.</b> (1)The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.</p> <p>(2) The Cabinet Secretary may make regulations that will contain rules of compliance with the requirements of unity of invention under subsection (1).</p> <p>(3) The fact that a patent has been granted on an application that did not comply with the requirements of unity of invention shall not be a ground for the invalidation or revocation of the patent.</p>   |
| <p>Amendment and division of application</p> | <p><b>62.</b> (1)The applicant may amend an application.</p> <p>(2) Despite the generality in subsection (1) the amendment shall not go beyond the disclosure in the initial application.</p>   |

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|  | <p>(3) The applicant may divide the initial application into two or more applications hereinafter referred to as “divisional applications”.</p> <p>(4) Despite the generality of subsection (3) each divisional application shall not go beyond the disclosure in the initial application.</p> <p>(5) The Cabinet Secretary may make regulations for the carrying out of the provisions of this section.</p>   |
| Right of priority  | <p>63. (1)The application may contain a declaration claiming the priority as provided for in the Paris Convention of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or of any state party to the Paris Convention. (confirm if WTO can confirm)</p> <p>(2) The Director General may, at any time after the expiration of three months from the filing of an application containing the declaration, require that the applicant furnish 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.</p>  |
| Information concerning corresponding foreign applications and grants | <p>64. (1)At the request of the Director General, the concerning applicant shall furnish him or her with the date and corresponding number of any application for a patent or other foreign applications title of protection filed by the applicant with a national industrial property office of another country or with a regional industrial property office (in this Act referred to as a “foreign application”), relating to the same invention as that claimed in the application filed with the Director General.</p> <p>(2) The applicant shall, at the request of the Director General, furnish him or her with the following documents relating to one of the foreign applications—</p> <p>(a) copies of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;</p> <p>(b) a copy of the patent or other title of protection granted on the foreign application; and</p> <p>(c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.</p> |
|  | <p>(3) The applicant shall, at the request of the Director General, furnish him with a copy of any decision revoking or invalidating the patent or</p>   |

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|  | <p>any other title of protection granted by the applicant on the basis of the foreign application.</p> <p>(4) The applicant shall, at the request of the Director General, furnish him with copies of any communication received by the applicant concerning the results of any search or examination carried out in respect of any foreign application other than the one referred to in subsection (2).</p> <p>(5) The documents furnished under this section shall merely serve the purpose of facilitating the evaluation of novelty claimed in the application filed with the Director General or in the patent granted on the basis of that application.</p> <p>(6) The applicant shall have the right to submit comments on the documents furnished under this section.</p> <p>(7) The details of the requirements under this section shall be prescribed by the regulations.</p> |
| Payment of fees  | <p><b>65.</b> (1) The application shall be subject to the payment of the prescribed fees.</p> <p>(2) The Council may waive whole or part of the fees in the manner and in the circumstances as may be prescribed.</p>  |
| Withdrawal of application                                  | <p><b>66.</b> The applicant may withdraw the application at any time before the grant of a patent or the notification of rejection of the application or of refusal to grant a patent.</p>   |
| Filing date and examination of application as to form, etc | <p><b>67.</b> (1) The Director General shall accord as the filing date the date of receipt of the application, provided at the time of receipt, the documents filed contain—</p> <p>(a) the name and address of the applicant;</p> <p>(b) a part which on the face of it appears to be a description; and</p> <p>(c) a part which on the face of it appears to be a claim or claims.</p> <p>(2) If the Director General finds that the application did not, at the time of receipt, fulfil the prescribed requirements, he or she shall invite the applicant to file the required correction.</p> <p>(3) If, the applicant complies with the invitation referred to in subsection (2), the Director General shall accord as filing date the date of receipt of the required correction; otherwise he or she shall treat the application as if it had not been filed.</p>                 |

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|                            | <p>(4) Where the application refers to drawings which are not included in the application, the Director General shall invite the applicant to furnish the missing drawings, and, if the applicant complies with the invitation, the Director General shall accord as the filing date the date of receipt of the missing drawings; otherwise he shall accord as the filing date the date of receipt of the application and shall treat any reference to the drawings as non-existent.</p> <p>(5) Where no invitation under subsections (2) and (4) was sent to the applicant and the applicant nevertheless files a correction, pertaining to any of the requirements under subsection (1), to his or her application, the Director General shall accord as filing date the date of receipt of the correction, provided that the correction was received within thirty days from the date of application.</p> <p>(6) The Director General shall cause an examination to be carried out as to whether there are any of the following defects with respect to the application—</p> <p>(a) the request does not comply with the requirements of section 60(3) and the rules pertaining thereto;</p> <p>(b) the description, the claims and, where applicable, the drawings do not comply with the prescribed physical requirements;</p> <p>(c) the application does not contain an abstract; or</p> <p>(d) the fees referred to in section 65 have not been paid as provided for in the regulations or the payment of such fees has been waived under that section.</p> <p>(7) If the Director General finds any of the defects referred to under subsection (6), he or she shall invite the applicant to remedy such defects provided that any corrections made to the application shall not be such that they would require a change of the filing date and if the applicant does not comply with the invitation, the application shall be rejected by the Director General. (edit clause for reform)</p> <p>(9) The details of the requirements and the procedure under this section shall be prescribed by the regulations.</p> |
| Publication of application | <p><b>68.</b> (1)The Director General shall publish the application as soon as possible after the expiration of eighteen months from the filing date or, where priority is claimed, the date of priority.</p>   |

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|                           | <p>(2) Despite the generality of subsection (1) the Director General may at the request of the applicant, publish the application before the expiry of eighteen months.</p> <p>(3) For the purposes of subsection (1), in the case of applications claiming priority, the term of eighteen months shall be construed from the original filing date and in the case of applications with two or more priority claims, the period shall be construed from the earliest priority dates.</p> <p>(4) The publication of the patent application shall be effected by publishing the particulars set out in the regulations, in the Kenya Gazette or in an Journal.</p> <p>(5) The Cabinet Secretary may make regulations for the carrying out of the provisions of this section.</p>   |
| International-type search | <p>69. (1)The Director General may instruct that any application found in order as to form be the subject of an international-type search.</p> <p>(2) When a direction under subsection (1) is made, the Director General shall invite the applicant to pay the prescribed fee; and if the applicant does not comply with the invitation, the application shall be rejected.</p> <p>(3) Upon receipt of the report on the international-type search, the Director General may request the applicant to furnish him or her with a copy of any document cited in the report and if without lawful reason, any copy is not furnished within the prescribed time limit, the application shall be rejected.</p> <p>(4) If it is apparent from the report on the international-type search or from the declaration on the non-establishment of the report, that the subject of the application or of any claim or claims is not an invention, the Director General shall reject the defective application or consider the defective claim or claims to be withdrawn, as the case may be, unless the applicant satisfies him or her that the subject of the application or claims constitutes an invention.</p> <p>(5) If it is apparent from the report on the international-type search or from the declaration on the non-establishment of the report, that—</p> <p>(a) the description, the claims or, where applicable, the drawings do not comply, in whole or in part, with the prescribed requirements to such an extent that no meaningful search could be carried out; or</p> |

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|                                    | <p>(b) the application does not comply, in whole or in part, with the requirements of unity of invention prescribed by section 61 and the rules pertaining thereto; or</p> <p>(c) the invention claimed in the application does not fulfil the requirements of novelty;</p> <p>the Director General shall reject the application unless the applicant either satisfies him or her that the requirements have been fulfilled or amends or divides the application so as to comply with the requirements.</p> <p>(6) The details of the requirements and the procedures under this section shall be prescribed by the regulations.</p>   |
| <p>Examination as to substance</p> | <p>70. (1) Where an application for a patent satisfies the requirements specified in subsection (7) of section 67, the Director General shall so notify the applicant who shall, within five years from the filing date of the application, submit a request in the prescribed form for the examination of the application pursuant to the provisions of subsection (3).</p> <p>(2) Despite the generality of subsection (1) where no request is made within the prescribed period, the application shall be deemed to be abandoned.</p> <p>(3) Where a request is filed under subsection (1), the Director General shall cause an examination of the application to be made as to whether—</p> <p>(a) the invention in respect of which the application is made is patentable within the meaning of this Act;</p> <p>(b) the application complies with the requirements of subsections (5) and (6) of section 60; and</p> <p>(c) the application complies with the requirements of unity of invention prescribed in section 61.</p> <p>(4) Where the Director General is of the opinion that any of the conditions referred to in subsection (3) are not fulfilled, he or she shall notify the applicant accordingly and invite him or her to make his observations, and where applicable, to amend his application.</p> <p>(5) Where, despite any observation or amendment submitted by the applicant, the Director General finds that any of the conditions referred to in subsection (3) are not fulfilled, he or she shall refuse the grant of a patent and notify the applicant accordingly.</p> |

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|   | (6) The details of the requirements and the procedure to be followed under this section shall be prescribed by the regulations.   |
| Grant, registration and publication of a patent | <p>71. (1) A patent shall be granted and issued to the applicant in the prescribed form.</p> <p>(2) Every patent granted under subsection (1) shall be registered, and shall, as soon as reasonably practicable, be published by the Director General in the manner prescribed in the regulations.</p>  |
| Register of patents                             | <p>72. (1) The Director General shall maintain a register in which all patents granted under this Act shall be recorded and numbered in the order of grant, and, in respect of each patent, where appropriate, its lapse for non-payment of annual fees and all transactions to be recorded by virtue of this Act.</p> <p>(2) Any person may, during working hours, inspect the register maintained under subsection (1) and may, subject to the payment of the prescribed fee and any regulations made under this section, obtain extracts therefrom.</p> <p>(3) The details concerning the register shall be prescribed by the regulations.</p> |
| Appeals   | 73. The applicant may appeal to the Tribunal against any decision by which the Director General accords a filing date, rejects the application, treats the application as if it had not been filed, considers any of the claims to be withdrawn or refuses to grant a patent.   |
| <b>PART VIII – INTERNATIONAL APPLICATIONS</b>   |   |
| Interpretation of Part VIII                     | <p>74. For the purposes of this Part—</p> <p>“international application” means an international application filed in accordance with the Patent Co-operation Treaty and the Regulations established thereunder;</p> <p>“receiving Office”, “designated Office”, “elected Office”, “international publication”, “international search report”, “international preliminary examination report”, and the words “to designate” and “to elect” have the meanings respectively assigned to them in the Patent Co-operation Treaty.</p>  |
| Further functions of the Office                 | 75. (1) The Office shall act as a receiving Office where an international application is filed with it by a national or a resident of Kenya.  |

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|  | <p>(2) The Office shall act as a designated Office or an elected Office in the case of any international application in which Kenya is designated or elected for a national patent.</p> <p>(3) The functions of the Office under this Part shall be performed in accordance with the provisions of the Patent Co-operation Treaty, the regulations made thereunder and the administrative instructions issued under the said regulations and with the provisions of this Act and the regulations pertaining thereto.</p> <p>(4) Despite the generality in subsection (3), in case of conflict, the provisions of the Patent Co-operation Treaty, the regulations and the administrative instructions issued thereunder shall apply.</p>   |
| <p>Unsearched or unexamined international applications, etc.</p> | <p>76. (1) Where an international search report is not established or relates to only one or some of the claims of the international application, the Director General shall reject the international application or consider withdrawn claim or claims not covered by the report, as the case may be, except to the extent that the applicant satisfies him or her that the non-establishment of the report in whole or in part was not justified.</p> <p>(2) Where the international search report relates to only one or some of the claims due to the applicant's refusal to pay additional fees, those parts of the international application which consequently have not been searched shall be considered withdrawn unless the applicant divides out from the application as provided for in section 62(2) the parts concerned, or satisfies the Director General that the invitation to pay the additional fees was not justified.</p> <p>(3) Where an international preliminary examination report with respect to an international application has been communicated to the Director General the following paragraphs shall apply—</p> <p>(a) where, in the case of lack of compliance with the requirements of unity of invention, the international preliminary examination report indicates that the international preliminary examination was carried out on restricted claims, or was carried out on the main invention only, those parts of the international application indicated as not having been the subject of international preliminary examination shall be considered withdrawn unless the applicant divides out from the application as provided for in section 62(2) the parts concerned, or satisfies the Director General that the invitation of the international preliminary examining authority was not justified; and</p> |

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|   | <p>(b) where the international preliminary examination report states, with respect to the entire international application or one or some of its claims only, the opinion that a defect under Article 34(4) (a) of the Patent Co-operation Treaty exists under the international application or the claim or claims, as the case may be, shall be considered withdrawn unless the applicant satisfies the Director General that the defects do not exist.</p> <p>(4) The Director General may refuse to grant a patent upon application if it is apparent from an international search report or an international preliminary examination report that an invention claimed in an international application does not fulfil the requirements of novelty, unless the applicant either satisfies him that the requirements have been fulfilled or amends the claims in such a way that fulfils the requirements.</p> |
| Provisional protection of published international applications                                | <p>77. (1) Relief against infringement may be sought in respect of acts committed before the grant of the patent but after the date of international publication under the Patent Co-operation Treaty, where the said international publication was effected in English.</p> <p>(2) If the international publication was effected in a language other than English, subsection (1) shall apply where the applicant had transmitted an English translation of the international publication to the infringer and only in respect of acts committed by the latter after he had received such translation.</p>   |
| Publication of international application  | <p>78. Publication under Article 21 of the Patent Co-operation Treaty, an international application in which Kenya is designated for a national patent shall be treated as publication in terms of the provisions of section 68.</p>  |
| <p><b>PART IX – RIGHTS AND OBLIGATIONS OF THE APPLICANT OR THE OWNER OF THE INVENTION</b></p> |   |
| Rights and obligations  | <p>79. (1) The applicant or the owner of the invention shall have the following rights—</p> <p>(a) to be granted the patent, where the relevant requirements under this Act are fulfilled;</p> <p>(b) after the grant of the patent and within the limits defined in section 84 to preclude any person from exploiting the patented invention in the manner referred to in section 80; and</p>  |

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|                           | <p>(c) to conclude licence contracts as provided for in Part *** of this Act, and subject to the obligations referred to in subsection (2).</p> <p>(2) The applicant or the owner of the invention shall have the following obligations—</p> <p>(a) to disclose the invention in accordance with this Act.</p> <p>(b) to give information concerning corresponding foreign applications and grants;</p> <p>(c) to pay fees to the Office, as prescribed in this Act and the regulations, subject to the sanctions provided for therein; and</p> <p>(d) in connection with licence contracts and contracts assigning patents or patent applications, to refrain from making undesirable provisions referred to in section 94.</p>  |
| Rights of owner of patent | <p><b>80.</b> (1) The owner of the patent shall have the right to preclude any person from exploiting the protected invention by any of the following acts—</p> <p>(a) when the patent has been granted in respect of a product—</p> <p>(i) making, importing, offering for sale, selling and using the product; or</p> <p>(ii) stocking such product for the purposes of offering it for sale, selling or using the product.</p> <p>(b) when the patent has been granted in respect of a process—</p> <p>(i) using the process; or</p> <p>(ii) doing any of the acts referred to in paragraph (a), in respect of a product obtained directly by means of the process. (relook and reword)</p> <p>(2) The rights conferred on the owner of the patent under this section shall not apply to acts by third parties necessary to obtain approval or registration of a product from a relevant authority, for the purpose of commercializing the product after expiry of the patent.</p> |
| Enforcement of rights     | <p><b>81.</b> (1) The owner of a patent shall have the right—</p> <p>(a) to obtain an injunction to restrain the performance or the likely performance, by any person without his or her authorization, of any of the acts referred to in section 80; and</p>   |

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|                       | <p>(b) to claim damages from any person who, having knowledge of the patent, performed any of the acts referred to in section 80, without the owner's authorization;</p> <p>(c) to claim compensation from any person who, without his or her authorization, performed any of the inventions, claimed in the published application, as if a patent had been granted for that invention</p> <p>(2) Despite the generality of subsection (1), the person, at the time of the performance of the act, had—(reword to tie fulfilment under 1)</p> <p>(a) actual knowledge that the invention that he was using was the subject matter of a published application; or</p> <p>(b) received written notice that the invention that he was using was the subject matter of a published application, such application being identified in the said notice by its serial number.</p>   |
| Right of a prior user | <p><b>82.</b> (1) Notwithstanding the provisions of section 105, prior use of a patent shall have no effect against any person (hereinafter referred to as "the prior user") who, in good faith, for the purposes of his enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within the territory where the patent produces its effect, was using the invention or was making effective and serious preparations for such use; any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations. (wordy; relook)</p> <p>(2) The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.</p> |
| Scope of protection   | <p><b>83.</b> The scope of the protection shall be determined by the terms of the claims but the description and the drawings included in the patent may be used to interpret the claims.</p>  |
| Limitation of rights  | <p><b>84.</b> (1) The rights under the patent shall extend only to acts done for industrial or commercial purposes and in particular not to acts done for scientific research.</p> <p>(2) The rights under the patent shall not extend to acts in respect of articles which have been put on the market in Kenya or in any other country or imported into Kenya by the owner of the patent or with his express consent.</p>  |

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|  | <p>(3) The rights under the patent shall not extend to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Kenya.</p> <p>(4) The rights under the patent shall be limited by the provisions of the terms of the patent.</p> <p>(5) The rights under the patent shall be limited by the provisions on compulsory licences for reasons of public interest or based on interdependence of patents and by the provisions on State exploitation of patented inventions.</p> <p>(6) The rights of the patent shall not extend to variants or mutants of living forms or replicable living matter that is distinctively different from the original for which patents were obtained where such mutants or variants are deserving of separate patents.</p>   |
| <p>Regional applications, grants and registrations under the Harare Protocol</p> | <p><b>85. (1)</b> For the purposes of this section—</p> <p>"regional application" means an application for a patent, utility model or industrial design filed in accordance with the Harare Protocol and the regulations made thereunder;</p> <p>"receiving Office" has the meaning assigned to it by the Harare Protocol; "designated Office" has the meaning assigned to it by the Harare Protocol; "designate" has the meaning assigned to it by the Harare Protocol;</p> <p>(2) The Office shall act as a receiving office where Kenya is designated in a regional application.</p> <p>(3) The Office shall act as a designated Office where Kenya is designated in a regional application.</p> <p>(4) The functions of the Office under this section shall be performed in accordance with the provisions of this Act and the Harare Protocol and in case of conflict, the provisions of this Act shall apply.</p> <p>(5) A patent, utility model or industrial design granted or registered under the Harare Protocol and in which Kenya is designated shall be treated as if it were granted or registered under this Act.</p> <p>(6) For purposes of subsection (5)—</p> <p>(a) the owner of the patent, utility model or industrial design shall have the same rights and remedies and be subject to the same conditions as the</p> |

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|   | <p>owner of a patent, utility model or industrial design granted or registered under this Act; and</p> <p>(b) the provisions of this Act relating to surrender, revocation, infringement and rectification of registers shall apply, with necessary modifications, to the patent, utility model or industrial design.</p> <p>(7) The requirements and procedures under this section shall be prescribed in regulations.</p>  |
| <b>PART X- TERM OF PATENT AND ANNUAL FEES</b> |  |
| Term of patent                                | <p><b>86.</b> A patent shall expire at the end of twenty years from the filing date of the application.</p>  |
| Annual fees                                   | <p><b>87.</b> (1) In order to maintain the application or the patent, an annual fee shall be paid in advance to the Office which shall fall due on the eve of each anniversary of the date of filing of the application or the patent, and shall be paid in the manner prescribed.</p> <p>(2) A grace period of six months shall be granted for the payment of the annual fee upon payment of such surcharge as may be prescribed from time to time.</p> <p>(3) If an annual fee is not paid in accordance with this section, the application shall be deemed to have been withdrawn or the patent shall lapse and respective invention shall cease to be protected.</p> <p>(4) The Director General shall forthwith publish the lapse of any patent under subsection (3).</p> <p>(5) Within six months from the expiration of the grace period referred to in subsection (2), any interested person may, upon payment of the prescribed fee, request the Office to restore an application that is deemed to have been withdrawn, or a patent that has lapsed, by virtue of subsection (3).</p> <p>(6) Upon a request under subsection (5), the Director General shall if satisfied that the failure to pay the annual fee was not intended, subject to the payment of the annual fee, make an order restoring the application or the patent, as the case may be.</p> <p>(7) Where a patent is restored, no proceedings shall be brought in respect of the patent—</p> |

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|  | <p>(a) with respect to any acts performed after the lapse of the patent and before the date of the order for restoration; or</p> <p>(b) with respect to any acts performed after the date of the order of restoration in relation to articles imported into or manufactured in Kenya, after the lapse of the patent and before the date of the order for restoration.</p>  |
| <b>PART XI – CHANGE IN THE OWNERSHIP AND JOINT OWNERSHIP OF APPLICATIONS AND PATENTS</b> |  |
| Change in ownership of applications, etc   | <p><b>88.</b> (1) All contracts assigning applications or patents shall be in writing and shall be signed by the parties thereto.</p> <p>(2) Any change in the ownership of an application or a patent shall be recorded in the patent register in accordance with, and on payment of a fee fixed by the regulations and until the change has been recorded, any document evidencing the change in ownership shall not be admitted in any proceedings as evidence of the title of any person to an application or a patent, unless the Tribunal otherwise directs.</p> |
| Joint ownership of applications and patents  | <p><b>89.</b> In the absence of any agreement to the contrary between the parties, joint owners of an application or a patent may, separately, transfer their rights in the application or patent, exploit the protected patent and preclude any person from exploiting the patent but may only jointly grant permission to any third person to do any of the acts referred to in section 80.</p>  |
| <b>PART XII – CONTRACTUAL LICENSES</b>   |  |
| Rights of licensee   | <p><b>90.</b> (1) In the absence of any provision to the contrary, in the licence contract, the licensee shall be entitled to do any of the acts referred to in section 80 in respect of the invention, without limitation as to time, in the whole of Kenya and in any field of use of the invention, utility model or industrial design.</p> <p>(2) In the absence of any provision to the contrary in the licence contract, the licensee may not grant to any third person to do any of the acts referred to in section 80.</p>                                     |
| Rights of licensor to grant further licences and use of the invention                    | <p><b>91.</b> (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant permission to any third person to do, or may himself do, any of the acts which constitute exercising the rights of ownership.</p> <p>(2) If the licence contract provides that such contract or the permission granted by it is exclusive, the licensor may neither grant permission to any</p>  |

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|  | third person to do any of the acts referred to in section 80 and covered by the licence contract, nor himself do any of those acts, and the licensee shall be considered an exclusive licensee for the purposes of this Act.  |
| Form of licence contracts                      | <b>92.</b> All licence contracts shall be in writing and shall be signed by the parties thereto.  |
| Petition for registration of licence contracts | <p><b>93.</b> (1) All licence contracts, including modifications thereof, shall be submitted to the Office for registration in the patent register.</p> <p>(2) A petition for registration under subsection (1) may be made by any party to the contract, and shall be accompanied by such documents and fees as may be prescribed.</p> <p>(3) The Director General shall issue to the applicant a receipt, which shall be proof of the fact of filing the petition and of the date on which it was filed and if no receipt is issued within fourteen days from the date of the petition, the petitioner may rely on other evidence to prove the fact and date.</p> <p>(4) Where—</p> <p>(a) section 92 or subsections (2) to (4) of this section, and the rules relating thereto, have not been complied with; or</p> <p>(b) the licence contract cannot be registered under section 94, the Director General shall refuse to register the licence contract, stating the reasons for such refusal. (tidy the drafting style)</p> <p>(5) Before refusing to register the licence contract, the Director General shall notify the petitioner and allow the parties—</p> <p>(a) to submit the observations, if any;</p> <p>(b) to correct any defect in the petition; or</p> <p>(c) to amend any term, or to correct any defect, in the licence contract that has been declared by the Director General to be a term or defect precluding registration, within forty-five days from the date of the notification.</p> <p>(6) A licence contract shall be void if the registration has been refused by the Director General in accordance with the provisions of this Act.</p> |
| Prohibited terms in licence contracts          | <b>94.</b> The Director General may refuse to register a licence contract if he is of the opinion that any clause in a licence contract imposes   |

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|  | <p>unjustified restrictions on the licensee with the consequence that the contract, taken as a whole, is harmful to the economic interests of Kenya, and that the effect of any such term contained in the contract is—</p> <ul style="list-style-type: none"><li>(a) to permit or require the importation of technology from outside Kenya when substantially similar or equivalent technology may be obtained on the same or more favourable conditions without importation from abroad;</li><li>(b) to require payment of a price, royalty or other consideration which is disproportionate to the value of the technology to which the contract relates;</li><li>(c) to require the licensee to acquire any materials from the licensor or from sources designated or approved by him or her, unless it is otherwise impossible, for all practical purposes, to ensure the quality of the products to be produced;</li><li>(d) to prohibit the licensee from acquiring, or to restrict his or her acquisition of, any materials from any source, unless it is otherwise impossible, for all practical purposes, to ensure the quality of the products to be produced;</li><li>(e) to prohibit the licensee from using, or to restrict his or her use of any materials which are not supplied by the licensor or by sources designated or approved by him or her, unless it is otherwise impossible, for all practical purposes, to ensure the quality of the products to be produced;</li><li>(f) to require the licensee to sell products produced by him or her under the contract exclusively or principally to persons designated by the licensor;</li><li>(g) to require the licensee to make available to the licensor, without appropriate consideration any improvements made by the licensee with respect to the technology to which the contract relates;</li><li>(h) to limit the volume of the products produced by the licensee with the help of the technology to which the contract relates;</li><li>(i) to restrict or prohibit the export of the products produced by the licensee;</li><li>(j) to oblige the licensee to employ persons designated by the transferor not needed for the efficient transfer of the technology to</li></ul> |
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|  | <p>which the contract relates, provided that, for persons so needed, the contract shall provide for training of persons to replace them within a reasonable period;</p> <p>(k) to impose restrictions on research or technological development carried out by the licensee to absorb or adapt the technology in connection with new products, processes or equipment;</p> <p>(l) to prohibit or restrict the use by the licensee of any technology other than the technology to which the contract relates;</p> <p>(m) to extend the coverage of the contract to technology not required for the use of the technology which is the main subject of the contract and to require consideration for such additional technology;</p> <p>(n) to fix prices for the sale or resale of the products produced by the licensee with the help of the technology to which the contract relates;</p> <p>(o) to exempt the licensor from any liability consequent upon any defect inherent in the technology to which the contract relates or restrict such liability;</p> <p>(p) to prohibit or restrict the use by the licensee, after the expiration of the contract, of the technology acquired as a result of the contract, subject, however, to any right of the licensor under the patent;</p> <p>(q) to require that disputes arising from the interpretation or performance of the contract be governed by a law other than the law of Kenya or that such disputes be brought before courts located in a country other than Kenya;</p> <p>(r) to establish the duration of the contract for a period which is unreasonably long in relation to the economic function of the contract, provided that any period which does not exceed the duration of the patent to which the contract relates shall not be regarded as unreasonably long;</p> <p>(s) to restrict the licensee from entering into sales, representation or manufacturing agreements relating to similar or competing technologies, when such restrictions are not needed for protecting the legitimate interests of the licensor, including, in particular, protecting the licensor's industrial or intellectual property rights or ensuring that the licensee exercises his best efforts in respect of any manufacturing, distribution or promotional obligations;</p> |
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|  | <p>(t) to prevent the licensee from adapting the technology to local conditions or introducing innovations in it or change to alternative inputs, or which require the licensee to introduce unnecessary designs or specification changes, if the licensee makes adaptations on his or her own responsibility and without using the licensor's name, trademarks or trade names, and except to the extent that this adaptation unsuitably affects those products, or the process for their manufacture, to be supplied by the licensor, his or her designates, or his or her other licensees, or to be used as a component or spare part in a product to be supplied to his or her customer;</p> <p>(u) to impose acceptance of additional technology, future inventions and improvements, goods or services not wanted by the licensee;</p> <p>(v) to impose restrictions on territories, quantities, prices, customers or markets arising out of patent pool or cross-licensing agreements or other international technology transfer interchange arrangements which unduly limit access to new technological developments or which would result in an abusing domination of an industry or market with adverse effects on the licensee, except for those restrictions appropriate and ancillary to co-operative arrangements such as co-operative research arrangements;</p> <p>(w) to impose restrictions which regulate advertising or publicity by the licensee except where restriction of such publicity may be required to prevent injury to the licensor's goodwill or reputation where the advertising or publicity makes reference to the licensor's name, trade marks, trade names or other identifying items;</p> <p>(x) to impose confidentiality after the expiry of the licence agreement or to impose unreasonably long periods for secrecy following the commissioning of manufacturing facilities using the licensed technology, or to impose measures which limit technological learning and mastery, except those which relate to industrial property rights;</p> <p>(y) to impose requirements for payments even under conditions of force majeure;</p> <p>(z) to impose restrictions which prevent or hinder export by means of territorial or quantitative limitations or prior approval for export or export prices of products or increased rates of payments for exportable products resulting from the technology licensed;</p> |
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|  | <p>(aa) to impose quality control methods or standards not needed by licensee, except to meet the requirement of a guarantee or when the product bears a trademark or trade name of the licensor;</p> <p>(bb) to allow the licensor to participate permanently in the management of the licensee's business as a condition for obtaining the technology;</p> <p>(cc) to restrict the licensee from taking measures that will enhance local technological capability and which are not prejudicial to the licensor's industrial property rights;</p> <p>(dd) to restrict the use of local expertise in management and consultancy or in any other positions;</p> <p>(ee) to require payment of royalty for patents granted outside Kenya;</p> <p>(ff) to apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing the licensee at a competitive disadvantage; or</p> <p>(gg) to make the contract subject to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.</p> |
| <p>Registration of the license contract and issue of certificate</p> | <p>95. (1) Where the Director General finds that the license contract meets the requirements under section 93, he or she shall register the contract and issue a certificate of registration to the petitioner. (get proper wording)</p> <p>(2) If the Director General fails—</p> <p>(a) to notify the petitioner of defects in the petition or of terms or defects precluding registration of the licence contract, within ninety days of the date of the petition; or</p> <p>(b) to notify the petitioner of his decision to refuse to register the licence contract, within ninety days of the date of notification referred to in paragraph (a), the licence contract shall be deemed to have been registered and the Director General shall issue a certificate of registration to the petitioner.</p> <p>(3) The registration shall take effect—</p>   |

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|                                     | <p>(a) if the petition was made within sixty days from the conclusion of the contract, on the date of the conclusion of the contract; and</p> <p>(b) in all other cases, on the date of the petition.</p> <p>(4) When the petition is corrected or the licence contract is amended under section 93(5), the petition shall be deemed to have been received on the date when the correction or amendment was made.</p> <p>(5) The registration and the certificate shall state—</p> <p>(a) the name of the parties to the contract and of the licensee if he is not a party;</p> <p>(b) the date of the petition;</p> <p>(c) the date of the registration; and</p> <p>(d) the registration number,</p> <p>all of which shall be published in the Kenya Gazette or in the Journal.</p> <p>(6) The contents of the contract shall be confidential, unless both parties to the contract agree to permit access thereto by third parties and such access shall only be to the extent of the permission so granted.</p> |
| Remedies                            | <p>96. (1) On review of decisions (Draft provision)</p> <p>(2) An appeal against the decision of the Director General may be made to the Tribunal by the petitioner within sixty days of his or her refusal provided that the grounds of such an appeal shall be limited to the following—</p> <p>(a) that the decision of refusal contains no statement of the reasons for refusal;</p> <p>(b) that none of the reasons specified in the decision is a valid reason under this Act or that such reason was wrongly applied to the petitioner or to the licence contract; or</p> <p>(c) that the procedure applied by the Director General was irregular and prejudicial to the rights of the petitioner.</p>   |
| Compulsory licences for non-working | <p>97. (1) At any time after four years from the filing date of an application for a patent or three years from the grant of a patent, whichever</p>  |

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| <p>patents and similar reasons</p>                               | <p>comes earlier, any person may apply to the Tribunal for a licence to exploit the patented invention on the grounds that a market for the patented invention is not being supplied on reasonable terms in Kenya.</p> <p>(2) Notwithstanding subsection (1), a compulsory licence shall not be granted if the owner of the patent satisfies the Tribunal that circumstances exist which justify the fact that the market for the patented invention is not being supplied, or is not being supplied on reasonable terms, in Kenya.</p>   |
| <p>Compulsory licences based upon interdependence of patents</p> | <p>98. (1) Where a patented invention cannot be worked without infringing the rights derived from an earlier patent, the owner of the latter patent may request the Tribunal at any time for the grant of a compulsory licence with respect to the earlier patent to the extent necessary for the working of his or her invention, if the invention constitutes an important technical advance of considerable economic significance in relation to the invention claimed in the earlier patent.</p> <p>(2) The owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent.</p> <p>(3) The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.</p> <p>(4) In this section, “earlier patent” or “first patent” means a patent granted on an earlier application or benefiting from an earlier validly claimed priority date, and “latter patent” or “second patent” shall be construed accordingly.</p> |
| <p>Preconditions for grant of compulsory licences</p>            | <p>99. (1) A compulsory licence shall not be granted unless for grant of the person requesting the licence—</p> <p>(a) satisfies the Tribunal that he or she has asked the owner of the patent for a contractual licence but has been unable to obtain the licence on reasonable commercial terms and within a reasonable time; and</p> <p>(b) offers satisfactory guarantee to the Tribunal to work the relevant invention sufficiently to remedy the deficiencies or to satisfy the requirements which gave rise to his request. (confirm wording)</p> <p>(2) The requirement under subsection (1)(a) shall be waived in the case of a national emergency or other circumstances of extreme urgency, provided the owner of the patent shall be so notified as soon as is reasonably practicable.</p>  |

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| <p>Grants and terms of compulsory licences</p> | <p><b>100.</b> (1) In considering a request for a compulsory licence, the Tribunal shall decide whether a compulsory licence may be granted and shall then, if it decides in favour of the grant taking into account any terms agreed by the parties, proceed to fix the terms which shall be deemed to constitute a valid contract between the parties and shall be governed by the provisions of contractual licences.</p> <p>(2) In fixing the terms under subsection (1), the Tribunal shall ensure that the compulsory licence—</p> <p>(a) is limited, in scope and duration, to the purpose for which it was authorised, and in the case of semi-conductor technology, shall only be for public non-commercial use or to remedy a practice determined after a judicial or administrative process to be anti-competitive;</p> <p>(b) is limited predominantly for the supply of the domestic market;</p> <p>(c) does not entitle the licensee to grant further licences, without the consent of the owner of the patent;</p> <p>(d) is non-exclusive; and</p> <p>(e) provides for the payment to the owner of the patent of remuneration which is equitable with due regard to all the circumstances of the case, including the economic value of the licence.</p> <p>(3) A representative of the Office and of the Government shall have the right to appear and be heard at the hearing of an application for a compulsory licence, before the Tribunal.</p> |
| <p>Transfer of compulsory licence</p>          | <p><b>101.</b> A compulsory licence may be transferred only with that part of the industrial undertaking or its goodwill, in which the relevant invention is used and no such transfer shall be valid until the consent of the Tribunal has been obtained.</p>  |
| <p>Cancellation of compulsory licences</p>     | <p><b>102.</b> On the application of any interested party, the Tribunal may cancel a compulsory licence if—</p> <p>(a) the licensee fails to comply with the terms of the licence; or</p> <p>(b) the conditions which justified the grant of the licence have ceased to exist and are unlikely to recur; provided that the legitimate interests of the licensee are adequately protected.</p> <p>(2) On the application of the Cabinet Secretary, or on the application of the owner of the patent, the Tribunal may, cancel the compulsory licence if, within two years from the grant of the licence, the licensee has not taken</p>  |

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|   | <p>the necessary steps to work the relevant invention sufficiently so as to remedy the deficiencies or to satisfy the requirements which gave rise to his or her application for the said licence.</p> <p>(3) On the application of the owner of the patent or the licensee, the Tribunal may vary the terms of a compulsory licence if new facts justify the variation and in particular if the patentee has granted contractual licence on more favourable terms.</p>   |
| Registration of grants, cancellation or variation | <p><b>103.</b> Where the Tribunal grants, cancels or varies the terms of a compulsory licence, the Tribunal shall instruct the Director General, to record the grant, cancellation or variation in the register without payment of any fee.</p>   |
| Licences as of right                              | <p><b>104.</b> (1)The owner of a patent may request the Director General to make an entry in the register to the effect that licences under the patent are to be available as of right.</p> <p>(2) The request shall be notified by the Director General to the licensees under the patent.</p> <p>(3) Any licensee may, within the prescribed time limit, object to the entry requested, on the ground that the owner of the patent is, by the relevant licence contract, precluded from granting further licences.</p> <p>(4) Where the Director General receives no objection under subsection (3) or considers all objections made to be unfounded, he shall make the requested entry in the register and shall publish the entry.</p> <p>(5) Where a patent is the subject of an entry under this section, any person may require the owner of the patent to grant him a non-exclusive licence under the patent on terms which, in the absence of an agreement between the parties, shall be fixed by the Tribunal.</p> <p>(6) The amount of the annual fees with respect to a patent which is subject of an entry under this section, falling due after the date of the entry, shall be reduced by half.</p> <p>(7) The owner of the patent may at any time request the Director General to cancel an entry under this section and the Director General shall cancel the entry after payment of the balance of all annual fees which would have been payable if no entry had been made and the Director General shall publish the cancellation of any entries under this section.</p> |

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|  | <p>(8) Section 102(3) shall apply, with necessary modifications, where the terms of licence granted under subsection (5) have been fixed by the Tribunal.</p>  |
| <p><b>PART XIII— EXPLOITATION OF PATENTED INVENTIONS BY THE GOVERNMENT OR BY THIRD PERSON AUTHORIZED BY THE GOVERNMENT</b></p> |  |
| <p>Exploitation of the patented inventions by the Government or by third persons authorized by the Government</p>              | <p><b>105.</b> (1) Subject to this section, where—</p> <p>(a) the public interest, in particular, national security, nutrition, health, environmental conservation, or the development of other vital sector of the national economy so requires; or</p> <p>(b) the Director General determines that the manner of exploitation of an invention by the owner of the patent or his licensee is not competitive,</p> <p>the Cabinet Secretary may, upon application in the prescribed form and after consultation with the Office and the owner of the patent, order that the protected invention shall be exploited by a Government Ministry, Department, agency or other person as the Cabinet Secretary may designate in the order subject to the payment of adequate compensation to the owner of the patent in accordance with this section.</p> <p>(2) Upon exercising the powers conferred upon him or her under subsection (1), the Cabinet Secretary may, notwithstanding any of the measures set out in this section, authorize by written order the importation, manufacture or supply, or authorize the utilization of any molecule or substance whatsoever by any individual, corporation or society as named or described by any individual, corporation or society as named or described in the order without notice to the patent holder or any other notifiable party, and such order shall remain in force until revoked by the Cabinet Secretary in writing, after giving six months' prior notice of his intention of such revocation to the party named or described in the order.</p> <p>(3) An order made under the subsection (2) shall not require the payment of compensation to the owner of the patent or licence holder or any other party so interested. (confirm- may not be fair and conflicts with subsection 7 and 8; propose deletion)</p> <p>(4) The Cabinet Secretary shall, notwithstanding any of the measures set out in this section, authorize the utilization of any process for the manufacture, sale or supply of any molecule or substance whatsoever by any individual, corporation or society as named or described in the order, and such order shall remain in force until revoked by the Cabinet Secretary in writing, giving six months prior notice of intention of such revocation to the party named or described in the order.</p> |

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(5) No application shall be made under subsection (1) unless the applicant has unsuccessfully sought a contractual licence from the owner of the patent.

(6) Despite the generality of subsection (5), the provisions of this subsection shall not apply in cases of national emergency or other extreme urgency in which case the Cabinet Secretary shall cause the contents of the order to be communicated to the owner of the patent as soon as reasonably practicable.

(7) An order under this section shall be subject to such conditions as the Cabinet Secretary may deem necessary.

(8) Where an order under this section is made, the Director General shall fix the amount of the compensation to be paid to the owner of the patent, such compensation being equitable with due regard to all the circumstances of the case and in particular, the economic value of the patent.

(9) An order under this section shall not preclude the owner of the patent from concluding a licence contract or from exercising the powers conferred by section 80 of this Act.

(10) The Cabinet Secretary may, upon the request of the owner of the patent or the Government Ministry, Department, agency or other person designated by the Cabinet Secretary for the purposes of any order under this section and after hearing all interested parties, vary the terms of the order to the extent that changed circumstances justify such variation.

(11) The Cabinet Secretary may, upon the request of the owner of a patent and after hearing all interested parties, revoke an order under this section—

(a) if satisfied that the circumstances necessitating the order have ceased and are unlikely to recur; or

(b) where the Government Ministry, Department, agency or other person designated for the purposes of the order is in breach of any condition imposed under subsection (7).

(12) The authorization of any person in an order under this subsection shall not be transferable except to a business or enterprise owned or operated by that person.

(13) The exploitation of the invention pursuant to an order under this section shall be primarily for the supply of the market in Kenya.



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|  | <p>(14) An order relating to the exploitation of an invention in the field of semi-conductor technology shall only be made where the Tribunal has determined that the manner of exploitation of the patented invention, by the owner of the patent or his or her licensees, is not competitive and the Cabinet Secretary is satisfied that the issuance of such order would remedy such practice.</p> <p>(15) Any person aggrieved by any decision of the Cabinet Secretary under this section may appeal to the Tribunal.</p>   |
| <p><b>PART XIV – UTILITY MODELS</b></p>                              |  |
| <p>Applicability of provisions relating to patents</p>               | <p><b>106.</b> (1) Subject to section 107, the provisions of Parts V, VII, VIII, IX, X, XI, XII XV and XVI shall apply, with necessary modifications, to utility model certificates or applications therefor, as the case may be.</p> <p>(2) Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in section 56(3), the said provision shall apply as if the word “patent” were replaced by the words “utility model certificate”.</p>  |
| <p>Special provisions relating to utility model certificates</p>     | <p><b>107.</b> (1) An invention qualifies for a utility model certificate if it is new and industrially applicable.</p> <p>(2) Section 48, 50, 68, 69, 70 and 86 shall not apply in the case of applications for utility model certificates.</p> <p>(3) An application for a utility model certificate shall be published in the Journal upon —</p> <p>(a) conducting a prior art search; and (confirm this)</p> <p>(b) in compliance with the requirements of section 67.</p> <p>(4) A registration certificate for a utility model shall expire at the end of the tenth year after the date of filing of the application in respect thereof, and shall not be renewable.</p> <p>(5) Despite the generality of subsection (4), the registration certificates in respect of utility models which were issued under this Act before the commencement of this subsection shall expire at the end of the tenth year from the date of grant.</p> |
| <p>Conversion of patent applications to applications for utility</p> | <p><b>108.</b> (1) At any time before the grant or refusal of a patent an applicant for a patent may, upon payment of the prescribed fee, convert his</p>  |

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| model certificate, and vice versa             | <p>application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.</p> <p>(2) At any time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the initial application.</p> <p>(3) An application may not be converted under subsection (1) more than once.</p>  |
| <b>PART XV – INDUSTRIAL DESIGNS</b>           |  |
| Definition of an industrial design            | <p><b>109.</b> (1) For the purposes of this Part—</p> <p>"industrial design" means the overall appearance of a product resulting from one or more visual features of the shape, configuration, pattern or ornamentation of a product; and</p> <p>"product" means anything that is made by hand, tool or machine.</p> <p>(2) The protection under this Act shall not extend to anything in an industrial design which serves solely to obtain a technical result or to methods or principles of manufacture or construction.</p>  |
| Right to industrial design; naming of creator | <p><b>110.</b> (1) Subject to the provisions of any other written law, the creator of an industrial design or his successors in title shall have the exclusive rights to sell or cause to be sold for commercial or industrial purposes the goods in which the design is incorporated, subject to the conditions of this Act.</p> <p>(2) Sections 56, 58 and 59 shall apply with necessary modifications to the rights of the creator of an industrial design.</p>   |
| Registrable industrial designs                | <p><b>111.</b> (1) An industrial design is registrable if it is new.</p> <p>(2) An industrial design is new unless it is identical or substantially similar in overall impression to an industrial design that has been disclosed to the public anywhere in the world by publication or use prior to the filing date or, where applicable, the priority date of the application for registration.</p> <p>(3) Section 49 (4) shall apply, with necessary modifications, with respect to industrial designs.</p> <p>(4) The following shall not be registered as industrial designs—</p> |

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|  | <p>(a) industrial designs that are contrary to public order and morality;</p> <p>(b) works of sculpture, architecture, painting, photography and any other creations that are purely of artistic nature.</p> <p>(5) The details of the requirements and the procedure under this section shall be in prescribed a manner.</p>  |
| <p>Application, examination, opposition and registration</p> | <p><b>112.</b> (1) Any person wishing to register an industrial design shall send to the Office—</p> <p>(a) an application in the prescribed form;</p> <p>(b) a power of attorney, where the applicant is represented by an agent;</p> <p>(c) drawings, photographs or other graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used; and</p> <p>(d) the prescribed application fee.</p> <p>(2) Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to the registration of the industrial design.</p> <p>(3) Section 62 shall apply, with necessary modifications, in respect of amendment and division of applications for registration of industrial designs.</p> <p>(4) The applicant may at any time withdraw an application lodged under this section.</p> <p>(5) The Director General shall accord as the filing date the date of receipt of the application provided that at the time of receipt, the application fee is paid and the application contains the name of the applicant and a graphic representation of the article embodying the industrial design.</p> <p>(7) Section 63 and 67(2) and (3) shall apply with necessary modifications in respect of priority dates and filing of corrections to the application.</p> <p>(8) The Director General shall, if satisfied that an application meets the requirements of this section and of sections 109 and 111, accept the application and publish it in the prescribed manner.</p> |

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|  | <p>(9) Any interested person may, within the prescribed time and in the prescribed manner, give notice of opposition to the Director General.</p> <p>(10) Where the Director General establishes that a design application does not meet the requirements for registration, the Director General shall send the applicant a report setting out the objections to registration and if the applicant does not reply to the objections within the prescribed period, the application shall be deemed abandoned.</p> <p>(11) Where an application for registration of an industrial design is accepted and published in error, the Director General may publish in the journal an indication to that effect and direct that the application be re-examined.</p> <p>(12) The details of the requirements and procedure under this section shall be in a prescribed manner.</p> <p>(13) The Director General shall, if satisfied that an application meets the requirements of this Act, register the industrial design and issue a certificate of registration to the applicant.</p> |
| Duration and renewal of registration of an industrial design | <p><b>113.</b> (1) Subject to subsection (2), the duration of the registration of an industrial design shall expire at the end of the fifth year following the date of the application for registration.</p> <p>(2) The registration of a design may be renewed for two further consecutive periods of five years upon payment of a prescribed fee.</p> <p>(3) The fee for the renewal of registration of an industrial design shall be paid within twelve months preceding expiration of the period of registration but a grace period of six months shall be allowed for the late payment of the renewal fee on payment of the surcharge, as may be prescribed.</p>   |
| Restoration of registration of industrial designs            | <p><b>114.</b> (1) Where the protection granted to an industrial design has not been renewed due to circumstances beyond the control of the owner of the design, the latter or any other persons entitled may apply designs for its restoration on the payment of the prescribed renewal fee, as well as of the surcharge, within a period of one year from the date upon which renewal fee was due.</p> <p>(2) An application for restoration of registration of an industrial design, together with documents proving payment of the fees and surcharge mentioned in subsection (1), shall be sent to the Director General and shall</p>  |

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|  | <p>contain a statement of the grounds on which the owner or the persons entitled consider the restoration justified.</p> <p>(3) The Director General shall examine the reasons referred to above and shall either restore the design or reject the application if he or she does not consider the grounds valid.</p> <p>(4) Restoration shall not entail extension of maximum duration of the industrial design.</p> <p>(5) Restored designs shall be published by the Director General in the prescribed form.</p>  |
| Graphic representations  | <p>115. (1) An application for registration of an industrial design together with any drawing, photograph, graphic representation, sample or specimen shall be kept confidential until the application is published in accordance with section 112.</p> <p>(2) Drawings, photographs, other graphic representations, samples or specimen of industrial designs shall be kept by the Office for a period of eight years after the expiry of the registration and may be examined by any interested person on payment of the prescribed fee.</p> <p>(3) After publication, any person may obtain the official copy of the application.</p> <p>(4) An applicant for registration of an industrial design seeking to avail himself outside Kenya of the priority of his registration before registration of the industrial design may obtain an official copy of his or her application.</p> |
| Publication of reference to registration of industrial designs | <p>116. The Director General shall, in relation to each industrial design registered under section 112, publish the details in a prescribed manner.</p>  |
| Publication of reference to registration of industrial designs | <p>117. Section 72 shall apply, with necessary modifications, with respect to the maintaining of the register of industrial designs.</p>   |
| Rights conferred by registration of industrial designs, etc    | <p>118. (1) Registration of an industrial design shall confer upon its registered owner the right to preclude third parties from performing any of the following acts in Kenya—</p> <p>(a) reproducing the industrial design in the manufacture of a product;</p>  |

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|  | <p>(b) importing, offering for sale and selling a product reproducing the protected industrial design; or</p> <p>(c) stocking of such a product for the purposes of offering it for sale or selling it.</p> <p>(2) The rights conferred by the registration of an industrial design shall extend only to acts done for industrial or commercial purposes and shall not extend to acts in respect of a product embodying the protected industrial design after the product has been lawfully imported or sold in Kenya.</p> <p>(3) The registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the industrial design by performing, without his consent, any of the acts referred to in subsection (1) or who performs acts which make it likely that infringement will occur.</p> <p>(4) Section 85 shall apply, with necessary modifications, with respect to industrial design applications or industrial designs registered under the Harare Protocol.</p> |
| <p>Transfer and assignment of industrial designs; licences</p> | <p>19. (1) Rights subsisting in an industrial design may be transferred in whole or in part.</p> <p>(2) The provisions of sections 88, 89, 90, 91, 92, 93, 94, 95, 96 and 97 shall apply, with necessary modifications, to this Part.</p>   |
| <p><b>PART XVI – TECHNOVATIONS</b></p>                         |   |
| <p>Definitions</p>   | <p>20. For the purpose of this Part—</p> <p>(a) “technovation” means a solution to a specific problem in the field of technology, proposed by an employee of an enterprise in Kenya for use by that enterprise, and which relates to the activities of the enterprise but which, on the date of the proposal, has not been used or actively considered for use by that enterprise;</p> <p>(b) “employee” and “enterprise” mean the employee and the enterprise referred to in paragraph (a), and where several enterprises are owned or operated by one person, all such enterprises shall be considered as one enterprise; (wrong definition – amend definition)</p> <p>(c) “date of the proposal” means the date on which the employee makes a request in accordance with section 122;</p>  |

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|   | <p>(d) “technovation certificate” means the document issued by the enterprise in accordance with section 121;</p> <p>(e) “technovator” means an employee to whom the enterprise has issued a technovation certificate.</p>   |
| Right to technovation certificate               | <p><b>121.</b> (1) Subject to subsection (2), any employee of the enterprise on the date of the proposal shall be entitled to a technovation certificate as provided for in this Part.</p> <p>(2) Where the duties of an employee comprise the making and proposing of technovations, he or she shall not be entitled to a technovation certificate for any technovation which pertains to the field of activities for which he or she is employed, unless the degree of the creative contribution inherent in the technovation exceeds that which is normally required of an employee having the said duties.</p> <p>(3) Where employees severally request a technovation certificate for the same technovation, the employee who is the first to make the request shall be entitled to such certificate.</p> <p>(4) Where a request for technovation certificate is made jointly by two or more employees, the certificate shall be issued in their joint names.</p> |
| Request for technovation certificate            | <p><b>122.</b> (1) A request for a technovation certificate signed by the employee shall be filed in writing with the enterprise and the enterprise shall assist the employee in filing the request and shall issue a receipt to him or her acknowledging that a request has been filed and indicating the date on which it has been filed.</p>  |
| Issuance or refusal of technovation certificate | <p><b>123.</b> (1) Where the requirements of this Part are satisfied, the enterprise shall, within a period of three months from the date of the proposal, issue a technovation certificate to the employee.</p> <p>(2) The enterprise may refuse to issue the certificate if it is of the opinion that the requirements of this Part have not been satisfied and shall notify the employee of the reasons therefor within the time limit prescribed in subsection (1).</p>  |
| Use of technovation                             | <p><b>124.</b> (1) Where the enterprise issues a technovation certificate, it shall, at the same time, notify the technovator, in writing, whether or not it intends to use the technovation.</p> <p>(2) Where the decision to make use of the technovation depends on testing the technovation in practice, the enterprise shall inform the</p>   |

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|                                 | <p>technovator accordingly and may postpone the notification of its intention to use or not to use the technovation by not more than a year from the date of the proposal.</p> <p>(3) The technovator shall be obliged to assist the enterprise, to the best of his ability, in any testing, development or use of the technovation.</p> <p>(4) The enterprise shall be obliged to give adequate opportunity to the technovator to furnish the assistance referred to in subsection (3).</p> <p>(5) Once the technovation certificate has been issued, the technovator, shall not communicate his technovation to anyone other than the enterprise and shall not use it.</p> <p>(6) Where the enterprise declares that it does not intend to use the technovation or where the enterprise, having declared its intention to use the technovation, does not in fact start using it within six months from the issuance of the technovation certificate or the expiration of the time limit referred to in subsection (2), the technovator shall be exempted from the obligations referred to in subsections (3) and (4).</p> <p>(7) Despite the generality in subsection (6), the technovator shall have the right to communicate his technovation to others only to the extent that such communication does not entail the communication of any know how or other knowledge that has acquired as an employee.</p> |
| Remuneration of the technovator | <p><b>125.</b> Where the enterprise uses the technovation or communicates it to a third person, the technovator shall be entitled to a remuneration the amount and method of payment of which shall, in the absence of an applicable collective bargaining agreement, be fixed by mutual agreement between the technovator and the enterprise.</p>  |
| Derogation by contract          | <p><b>126.</b> Any contractual provision which is less favourable to the employees or technovators than the provisions of this part shall be null and void.</p>   |
| Disputes                        | <p><b>127.</b> Any dispute concerning the application of this part shall be submitted by any interested party to an arbitration board consisting of three members: one member appointed by the employee or technovator, one member appointed by the enterprise, and a chairman appointed by the two members. The arbitration board shall hear interested parties and thereafter deliver its ruling.</p> <p>(2) Where the parties fail to agree on the appointment of the chairman, he or she shall be appointed by the Resident Magistrate Court having jurisdiction in the place where the enterprise is located.</p>  |

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|   | <p>(3) An aggrieved party may appeal against the decision of the arbitration board to the Tribunal.</p> <p>(4) The arbitration board shall determine its own procedures.</p>   |
| <p><b>PART XVII – COMMON PROVISIONS: SURRENDER, REVOCATION AND INVALIDATION</b></p> |  |
| <p>Surrender</p>  | <p><b>128.</b> (1) A patent, utility model or industrial design registration certificate may be surrendered by its owner to the Office.</p> <p>(2) The surrender may be limited to one or more claims of the patent or utility model or, in the case of industrial designs, one kind of product or class of products.</p> <p>(3) The surrender shall promptly be recorded in the register and published by the Director General and the surrender shall be effective only after it has been published.</p> <p>(4) If a licence has been recorded in the register, surrender shall only be registered upon the submission of a declaration by which the licensee consents to the surrender, unless the latter has expressly waived this right in the licence contract.</p>  |
| <p>Revocation or invalidation</p>   | <p><b>129.</b> (1) Any interested person may institute proceedings instituted against the owner of a patent, or a registered utility model or industrial design or in proceedings instituted against him or her by the owner, request the Tribunal to revoke or invalidate the patent, utility model or industrial design registration.</p> <p>(2) For purposes of this section “owner” means holder of patent, utility model or industrial design.</p> <p>(3) The Tribunal shall revoke or invalidate the registration of the patent, utility model or industrial design on any of the following grounds—</p> <p>(a) that the owner is not entitled under section 56, 57 or 58 of the Act to apply for the grant of a patent;</p> <p>(b) that the owner is in infringement of the rights of the person filing an application for revocation or of any persons under or through whom he or she claims;</p> |

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| <p>(c) that the invention does not relate to an art (whether producing a physical effect or not), process, use, machine, manufacture or composition of matter which is capable of being applied in trade or industry;</p> <p>(d) that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;</p> <p>(e) that the invention, in so far as it is claimed in any claim of the application is not useful;</p> <p>(f) that the invention does not fully describe and ascertain the manner in which it is to be performed;</p> <p>(g) that the invention does not disclose the best method of performing, known to the owner of the invention at the time when the specification was lodged at the Office;</p> <p>(h) that at the time the application for the grant of the invention was filed, the application form or any other documents filed in pursuance of the application contained a material misrepresentation; or</p> <p>(i) that the invention is not new in terms of section 49 of the Act.</p> <p>(4) An application for revocation or invalidation of a patent, utility model or industrial design shall—</p> <p>(a) state the grounds on which the applicant intends to rely on in his application for revocation or invalidation; and</p> <p>(b) be accompanied by—</p> <p>(i) a statement setting out particulars of the facts alleged in support of the said grounds; and</p> <p>(ii) proof of service on the owner of notice of filing of the application under subsection (1) and (2) and such statement shall be furnished to the Tribunal.</p> <p>(5) If the owner wishes to contest the application he or she shall, within such time as is prescribed or such further time as the Tribunal may allow, lodge a counter statement with the interested party setting out particulars of the grounds upon which the application is to be contested.</p> <p>(6) A copy of any counter-statement in terms of subsection (5) shall be served by the owner to the interested party.</p> |
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|  | <p>(7) Particulars delivered in terms of this section may from time to time, with the leave of the Tribunal, be amended.</p> <p>(8) No evidence shall be admitted in proof of any ground on which particulars have not been delivered in terms of this section, except by leave of the Tribunal.</p> <p>(9) After receiving an application under subsection (1) and compliance with any other provisions of this section which are applicable, the Tribunal shall arrange for the matter to be heard in the manner prescribed and may make such order therein as it deems fit.</p> <p>(10) The Tribunal shall publish the application for revocation or invalidation in the Kenya Gazette or in the Journal.</p> <p>(11) An aggrieved party may appeal against the decision of the Tribunal to the High Court.</p> <p>(12) Where the provisions of subsection (2) apply only to some of the claims or some parts of a claim of a patent or utility model, or some parts, of a registered industrial design, only those claims or parts may be revoked or invalidated by the Tribunal.</p> <p>(13) The Tribunal may require the owner of the patent, the utility model or the industrial design registration certificate to submit to it for the purposes of examination, the registration certificate, publications and other documents showing the prior art which have been referred to either in connection with an application for a title to the patent, the utility model or the industrial design filed, for the same or essentially the same invention or design by the owner with any other national or regional industrial property office, or in connection with any proceedings relating to the registration of the patent, utility model or the industrial design or other title or protection granted upon such application.</p> <p>(14) The notice of the application referred to in subsection (1) shall be served on any licensee under the patent, the utility model or the industrial design who is entitled to join in the proceedings in the absence of any provision to the contrary in the licence contract.</p> <p>(15) Where, before or during the proceedings, it is alleged or it appears to the Tribunal that the right to the patent, the utility model or the industrial design belongs to a person who is not a party to the proceedings, notice of the application referred to in subsection (1) shall be served on that person and such person who shall be entitled to join in the proceedings.</p> |
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| Effect of revocation or invalidation | <p><b>130.</b> (1) Any revoked or invalidated patent, utility model or industrial design or claim or part of a claim or part of a registered industrial design shall be regarded as null and void from the date of the grant of the patent or certificate of registration for the utility model or the industrial design.</p> <p>(2) As soon as the decision of the Tribunal is no longer subject to appeal, the Chairman of the Tribunal shall inform the Director General who shall register and publish it as soon as possible in the Kenya Gazette or in the Journal.</p>               |
| <b>PART XVIII – INFRINGEMENT</b>     |   |
| Acts constituting infringement       | <p><b>131.</b> Subject to sections 47(3) (e), 84, 87(6), 97, 98, 105(4) and 111, any act specified in section 80 or 118 and performed by a person other than the owner of the patent or of the registered utility model or industrial design without the owner’s authorization, in relation to a product or a process falling within the scope of a validly granted patent or certificate of registration shall constitute an infringement.</p>   |
| Relief                               | <p><b>132.</b> On the request of the owner of the patent or the registered utility model or industrial design, the Tribunal shall grant any of the following reliefs—</p> <p>(a) an injunction to prevent infringement where infringement is imminent or to prohibit the continuation of the infringement, once infringement has started;</p> <p>(b) damages; or</p> <p>(c) any other remedy provided for in law.</p>   |
| Declaration of non-infringement      | <p><b>133.</b> Subject to subsection (2), any person showing a legitimate interest may request the Tribunal to declare that the performance of any specific act does not infringe the patent or the registered utility model or industrial design and the owner and any licensee under the patent or the registered utility model or industrial design shall have the right to be a party to the proceedings.</p> <p>(2) No declaration under subsection (1) shall be made—</p> <p>(a) if the acts to which the request relates are already the subject of infringement proceedings; or</p> |

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|  | <p>(b) if the person making the request is unable to prove that he has previously demanded from the owner a written acknowledgement of the lawfulness of the acts referred to and that the owner has refused such demand or has failed to reply within fourteen days.</p>  |
| Threat of infringement proceedings     | <p><b>134.</b> (1) Any person threatened with infringement proceedings who can prove that the acts performed or to be performed by him do not constitute infringement of the patent or the registered utility model or industrial design may request the Tribunal to grant an injunction to prohibit such threats and to award damages for financial loss resulting from the threats.</p> <p>(2) The mere notification of the existence of the patent, or the registered utility model or industrial design registration shall not constitute a threat of infringement.</p>  |
| Intentional infringement               | <p><b>135.</b> (1) Any intentional infringement of the patent or the registered utility model or industrial design shall constitute an offence under this Act.</p> <p>(2) Such an offence shall be punishable with a fine of not less than ten thousand shillings, and not exceeding fifty thousand shillings, or with imprisonment for a term of not less than three years, and not more than five years, or with both. (review the penalties)</p>  |
| Presumption of use of patented process | <p><b>136.</b> For the purposes of proceedings, other than criminal proceedings, in respect of the infringement of the rights of the owner of the patent, where the subject matter of the patent is a process for obtaining a product, the burden of establishing that an identical product was not made by the patented process shall be on the alleged infringer, if either of the following conditions is fulfilled—</p> <p>(a) the product is new; or</p> <p>(b) a substantial likelihood exists that the identical product was made by the process and the owner of the patent has been unable, through reasonable efforts, to determine the process actually used.</p> |
| Legal proceedings by licensee          | <p><b>137.</b> (1) Any exclusive licensee within the meaning of section 91(2) shall, by registered letter, request the owner of the patent or the registered utility model or industrial design to institute legal proceedings for a specific relief with respect to any infringement specified by the licensee.</p>   |

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|   | <p>(2) The licensee may, if the owner refuses or fails to institute the legal proceedings within three months from the request, after giving notice to the owner institute such proceedings in his own name; and the owner may join in the proceedings.</p> <p>(3) Even before the end of the three-month period referred to in subsection (2), the Tribunal may, on the request of the licensee, grant an appropriate injunction to prevent infringement or to prohibit its continuation, where the licensee shows that immediate action is necessary to avoid substantial damage.</p>   |
| <b>PART XIX – REGISTRABILITY OF TRADE MARKS</b> |   |
| <p>Registrable trade marks</p>                  | <p><b>138.</b> (1) A trade mark shall be registrable under this Act only where the mark is capable of distinguishing the goods or services of a person in respect of which it is registered or proposed to be registered from the goods or services of another person.</p> <p>(2) A trade mark shall be considered to be capable of distinguishing within the meaning of subsection (1) if, at the date of the application for registration, it is inherently capable of so distinguishing or it is capable of distinguishing by reason of prior use thereof.</p> <p>(3) A trade mark shall be considered to be capable of distinguishing within the meaning of subsection (1) if it consists of any of the following essential particulars—</p> <p>(a) the name of a company, individual or firm;</p> <p>(b) the signature of the applicant for registration or some predecessor in his business;</p> <p>(c) an invented word or invented words;</p> <p>(d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname; or</p> <p>(e) any other distinctive mark.</p> |
| <p>Unregistrable trade marks</p>                | <p><b>139.</b> (1) The following trade marks shall not be registrable—</p> <p>(a) a mark which—</p> <p>(i) is not capable of distinguishing within the meaning of section 138;</p>  |

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(ii) a mark which is inherently deceptive or the use of which would be likely to deceive or cause confusion or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design;

(iii) is similar or identical to an earlier right in particular by virtue of the law on copyright or industrial designs;

(iv) consists exclusively of a sign which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, or the mode or time of production of the goods or of rendering of the services;

(v) consists exclusively of a sign or an indication which has become customary in the current language or in the bona fide and established practices of the trade.

(b) a mark in relation to which the applicant for registration has no bona fide claim to proprietorship;

(c) a mark in relation to which the applicant for registration has no bona fide intention of using it as a trade mark, either himself or through any person permitted or to be permitted by him to use the mark as contemplated by section 165;

(d) a mark which consists exclusively of the shape, configuration or colour of goods where such shape, configuration or colour is necessary to obtain a specific technical result, or results from the nature of the goods themselves; (new wording for shape and configuration)

(e) a mark which, on the date of application for registration thereof, or, where appropriate, of the priority claimed in respect of the application for registration thereof, constitutes, or the essential part of which constitutes, a reproduction, imitation or translation of a trade mark which is entitled to protection under the Paris Convention and the TRIPS Agreement as a well-known trade mark within the meaning of section 147 and which is used for goods or services identical or similar to the goods or services in question;

(f) a mark the application for registration of which was made mala fide;

(g) a mark which contains the coat of arms, seal or national flag of Kenya or, save with the authorization of the competent authority of a the convention country concerned, of any convention country;

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- (h) a mark which consists of a container for goods or the shape, configuration, colour or pattern of goods, where the registration of such mark is or has become likely to limit the development of any art or industry;
- (i) a mark which is inherently deceptive or the use of which would be likely to deceive or cause confusion, be contrary to law or morality, or any scandalous design;
- (j) a mark which, as a result of the manner in which it has been used, would be likely to cause deception or confusion; (clarify)
- (k) subject to the provisions of section 141, a mark which is identical to a registered trade mark belonging to a different proprietor or so similar thereto that the use thereof in relation to goods or services in respect of which it is sought to be registered and which are the same as or similar to the goods or services in respect of which such trade mark is registered, would be likely to deceive or cause confusion, unless the proprietor of such trade mark consents to the registration of such mark;
- (l) subject to the provisions of section 141 and subsection 139 (1) (m), a mark which is identical to a mark which is the subject of an earlier application by a different person, or so similar thereto that the use thereof in relation to goods or services in respect of which it is sought to be registered and which are the same as or similar to the goods or services in respect of which the mark in respect of which the earlier application is made, would be likely to deceive or cause confusion, unless the person making the earlier application consents to the registration of such mark;
- (m) a mark which is the subject of an earlier application as contemplated in paragraph (l), if the registration of that mark is contrary to existing rights of the person making the later application of registration as contemplated in that paragraph;
- (n) a mark which is identical or similar to a trade mark which is already registered and which is well known in Kenya, if the use of the mark sought to be registered would be likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the registered trade mark, notwithstanding the absence of deception or confusion; or

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| <p>Registration to be in respect of particular goods or services</p> | <p>(o) a mark which contains the words “Patent”, “Patented”, “Registered”, “Registered Design”, “Copyright”, or “To counterfeit this is a forgery”, or words to a similar effect.</p> <p>(2) Despite the generality in subsection (1) (a) a mark shall not be refused registration by virtue of the provisions of this section or, if registered, shall not be liable to be removed from the Register by virtue of the said provisions if at the date of the application for registration or at the date of an application for removal from the Register, as the case may be, it has in fact become capable of distinguishing within the meaning of section 138 as a result of use made of the mark</p> <p>(3) Where separate applications are made by different persons within a period of thirty days to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other, in respect of the same goods or description of goods or in respect of the same services or description of services, the Registrar may refuse to register any of them until their rights have been determined by the Tribunal, or have been settled by agreement in a manner approved by the Registrar.</p> <p><b>140.</b> (1) A trade mark shall be registered in respect of particular goods or services, which shall be classified in the manner specified in subsection (2).</p> <p>(2)The goods and services in respect of which registration of a mark is applied for shall be classified in accordance with the Nice Classification and any figurative elements of the mark shall be classified in accordance with the Vienna Classification of the Figurative Elements of Marks.</p> <p>(3)Despite the generality in subsection (2) where goods or services belonging to several classes according to the International Classification of Goods and Services have been included in the same application, the Registrar shall incorporate the several classes of goods and services for the purpose of registration.</p> |
| <p>Honest concurrent use.</p>  | <p><b>141.</b> (1) In the case of honest concurrent use or of other special circumstances which may make it proper to do so, the Registrar may, on application in the prescribed manner, register, subject to such conditions and limitations, if any, as he may deem fit to impose, a trade mark the registration of which would otherwise offend against the provisions of section 139 (e), (j), (k) or (n).</p> <p>(2)In the case of a trade mark which is sought to be removed from the Register on the ground that it offends against the provisions of section 139 (e), (j), (k) or (n), the Registrar may, in the case of honest</p>  |

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|  | concurrent use or of other special circumstances which make it proper to do so, decline to remove the trade mark from the Register.   |
| Registration subject to a disclaimer                         | <p><b>142.</b> If a trade mark contains any part not separately registered by the proprietor as a trade mark or contains matter common to the trade or to the provision of services of that description or otherwise of a non-distinctive character the Registrar or the Tribunal, in deciding whether the trade mark shall be entered or shall remain on the Register, may require, as a condition of its being on the Register—</p> <p>(a) that the proprietor shall disclaim any right to the exclusive use of any part of the trade mark or to the exclusive use of all or any portion of any such matter, to the exclusive use of which, the Registrar holds him not to be entitled; or</p> <p>(b) that the proprietor shall make such other disclaimer as the Registrar may consider necessary for the purpose of defining his rights under the registration.</p> |
| Words used as name or description of an article or substance | <p><b>143.</b> (1) Where a registered trade mark becomes the generic name for any of the goods or services for which it is registered, any person may file an application to cancel the registration in the prescribed manner for those goods or services.</p> <p>(2) Despite the generality in subsection (1), a registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service.</p> <p>(3) Where the registered trade mark contains a word or any other element that has become generic, the Registrar may, in deciding whether the trade mark shall remain on the Register require that a disclaimer be entered in accordance with the provisions of section 142.</p>   |
| Effect of limitation as to colour, and of absence thereof    | <p><b>144.</b> (1) A trade mark may be limited in whole or in part to one or more specified colours, and in any such case, the fact that it is so limited shall be taken into consideration by the Registrar or the Tribunal in deciding on the distinctive character of the trade mark.</p> <p>(2) Where there is a limitation of colour as provided for under subsection (1), the applicant shall provide a description of the colours, the manner of the colour application to the products and where possible, the colour codes.</p> <p>(3) If and so far as a trade mark is registered without limitation of colour, it shall be deemed to be registered for all colours.</p>  |

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| Registration of part of trade mark and of trade marks as a series | <p><b>145.</b> (1) Where a person claiming to be the proprietor of several trade marks, in respect of the same goods or description of goods, which, while resembling each other in the material particulars thereof, yet differ in respect of—</p> <ul style="list-style-type: none"><li>(a) statements of the goods in relation to which they are respectively used or proposed to be used;</li><li>(b) statements of number, price, quality or names of places;</li><li>(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or</li><li>(d) colour;</li></ul> <p>seeks to register those trade marks, they may be registered as a series in one registration.</p>  |
| Defensive registration of well-known trade marks                  | <p><b>146.</b> (1) Where a trade mark has become so well known as respects any goods in respect of which it is registered and in relation to which it has been used that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 169, the trade mark may, on the application in the prescribed manner of the proprietor registered in respect of the first-mentioned goods, be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the Register in respect of those goods under that section.</p> <p>(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.</p> <p>(3) On application by any person aggrieved to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of subsection (1) are no longer satisfied in respect of any goods in respect of which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in respect of which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade</p> |



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|  | <p>mark in relation to those goods would be taken as giving the indication mentioned in subsection (1).</p> <p>(4)The Registrar may at any time cancel the registration as a defensive trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.</p> <p>(5)Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.</p>  |
| <p>Protection of well-known trade marks</p>        | <p><b>147.</b> (1)References in this Act to a trade mark which is entitled to protection under the Paris Convention or the TRIPS Agreement as a well-known trade mark, are to a mark which is well known in Kenya as being the mark of a person who—</p> <p>(a) is a Kenyan citizen;</p> <p>(b) is a national of a convention country; or</p> <p>(c) a person who is domiciled in, or has a real and effective industrial or commercial establishment in, a convention country.</p> <p>(2) In determining whether or not a trade mark is well known in Kenya, the Registrar shall take into account the factors indicated in the **** Schedule.</p> <p>(3) Subject to the provisions of section 172, the proprietor of a trade mark which is entitled to protection under the Paris Convention or the TRIPS Agreement as a well-known trade mark, is entitled to restrain by injunction, the use in Kenya of a trade mark which is identical or the essential part of which is identical or similar to his, in relation to identical or similar goods or services, where the use is likely to cause confusion among the users of the goods or services.</p> <p>(4) A trade mark shall not be registered if that trade mark, or an essential part thereof, is likely to impair, interfere with or take unfair advantage of the distinctive character of the well-known trade mark.</p> |
| <p><b>PART XX- REGISTRATION OF TRADE MARKS</b></p> |   |
| <p>Application for registration</p>                | <p><b>148.</b> (1) Any person may, before submitting an application for registration of a trade mark, apply in the prescribed manner to the Registrar for a advice as to availability of the mark for registration.</p> <p>(2) Any person claiming to be the proprietor of a trade mark used or proposed to be used shall apply to the Registrar in the prescribed manner for registration.</p>   |

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|   | <p>(3) Where an applicant's ordinary residence or principal place of business is not within Kenya, he shall be represented by an agent.</p> <p>(4) Where an applicant's ordinary residence or principal place of business is in Kenya, he may be represented by an agent.</p>  |
| <p>Examination, publication, opposition and registration of trade marks</p> | <p><b>149.</b> (1) The Registrar shall examine the application and determine whether or not the application complies with the requirements of this Act.</p> <p>(2) (a) Where the Registrar finds that the requirements referred to in subsection (1) are fulfilled, he shall accept the application, and publish it in the Journal or Kenya Gazette, in such manner as may be prescribed in the Rules.</p> <p>(b) Any interested person may within the prescribed period and in the prescribed manner, file notice of opposition with the Registrar.</p> <p>(3) Once the application has been published and upon expiry of the prescribed period, and either—</p> <p>(a) the registration of the trade mark has not been opposed within the prescribed time limit; or</p> <p>(b) the registration of the trade mark has been opposed and the opposition has been decided in the applicant's favour;</p> <p>the Registrar shall, unless the application was accepted in error, register the trade mark and the trade mark, when registered, shall be registered as of the date of the application for registration, and that date shall be deemed for the purposes of this Act to be the date of registration.</p> <p>(4) Despite the generality of the provisions of subsection (3), the date as of which a trade mark shall be registered and the date deemed to be the date of registration, shall, as respects a trade mark registered under this Act, with the benefit of any enactment relating to international arrangements, have effect subject to the provisions of that enactment.</p> <p>(5) Upon registration of a trade mark, the Registrar shall issue to the applicant a certificate of registration in the prescribed form.</p> <p>(6) Where the Registrar finds that the requirements referred to in subsection (1) are not fulfilled, he or she may refuse or accept absolutely or subject to such amendments, modifications, conditions or limitations if any, as he or she may deem fit.</p> |

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|                                 | <p>(7)Where the Registrar accepts the application conditionally, he shall invite the applicant in writing to correct any error or amend the application accordingly, and if the applicant—</p> <p>(a)does not comply with the invitation within the prescribed time limit, the application shall be deemed to be abandoned; or</p> <p>(b) complies with the invitation, the provisions of subsections (2), (3) and (5) shall apply.</p> <p>(8)Where the Registrar refuses or accepts the application conditionally, he shall state in writing the grounds of his decision.</p> <p>(9)Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in the notice.</p> <p>(10)The applicant may at any time, whether before or after acceptance, correct any error in connection with the application or amend his application in the prescribed manner upon such terms as the Registrar may deem fit.</p> <p>(11)The Cabinet Secretary may prescribe regulations giving effect to this section.</p> |
| <p>Duration of registration</p> | <p><b>150.</b> (1) A trade mark shall be registered for a period of ten years from the date of registration.</p> <p>(2) Registration of a trade mark may be renewed in accordance with section 166 for further periods of ten years each.</p>   |
| <p>Renewal of registration</p>  | <p><b>151.</b> (1) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be, which date is in this section referred to as the date of expiration of the last registration.</p> <p>(2) At the prescribed time before the date of expiration of the last registration of a trade mark, the Registrar shall notify the proprietor in the prescribed manner of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of the time prescribed those conditions have not been duly complied with, the Registrar may remove the trade mark from the Register, subject to such conditions, if any, as to its restoration to the Register as may be prescribed.</p>  |

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|                                | <p>(3) Where a trade mark has been removed from the Register for non-payment of the fee for renewal, it shall nevertheless for the purpose of any application for the registration of an identical or confusingly similar trade mark, be deemed to be existing on the Register for a period of one year from the date of removal.</p> <p>(4) The Registrar, in deciding whether to approve the application in subsection (3), shall consider the following—</p> <ul style="list-style-type: none"> <li>(a) that there has been no bona fide trade use or business use of the trade mark that has been removed during the two years immediately preceding its removal; or</li> <li>(b) that no deception or confusion would be likely to arise from the use of the trade mark that is the subject of the application for registration by reason of any previous use of the trade mark that has been removed.</li> </ul>   |
| <p>Register of Trade Marks</p> | <p><b>152.</b> (1) Subject to section (8) (q) the Office shall maintain a Register which may be kept in whole or in part electronically.</p> <p>(2) All trade marks in the Register shall be recorded and numbered in the order of registration and in respect of each trade mark—</p> <ul style="list-style-type: none"> <li>(a) the representation of the mark and its modifications if any;</li> <li>(b) the date of application, publication of the application and registration of the trade mark;</li> <li>(c) the name, description and address of the proprietor of the trade mark and agent if any;</li> <li>(d) renewals;</li> <li>(e) notifications of assignments and transmissions relating to the trade mark;</li> <li>(f) the names, addresses and descriptions of all licenses;</li> <li>(g) disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed;</li> <li>(h) where applicable, the removal of the trade mark in accordance with the provisions of this Act; and</li> <li>(i) any other transaction to be recorded in accordance with the provisions of this Act.</li> </ul> <p>(3) The Register shall be kept under the control and management of the Director General and shall at all convenient times be open to the inspection of the public, subject to such conditions as the Council may direct.</p> <p>(4) The Office may maintain a supplementary register as may be prescribed.</p> |

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| <b>PART XXI - EFFECTS OF REGISTRATION OF TRADE MARKS</b>            |   |
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| No action for infringement of unregistered trade mark               | <p><b>153.</b> No person shall be entitled to institute any proceeding to prevent, or to recover damages for, infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off or the remedies in respect thereof.</p>   |
| Saving for earlier rights.  | <p><b>154.</b> Nothing in this Act shall entitle the proprietor or a licensee of a registered trade mark to interfere with or restrain the use by any person of an identical or similar trade mark in relation to goods or services in relation to which that person or a predecessor in title of his, has continuously used that trade mark from a date anterior—</p> <p>(a) to the use of the first-mentioned trade mark; or<br/>           (b) to the registration of the first-mentioned trade mark,</p> <p>whichever is earlier, or to oppose registration of the trade mark upon adducing proof of use for that identical or similar trade mark in respect of those goods or services under section 141.</p> <p>(redraft for clarity)</p> |
| Saving for use of name, address or description of goods or services | <p><b>155.</b> No registration of a trade mark shall interfere with -</p> <p>(a) any bona fide use by a person of his own name or of the name of his place of business, of any of his predecessors in business; or<br/>           (b) the use by any person of any bona fide description of the character or quality of his goods or services.</p>  |
| Rights conferred by registration                                    | <p><b>156.</b> (1)The proprietor of a registered trade mark has exclusive rights in the trade mark registered in Kenya and any use of the trade mark without his consent constitutes infringement as specified in section 172.</p> <p>(2) The rights of the proprietor have effect from the date of Registration, which is the date of filing of the application for registration.</p> <p>(3)Despite the generality of subsection (2) no infringement proceedings may commence before the date on which the trade mark is entered in the Register.</p>  |
| Infringement of a registered trade mark                             | <p><b>157.</b> (1)A person infringes a registered trade mark if he uses, in the course of trade, a mark which is identical or similar with the trade mark</p>   |

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|          | <p>in relation to goods or services which are identical or similar with those for which it is registered where—</p> <p>(a) the mark is identical or similar with the trade mark and is used in relation to goods or services identical or similar to those for which the trade mark is registered;</p> <p>(b) the mark is identical or similar to the trade mark and is used in relation to goods or services identical or similar to those for which the trade mark is registered, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trade mark; or</p> <p>(c) the trade mark is well known in Kenya and the use of the mark, being without due cause, takes unfair advantage of, or is detrimental to the distinctive character or the repute of the trade mark.</p> <p>(2) For the purposes of this section use of a mark includes—</p> <p>(a) affixing it to goods or the packaging thereof;</p> <p>(b) offering or exposing goods or services for sale, or placing goods or services on the market or stocking them for those purposes, or offering or supplying services under the mark;</p> <p>(c) importing or exporting goods or services under the mark; or</p> <p>(d) using the mark on promotional material or in advertising.</p> <p>(3) A person who, without the authority of the registered proprietor, applies a registered trade mark to material intended to be used for labelling or packaging goods, as a promotional material, or for advertising goods or services, shall be treated as a contributory infringer.</p> <p>(4) Nothing in the preceding provisions of this section shall be construed as preventing the use of a registered trade mark by any person for the purpose of identifying goods or services as those of the proprietor or a licensee.</p> <p>(5) Despite the generality of subsection (4) any such use otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trade mark if the use without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark.</p> |
| Remedies | <p><b>158.</b> (1) Where a registered trade mark has been infringed, the Tribunal may grant the proprietor the following remedies—</p> <p>(a) an injunction;</p> <p>(b) an order for removal of the infringing mark from all material and, where the infringing mark is inseparable or incapable of being removed from the material, an order that all such material be delivered up to the proprietor;</p>  |

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|  | <p>(c) damages, including those arising from acts performed after advertisement of the acceptance of an application for registration which, if performed after registration, would amount to infringement of the rights acquired by registration; or</p> <p>(d) in lieu of damages, a reasonable royalty which would have been payable by a licensee for the use of the trade mark concerned, including any use which took place after advertisement of the acceptance of an application for registration and which, if taking place after registration, would amount to infringement of the rights acquired by registration.</p> <p>(2) For the purposes of determining the amount of damages or reasonable royalty to be awarded under this section, the Tribunal may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as it may deem fit.</p> <p>(3) Prior to instituting proceedings under this section, the owner of a registered trade mark shall give notice in writing of his intention to do so to every licensee in the Register, who shall be entitled to intervene in such proceedings and to recover any damages he or she may have suffered as a result of the infringement.</p> |
| Limits on effects of a registered trade mark | <p><b>159.</b> (1) A registered trade mark is not infringed by the use of another registered trade mark in relation to goods or services for which the latter is registered.</p> <p>(2) The right to the use of a trade mark conferred by registration shall be subject to any conditions or limitations entered on the Register, and shall not be deemed to be infringed by the use of any such mark to which, having regard to any such limitations, the registration does not extend.</p> <p>(3) A registered trade mark is not infringed by—</p> <p>(a) a bona fide use by a person of his own name, the name of his place of business, the name of his predecessor or place of business, or the name of any such predecessor's place of business or address;</p> <p>(b) the use of marks indicating the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services; or</p> <p>(c) bona fide use of the trade mark where it is necessary to indicate the intended purpose of a product or service, in particular, as accessories or spare parts.</p>  |

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|  | <p>(3) The use of a trademark under subsection (2) above shall at all times be in accordance with honest practices in industrial or commercial matters</p>  |
| Exhaustion of rights   | <p><b>160.</b> (1) A registered trade mark is not infringed by the use of the trade mark in relation to goods which have been placed on the market, whether in Kenya or outside Kenya, under that trade mark, by the proprietor of the registered trade mark or with his express or implied consent.</p> <p>(2) The provisions of subsection (1) shall not apply where —</p> <p>(a) the condition of the goods has been changed or impaired after they have been put on the market; and</p> <p>(b) the use of the registered trade mark in relation to those goods has caused dilution in an unfair manner of the distinctive character of the registered trade mark.</p>   |
| <p><b>PART XXII- REGISTERED TRADE MARK AS OBJECT OF PROPERTY</b></p> |   |
| Nature of a registered trade mark                                    | <p><b>161.</b> A registered trade mark is a property right obtained by the registration of the trade mark under this Act and the proprietor of a registered trade mark has the rights and remedies provided for under this Act.</p>   |
| Co-proprietorship of a registered trade mark                         | <p><b>162.</b> (1) Where a registered trade mark is granted to two or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered trade mark.</p> <p>(2) Subject to any agreement to the contrary, each co-proprietor is entitled, by himself or his agents, to do for his own benefit and without the consent of or the need to account to the other or others, any act which would otherwise amount to an infringement of the registered trade mark.</p> <p>(3) A co-proprietor may not without consent of the other or others—</p> <p>(a) grant a licence to use the registered trade mark; or</p> <p>(b) assign or charge his share in the registered trade mark or cause or permit security to be granted over the trade mark.</p> <p>(4) Infringement proceedings may be brought by any co-proprietor, but he may not, without the leave of the Tribunal, proceed with the action unless the other, or each of the others, is either joined as a plaintiff or added as a defendant.</p> |

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|                                       | <p>(5) Despite the generality in subsection (4), a co-proprietor who is thus joined as a defendant shall not be made liable for any costs in the action unless he takes part in the proceedings.</p> <p>(6) Nothing in this subsection affects the granting of interlocutory relief on the application of a single co-proprietor.</p>  |
| Assignment of a registered trade mark | <p><b>163.</b> (1) A registered trade mark shall be assignable or transmissible only by the registered proprietor.</p> <p>(2) A registered trade mark is assignable or transmissible either in connection with the goodwill of a business or not.</p> <p>(3) An assignment or transmission of a registered trade mark may be partial, that is, limited so as to apply in relation to some but not all of the goods or services for which the trade mark is registered.</p> <p>(4) The provisions of subsections (2) and (3) shall have the effect of an application for registration of a trade mark as they have effect in the case of a registered trade mark subject to successful registration of the trade mark.</p> <p>(5) Notwithstanding anything in subsections (2), (3) and (4), a trade mark shall not be, or be deemed to have been, assignable or transmissible in a case in which as a result of an assignment or transmission there would in the circumstances subsist, or have subsisted, whether under the common law or by registration, exclusive rights in more than one of the persons concerned to the use, in relation to identical or similar goods or services if, having regard to the similarity of the goods or services the use of the trade marks in exercise of those rights would be, or have been, likely to deceive or cause confusion.</p> <p>(6)(a) The proprietor of a trade mark who proposes to partially assign the trade mark shall submit to the Registrar in the prescribed manner a statement of case setting out the circumstances.</p> <p>(b) Where the Registrar is satisfied that the proposed partial assignment has fulfilled the conditions set out in subsection (5), he shall issue a certificate to that effect.</p> <p>(c) Within six months of the date of issue of the certificate of validity in paragraph (b), the proprietor shall file the application for the partial assignment in the prescribed manner.</p> |

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|                                     | <p>(7) An application for recordal of an assignment without goodwill shall be made upon payment of the prescribed application and publication fees.</p> <p>(8) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall make an application to the Registrar to register his title in the prescribed manner, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the Register and issue a certificate of assignment. (redraft the sections)</p>   |
| <p>Hypothecation and attachment</p> | <p><b>164.</b> (1) A registered trade mark may be hypothecated by a deed of security or a charge.</p> <p>(2) A registered trade mark may be attached to found or confirm jurisdiction for the purposes of any proceedings before the Court or a Magistrate and may be attached and sold in execution pursuant to an order made thereof. (clarify and redraft)</p> <p>(3) Where a deed of security has been lodged with the Registrar in the prescribed manner, the Registrar shall endorse the register to that effect and such endorsement shall record the name and address of the person in whose favour the deed of security has been granted and the nature and duration thereof.</p> <p>(4) A deed of security in respect of which an endorsement has been made in accordance with the provisions of subsection (3) shall have the effect of a pledge of the trade mark to the person or persons in whose favour the deed of security has been granted.</p> <p>(5) An assignment or transmission of a registered trade mark in respect of which a deed of security has been endorsed in terms of subsection (3) shall not, without the written consent of the person in whose favour the deed of security has been granted, be registered by the Registrar in terms of section 163.</p> <p>(6) Where the debt or obligation secured by a deed of security in respect of which the register has been endorsed in terms of subsection (3) has been discharged, any person may apply to the Registrar in the prescribed manner for the removal from the register of an endorsement in relation thereto made under subsection (3).</p> |
| <p>Licenses for trademarks</p>      | <p><b>165.</b> (1) A registered trade mark, other than defensive trade mark, shall be licensed only by the registered proprietor.</p>  |

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(2) A license of a registered trade mark may be exclusive, non-exclusive or sole and may apply to some or all of the goods or services for which the trade mark is registered.

(3) The use of a trade mark by a licensee shall be deemed to be use by the proprietor thereof for the purposes of section 169, and for any other purpose for which such use is material under this Act or at common law.

(4) Subject to any agreement subsisting between the parties, a licensee shall be entitled to request the proprietor to institute proceedings to prevent infringement, and, if the proprietor refuses or neglects to do so within sixty days after being requested, the licensee may institute proceedings for infringement in his own name, as if he or she were the proprietor, making the proprietor a party; and a proprietor who has been added as a party shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(5) Where the proprietor proposes to license the trade mark, he or she shall notify the Registrar in the prescribed manner and shall furnish the proprietor with a license agreement—

(a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed licensee, including particulars showing the degree of control by the proprietor over the license which their relationship will confer and whether it is a term of their relationship that the proposed licensee shall be the sole licensee or that there shall be any other restriction as to persons for whose registration as licensees application may be made;

(b) stating the goods or services in respect of which registration is proposed;

(c) stating any conditions or restrictions proposed with respect to the characteristics of the goods or services, to the mode or place of permitted use or to any other matter; and

(d) stating whether the license is to be for a period or without limit of period, and if for a period the duration thereof, and with such further documents, information or evidence as may be prescribed or by the Registrar.

(6) Where the requirements of subsection (5) have been complied with and the Registrar is satisfied that in all the circumstances the use of the trade mark in relation to the proposed goods or services or any of them by the proposed licensee subject to any conditions or restrictions which the Registrar deems proper would not be contrary to the public interest, the Registrar may register the proposed license and issue a certificate to that effect.

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|   | <p>(7) The Registrar may take steps for securing, solely, the information given for the purposes of an application under this section.</p> <p>(8) Without prejudice to the provisions of section 170 the registration of a license may be—</p> <p>(a) varied by the Registrar as regards the goods or services in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark to which the registration relates;</p> <p>(b) cancelled by the Registrar on the application in writing in the prescribed manner of the proprietor, the licensee, any other licensee of the trade mark or any person on any of the following grounds—</p> <p>(i) that the licensee has used the trade mark otherwise than by way of the license, or in such a way as to cause, or to be likely to cause, deception or confusion;</p> <p>(ii) that the proprietor or the licensee misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration; or</p> <p>(iii) that the registration of the license ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which the applicant is interested.</p> <p>(9) The Registrar shall cause the notification of the registration of a person as a licensee to any other licensee of the trade mark.</p> <p>(10) Pursuant to an application under subsection (8), the Registrar shall cause the notification of the application to the registered proprietor and each licensee, not being the applicant, of the trade mark, and to any person to whom such an application is notified and who intervenes in the variation or cancellation proceedings an opportunity of being heard.</p> <p>(11) The Registrar may at any time cancel the registration of a licence of a trade mark in respect of any goods or services in respect of which the trade mark is no longer registered.</p> <p>(12) Nothing in this section shall confer on a licensee of a trade mark any assignable or transmissible right to the use thereof.</p> |
| <p>Use of one of substantially identical trade marks equivalent to use of another</p> | <p><b>166.</b> (1) Where under this Act use of a registered trade mark is required to be proved for any purpose, the Tribunal or the Registrar may, if and so far as the Tribunal or the Registrar deems right, accept use of a trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.</p>   |

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|   | <p>(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any registered trade mark, being a part thereof, registered in the name of the same proprietor by virtue of section 145 (1).</p>  |
| <p>Use of trade mark for export trade</p>   | <p><b>167.</b> The application in Kenya of a trade mark to goods to be exported from Kenya, and any other act done in Kenya in relation to goods to be so exported or services to be performed outside Kenya which, if done in relation to goods to be sold or otherwise traded in Kenya or services to be performed within Kenya would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods or services for any purpose for which such use is material under this Act or at common law.</p>  |
| <p align="center"><b>PART XXIII-SURRENDER, RECTIFICATION AND CORRECTION OF REGISTER</b></p> |   |
| <p>Surrender of a registered trade mark</p>   | <p><b>168.</b> (1)A proprietor may surrender a registered trade mark in respect of some or all of the goods or services for which it is registered.</p> <p>(2)The Cabinet Secretary may make rules for the surrender of a registered trade mark and for protecting persons with rights in the registered trade mark.</p>  |
| <p>Removal from register and imposition of limitations on ground of non-use</p>             | <p><b>169.</b> (1)Subject to the provisions of section 146, a registered trade mark may be removed from the register in respect of any of the goods or services in respect of which it is registered on application by any person aggrieved to the Registrar, on the ground that either—</p> <p>(a) the trade mark was registered without any bona fide intention to use in relation to those goods or services by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods or services by any proprietor thereof for the time being up to the date one month before the date of the application; or</p> <p>(b) thirty days before the date of the application, a continuous period of five years or longer elapsed during which there was no bona fide use thereof in relation to those goods or services by any proprietor thereof for the time being.</p> <p>(2)Despite the generality in subsection (1), except where the applicant has been permitted under section 141 to register an identical or similar trade mark in respect of the goods or services in question or where the Registrar is of the opinion that he or she might properly be permitted so to register such a trade mark, the Registrar may refuse an application made under subsection (1) (a) or (b) in relation to any</p> |

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|   | <p>goods or services, if it is shown that there has been, before the relevant date or during the relevant period as the case may be, bona fide use of the trade mark by any proprietor thereof for the time being in relation to—</p> <p>(i) the services of the same description; or<br/> (ii) goods associated with those services or services of that description, being services, or as the case may be, goods in respect of which the trade mark is registered.</p> <p>(3) Where in relation to any goods or services in respect of which a trade mark is registered—</p> <p>(a) the matters referred to in subsection (1) (b) are shown so far as regards non-use of the trade mark in relation to goods or services to be sold, or otherwise traded in, in a particular place in Kenya, otherwise than for export, or in relation to goods or services to be exported to a particular market; and</p> <p>(b) a person has been permitted under section 7 to register an identical or similar trade mark in respect of those goods or services under a registration extending to use in relation to goods or services to be sold, or otherwise traded in, or services to be performed in that place, otherwise than for export, or in relation to goods or services to be exported to that market, or the Registrar is of opinion that he might properly be permitted so to register such a trade mark, on application by that person to the Registrar, the Registrar, may impose on the registration of the first-mentioned trade mark such limitations as the Registrar deems proper for securing that the registration of the first-mentioned trade mark shall cease to extend to the last-mentioned use. (confirm new section)</p> <p>(4) An applicant shall not be entitled to rely for the purposes of subsection (1) (b), or for the purposes of subsection (3), on any non-use of a trade mark that is shown to have been due to special circumstances or in relation to particular services and not to any intention to abandon the trade mark to which the application relates.</p> |
| <p>General powers to rectify the register</p> | <p><b>170.</b> (1) Any person aggrieved by an omission from the register of an entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Registrar, the Registrar may make such order for making, expunging or varying the entry as the Registrar may deem fit.</p>  |

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|                               | <p>(2) The Registrar 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 the register.</p> <p>(3) Any order of the Tribunal rectifying the register shall direct that notice of the rectification shall be served on the Registrar, and the Registrar shall on receipt of the notice rectify the register accordingly.</p>   |
| <p>Correction of Register</p> | <p><b>171.</b> (1)The Registrar may, on request by the proprietor in the prescribed manner—</p> <ul style="list-style-type: none"> <li>(a) correct any error in the name, address or description of the registered proprietor of a trade mark;</li> <li>(b) enter any change in the name, address or description of the person who is registered as the proprietor of a trade mark;</li> <li>(c) cancel the entry of a trade mark on the register;</li> <li>(d) strike out any goods or services or classes of goods or services, as the case may be, from those in respect of which a trade mark is registered;</li> <li>(e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark; or</li> <li>(f) correct any other error.</li> </ul> <p>(2)The Registrar may, on request made in the prescribed manner by a licensee of a trade mark, correct any error, or enter any change, in the name, address or description of the licensee.</p> <p>(3)Where the Registrar is of the considered view that a trade mark was entered on the Register in error, the Registrar may, on his own motion cancel the entry of the trade mark on the register and record the reasons for such a decision accordingly.</p> <p>(4) Where the Registrar’s action under this section is likely to adversely affect the proprietor, the Registrar shall give that person an opportunity to be heard.</p> |
| <p>Effect of acquiescence</p> | <p><b>172.</b> (1)A proprietor of an earlier trade mark, who has acquiesced for a continuous period of three years in the use of a registered trade mark in Kenya, being aware of that use, shall cease to be entitled, on the basis of that earlier trade mark—</p> <ul style="list-style-type: none"> <li>(a) to apply for a declaration that the registration of the latter trade mark is invalid; or</li> <li>(b) to oppose the use of the latter trade mark in relation to the goods or services in relation to which it has been so used, unless the registration of the latter trade mark was applied for in bad faith.</li> </ul>   |

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|   | <p>(2) Where subsection (1) applies, the proprietor of the latter trade mark shall not be entitled to oppose the use of the earlier trade mark notwithstanding that the earlier trade mark, may no longer be invoked against his latter trade mark.</p>   |
| <p>Alteration of a registered trade mark</p>                      | <p><b>173.</b> (1)The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he or she may deem fit.</p> <p>(2) The Registrar may cause an application under this section to be published in the Journal, in such prescribed manner, in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the publication any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.</p> <p>(3) Where leave under this section is granted, the trade mark as altered shall be published in the Journal, in such manner as may be prescribed in the Rules made under this Act.</p>  |
| <p><b>PART XXIV- CERTIFICATION AND COLLECTIVE TRADE MARKS</b></p> |   |
| <p>Certification trade marks</p>                                  | <p><b>174.</b> (1)A mark capable of distinguishing, in the course of trade, goods or services certified by any person in respect of kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, or the mode or time of production of the goods or of rendering of the services, as the case may be, from goods or services not so certified, shall, on application in the prescribed manner, be registered as a certification trade mark in respect of such goods or services, in the name, as proprietor thereof, of that person.</p> <p>(2)Despite the generality in subsection (1), a mark may not be so registered in the name of a person who carries on a trade in the goods or services in respect of which registration is sought.</p> <p>(3) Geographical names or other indications of geographical origin may be registered as certification trade marks.</p> <p>(4) Subject to the provisions of this section, the provisions of this Act shall, except in so far as is otherwise provided, and in so far as they can be applied, apply to a certification trade mark.</p> |

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|  | (5) The provisions of the **** Schedule shall have effect with respect to the registration of a mark under this section and to marks so registered.  |
| Collective trade marks   | <p><b>175.</b> (1) A mark capable of distinguishing, in the course of trade, goods or services of persons who are members of any association from goods or services of persons who are not members thereof, shall, on application in the manner prescribed and subject to the provisions of this section, be registered as a collective trade mark in respect of such goods or services in the name of such association as the proprietor thereof.</p> <p>(2) Geographical names or other indications of geographical origin may be registered as collective trade marks.</p> <p>(3) Subject to the provisions of this section, the provisions of this Act shall, except in so far as is otherwise provided, and in so far as they can be applied, apply to a collective trade mark.</p> <p>(4) The provisions of the ***** Schedule shall have effect with respect to the registration of a mark under this section and to marks so registered.</p> |
| <b>PART XXV - REGIONAL AND INTERNATIONAL APPLICATIONS</b>                      |  |
| Marks registered under the Banjul Protocol, the Madrid Agreement and Protocol. | <p><b>176.</b> In this Part—</p> <p>“The Banjul Protocol” means the Banjul Protocol on Marks within the Framework of the African Regional Intellectual Property Organization of 1993;</p> <p>“International Bureau” means the International Bureau of the World Intellectual Property Organization of 14th July, 1967;</p> <p>“the Madrid Agreement” means the Agreement relating to International Registration of Marks of April 1891;</p> <p>“the Madrid Protocol” means the Protocol relating to the Madrid Agreement of 27th June 1989;</p> <p>“international trade mark” means a trade mark which is protected in Kenya under the Madrid Agreement and the Madrid Protocol.</p>   |
| Rules regarding regional and international applications                        | <p><b>177.</b> (1) The Cabinet Secretary may, make appropriate Rules to give effect, in Kenya, to the provisions of the Banjul Protocol, and the Madrid Agreement and the Madrid Protocol, as applicable.</p>  |

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|   | <p>(2) The Rules referred to in subsection (1) may, in particular, provide for—</p> <p>(a) the filing of applications for international registration of marks through the Office;</p> <p>(b) the procedures to be followed where the basic application in Kenya fails or ceases to be in force;</p> <p>(c) the communication of information to ARIPO or the International Bureau; and</p> <p>(d) the payment of fees in respect of applications for regional or international registration and renewals.</p> |
| Proceedings and effects of regional and international trade marks | <p><b>178.</b> (1)The provisions of this Act with respect to opposition and expungement proceedings shall apply to regional and international trade marks.</p> <p>(2) A trade mark in respect of which Kenya is a designated state, registered by virtue of the Banjul Protocol or Madrid Agreement and Protocol shall have the same effect and enjoy the same protection in Kenya, as a trade mark registered under this Act.</p>   |
| Applications for registration of marks under the Banjul Protocol  | <p><b>179.</b> (1)The Office shall act as a receiving office, for the purposes of filing an application under the Banjul Protocol, where a regional application is filed with it and the applicant is a national or a resident of Kenya.</p> <p>(2) Where there is a conflict between the provisions of this Act and the provisions of the Banjul Protocol on Marks, this Act shall prevail.</p>   |
| <b>PART XXVI - POWERS AND DUTIES OF REGISTRAR</b>                 |  |
| Preliminary advice by Registrar as to distinctiveness             | <p><b>180.</b> Any person may apply in the prescribed manner to the Registrar for advice as to whether or not a trade mark appears to the Registrar prima facie to be inherently adapted to distinguish, or capable of distinguishing, as the case may be.</p>   |
| Hearing before exercise of Registrar's discretion                 | <p><b>181.</b> Where any discretionary or other power is given to the Registrar by this Act or the Rules, he or she shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without, giving to the applicant or registered proprietor an opportunity of being heard.</p>  |
| Power of Registrar to award costs.                                | <p><b>182.</b> (1)In all proceedings before the Registrar under this Act, the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may, by leave of the Tribunal thereof, be</p>   |

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|  | <p>enforced in the same manner as a judgment or order of the Court to the same effect.</p> <p>(2) The Chief Justice may make rules in regard to the amount of and generally as to costs. (clarify)</p>   |
| <p>Security for costs</p>                                  | <p><b>183.</b> (1) Any party to legal proceedings before the Registrar may, at any stage in the proceedings, apply for security for costs in the prescribed manner.</p> <p>(2) The Registrar may make an order for security for costs if satisfied, having regard to all circumstances of the case that it is just to make such an order and one or more of these conditions are fulfilled—</p> <p>(a) the party neither resides nor carries on business in Kenya and there is reason to believe that he will be unable to pay the costs if ordered to do so;</p> <p>(b) the party has changed the address or name since the proceedings commenced with a view to evading the consequences of litigation;</p> <p>(c) the party has taken steps in relation to his assets that would make it difficult to enforce orders for costs against him; or</p> <p>(d) there is reason to believe that the party will be unable to pay the costs.</p> <p>(3) Where the Registrar makes an order for security for costs, he or she will determine the amount of security and direct the manner in which the security shall be given.</p> <p>(4) The party seeking security under this section shall specify the amount sought, supported by a taxable bill of costs for work completed up to the date of request and foreseeable costs.</p> |
| <p><b>PART XX – LEGAL PROCEEDINGS AND APPEALS</b></p>      |  |
| <p>Registration to be prima facie evidence of validity</p> | <p><b>184.</b> In all legal proceedings relating to a registered trade mark, including applications under section 170, the fact that a person is registered as proprietor of the trade mark shall be prima facie evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof.</p>  |

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| Certificate for use in legal proceedings  | <b>185.</b> In any legal proceedings where the proprietor of a trade mark is required to prove that the trade mark is validly on the Register, the proprietor shall obtain a certificate for use in legal proceedings from the Registrar in the prescribed manner.  |
| Costs of Registrar in proceedings before Court, and payment of costs by Registrar | <b>186.</b> In all proceedings before the Tribunal under this Act, the costs awarded to the Registrar shall be in the discretion of the Tribunal.   |
| Mode of giving evidence.  | <p><b>187.</b> (1) In any proceeding under this Act before the Registrar, evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the Registrar deems it right so to do, he may take oral evidence in lieu of or in addition to evidence by statutory declaration.</p> <p>(2) Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.</p> <p>(3) In case any part of the evidence is taken viva voce, the Registrar shall, in respect of requiring the attendance of witnesses and taking evidence on oath, as court of competent jurisdiction.</p> |
| <b>PART XII - GENERAL PROVISIONS FOR TRADEMARKS</b>                               |   |
| Search on the Register  | <b>188.</b> Any person may request the Registrar in a prescribed manner to cause a search to be made in respect of specified goods and services to ascertain whether any mark is on record that resembles a trade mark provided by the person.  |
| Notice prior to filing opposition or expungement proceedings                      | <p><b>189.</b> (1) Where a party intends to file opposition or expungement proceedings, he or she shall, within thirty days give a notice in writing to the applicant or proprietor, as the case may be, to afford the applicant or the proprietor an opportunity to withdraw or surrender the application or trade mark respectively. (redraft the 30 day period)</p> <p>(2) Where a party does not give notice in accordance with subsection (1), the Registrar, in deciding whether or not costs should be awarded to the applicant or proprietor, shall consider whether proceedings might have been avoided if reasonable notice had been given. (use of expungement; replace reasonable notice)</p>   |
| Recognition of agents.  | <b>190.</b> (1) Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may, under and in accordance with the Rules,   |

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|  | <p>be done by or to an agent of that person duly authorized in the prescribed manner.</p> <p>(2) A person shall be qualified to act as a trade mark agent if such person—</p> <p>(a) is a Kenyan citizen; and</p> <p>(b) is an advocate of the High Court of Kenya and admitted to practice under the Act in the prescribed manner; or</p> <p>(c) is admitted to practise as an agent before the Office in accordance with the provisions of this Act.</p>  |
| International arrangements                                 | <p><b>191.</b> (1) Where any person has registered or has applied for registration of a trade mark in a convention country, that person or his legal representative or assignee shall be entitled to registration of his trade mark in priority to other applicants and that registration shall have the same date as the date of application for protection in the convention country on condition that the application for registration is made within six months from the date of the application for protection in the convention country.</p> <p>(2) Despite the generality in subsection (1), nothing in this section shall entitle the proprietor of a trade mark to recover damages for infringement on the trade mark prior to the actual date on which the trade mark is registered in Kenya.</p> |
| <b>PART XVIII – PROTECTION OF GEOGRAPHICAL INDICATIONS</b> |   |
| Availability of protection regardless of registration      | <p><b>192.</b> (1) Protection under this Act shall be available regardless of whether a geographical indication has been registered or not.</p> <p>(2) If a geographical indication is registered under Part *** of this Act, the registration shall be sufficient proof that, that indication is a geographical indication within the meaning of section 2.</p> <p>(3) The protection under subsection (1) shall be available against a geographical indication which, although true as to the territory, region or locality in which the products originate, falsely represents to the public that the products originate in another territory, region or locality.</p>   |
| Homonymous geographical indications                        | <p><b>193.</b> In the case of homonymous geographical indications, protection shall be accorded to each indication subject to section 193(3).</p> <p>(2) The Registrar shall, for the purposes of subsection(1), determine the practical conditions under which the homonymous indications shall be differentiated from each other, taking into account the need to ensure</p>  |

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|   | <p>equitable treatment of the producers concerned and that consumers are not confused or deceived.</p> <p>(3) The procedure under this section shall be prescribed in the Regulations.</p> <p>(4) For the purposes of this section “homonymous geographical indication” means an indication for the same product that has the same spelling as, or sounds the same as—</p> <p>(a) a registered geographical indication for the same products having a different geographical origin;</p> <p>(b) a geographical indication for the same product having a different geographical origin for which an application for registration under section 197 has been made; or</p> <p>(c) a non - registered geographical indication for the same products having a different geographical origin.</p>   |
| <p>Exclusion from protection</p>                                  | <p><b>194.</b> (1)The following may not be protected as geographical indications—</p> <p>(a) indications which are contrary to public order or morality;</p> <p>(b) indications which are contrary to public interest, in particular national security, nutrition, health, environmental conservation, or the development of other vital sectors of the national economy;</p> <p>(c) indications which are not protected or cease to be protected in their country of origin, or which have fallen into disuse in that country;</p> <p>(d) indications which confuse or deceive the public as to the characteristics, nature, quality, place of origin, process of production or the use of the product;</p> <p>(e) indications which have become generic;</p> <p>(f) indications which are similar or identical to well known-marks; or</p> <p>(g) indications which conflict with the name of a plant variety or an animal breed and which are likely to deceive or cause confusion.</p> <p>(2)For the purposes of subsection 1(f), a generic indication means an indication which, although relating to the territory, region or locality where the products were originally produced, has lost its original meaning and has become the common name of such products and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the product.</p> |
| <p><b>PART XIX – REGISTRATION OF GEOGRAPHICAL INDICATIONS</b></p> |   |
| <p>Application for registration and right to file application</p> | <p><b>195.</b> (1)An application for registration of a geographical indication shall be filed with the Registrar.</p> <p>(2) An application under this section may only be filed by—</p>  |

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|  | <p>(a) legal entities carrying on activities as producers in the geographical area specified in the application, with respect to the products specified in the application;</p> <p>(b) a group of representative producers; or</p> <p>(c) in respect to indications with a national character, any competent authority.</p> <p>(3) An applicant for a geographical indication may be represented by an agent.</p>   |
| Contents of application  | <p><b>196.</b> (1) The application in section 195 shall specify—</p> <p>(a) the name of applicant;</p> <p>(b) the geographical indication for which registration is sought;</p> <p>(c) the products for which the geographical indication is used;</p> <p>(d) the delimitation of the geographical area to which the geographical indication applies;</p> <p>(e) the quality, reputation or other characteristic of the product attributable to its geographical origin;</p> <p>(f) the authorities or entities verifying compliance with the provisions of the requirements under this Act and the Regulations made thereunder;</p> <p>(g) where applicable, any trade mark to be used alongside the indication; and</p> <p>(h) any other matter that may be prescribed in the Regulations.</p> <p>(2) The application shall be accompanied by—</p> <p>(a) the internal rules governing the management of the geographical indication; and</p> <p>(b) a summary of the application as prescribed in the Regulations.</p> <p>(3) The application shall be subject to payment of the prescribed fees.</p> <p>(4) The details of the requirements with which the application shall comply shall be prescribed in the Regulations.</p> |
| Designation of inspection authorities or entities                    | <p><b>197.</b> For purposes of this Act, the Cabinet Secretary shall designate the competent authorities or entities responsible for controls in respect of the geographical indication.</p>  |
| Examination, opposition and registration of geographical indications | <p><b>198.</b> (1) The Registrar shall examine whether or not the application complies with the provisions of section 195, 196 (2) and 197 and where the Registrar finds that such conditions are fulfilled, shall accept the application, and publish it in accordance with subsection (3).</p> <p>(2) Any interested person may within the prescribed period and in the prescribed manner, give notice of opposition of a geographical indication to the registration.</p>  |

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|  | <p>(3) Once the application has been published and upon expiry of the prescribed period for giving the notice of opposition, and either the registration of the geographical indication has not been opposed within the prescribed time limit or the registration of the geographical indication has been opposed and the opposition has been decided in the applicant's favour, the Registrar shall register the geographical indication, issue the certificate and cause the fact of the registration published in the Journal.</p> <p>(4) Where the provisions of subsection (1) are not fulfilled, the Registrar may—</p> <p>(a) invite the applicant to correct any error or amend the application, within a specified period and, if the applicant fails to comply with such invitation, the application shall be deemed to be abandoned;</p> <p>(b) refuse the application, and publish a notice to that effect, together with reasons for the refusal, in the Journal or the Kenya Gazette.</p> <p>(5) The Cabinet Secretary may make regulations for the better implementation of this section.</p> |
| <p>Administration of the geographical indication</p> | <p><b>199.</b> (1) The applicant shall be the administrator of the geographical indication upon the registration thereof.</p> <p>(2) The responsibility of administration of the geographical indication may be transferred from one entity to another.</p> <p>(3) A transfer that occurs as provided for under subsection (2) shall be notified to the Registrar in the prescribed manner and shall be recorded accordingly.</p> <p>(4) The Cabinet Secretary may make regulations for the better implementation of this section.</p>   |
| <p>Term of a geographical indication</p>             | <p><b>200.</b> A registered geographical indication shall be protected under this Act as long as the specific characteristics, quality or reputation which are the basis of the grant of the registration exist.</p>   |
| <p>Maintenance of registration</p>                   | <p><b>201.</b> (1) In order to maintain the registration of a geographical indication, a maintenance fee shall be paid every five years in advance to the Office in the manner prescribed in the Regulations under this Act.</p> <p>(2) Where the maintenance fee is not paid in accordance with the provisions of this section, the registration shall lapse.</p> <p>(3) Notwithstanding that the registration of the geographical indication has lapsed under this section, the geographical indication shall continue to be protected in accordance with the provisions of sections 193(1) and 210 of this Act.</p>   |

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| Right of use                               | <p><b>202.</b> (1) Only producers carrying out their activity in the geographical area specified in the Register shall have the right to use a registered geographical indication, in the course of trade, with respect to the products specified in the Register, provided that such products possess the quality, reputation or other characteristic specified in the Register.</p> <p>(2) Notwithstanding the provisions of subsection (1), the administrator may authorize any other person in the value chain of the product to use such geographical indication in the course of trade.</p> <p>(3) Upon application in the prescribed manner, the Registrar may direct an administrator to admit any producer complying with the requirements of the geographical indication.</p>   |
| Labelling                                  | <p><b>203.</b> (1) Upon registration of a geographical indication, the labelling of the geographical indication product shall include the identification of the product as a “registered geographical indication.”</p> <p>(2) The identification provided for under subsection (1) shall be indicated by using a label in the manner prescribed in the Regulations.</p>   |
| Change of Particulars                      | <p><b>204.</b> (1) Any change of particulars provided for under section 9 shall be recorded in the Register upon payment of the prescribed fee in the manner prescribed in the Regulations.</p> <p>(2) Where the change is in respect of particulars in section 9(1), the provisions of section 11 shall apply with necessary modifications. (clauses are contradicting) .</p>  |
| Cancellation and rectification of Register | <p><b>205.</b> (1) Any interested person or any competent authority may request the Tribunal to order—</p> <p>(a) the cancellation of a registration of a geographical indication on the ground that—</p> <p>(i) the indication does not qualify for protection as provided for under this Act,</p> <p>(ii) the indication was registered without any bona fide intention on the part of the administrator that it should be used in relation to those products by the administrator, and that there has in fact been no bona fide use of the geographical indication in relation to those products by any person thereof for the time being up to thirty days before the date of the application; or</p> <p>(iii) up to thirty days before the date of application, a continuous period of five years or longer elapsed during which the geographical indication was</p> |

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|   | <p>registered and during which there was no bona fide use thereof in relation to those products by any person thereof for the time being; or</p> <p>(b) the rectification of a registration of geographical indication on the ground that the geographical area specified in the registration does not correspond to the geographical indication.</p> <p>(2) The Cabinet Secretary may make regulations for the implementation of this section.</p> <p>(3) Upon the final decision of the Tribunal, the Tribunal shall inform the Registrar, who shall enter the decision in the Register and publish it as soon as possible in the Journal or in the Kenya Gazette.</p>  |
| <p>Register of Geographical Indications</p> | <p><b>206.</b> (1)The Registrar shall maintain a register in which all geographical indications registered under this Act shall be recorded and numbered in the order of registration and in respect of each geographical indication —</p> <p>(a) the application for registration and its modifications if any;</p> <p>(b) the date of publication of the application and registration of the geographical indication;</p> <p>(c) the name and address of the administrator of the geographical indication;</p> <p>(d) the internal rules governing the management of the geographical indication;</p> <p>(e) the authorized users of the geographical indication;</p> <p>(f) where applicable, the lapse of the geographical indication for non-payment of maintenance fees; and</p> <p>(g) any other transaction to be recorded in accordance with the provisions of this Act.</p> <p>(2) The register maintained under subsection (1) shall be divided into three parts-</p> <p>(a) indications registered under the Act;</p> <p>(b) indications registered pursuant to multilateral agreements; and</p> <p>(c) indications registered pursuant to bilateral agreements.</p> <p>(3) Any person may search, inspect, obtain extracts or apply for copies of the records maintained by the Registrar upon fulfillment of the conditions and payment of the prescribed fees.</p> |
| <p>Correction of Register</p>               | <p><b>207.</b> (1)The Registrar may, on his or her own motion or upon request by the administrator of a geographical indication in the prescribed manner—</p>   |

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|   | <p>(a) correct any error in the name, address or description of the registered administrator of a geographical indication;</p> <p>(b) enter any change in the name, address or description of the person or entity registered as the administrator of a geographical indication; or</p> <p>(c) correct any other error as may be requested.</p>   |
| <p>Jurisdiction of the Tribunal on Geographical Indications</p> | <p><b>208.</b> (1) Any interested party may institute proceedings in the Tribunal to prevent the use of the geographical indication in respect of -</p> <p>(a) identical or similar products not originating in the place indicated by the designation in question;</p> <p>(b) identical or similar products in non-compliance with the requirements of a registered geographical indication; or</p> <p>(c) other products not originating in the place indicated by the designation in question, in a manner which is likely to deceive or cause confusion as to the geographical origin of the product or exploits the reputation of a geographical indication.</p> <p>(2) The protection afforded by subsection (1) shall also apply where the true origin of the product is indicated or where the geographical indication is used in translation or is accompanied by terms such as 'kind', 'type', 'style', 'way', 'imitation', 'method' or other analogous expressions, and the use or evocation of graphic symbols which may lead to deception or confusion.</p> <p>(3) Geographical indications shall be protected against consumer as to the true geographical origin of the product.</p> <p>(4) Any interested party may institute proceedings in the Tribunal to prevent the use of—</p> <p>(a) incorrect indications of source of a product, or designations which may be confused with incorrect indications of the source;</p> <p>(b) names, addresses or trade marks in relation to trade marks or services of a different origin where there could be deception or confusing ; or</p> <p>(c) any other practice liable to confuse or deceive the consumer as to the true geographical origin of the products.</p> <p>(5) The Tribunal may grant the following relief—</p> <p>(a) an injunction to prevent infringement where infringement is imminent or to prohibit the continuation of the infringement, once infringement has started;</p> <p>(b) damages; or</p> |

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|                                     | <p>(c) any other remedy provided for in law.</p> <p>(6) No proceedings shall be instituted, to prevent, or to recover damages for, the infringement of an unregistered geographical indication</p> <p>(7) Notwithstanding subsection 6, nothing in this Act shall be deemed to affect the rights of action against any person for passing off the geographical indications products of another person or the remedies in respect thereof.</p>   |
| Deceptive or confusing marks        | <p><b>209.</b> (1)The Registrar may, on his or her own motion or at the request of any interested party, after hearing all the parties concerned, refuse or invalidate the registration of trade mark which contains or consists of a geographical indication with respect to goods not originating in the territory, region or locality indicated, if use of the indication in the trade mark for such goods in Kenya is of such a nature as to be likely to deceive or cause confusion as to the true place of origin.</p> <p>(2) The Cabinet Secretary may make regulations for the better implementation of this section.</p> |
| Exception regarding prior users     | <p><b>210.</b> (1)Notwithstanding any other provision of this Act, the use of an already registered trade mark which is identical or similar to a geographical indication which is registered under this Act may continue for a period of two years after such registration after which the provisions of section 211 shall apply.</p>  |
| Use of names in the course of trade | <p><b>211.</b> Notwithstanding the provisions of this Act, this Act shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where the name is used in a manner likely to deceive or cause confusion.</p>  |
| Exercise of discretionary powers    | <p><b>212.</b> Where any discretionary or other power is given to the Registrar by this Act or the Regulations, the Registrar shall not exercise that power adversely towards any party without giving the party an opportunity of being heard.</p>   |
| Extension of time                   | <p><b>213.</b> (1)Upon request in the prescribed manner, any person may apply to the Registrar for extension of time for doing any act or taking any proceedings under this Act or Regulations made thereunder.</p> <p>(2) The extension may be granted, though the time for doing the act or taking the proceedings has expired.</p>   |
| Publication                         | <p><b>214.</b> Where a matter is required to be published under this Act, it shall be published in the Journal or the Kenya Gazette.</p>  |

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| Waiver of fees                               | <b>215.</b> The Council may waive whole or part of any fees payable under this Act in the manner and in the circumstances prescribed.  |
| International Arrangement                    | <b>216.</b> Geographical indications protected under an agreement on the protection of geographical indications concluded by Kenya with any other country shall be deemed to be geographical indications under this Act shall be protected in accordance therewith.  |
| <b>PART XX- COPYRIGHT AND RELATED RIGHTS</b> |  |
| Works eligible for copyright                 | <p><b>217.</b> (1) Subject to this section, the following works shall be eligible for copyright or related rights—</p> <ul style="list-style-type: none"> <li>(a) literary works;</li> <li>(b) musical works;</li> <li>(c) artistic works;</li> <li>(d) dramatic works;</li> <li>(e) audio-visual works;</li> <li>(f) sound recordings; and</li> <li>(g) broadcasts.</li> </ul> <p>(2) A broadcast shall not be eligible for copyright until it has been broadcast.</p> <p>(3) A literary, musical or artistic work shall not be eligible for copyright unless—</p> <ul style="list-style-type: none"> <li>(a) sufficient effort has been expended on making the work to give it an original character; and</li> <li>(b) the work has been written down, recorded or otherwise reduced to material form.</li> </ul> <p>(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.</p> <p>(5) Rights protected by copyright shall accrue to the author automatically on affixation of a work subject to copyright in a material form, and non-registration of any copyright work or absence of either formalities shall not bar any claim from the author.</p> |
| Register of copyright works                  | <b>218.</b> (1) The Registrar shall keep and maintain a register of all works under this Act in such manner as may be prescribed.  |

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|   | <p>(2) Without prejudice to the relevant provisions of this Act conferring Copyright, all works eligible for copyright may be entered on the Register on application in the prescribed format made by or on behalf of the author, owner, assignee or exclusive licensee of the work.</p> <p>(3) The Register shall be prima facie evidence of particulars entered therein and documents, extracts or copies made there from if certified by the Registrar shall be admissible in evidence without further proof or production of the original.</p> <p>(4) The register and the relevant details entered on application shall be available for search to the public on terms set by the Registrar.</p>   |                     |  |  |   |                                       |   |                     |  |               |  |
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| <p>Copyright by virtue of nationality or residence, and duration of copyright</p> | <p><b>219.</b> (1) Copyright shall be conferred by this section on every work eligible for copyright of which the author, or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a citizen of, or is domiciled or ordinarily resident in, Kenya or is a body corporate which is incorporated under or in accordance with the laws of Kenya.</p> <p>(2) The term of a copyright conferred by this section shall be calculated according to the following table—</p> <table border="1" data-bbox="466 1043 1302 1626"> <thead> <tr> <th><i>Type of Work</i></th> <th><i>Date of Expiration of Copyright</i></th> </tr> </thead> <tbody> <tr> <td>1. Literary, musical, dramatic or artistic work other than photographs</td> <td>Fifty years after the end of the year in which the author dies.</td> </tr> <tr> <td>2. Audio-visual works and photographs</td> <td>Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest.</td> </tr> <tr> <td>3. Sound recordings</td> <td>Fifty years after the end of the year in which the recording was made.</td> </tr> <tr> <td>4. Broadcasts</td> <td>Fifty years after the end of the year in which the broadcast took place.</td> </tr> </tbody> </table> <p>(3) In the case of anonymous or pseudonymous literary, musical, dramatic or artistic works, the copyright therein shall subsist until the expiration of fifty years from the end of the year in which it was first published.</p> | <i>Type of Work</i> | <i>Date of Expiration of Copyright</i> | 1. Literary, musical, dramatic or artistic work other than photographs | Fifty years after the end of the year in which the author dies. | 2. Audio-visual works and photographs | Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest. | 3. Sound recordings | Fifty years after the end of the year in which the recording was made. | 4. Broadcasts | Fifty years after the end of the year in which the broadcast took place. |
| <i>Type of Work</i>   | <i>Date of Expiration of Copyright</i>  |                     |  |  |   |                                       |   |                     |  |               |  |
| 1. Literary, musical, dramatic or artistic work other than photographs            | Fifty years after the end of the year in which the author dies.   |                     |  |  |   |                                       |   |                     |  |               |  |
| 2. Audio-visual works and photographs   | Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest.   |                     |  |  |   |                                       |   |                     |  |               |  |
| 3. Sound recordings   | Fifty years after the end of the year in which the recording was made.  |                     |  |  |   |                                       |   |                     |  |               |  |
| 4. Broadcasts   | Fifty years after the end of the year in which the broadcast took place.  |                     |  |  |   |                                       |   |                     |  |               |  |

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|  | <p>(4) Despite the generality of subsection (3) in the event of the identity of the author becoming known the term of protection of a copyright shall be calculated in accordance with subsection (2).</p> <p>(5) In the case of a work of joint authorship, reference in the preceding table to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person. (find a better term for this)</p> <p>(6) Notwithstanding anything else contained in this Act, copyright in works eligible for copyright and vested in the National Museums Board of Directors or the National Museums is conferred in perpetuity on the National Museums.</p>  |
| <p>Copyright by reference to country of origin</p>               | <p><b>220.</b> (1) Copyright shall be conferred by this section on every work, other than a broadcast which is eligible for copyright and which—</p> <p>(a) being a literary, musical, dramatic or artistic work or any audio-visual work, is first published in Kenya; or</p> <p>(b) being a sound recording, is made or first published in Kenya; or</p> <p>(c) being a broadcast, is transmitted from transmitters situated in Kenya.</p> <p>(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 219 in relation to a similar work.</p>   |
| <p>Copyright in works of Government and international bodies</p> | <p><b>221.</b> (1) Copyright is conferred under this section on any work eligible for copyright which has been created pursuant to a commission from the Government or such international body or non-governmental body as may be prescribed, and on which no copyright has been conferred under section 219 (1) or 220(1).</p> <p>(2) Copyright conferred by this section on a literary, musical, dramatic or artistic work, shall subsist until the end of the expiration of fifty years from the end of the year in which it was first published.</p> <p>(3) Copyright conferred by this section on any audio-visual work, photograph, sound recording or broadcast shall have the same duration as is provided for by section 219 in relation to a similar work. (confirm new section)</p> <p>(4) Sections 219 and 220 shall not confer copyright on works to which this section applies.</p> |

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| <p>Nature of copyright in literary, musical or artistic and audio-visual works</p> | <p><b>222.</b> (1) Copyright in a literary, musical, artistic or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts—</p> <p>(a) the reproduction in any material form of the original work;</p> <p>(b) the translation or adaptation of the work;</p> <p>(c) the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement;</p> <p>(d) the communication to the public of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original;</p> <p>(e) the making available of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original; and</p> <p>(f) the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original.</p> <p>(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; but the copyright in any such work shall not include the right to control the reconstruction of a building to which that copyright relates in the same style as the original.</p> <p>(3) The exclusive rights under this section shall be limited to the extent as provided for under the ***** Schedule.</p> |
| <p>Computer programmes</p>   | <p><b>223.</b> (1) A computer program shall be subject of fair dealing for the purposes of Part A of the ***** Schedule.</p> <p>(2) Notwithstanding the provisions of subsection (1), a person who is in lawful possession of a computer program may do any of the following acts without the authorization of the right holder whereby copies are necessary for the use of the computer program in accordance with its intended purpose—</p> <p>(a) to make copies of the program to the extent necessary to correct errors;</p> <p>(b) to make a back-up copy;</p> <p>(c) for the purpose of testing a program to determine its suitability for the person's use; or</p> <p>(d) for any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program.</p> <p>(3) The authorization of the right holder of the program shall not be required to decompile the program, convert the program into a version expressed in different programming language, code, notation for the purpose of obtaining information needed to enable the program to operate with other programs.</p>   |

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|  | (4) Any copies made pursuant to this section shall be used only for the purpose for which it was made and shall be destroyed when the person's possession of the computer program ceases to be lawful.   |
| Technological protection measures                      | 224. Circumvention of technological protection measures shall be permitted in limited circumstances as set out in the ***** Schedule to this Act.  |
| Visually impaired, and persons with other disabilities | 225. (1) Notwithstanding the provisions of section 222, it shall not be an infringement of copyright for—<br><br>(a) an authorized entity to reproduce or to distribute copies or sound recordings of a previously published literary work if such copies or sound recordings are reproduced or distributed in specialized formats exclusively for use by visually impaired or other persons with disabilities; or<br>(b) to make, import, distribute, lend or share accessible format copies by a beneficiary person or authorized entities or persons acting on behalf of a beneficiary person, including the circumvention of any technological protection measures that may be in place, subject to the terms and conditions set out under Regulations.<br><br>(2) Copies or sound recordings to which this section applies shall—<br><br>(a) not be reproduced or distributed in a format other than a specialized format exclusively for use by visually impaired or other persons with disabilities;<br>(b) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and<br>(c) include a copyright notice identifying the copyright owner and the date of the original publication. |
| Artist resale right                                    | 226. (1) Artist resale right shall be valid as long as copyright continues to subsist in an original work of art.<br><br>(2) The artist resale right is absolutely inalienable and shall not be waived under any circumstances.<br><br>(3) Visual artists may form a collective management organization to manage the right under this section and in the absence of a registered collective management organization, the Attorney-General shall designate any registered collective management organization. (confirm if its visual artists)<br><br>(4) The resale royalty shall be payable at the rate of five percent of the net sale price on the commercial resale of an artwork and the seller, the art market   |

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|   | <p>professional, the seller's agent and the buyer shall be jointly and severally liable to pay the resale royalty.</p> <p>(5) If a mark or name purporting to identify a person as an artist of an artwork appears on the artwork, it shall be presumed in the absence of any other mark or evidence, that the person is the artist.</p> <p>(6) There shall be no resale royalty payable on commercial resale of an artwork—</p> <p>(a) if the sale price is less than twenty thousand shillings;</p> <p>(b) if it concerns the resale of a building, or a drawing, plan or model of a building;</p> <p>(c) if it is an auction for charitable purposes;</p> <p>(d) if the works of fine art produced are of identical copies, or</p> <p>(e) if it concerns a manuscript of a literary, dramatic or musical work.</p>   |
| <p>Broadcasting of works incorporated in audio-visual works</p> | <p><b>227.</b> (1) Where the owner of the copyright in any literary, musical, dramatic, or artistic work authorizes a person to incorporate the work in audio-visual works and a broadcasting authority broadcasts such works, it shall, in the absence of any express agreement to the contrary, be deemed that the owner of the copyright authorized the broadcast.</p> <p>(2) Notwithstanding subsection (1), where a broadcasting authority broadcasts audio-visual works in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority, and in the absence of an agreement the amount of compensation shall be determined by the Tribunal.</p>  |
| <p>Nature of copyright in sound recordings</p>                  | <p><b>228.</b> (1) Subject to subsections (2) and (3), copyright in sound recordings shall be the exclusive right to control the doing in Kenya of any of the following acts in respect of the sound recording, namely—</p> <p>(a) the direct or indirect reproduction in any manner or form; or</p> <p>(b) the distribution to the public of copies by way of sale, rental, lease, hire, loan or any similar arrangements; or</p> <p>(c) the making available of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original;</p> <p>(d) the importation into Kenya; or</p> <p>(e) the communication to the public or the broadcasting of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original.</p> <p>(2) The provisions of paragraphs (a), (f), (j) and (h) of section 222(1) shall apply with necessary modifications to the copyright in a sound recording.</p> |

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|  | <p>(3) The rights of an owner of a copyright in a sound recording are not infringed by the making of a single copy of the recording for the personal and private use of the person making the copy; and in respect of such use the owner of copyright in the sound recording shall have the right to receive fair compensation consisting of a royalty levied on audio recording equipment or audio blank tape suitable for recording and other media intended for recording, payable at the point of first manufacture or entry in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.</p> <p>(4) Any person who, for commercial purposes, makes available any audio recording equipment for the purposes of enabling any other person to make single copies of any sound recording for his personal or private use, without payment of the royalty levied under subsection (3) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding four years or to both.</p>   |
| <p>Nature of copyright in broadcasts</p> | <p><b>229.</b> (1) Copyright in a broadcast shall be the exclusive right to control the doing in Kenya of any of the following copyright acts—</p> <ul style="list-style-type: none"> <li>(a) the fixation of the whole or a substantial part of the broadcast;</li> <li>(b) the rebroadcasting of the whole or a substantial part of the broadcast;</li> <li>(c) the communication to the public of the whole or a substantial part of a television broadcast either in its original form or in any form recognizably derived from the original;</li> <li>(d) retransmission of the broadcast over any network;</li> <li>(e) decrypting in any way or form any encrypted broadcast; or</li> <li>(f) any adaptation or modification by way of commentaries, or any unauthorized expropriation of the broadcast or pre-broadcast signal meant for reception by another broadcaster.</li> </ul> <p>(g) Despite the generality of subsection (1) (f), the provisions of the Second Schedule in respect of general exceptions and limits and subsection 1(c) with regard to education institutions shall apply with necessary modifications to the copyright in a broadcast; and the copyright in a television broadcast shall include the right to control the taking of still photographs therefrom.</p> |
| <p>Rights of performers</p>              | <p><b>230.</b> (1) Subject to section 230 of this Act, a performer shall have the exclusive right to carry out any of the following acts—</p> <ul style="list-style-type: none"> <li>(a) broadcast his or her performance except where the broadcast is made from a fixation of the performance authorized by the performer;</li> <li>(b) communicate to the public his or her performance except where the communication—</li> <li>(i) is made from a fixation of the performance; or</li> </ul>  |

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|  | <p>(ii) is made from broadcast of the performance, authorized by the performer;</p> <p>(c) make a fixation of a previously unfixed performance; and</p> <p>(d) reproduce a fixation of the performance in either of the following cases —</p> <p>—</p> <p>(i) where the performance was initially fixed without the authorization of the performer; or</p> <p>(ii) where the reproduction is made for purposes different from those for which the performer gave his or her authorization;</p> <p>(e) rent for commercial purposes to the public, the original and copies of their fixed performances;</p> <p>(f) distribution of a fixation of his performance or copies thereof, to the public;</p> <p>(g) the making available to the public of his fixed performance, by wire or wireless means in such a way that members of the public may access them from a place or a time individually chosen by them.</p> <p>(2) In the absence of any contractual agreement to the contrary in circumstances of employment from which the contrary would normally be inferred —</p> <p>(a) the authorization to broadcast does not imply an authorization to license other organizations to broadcast the performance;</p> <p>(b) the authorization to broadcast does not imply an authorization to make a fixation of the performance; and</p> <p>(c) the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation.</p> <p>(3) A binding authorization given under this section may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorization; and any authorization given by the performer claiming that he has retained the relevant rights or by a person claiming to be a duly appointed representative of a performer shall be considered valid.</p> <p>(4) Protection of the rights of the performer under this section shall subsist for fifty years after the end of the year in which the performance was fixed.</p> <p>(5) The performer shall, during his lifetime, as regards live performances or performances fixed in phonograms, have the right, independently of his or her economic rights, to—</p> <p>(a) be identified as the performer of his performances and to object to any distortion, mutilation, or other modification of his performances that would be prejudicial to his reputation; and</p> |
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|  | <p>(b) seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such work would be or is prejudicial to his honour or reputation.</p> <p>(6) The rights of an owner of a copyright in a fixation of their performance are not infringed by the making of a single copy of the performance for the personal and private use of the person making the copy and in respect of such use the owner of a related right in the performance shall have the right to receive fair compensation consisting of a royalty levied on audio-visual recording equipment or audio-visual blank media suitable for recording and other media intended for recording, payable at the point of first manufacture or entry in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.</p>   |
| <p>Collection and payment of royalty</p> | <p><b>231.</b> (1) Subject to the provisions of sections 228 and 230 of this Act, the Kenya Revenue Authority or any other designated entity by the Council shall collect royalties on behalf of collective management organizations licensed to represent performers and owners of sound recordings.</p> <p>(2) All claims for compensation under this section shall be made through the collective management organizations representative of performers and producers of sound recordings.</p> <p>(3) The level of the royalty payable shall be agreed between the collective management organization representative of performers and producers of sound recordings and the organization representative of manufacturers and importers of audio recording equipment, audio blank tape and media intended for recording or failing such agreement by the Council.</p> <p>(4) The Council shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rights holders.</p> |
| <p>First ownership of copyright</p>      | <p><b>232.</b> (1) Copyright conferred by sections 219 and 220 shall vest initially in the author: Provided that where a work—</p> <p>(a) is commissioned by a person who is not the author's employer under a contract of service; or</p> <p>(b) not having been so commissioned, is made in the course of the author's employment under a contract of service, the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting the transfer.</p>   |

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|                                  | <p>(2) Copyright conferred by section 221 shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.</p> <p>(3) In this section “owner of copyright”—</p> <p>(a) where the economic rights are vested in the author, means the author;</p> <p>(b) where the economic rights are originally vested in a physical person other than the author or in a legal entity, means that person or entity; and</p> <p>(c) where the ownership of the economic rights has been transferred to a physical person or legal entity, means that person or entity.</p>  |
| <p>Moral rights of an author</p> | <p><b>233.</b> (1) Independently of the author’s economic rights and even after the transfer of the said rights, the author shall have the right to—</p> <p>(a) claim the authorship of the work; and</p> <p>(b) object to any distortion, mutilation or other modification of or other derogatory action in relation to, the said work which would be prejudicial to his honour or reputation.</p> <p>(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author but the right to exercise any of the said rights shall be transmissible by testamentary disposition or by operation of the law following the demise of the author.</p> <p>(3) The author has the right 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 work would be or is prejudicial to his honour or reputation.</p>              |
| <p>Assignment and licences</p>   | <p><b>234.</b> (1) Subject to this section, copyright shall be transmissible by assignment, by licence, testamentary disposition, or by operation of law as movable property.</p> <p>(2) An assignment license or testamentary disposition of copyright may be limited so as to apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.</p> <p>(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing signed by or on behalf of the assignor, or by or on behalf of the licensor, as the case may be.</p> <p>(4) An assignment under subsection (3) shall not be valid unless it is lodged at the Office and a certificate of assignment issued to the applicant and entry made in the Register.</p> |

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|   | <p>(5) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time, but a licence granted by contract shall not be revoked, either by the person who granted the licence or his or her successor in title, except as the contract may provide, or by a further contract.</p> <p>(6) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible by operation of law as movable property.</p> <p>(7) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of contrary indication, be taken to include the disposition of any copyright or prospective copyright in the work which is vested in the deceased.</p> <p>(8) Where an agreement for license of copyright does not specify the period of license, the license shall terminate after three years.</p> <p>(9) In the case of agreements regarding future works which are not specified in detail, either party may, on giving not less than one month's notice, terminate the agreement not earlier than three years after it was signed or such shorter period as may be agreed.</p> <p>(10) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the licence, or a person deriving title from such purchaser and any reference in this Act to the doing of anything in relation to any copyright, with or without the licence of the owner of the copyright, shall be construed accordingly.</p> <p>(11) Where the doing of anything is authorised by the licensor or a licensee, and it is within the terms, including any implied terms of the licence for him to authorize it, it shall for the purpose of this Act be deemed to be done with the licence of the grantor and of every person, if any, upon whom the licence is binding.</p> |
| <p>A Grant of licences in copyright works withheld from Kenyan market</p> | <p><b>235.</b> (1)The Director General may upon application by any person grant a licence for works not made available in the Kenyan market during the term of copyright where the owner of the copyright in the work—</p>   |

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|   | <p>(a) refuses to republish or allow the republication of the work or to allow the performance of the work in public, and by reason of such refusal the work is withheld from the public; or</p> <p>(b) refuses to allow—</p> <p>(i) communication of such work to the public; or</p> <p>(ii) in the case of a sound recording, the communication of the work recorded in such recording to the public by broadcast, on terms which the complainant considers unreasonable.</p> <p>(2) The Director General may, after giving to the owner of the copyright in the work a reasonable opportunity to be heard and after holding such inquiry as it may deem necessary, if it is satisfied that the grounds for such refusal are not reasonable, grant to the complainant a licence to republish the work or communicate the work to the public by broadcast, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Director General may determine.</p> <p>(3) Where two or more persons make an application in respect of the same work, the license shall be granted to the applicant who in the opinion of the Director General would best serve the interests of the general public upon proof of refusal of license and subject to such prescribed terms.</p> |
| <p>Rights of action and remedies of exclusive licensee and sub-licensee</p> | <p><b>236.</b> (1) An exclusive licensee and exclusive sub-licensee shall have the same rights of action and be entitled to the same remedies, as if the licence were an assignment and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence and sub-licence were granted.</p> <p>(2) Before an exclusive licensee or sub-licensee institutes proceedings under subsection (1), he shall give notice in writing to the owner of the copyright concerned, of his intention to do so, and the owner may intervene in such proceedings and recover any damages he may have suffered as a result of the infringement concerned or a reasonable royalty to which he may be entitled.</p>  |
| <p><b>PART IV – INFRINGEMENT</b></p>  |  |
| <p>Infringement</p>   | <p><b>237.</b> (1) Copyright or related rights shall be infringed by a person who, without the license of the owner of the copyright or related rights—</p> <p>(a) does, or causes to be done, an act the doing of which is controlled by the copyright or related rights; or</p> <p>(b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.</p> <p>(2) The rights of a performer shall be infringed by a person who without the consent of the performer—</p>   |

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|  | <p>(a) does, or causes to be done, any act specified in section 230(1); or</p> <p>(b) imports or causes to be imported, otherwise than for his own private or domestic use, an article which he knows would have been made contrary to section 230 had it been made in Kenya by the importer.</p> <p>(3) The rights of a producer of sound recordings shall be infringed by a person who without the consent of the producer—</p> <p>(a) does or causes to be done, any act specified in section 228(1); or</p> <p>(b) imports or causes to be imported, otherwise than for his private use, an article which he knows would have been made contrary to section 228(1) had it been made in Kenya by the importer.</p> <p>(4) Subject to section 186 and ***** Schedule, copyright and related rights shall be infringed by a person who— (clarify section and schedule)</p> <p>(a) circumvents any effective technological protection measure designed to protect works; or</p> <p>(b) manufactures or distributes devices which are primarily designed or produced for the purpose of circumventing technological protection measures designed to protect works protected under this Act; or</p> <p>(c) removes or alters any electronic rights management information; or</p> <p>(d) distributes, imports, broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the right holder.</p> <p>(5) Infringement of any right protected under this Act shall be actionable at the suit of the owner of the right and in any action for infringement the following reliefs shall be available to the plaintiff—</p> <p>(a) the relief by way of damages, injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights;</p> <p>(b) delivery up to the plaintiff of any article in the possession of the defendant which appears to the court to be an infringing copy, or any article used or intended to be used for making infringing copies;</p> <p>(c) in lieu of damages, the plaintiff at his option, be awarded an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned;</p> <p>(d) for the purpose of determining the amount of damages or a reasonable royalty to be awarded under this section or section 234(2), the Tribunal may direct an enquiry to be held and may prescribe such procedures for conducting such enquiries as the Tribunal considers necessary; and</p> |
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|  | <p>(e) before the owner of the right institutes proceedings under this section, he shall give notice in writing to the exclusive licensee or sublicensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.</p> <p>(5) Where in an action for infringement of copyright it is proved or admitted—</p> <p>(a) that an infringement was committed; but</p> <p>(b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement whether or not other relief is granted under this section.</p> <p>(6) Where in an action under this section an infringement of copyright protected under this Act is proved or admitted, and the Tribunal, having regard (in addition to all other material considerations) to—</p> <p>(a) the flagrancy of the infringement; and</p> <p>(b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the Tribunal, in assessing damages for the infringement, may award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.</p> <p>(7) No injunction shall be issued in proceedings for infringement of any right protected under this Act which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.</p> <p>(8) In an action under this section—</p> <p>(a) copyright shall be presumed to subsist in the work or other subject matter to which the action relates, if the defendant does not put in issue the subsistence of copyright therein; and</p> <p>(b) where the subsistence of copyright is proved, admitted or presumed under paragraph (a), the plaintiff shall be presumed to be the owner of the copyright if he makes a claim thereto and the defendant does not dispute that claim.</p> <p>(9) Where in an action under this section, a name purporting to be the name of the author or joint author appears on copies of a literary, dramatic or musical work as published or an artistic work when it was made, any person whose name so appears, if it is his true name or the name by which he is</p> |
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|  | <p>commonly known, shall be presumed, unless the contrary is proved, to be the author of the work.</p> <p>(10) (a) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work shall, in the absence of any proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author.</p> <p>(b) Despite the generality in subsection (10) (a) the presumption under this subsection shall cease to apply when the author reveals his identity or where the pseudonym leaves no doubts as to the identity of the author.</p> <p>(11) Where, in any action under this section, the author of the literary, musical, dramatic or artistic work to which the action relates is dead, it shall be presumed, unless the contrary is proved—</p> <p>(a) that the work is eligible for copyright; and</p> <p>(b) that any allegation by the plaintiff that the work is a first publication and was published in a specified country on a specified date, is true.</p> <p>(12) Where, in an action under this section, the sound recording to which the action relates is reproduced on a record bearing a label or other mark which has been issued to the public, any statement on that label or mark to the effect that a person named thereon was the maker of the sound recording or by whom the recording was first published in a specified year shall, unless the contrary is proved, be presumed to be true.</p> <p>(13) In this section—</p> <p>“record” means any disc, tape, perforated roll or other device in which sounds or the representations of sounds are embodied which are capable of reproduction therefrom with or without the aid of another instrument;</p> <p>“action” includes a counterclaim and references to the claimant and to the respondent in an action shall be construed accordingly;</p> <p>“owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.</p> |
| <p>Protection of Internet Service Provider</p> | <p><b>238.</b> (1) An Internet Service Provider shall not be liable—</p> <p>(a) for infringement for providing access to or transmitting content, routing or storage of content in ordinary course of business as long as it—</p> <p>(i) does not initiate transmission;</p> <p>(ii) does not select the addressee;</p>  |

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|  | <p>(iii) performs the functions in an automatic, technical manner without selection of the material;</p> <p>(iv) does not modify the material contained in the transmission;</p> <p>(v) does not in any way promote the content or material being transmitted.</p> <p>(b) Despite the generality of paragraph (a) the acts of transmission, routing, and of the provision of access shall include automatic, intermediate and transient storage of the content.</p> <p>(c) for infringement for the automatic, intermediate and temporary storage of that content, where the purpose of storing such content is to make onward transmission of the data more efficient to other recipients of the service upon their request as long as the Internet Service Provider—</p> <p>(i) does not modify the material;</p> <p>(ii) complies with conditions on access to the material;</p> <p>(iii) complies with rules regarding updating the cache in conformity with generally accepted standards within the service sector;</p> <p>(iv) does not interfere with the lawful use of technology to obtain information on the use of the material;</p> <p>(v) removes or disables access once it receives a takedown notice as provided in section 239(1) or where the original material has been deleted or access disabled on orders of the Tribunal or a competent court or otherwise on obtaining knowledge of unlawful nature of the cached material.</p> <p>(d) for damages arising from material stored at the request of the recipient of the services, as long as it—</p> <p>(i) does not have actual knowledge that the content or activity related to the material is infringing the rights of a third party;</p> <p>(ii) is not aware of the facts or circumstances of the allegedly infringing activity unless the infringing nature of the material is apparent;</p> <p>(iii) upon the receipt of a takedown notice acts to remove or to disable access to the allegedly infringing content in the manner provided under section 239(5) within forty eight business hours;</p> <p>(iv) despite the generality in paragraph (iii) the exemption shall not apply if the recipient of the service is acting under the authority or control of the Internet Service Provider.</p> <p>(d) for damages incurred by a person if the service provider refers or links users to a webpage containing infringing material or facilitates infringing activity, by using information location tools including a directory, index, reference, pointer or hyperlink where the Internet Service Provider—</p> <p>(i) does not have actual knowledge that the material is infringing the rights of that person;</p> |
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|                 | <p>(ii) is not aware of the facts or circumstances from which the allegedly infringing activity or infringing nature of the material is not apparent;<br/>         (iii) removes or disables access to, the reference or link to the content or the infringing activity after being informed that the content or the activity infringes rights of a person.</p>   |
| Takedown notice | <p><b>239.</b> (1) A person whose rights have been infringed by content to which access is being offered by an Internet Service Provider may request, by way of a takedown notice, that Internet Service Provider removes the infringing content.</p> <p>(2) A takedown notice issued under subsection (1) shall—</p> <p>(a) be in writing and addressed by complainant or his agent to the Internet Service Provider or their designated agent;</p> <p>(b) contain the full names and telephone, physical and email address of the complainant;</p> <p>(c) be signed by the complainant or his authorized agent;</p> <p>(d) describe in specific detail the copyright work subject to the alleged infringement or sought to be removed;</p> <p>(e) identify the rights being infringed;</p> <p>(f) set out the content sought to be removed with details of where the content is contained;</p> <p>(g) attach an affidavit or any other declaration attesting to claim of ownership, validity of the rights, good faith and setting out any efforts to have entities responsible for making the content available to remove the content;</p> <p>(h) be copied to the Council, Communication Authority and the recognised umbrella association of service providers.</p> <p>(3) A takedown notice shall be deemed delivered on the next business day following physical delivery at its registered offices or two days following the day it is sent by registered post or immediately it is sent by electronic communication to a designated address of the Internet Service Provider or its designated agent.</p> <p>(4) An Internet Service Provider shall, upon receipt of a valid takedown notice, notify the person responsible for making available the alleged infringing content and provide them with a copy of the notice as soon as is practicable.</p> <p>(5) An Internet Service Provider shall disable access to the material within forty eight business hours unless it receives a counter notice fulfilling the requirements set out for a takedown notice and contesting the contents of the takedown notice.</p> |

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|  | <p>(6) An Internet Service Provider which fails to take down or disable access when it receives a takedown notice shall be fully liable for any loss or damages resulting from non-compliance to a takedown notice without a valid justification.</p> <p>(7) An Internet Service Provider which contravenes the provisions of subsection (4) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.</p> <p>(8) Any person who falsely or maliciously lodges a takedown notice or a counter notice under this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.</p> <p>(9) A person responsible for such misrepresentation under subsection (7) shall, in addition to the penalty provided under that subsection, be liable for any damages resulting from such false or malicious misrepresentation.</p> <p>(10) An Internet Service Provider shall not be liable for wrongful takedown in response to a valid takedown notice.</p> |
| <p>Role of Internet Service Provider</p> | <p><b>240.</b> (1)An Internet Service Provider may be required—</p> <ul style="list-style-type: none"> <li>(a) to provide information to investigative agencies regarding identity of the subscribers of their services suspected to be engaging in infringement of content on orders of the court upon application by the copyright owner whose rights have been subject of a takedown notice;</li> <li>(b) to designate an agent or electronic or other address for receiving such notices under its terms and conditions of service section.</li> </ul> <p>(2) Notwithstanding the provisions of subsection (1), there shall be no general obligation on the Internet Service Provider to—</p> <ul style="list-style-type: none"> <li>(a) monitor the material transmitted, stored or linked; or</li> <li>(b) actively seek facts or circumstances indicative of infringing activity within its services.</li> </ul>  |
| <p>Application for injunction</p>        | <p><b>241.</b> (1)A person may apply to the Tribunal for the grant of interim relief where he or she has reasonable grounds to believe that his or her copyright is being or may be infringed by a person situated in or outside Kenya.</p> <p>(2) The Tribunal may, upon application under subsection (1), grant an order requiring—</p>  |

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|                             | <p>(a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringing purpose;</p> <p>(b) a person hosting or making available an online location, service or facility situated in or outside Kenya which is used to infringe copyright or which enables or facilitates the infringement of copyright, to disable access to such online location, service or facility as replaced, amended or moved from time to time; or</p> <p>(c) an internet service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside Kenya that is used to infringe copyright as replaced, amended or moved from time to time.</p>  |
| Authentication of copyright | <p><b>242.</b> (1) Every sound and audio-visual recording made available to the public by way of sale, lending or distribution in any other manner to the public for commercial purposes in Kenya shall have affixed on it an authentication device in a prescribed manner.</p> <p>(2) The Director General shall authenticate copyright works according to all required documents furnished to it by the applicant for that purpose and shall issue an approval certificate in the prescribed form to the applicant for authority to purchase an authentication device.</p> <p>(3) The authentication device shall be issued to an applicant upon proof that the applicant has been authorized by the copyright owner to manufacture, reproduce, sell, import, and rent or otherwise distribute the work.</p> <p>(4) The authentication device shall be affixed to each copy of the copyright work made or published by the applicant.</p> <p>(5) No person shall sell or exhibit for sale any copyright works that require an authentication device in any form without an authentication device affixed thereto pursuant to subsection (4).</p> <p>(6) Any person who knowingly sells or offers for sale any copyright work that require an authentication device without an authentication device affixed thereto is guilty of an offence and is liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.</p> <p>(7) Any work requiring an authenticating device and which is sold or exhibited for sale without the authentication device shall be presumed to be an infringing copy.</p> |

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|   | <p>(8) Any person who, without the permission of the Director General—</p> <p>(a) is found to be in possession of or to have reproduced, a security device; or</p> <p>(b) is found to be in possession of any machine, instrument or contrivance intended to be used to produce or reproduce a security device, shall be guilty of an offence and liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both.</p> <p>(9) The court upon conviction of a person under this section shall order for the destruction of the material seized.</p>   |
| Anton Piller orders                                   | <p><b>243.</b> (1) If a person has prima facie evidence that his right has been infringed by another party and he satisfies the court or Tribunal that prima facie—</p> <p>(a) he or she has a cause of action against another person which he intends to pursue;</p> <p>(b) the other person has, in his or her possession, documents infringing copies or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and</p> <p>(c) there is the real and well-founded apprehension that the documents, infringing copies or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way, the court or Tribunal as the case may be, may make such order as it considers necessary or appropriate to secure the preservation of the documents, copies or things as evidence.</p> <p>(2) An order made under subsection (1) may be granted ex parte.</p> |
| <b>PART VI – PUBLIC DOMAIN (confirm roman number)</b> |   |
| Works in the public domain                            | <p><b>244.</b> (1) The following works shall belong to the public domain—</p> <p>(a) works whose terms of protection have expired;</p> <p>(b) works in respect of which authors have renounced their rights; and</p> <p>(c) foreign works which do not enjoy protection in Kenya.</p> <p>(d) confirm on patents</p> <p>(2) For the purposes of subsection (1) (b), renunciation by an author or his successor in title of his rights shall be in writing and made public but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.</p>   |

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|  | <p>(3) Subject to the payment of such fees as may be determined by the Cabinet Secretary in relation thereto, a work which has fallen into the public domain may be used without any restriction.</p>  |
| <b>PART VII – COLLECTIVE ADMINISTRATION OF COPYRIGHT</b> |  |
| Collective administration of Copyright                   | <p><b>245.</b> (1) No person or association of persons shall commence or carry on the business of a copyright collective management organisation except under or in accordance with a certificate of registration granted under this section.</p> <p>(2) Applications for registration as collective management organizations shall be made to the Council accompanied with the prescribed fees and the Council, by a Gazette notice is empowered to declare a body which has applied for registration a collective management organisation, for all relevant copyright owners of for such classes of relevant copyright owners as are specified in the notice.</p> <p>(3) Every certificate issued to a collective management organisation shall be in the prescribed form and shall unless cancelled be valid for a period of twelve months from the date of issue. (add a clause on issuance of a license to operate, which will be renewed annually subject to terms and conditions)</p> <p>(4) Where the collective management organization has not submitted a complete application or where administrative shortfalls are apparent, the Council may issue a provisional license for a period not exceeding six months and such provisional license shall be counted as part of the complete license if the license is subsequently issued.</p> <p>(4) The Council may approve a collective management organisation if it is satisfied that—</p> <p>(a) the body is a company limited by guarantee and incorporated under the Companies Act, 2015;</p> <p>(b) it is a non-profit making entity;</p> <p>(c) its rules and regulations contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collective management organisation are adequately protected;</p> <p>(d) its principal objectives are the collection and distribution of royalties; and</p> <p>(e) its accounts are regularly audited by independent external auditors elected by the society.</p> <p>(5) The Council shall not approve another collective management organisation in respect of the same class of rights and category of works if there exists another collective management organisation that has been licensed and functions to the satisfaction of its members.</p> |

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|  | <p>(6) The Council may, where it finds it expedient, assist in establishing a collective management organisation for any class of copyright owners.</p> <p>(7) The Council may by notice in the Gazette and two daily newspapers of national circulation de-register a collective management organisation if its satisfied that the collective management organisation—</p> <p>(a) is not functioning adequately as a collective management organisation;</p> <p>(b) is not acting in accordance with its Memorandum and Articles of Association or in the best interests of its members;</p> <p>(c) has altered its rules so that it no longer complies with subsection 4 of this section; and</p> <p>(d) it has refused or failed to comply with any of the provisions of this Act.</p> <p>(8) Before deregistering a collective management organization, the Council shall notify the organization in writing and invite it and any of its members to make written representations against deregistration within twenty one days from the date of the notice.</p> <p>(9) If, after consideration of any written representations made in terms of subsection (8), the Council is of the opinion that the failure in question on the part of the organisation is materially prejudicing or has materially prejudiced its members, the Council may withdraw the registration thereof or otherwise sanction members of the Board of Directors or Management of the organization as set out under this Act.</p> <p>(10) Any person who purports to collect royalties from users as provided for under this section without authority of the Council commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment to a term not exceeding four years, or both.</p> |
| <p>Approval for imposition and collection of levy</p>  | <p><b>246.</b> Notwithstanding any other provision of this Act, no collecting society shall— (clarify if it's a CMO and who a collecting society is)</p> <p>(a) impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary in charge of copyright issues in the Gazette from time to time; or</p> <p>(b) levy royalty on users exempted by the Cabinet Secretary by notice in the Gazette.</p>  |
| <p>Qualification and tenure of Directors and Chairpersons of collective management organizations</p> | <p><b>247.</b> (1)A member of a collective management organization shall be eligible for election as a director if he or she holds a post-secondary qualification recognized in Kenya.</p>  |

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|  | <p>(2) A director elected under this section shall serve for a term of three years and shall be eligible for re-election for one further term.</p> <p>(3) A director elected as a chairperson of a collective management organization shall hold office for a term of three years and shall be eligible for re-election for one further term.</p> <p>(4) A chief executive officer of a collective management organization shall hold office for a term of four years and shall be eligible for reappointment for one further term upon satisfactory performance as evaluated by the Board of Directors.</p>  |
| <p>Role and types of collective management organizations .</p>       | <p><b>248.</b> (1) Authors, producers, performers, visual artists and publishers may form a collective management organization to collect, manage and distribute royalties and other remuneration accruing to their members. (Will incorporate functions of CMOs)</p> <p>(2) Any new collective management organization to deal with rights not provided for under subsection (1) may be approved by the Council as may be necessary.</p> <p>(3) The designated extent of operation shall be as provided in Schedule ***** to the Act)</p>  |
| <p>Submission and publication of information royalties</p>           | <p><b>249.</b> (1) A collective management organization shall submit to the Board information on its total collection and distribution of royalties annually.</p> <p>(2) The Council shall, by notice in the Gazette, publish information submitted under subsection (1).</p>   |
| <p>Inspection and control of collective management organizations</p> | <p><b>250.</b> (1) The Director General may authorize a person, in writing, to inspect the books of accounts and records of a collective management organization.</p> <p>(2) When an inspection is made under subsection (1), the collective management organisation concerned and every officer and employee thereof shall produce and make available to the person making the inspection all the books, accounts, records and other documents of the organization as the person making the inspection may require and within seven days or such longer times as he may direct in writing.</p> <p>(3) A person who wilfully fails to produce any books, accounts, records document, correspondence, statements, returns or other information within the period specified in the direction under subsection (2) commits an offence under the provisions of this Act and shall on conviction be liable to a fine not</p> |

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|   | <p>exceeding two hundred thousand shillings or imprisonment for a term not exceeding three months or to both. (review penalty)</p> <p>(4) The person authorized to inspect a collective management organization shall report to the Council through the Director General on—</p> <p>(a) any breach or non-observance of the requirements of this Act or regulations;</p> <p>(b) any irregularity in the manner of conduct of the business of the organization;</p> <p>(c) any apparent mismanagement or lack of management skills in the organization; or</p> <p>(d) any other matter warranting remedial action or a forensic audit.</p> <p>(5) The Director General shall, by notice in writing, and after giving the collective management organization reasonable opportunity of being heard, require the inspected organization to comply by such date or within such period as may be specified therein, with such directions as he or she considers necessary in connection with any matter arising out of a report made under this section.</p> <p>(6) The powers conferred by subsection (1) may be exercised in the following circumstances—</p> <p>(a) where a petition for inspection has been made by not less than forty five percent of the membership specifying breach of instruments establishing the entity, the regulations or the Act;</p> <p>(b) failure by a collective management organization to account for monies to at least twenty percent of its members;</p> <p>(c) failure by a collective management organization to offer an account of the exploitation of the copyright works assigned or licensed to it;</p> <p>(d) where a collective management organization has acted beyond its powers in administering the rights to which it is assigned or licensed;</p> <p>(e) where a collective management organization has altered its memorandum or other internal rules to exclude a section of its members in participating in its affairs or as to alter its core business;</p> <p>(f) where a collective management organization has persistently failed to adhere to its set administrative budget without a reasonable cause; or</p> <p>(g) where a collective management organisation has failed to comply with a request for information or records from its members or the Council.</p> |
| <p>Directions and orders of the Council</p> | <p><b>251.</b> (1) Where the Council determines through the results of an audit or inspection report that a collective management organization conducts its business in a manner contrary to the provisions of this Act or of any regulations or any other Act or in any manner detrimental to or not in the best interests of its members, the Council may—</p>  |

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|   | <ul style="list-style-type: none"> <li>(a) recommend the suspension or removal of any officer or employee of the organization who, in the opinion of the Council, has contributed or caused the contravention of any law.</li> <li>(b) issue directions regarding measures to be taken to improve the management of the organization or to secure or improve compliance with the requirements of this Act, any regulations or any other written law or regulations;</li> <li>(c) require the organization to reconstitute its board of directors;</li> <li>(d) demand for a plan to resolve all deficiencies to the satisfaction of the Council;</li> <li>(e) appoint a person as the chairperson who is suitably qualified and competent in the opinion of the Council to advise and assist the organization in developing and implementing a corrective action plan and the person appointed shall regularly report to the Council on the progress of the implementation plan; (amend to reflect a caretaker/interim chair/committee to deal with crisis)</li> <li>(f) issue an order placing the organization under statutory management;</li> <li>(g) order for the convening of a special general meeting by the organization;</li> <li>(h) order for the revocation of the collection license;</li> <li>(i) order the organization to take such other action that the Council may deem necessary to rectify the deficiency, or issue such administrative directives as it may deem necessary.</li> </ul> |
| <p>Record keeping and attendance of meetings by Board representatives</p> | <p><b>252.</b> (1)The directors of a collective management organization shall cause minutes of all resolutions and proceedings of their meetings to be entered and updated in books kept for that purpose.</p> <p>(2) The Director General may, through a designated representative, attend and advise a meeting of the directors of a collective management organization where matters affecting members' interests are proposed for discussion.</p>  |
| <p>Annual reports and accounts</p>  | <p><b>253.</b> (1)A collective management organisation shall, as soon as reasonably practicable after the end of each financial year, submit to the Council through the Director General—</p> <ul style="list-style-type: none"> <li>(a) a report of its operations during that year;</li> <li>(b) a copy of its audited accounts in respect of that year.</li> </ul> <p>(2) The obligations imposed by subsection (1) are in addition to those imposed by the Companies Act, 2015, in the case of a collective management organisation that is a company.</p>   |

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| Abrogation of common law right  | <p><b>254.</b> No copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act.</p>   |
| <p><b>PART – INSPECTION</b></p> |   |
| Appointment of inspectors       | <p><b>255.</b> (1)The Council shall, for purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Council may consider appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as inspectors.</p> <p>(2) A person appointed as an inspector under subsection (1) shall—</p> <p>(a) hold office subject to such terms and conditions as the Council may determine;</p> <p>(b) have full police powers in the exercise of their duties under this Act.</p> <p>(3) In addition to inspectors appointed under subsection (1), the Director General, any police officer, authorised customs officer, trade development officer, industrial development officer, trade mark and patent examiner, seed and plant inspector, public health inspector, and inspectors appointed under the Standards Act (Cap. 496), the Weights and Measures Act (Cap. 513), the Food, Drugs and Chemical Substances Act (Cap. 254), the Pharmacy and Poisons Act (Cap. 244) and the Pest Control Products Act (Cap. 346) and any other relevant legislation are hereby designated as inspectors for purposes of this Act.</p> <p>(4) The Council may designate other public officers to be inspectors for purposes of this Act.</p> <p>(5) The Council may amend or withdraw appointment of inspectors or designated inspectors under this section.</p> <p>(6) Appointment of inspectors under this section shall be by name and notice in the Gazette.</p> <p>(7) The inspectors appointed and designated under this Act shall at all times, perform their functions under the superintendence and direction of the Director General.</p> |
| Powers of inspectors            | <p><b>256.</b> (1)An inspector may at any reasonable time—</p> <p>(j) enter upon and inspect any place, premises or vehicle at, on or in which goods, articles or works that are reasonably suspected of being counterfeit goods or infringed works or articles are to be found, or on reasonable grounds are suspected to be manufactured, produced or made, and search such place, premises or vehicle and</p>  |

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any person found in such place, premises or vehicle, for such goods, articles or works and for any other evidence of the alleged or suspected act of dealing in counterfeit goods, infringed works or articles and for purposes of entering, inspecting and searching such a vehicle, stop the vehicle, wherever found, including on any public road or at any other public place;

- (k) inspect any substance or article appearing to be a work, any container or package used or intended to be used to contain any work or any plant or equipment used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work;
- (l) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods or infringed works or articles, or any other act of dealing in counterfeit goods or infringed works or articles being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future provided that those steps shall not include the destruction or alienation of the relevant goods, works or articles unless authorized by an order issued by a court of competent jurisdiction;
- (m) seize and detain any substance or article which he or she has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he or she has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he or she has reasonable cause to believe to be a document which may be required in proceedings under this Act;
- (n) seize and detain, and where applicable, remove for detention, all the goods in question found at, on or in such place, premises or vehicle;
- (o) seize detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark on such goods;
- (p) reship or return the counterfeit goods, infringed works or articles to the country of origin at the expense of the importer;

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(q) if he reasonably suspects that a person at, on or in such place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods—

(i) question that person and take down a statement from him;

(ii) demand and procure from that person any book, document, article, item or object which in any way may be relevant to nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or appears to be involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or clearing and forwarding agent of, or other dealer in, the goods in question; and

(i) seal or seal off any place, premises or vehicle at, on or in which—

(i) the goods in question are found, or are manufactured, produced or made, either wholly or in part;

(ii) any trade mark, any exclusive mark or any work which is the subject matter of copyright, is applied to those goods;

(iii) the packaging for those goods is prepared; or

(iv) the packaging of those goods is undertaken.

(2) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him or her.

(3) An inspector may arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under this Act and may search and detain such a person;

(4) Despite the generality of subsection (3) no person shall be arrested under this section unless he or she obstructs or hinders the inspector or refuses to give his name and address to the inspector or to produce to the inspector satisfactory evidence of his identity, or gives a name and address which the inspector has reason to believe to be false or it appears to the inspector that such a person may not be found or made answerable to justice without unreasonable delay, trouble or expense.

(5) An inspector shall have the power to investigate any offence related or connected to counterfeiting or infringing notwithstanding that such an offence is not expressed as such under the provisions of this Act. (too wide)

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|                                  | <p>(6) An inspector shall have the same powers as are exercised by a customs officer with regard to importation of counterfeit goods under the East African Community Customs Management Act, 2005.</p> <p>(7) If a magistrate, on sworn information in writing—</p> <p>(a) is satisfied that there is reasonable ground to believe either—</p> <p>(i) that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of commission of an offence under this Act; or</p> <p>(ii) that any offence under this Act has been, is being, or is about to be committed on any premises; and</p> <p>(b) is also satisfied either—</p> <p>(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier; or</p> <p>(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his or her return, the magistrate may by warrant under his or her hand, which shall continue in force for a period of thirty days, authorize an inspector to enter the premises, if need be by force.</p> <p>(8) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he or she has so entered by virtue of a warrant, he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.</p> |
| Obstruction and breaking of seal | <p><b>257.</b> (1) A person who—</p> <p>(a) wilfully obstructs an inspector in the discharge of his or her duties;</p> <p>(b) wilfully fails to comply with any requirement properly made to him by an inspector;</p> <p>(c) without reasonable cause, fails to give to an inspector any assistance or information which the inspector may reasonably require of that person for the purpose of the performance of his duties under this Act; or</p> <p>(d) in giving any such information as is mentioned in paragraph (c), makes any statement which he knows to be false or does not believe to be true,</p>   |

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|   | <p>commits an offence.</p> <p>(2) A person who, without authority—</p> <p>(a) breaks, damages or tampers with a seal applied by an inspector under this Act; or</p> <p>(b) removes any goods, documents, articles, items, objects or things sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot under this Act,</p> <p>commits an offence.</p>   |
| <p>Duty of inspector upon seizure of suspected counterfeit goods, infringed works or articles</p> | <p><b>258.</b> (1) An inspector who has seized any suspected counterfeit goods, infringed works or articles in accordance with section 256 shall—</p> <p>(a) forthwith seal, clearly identify and categorize the goods, works or articles and prepare, in quadruplicate, an inventory of such goods, works or articles in the prescribed form and cause the person from whom the goods, works or articles are seized to check the inventory for correctness, and, if correct, cause that person to make a certificate under his signature on each copy of the inventory and if the seized goods, works or articles are removed under paragraph(c), the inspector shall endorse that fact under his or her signature on every copy of the inventory, in which case the inventory shall also serve as a receipt;</p> <p>(b) furnish one copy of the inventory to the person from whom the goods, works or articles are seized and another to the complainant, if any, within five working days after the seizure;</p> <p>(c) as soon as possible, remove the goods, works or articles if transportable, to a counterfeit goods depot for safe storage, or, if not capable of being removed or transported, declare the goods, works or articles to have been seized in situ, and seal off or seal and lock up the goods, works or articles or place them under guard at the place where they were found, and thereupon that place shall be deemed to be a counterfeit goods depot; and</p> <p>(d) by written notice, inform the following persons of the action taken by the inspector under section 256 (1) and of the address of the counterfeit goods depot where the seized goods are kept—</p> <p>(i) the person from whom those goods, works or articles are seized; and</p> <p>(ii) either the complainant, where the inspector exercised his powers pursuant to a complaint laid in accordance with section 265(1); or</p> |

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|                           | <p>(iii) the person who, in relation to those goods, works or articles, qualifies under section 265(1) to be a complainant, but who had not yet so laid a complaint at the time when the inspector exercised those powers on his own initiative in accordance with section 265(4).</p> <p>(2) An inspector may require a complainant to disclose any additional information, which may be relevant to the action that has been taken.</p> <p>(3) Any person aggrieved by a seizure of goods, works or articles under section 23 may, at any time, apply to a court of competent jurisdiction for a determination that the seized goods, works or articles are not counterfeit or infringed and for an order that they be returned to him.</p> <p>(4) The court may grant or refuse the relief applied for under subsection (3) and make such order as it deems fit in the circumstances, including an order as to the payment of damages and costs.</p>   |
| Evidence and presumptions | <p><b>259.</b> (1) Copies of any statement taken down or other documentary evidence procured by an inspector in the course of exercising his or her powers under this Act, may be made available to a complainant upon an application in the prescribed manner.</p> <p>(2) (a) In any civil proceedings concerning an act of dealing in counterfeit goods or infringed works or articles by any person, it shall be permissible to present evidence about that person's previous conviction or convictions on account of an offence or offences founded on acts of dealing in counterfeit goods or infringed works or articles.</p> <p>(b) In addition to the evidence contemplated under subsection (2) (a) it shall be permissible to present evidence about a person's previous written admissions on acts of dealing in counterfeit goods or infringed works or articles.</p> <p>(3) A statement made by an inspector to the effect that the goods, works or articles specified in the inventory attached to that statement are goods, works or articles seized by him from a specified person at a specified place and on a specified date shall be <i>prima facie</i> evidence of the facts stated therein concerning the counterfeit goods or infringed works or articles or any act of dealing therein.</p> <p>(4) Where the subsistence of an intellectual property right in respect of protected goods or any person's title to or interest in such intellectual property right is in issue in any civil or criminal proceedings concerning counterfeit goods, the subsistence of, title to or interest in such intellectual property right, where it is alleged to encompass the rights in respect of industrial property as</p> |

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|  | <p>contemplated in the definition of “intellectual property right” in this Act, may be proved in accordance with the provisions of this Act.</p> <p>(5) Where the subsistence of intellectual property right in respect of suspected infringed works or articles, or the title or interest in such intellectual property right is in issue, the complainant shall be presumed to be the owner of the copyright or the related right or, as the case maybe, the exclusive licensee of any such right, until the contrary is proved.</p> <p>(6) Where a name or mark purporting to be that of the author of a work or the owner of copyright or related rights is either associated with copies of a work or other protected subject matter, or its related packaging, or appears in connection with a work or other protected subject matter, this shall be admissible as evidence of the fact indicated and such evidence shall be presumed to be correct, until the contrary is proved.</p> <p>(7) Subsections (4), (5) and (6) shall not be construed so as to detract from the power of a court or Tribunal, in relation to any such matter or any aspect thereof—</p> <p>(a) to require oral evidence to be given;</p> <p>(b) to order that the evidence of a person who resides or is for the time being outside the area of jurisdiction of the court, be taken by means of interrogatories or affidavits.</p> <p>(8) Where any person who trades in protected goods, works or articles featuring, bearing, incorporating or embodying the subject matter of a particular intellectual property right, is proved to have been found in possession of suspected counterfeit goods or infringed works or articles to which the subject matter of the same intellectual property right has been applied, it shall, in any civil or criminal proceedings concerning an act of dealing in counterfeit goods or infringed works or articles found in his possession, be presumed, until the contrary is proved, that such person was in possession of the goods for the purpose of trade if the quantity of those goods, works or articles is more than that which, in the circumstances, reasonably may be required for his private and domestic use.</p> <p>(9) In any criminal or civil proceedings concerning an act of dealing in counterfeit goods or infringed works or articles, the evidence of any person in the employment of the intellectual property rights holder or its agent with demonstrable training offered by such intellectual property rights holder or experience in the identification of the intellectual property rights holder's products shall be admissible as expert evidence.</p> |
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| <p>Storage and access to seized goods, works or articles</p> | <p><b>260.</b> (1) (a) Goods, works or articles that have been seized under section 256(1) shall be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot is ordered by a court to return, release, destroy or otherwise dispose of those goods, works or articles as specified in the order.</p> <p>(b) Despite the generality in subsection (1) (a), the counterfeit goods or infringed works or articles shall be destroyed at the expense of the local manufacturer or importer or the person from whom the goods, works or articles were seized, as the case may be, based on the environmental considerations and the capacity of the country to destroy the goods, works or articles, or shall be reshipped;</p> <p>(c) An inspector may, subject to section 261, direct the person in charge of the depot to release the goods, works or articles to the person from whom they were seized.</p> <p>(2) Upon an application in the prescribed manner, goods, works or articles seized under section 256(1) shall, within five working days, be made available for inspection by the complainant or prospective complainant, if any, the suspect or any other interested person, at the counterfeit goods depot at any reasonable time.</p> <p>(3) Upon an application in the prescribed manner, the Director General or an Inspector may make a sample of the seized goods available within a period of five working days to the applicant for testing or analysis.</p> <p>(4) An inspector may take, in the prescribed manner, samples of goods, works or articles in reasonable quantities for testing or analysis.</p> |
| <p>Release of seized goods, works or articles</p>            | <p><b>261.</b> (1) (a) Where any goods, works or articles are seized and detained under section 256, they shall be returned, less any portion thereof which has been reasonably utilized for the purpose of any test or analysis, to the person from whom they were seized within a period of ninety days after the date of seizure unless, within such period, a person is charged with an offence under this Act and it is alleged that such offence was committed in relation to or in connection with such goods.</p> <p>(b) Upon application by an inspector, the court may extend the time specified under subsection (1) (a) for a further period of ninety days provided that the inspector furnishes the court with sufficient grounds or reasons to justify the extension.</p> <p>(2) Where a prosecution for an offence under this Act is commenced within the period mentioned in subsection (1), and any person is convicted of that</p>   |

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|                         | <p>offence, the court which made the conviction may order that any goods, works or articles seized and detained in relation to or in connection with which such offence was committed, shall be forfeited to the Office for destruction at the expense of the person so convicted.</p> <p>(3) The court before which a person is charged with an offence under this Act shall, whether such person is convicted of the offence or not, order that any goods in his possession which appear to the court to be counterfeit goods or infringed works or articles or to be tools used or intended to be used for making counterfeit goods, infringed works or articles, be destroyed or otherwise dealt with as the court may deem appropriate. (clarify seems contradictory or overreaching)</p> <p>(4) Where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods, infringed works or articles are seized but are not claimed, an inspector may apply to have the counterfeit goods or infringed works or articles, forfeited to the Office for destruction.</p> <p>(5) Notwithstanding the provisions of Section 389A of the Criminal Procedure Code, it shall not be necessary to serve any notice under this section on the owner of the seized goods, works or articles if a period of ninety days has lapsed since the date of seizure and no person has formally claimed the goods, works or articles.</p> |
| Counterfeit goods depot | <p><b>262.</b> (1) The Council may, by notice in the Gazette, designate any place to be a counterfeit goods depot for the purposes of this Act.</p> <p>(2) The Council shall appoint a suitable officer to be in charge of a counterfeit goods depot.</p> <p>(3) For purposes of this section, counterfeit goods shall include infringed works and articles.</p>  |
| Conduct of prosecutions | <p><b>263.</b> (1) In accordance with Article 157(12) of the Constitution, any Advocate of the High Court of Kenya in the employment of the Office may be appointed, by the Council, as a public prosecutor for purposes of this Act.</p> <p>(2) Appointment under subsection (1) shall be by name and notice in the gazette.</p> <p>(3) The Director of Public Prosecutions in consultation with the Director General shall give any general or specific directions relating to prosecution under this Act.</p>  |

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| Disclosure of information and impersonation | <p><b>264.</b> (1) Any person who discloses any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of powers of entry conferred on him under this Act, commits an offence.</p> <p>(2) If any person who is not an inspector purports to act as such, such person commits an offence.</p>   |
| Laying a complaint                          | <p><b>265.</b> (1) Any holder of an intellectual property right, his successor in title, licensee or agent may, in respect of any protected goods, works or articles, where he has reasonable cause to suspect that an offence has been or is being committed, or is likely to be committed, under this Act, by any person, lay a complaint with the Director General.</p> <p>(2) The complainant shall furnish, to the satisfaction of the Director General, such information and particulars, as may be prescribed, to the effect that the goods, articles or works with reference to which that offence has allegedly been, or is being, or is likely to be, committed, <i>prima facie</i> are counterfeit goods or infringed works or articles.</p> <p>(3) Where the Director General is reasonably satisfied—</p> <p>(a) that the complainant is a person entitled to lay a complaint under subsection (1); and</p> <p>(b) that—</p> <p>(i) the goods, works or articles claimed to be protected, <i>prima facie</i> are protected goods, works or articles; and</p> <p>(ii) the intellectual property right, the subject matter of which is alleged to have been applied to the offending goods, works or articles, <i>prima facie</i> subsists; and</p> <p>(c) that the suspicion on which the complaint is based appears to be reasonable in the circumstances, the Director General shall cause appropriate steps to be taken in accordance with section 256 (1).</p> <p>(4) The preceding provisions of this section shall not preclude an inspector from taking any appropriate steps on his own initiative including receiving and acting on consumer complaints in relation to any act or conduct believed or suspected to be an act of dealing in counterfeit goods or infringed works or articles, provided the provisions of this Act are complied with.</p> <p>(5) Nothing in this section shall preclude the Director General from causing appropriate steps to be taken in accordance with section 23(1) in the event of an infringement of an intellectual property right for which no complaint has</p> |

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|   | <p>been lodged by the holder thereof in accordance with subsection (1) of this section.</p> <p>(6) Notwithstanding the provision of subsections (1) and (2) of this section, a consumer or purchaser of goods, works or articles may, where h or she has reasonable cause to suspect that an offence under this Act has been committed, is being committed or is likely to be committed by any person, lay a complaint with the Director General who shall cause appropriate steps to be taken in accordance with the provisions of this Act.</p>  |
| <p>Powers of the Commissioner or Director General</p> | <p><b>266.</b> (1)The owner of an intellectual property right, who has valid grounds for suspecting that the importation of counterfeit goods or infringed works or articles, may take place, may apply to the Commissioner or Director General in the prescribed manner to seize and detain all suspected counterfeit goods or infringed works or articles which are—</p> <p>(a) goods, works or articles featuring, bearing, embodying or incorporating the subject matter of that intellectual property right or to which the subject matter of that right has been applied; and</p> <p>(b) imported into or enter Kenya during the period specified in the application.</p> <p>(2) Despite the generality in subsection (1) (b), the period may not extend beyond the last day of the period for which that intellectual property right subsists.</p> <p>(3) For purposes of subsection (1), the applicant may furnish to the Commissioner or Director General—</p> <p>(a) a specimen of the goods, works or articles to which the subject matter of the applicant’s relevant intellectual property right relates;</p> <p>(b) sufficient information and particulars as to—</p> <p>(i) the subsistence and extent of that intellectual property right; and</p> <p>(ii) the applicant’s title to that right.</p> <p>(4) The Commissioner or Director General shall consider and deal with an application under sub-section (1) within three working days and may grant the application if satisfied on reasonable grounds that—</p> <p>(a) the goods, works or articles claimed to be protected are protected goods, works or articles;</p> <p>(b) the intellectual property right, the subject matter of which relates to the protected goods, works or articles subsists; and</p> |

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| <p>(c) the applicant is the owner of that intellectual property right.</p> <p>(5) When an application made under subsection (1) has been granted and notice thereof given under subsection (6), the counterfeit goods or infringed works or articles of the type with reference to which that application was made, hereinafter referred to as stipulated goods for purposes of this section, or suspected on reasonable grounds to be stipulated goods, and imported into or entering Kenya from time to time during the period determined by the Commissioner or Director General, which may be shorter than the period applied for, may be seized and detained by the customs authorities in accordance with the East African Community Customs Management Act, 2005 subject to subsections (7) and (8).</p> <p>(6) The Commissioner or Director General shall, by notice in writing, inform the applicant whether the application has been granted or not, and—</p> <p>(a) if granted, state the period during which any stipulated goods being imported into or entering Kenya will be made subject to seizure and become subject to detention under subsection (5);</p> <p>(b) if not granted, state the reasons for refusal to be granted.</p> <p>(7) For purposes of acting under subsection (5) in relation to goods that are stipulated goods or suspected on reasonable grounds to be stipulated goods—</p> <p>(a) an authorized customs officer or inspector shall seize the counterfeit goods or alleged or suspected counterfeit goods, in accordance with subsection (1) or (5);</p> <p>(b) the following provisions will apply with the necessary modifications in relation to an authorized customs officer or Inspector—</p> <p>(i) the provisions in accordance with or subject to which the powers contemplated in section 265 (4) may be exercised by an inspector so acting on his own initiative;</p> <p>(ii) the provisions by which any other power or any right, function, duty, obligation, exemption, indemnity or liability is conferred or imposed on an inspector so acting; (clarify use of stipulated goods interchangeably with counterfeit goods, is it necessary to outline the powers that the inspector or customs officer may apply)</p> <p>(c) Despite the generality of subsection (7), the Cabinet Secretary, at the request of the Cabinet Secretary responsible for finance, acting on the recommendation of the Commissioner or Director General, may, by notice in the Gazette, exempt an authorized customs officer from any of the provisions made applicable by this paragraph if satisfied that there are suitable and appropriate alternative arrangements made by or under the East Africa</p> |
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|   | <p>Community Customs Management Act, 2005 that cover the purpose of the provision from which exemption is sought.</p> <p>(8) Any person who suffers damage or loss caused by wrongful seizure, removal or detention of goods, works or articles alleged to be counterfeit goods or infringed works or articles pursuant to an application made to the Commissioner or Director General shall be entitled to claim compensation for the damage or loss suffered by him against the applicant.</p> <p>(9) Compensation shall only be paid under this section, where the application for seizure and detention was false or negligent or made in bad faith.</p> <p>(10) The provisions of this Act shall not be construed so as to render the customs authority or any of its staff or agents liable for—</p> <p>(a) any failure to detect or seize stipulated goods;</p> <p>(b) the inadvertent release of any such goods; or</p> <p>(c) any action taken in good faith in respect of such goods.</p> <p>(11) For purposes of this section, “customs authority” means the Kenya Revenue Authority established under the Kenya Revenue Authority Act (Cap. 469) or the Authority.</p> |
| Alternative dispute resolution                  | <p><b>267.</b> Pursuant to the provisions of Article 159 of the Constitution the Office shall be at liberty to employ any form of alternative dispute resolution with any person that has committed an offence under this Act.</p>   |
| <b>PART – MISCELLANEOUS PROVISIONS</b>          |  |
| Falsification of register                       | <p><b>268.</b> (1) A person who makes, or causes to be made, a false entry in the register, knowing or having reason to believe that it is false, commits an offence.</p> <p>(2) A person who makes or causes to be made anything falsely purporting to be a copy of an entry in the register or produces or tenders or causes to be produced or tendered in evidence any such thing knowing or having reason to believe that it is false, commits an offence.</p> <p>(3) A person who is convicted of an offence under this section is liable to a fine of not more than two hundred thousand shillings or imprisonment for a term of not more than two years or both. (clarify penalty)</p>  |
| Falsely representing a trade mark as registered | <p><b>269.</b> (1) Any person who makes a representation—</p>  |

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|          | <p>(a) with respect to a mark not being a registered trade mark, to the effect that it is a registered trade mark;</p> <p>(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is so registered;</p> <p>(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not registered;</p> <p>(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right;</p> <p>shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term of not more than one year or both. (review)</p> <p>(2) For purposes of this section, the use in Kenya in relation to a trade mark of the word “registered”, or of any other word or of any symbol referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—</p> <p>(a) where that word is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and indicating that the reference is to registration as a trade mark under the law of a country outside Kenya, being a country under the law of which the registration referred to is in fact in force;</p> <p>(b) where that word, being a word other than the word “registered”, is of itself such as to indicate that the reference is to the last-mentioned registration; or</p> <p>(c) where that word is used in relation to a mark registered as a trade mark under the law of a country outside Kenya and in relation to goods to be exported to that country.</p> |
| Offences | <p>270. (1) A person who intentionally performs any of the acts referred to in section 210 in regard to a registered geographical indication commits an offence.</p> <p>(2) A person who makes a representation—</p> <p>(a) with respect to an indication which is not a registered geographical indication, to the effect that it is a registered geographical indication;</p> <p>(b) that a geographical indication is registered whether in whole or in part, knowing the same to be false;</p>  |

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|   | <p>(c) to the effect that a registered geographical indication is registered in respect of any product in respect of which it is not registered; or relates to a product other than that in respect of which it is registered; or</p> <p>(d) to the effect that the registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which, having regard to conditions entered on the Register, the registration does not give that right, commits an offence.</p> <p>(3) For the purposes of this section, the use in Kenya in relation to a geographical indication of the word "registered", or of any other word referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the Register, except—</p> <p>(a) where that indication is used in physical association with other words delineated in characters at least as large as those in which that word is delineated and geographical indication under the law of a country outside Kenya, being a country under the law of which the registration referred to is in fact in force;</p> <p>(b) where that indication, being a word other than the word "registered" is of itself such as to indicate that the reference is to the last-mentioned registration; or</p> <p>(c) where that indication is used in relation to a registered geographical indication under the law of a country outside Kenya and in relation to products to be exported to that country.</p> <p>(4) A person who is convicted of an offence under this section shall be liable to a fine of not less than two hundred thousand shillings or imprisonment for a term of not less two years or both. (review penalty)</p> |
| <p>Offences and penalties for infringement against copyrights</p> | <p><b>271.</b> (1) A person who, at a time when copyright or the right of a performer or producer subsists in a work, knowingly—</p> <p>(a) makes for sale or hire an infringing copy;</p> <p>(b) sells or lets for hire or, by way of trade, exposes or offers for sale an infringing copy;</p> <p>(c) distributes infringing copies;</p> <p>(d) possesses otherwise than for his or her private and domestic use, an infringing copy;</p> <p>(e) imports into Kenya otherwise than for his or her private and domestic use, an infringing copy;</p> <p>(f) makes or has in his or her possession a contrivance used or intended to be used for the purpose of making an infringing copy;</p>   |

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|  | <p>(g) causes a broadcast to be rebroadcast or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright;</p> <p>(h) causes a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright;</p> <p>(i) circumvents a technological protection measure or manufactures or distributes devices designed for circumventing technological protection measures; or</p> <p>(j) removes or alters rights management information or imports or distributes, or makes available to the public a copy of a work from which electronic rights management information has been removed or altered,</p> <p>commits an offence.</p> <p>(2) Any person who causes a literary or musical work, an audio-visual work or a sound recording to be performed in public at a time when copyright subsists in such work or sound recording and where such performance is an infringement of that copyright shall be guilty of an offence.</p> <p>(3) For the purposes of paragraphs (a) to (f) of subsection (1), any person who has in his or her possession, custody or control two or more infringing copies of a work in the same form, shall, unless the contrary is proved, be presumed to be in possession of or to have imported such copies otherwise than for private and domestic use.</p> <p>(4) A person convicted of an offence under subsection (1) (a), (b), (c), (d) or (e) shall be liable to—</p> <p>(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and</p> <p>(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both.</p> <p>(5) A person convicted of an offence under subsection (1) (f), (g), (h), (i) or (j) shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.</p> |
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|   | <p>(6) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.</p> <p>(7) The court before which a person is charged with an offence under this section, shall whether such person is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy, or to be an article used or intended to be used for making infringing copies, be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.</p> <p>(8) No prosecution for an offence under this section shall be instituted—</p> <p>(a) after the expiration of the period of three years immediately following the date of the alleged offence; and</p> <p>(b) except, before a court of competent jurisdiction.</p> <p>(9) Any complaint alleging a breach of this section may be lodged by a licensed collective management organization where such rights are managed collectively.</p> |
| <p>Offences by body corporate</p>       | <p><b>272.</b> (1) Where a body corporate is convicted of an offence under this Act, every person who at the time the offence was committed was in charge of or was responsible to the body corporate for the conduct of its business and affairs is also deemed to have committed the offence and shall be liable to prosecution. (review and align)</p> <p>(2) Where it is proven that a body corporate committed an offence under this Act with the consent, connivance or willful lack of due diligence by a person in charge of or responsible to the body corporate for the conduct of its business and affairs, the person shall be guilty of the offence.</p> <p>(3) For purposes of this section—</p> <p>(a) “body corporate” includes a firm or other association of persons; and</p> <p>(b) “director” in relation to a firm includes the partner in the firm.</p>  |
| <p>Obstruction and breaking of seal</p> | <p><b>273.</b> (1) A person who—</p> <p>(a) wilfully obstructs an inspector in the discharge of his duties;</p>  |

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|                                       | <p>(b) wilfully fails to comply with any requirement properly made to him by an inspector;</p> <p>(c) without reasonable cause, fails to give to an inspector any assistance or information which the inspector may reasonably require of that person for the purpose of the performance of his duties under this Act; or</p> <p>(d) in giving any such information as is mentioned in subsection (1) (c), makes any statement which he knows to be false or does not believe to be true,</p> <p>commits an offence.</p> <p>(2) A person who, without authority—</p> <p>(a) breaks, damages or tampers with a seal applied by an inspector under this Act; or</p> <p>(b) removes any goods, documents, articles, items, objects or things sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot under this Act,</p> <p>commits an offence.</p> <p>(Review the section for clarity)</p>  |
| <p>Offences under<br/>ACA(review)</p> | <p><b>274.</b> Any person who—</p> <p>(a) has in his possession or control in the course of trade, any counterfeit goods or infringing works or articles;</p> <p>(b) manufactures, produces or makes in the course of trade, any counterfeit goods, infringing works or articles ;</p> <p>(c) sells, hires out, barter or exchanges, or offers or exposes for sale, hiring out, barter or exchange any counterfeit goods infringing works or articles ;</p> <p>(d) exposes or exhibits for the purposes of trade any counterfeit goods infringing works or articles;</p> <p>(e) distributes counterfeit goods infringing works or articles for purposes of trade or any other purpose;</p> <p>(f) imports into, transits through, tranships within or export from Kenya, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods infringing works or articles;</p> <p>(g) has in his possession or control in the course of trade any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive; or</p> <p>(h) in any other manner, disposes of any counterfeit goods infringing works or articles in the course of trade;</p> |

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| <p>commits an offence.</p> <p>(2) A person convicted of an offence under subsection (1) shall be liable—</p> <ul style="list-style-type: none"><li>(a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;</li><li>(b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years, or to a fine, not less than five times the value of the prevailing retail price of the goods, or both.</li></ul> <p>(3) Any person who—</p> <ul style="list-style-type: none"><li>(a) aids or abet or conspire in the commission of any offence under this Act;</li><li>(b) imports into Kenya, any goods or items bearing a trade mark, trade name or copyright that has not been registered with the Office;</li><li>(c) import into Kenya, in the course of trade, any goods or items except raw materials that is unbranded;</li><li>(d) fail to declare the quantity or the intellectual property right subsisting in any goods being imported into the Kenya;</li><li>(e) falsely declare the quantity or the intellectual property rights subsisting in any goods being imported into Kenya; or</li><li>(f) import into or transit through Kenya any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive.</li></ul> <p>commits an offence.</p> <p>(4) A person convicted of an offence under subsection (3) shall be liable to imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both</p> <p>(5) A court that has convicted a person of an offence under this section—</p> <ul style="list-style-type: none"><li>(a) shall, when considering which penalty to impose, take into account, among others, any risk to human or animal life, health or safety or danger to property, whether movable or immovable, that may arise from the presence or use of the counterfeit goods in question;</li><li>(b) may take into account, in mitigation of sentence, any evidence to the effect that such person had fully, truthfully and to the best of his ability</li></ul> |
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|                                | <p>disclosed to an inspector who investigated that offence, all information and particulars available to that person in relation to any or all of the following—</p> <p>(i) the source from which the counterfeit goods involved in the commission of the offence, were obtained;</p> <p>(ii) the identity of the persons involved in the importation, exportation, manufacture, production or making of those counterfeit goods;</p> <p>(iii) the identity and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods;</p> <p>(iv) the channels for the distribution of those goods.</p> <p>(6) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits an offence.</p> <p>(7) Where a court has concluded the hearing of a matter in any criminal proceedings whether the suspect is convicted or acquitted and the goods or works or articles in the opinion of court are counterfeit or infringed and it appears that the suspect has benefited or obtained some monetary advantage from dealing in counterfeit goods or infringing works or articles the subject matter of the criminal proceedings, the court shall on application of the prosecutor order the suspect to forfeit that benefit or monetary advantage to the Office within a period of three months and in default the Office may trace and recover that benefit or advantage from the suspect.</p> |
| <p>Compounding of offences</p> | <p><b>275.</b> (1) The Director General may, where satisfied that any person has committed an offence under this Act in respect of which a fine is provided for or in respect of which anything is liable to forfeiture, order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as he may deem fit, and the Director General may order anything liable to forfeiture in connection with the offence to be forfeited.</p> <p>(2) The Director General shall not exercise the powers conferred under subsection (1) unless the person admits in the prescribed form that he or she has committed the offence and requests the Director General to deal with such offence under this section.</p> <p>(3) Where the Director General makes any order under this section—</p> <p>(a) the order shall be in writing and shall have attached to it the request of the person to the Director General to deal with the matter;</p>   |

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|  | <p>(b) the order shall specify the offence which the person committed and the penalty imposed by the Director General;</p> <p>(c) a copy of the order shall be given to the person if the person so requests;</p> <p>(d) the person against whom an order is issued under this section shall not be liable to any further prosecution in respect of the offence, and where any prosecution is subsequently brought in respect thereof, it shall be a defence for the person to prove that the offence which he or she is charged with has been compounded under this section; and</p> <p>(e) the order shall be final, and may be enforced in the same manner as a decree or order of the court.</p> <p>(4) The Director General shall not exercise powers under this section in respect of the same person more than two times. (redraft)</p> |
| <b>PART - TRANSITIONAL AND SAVINGS PROVISIONS</b>    |  |
| Succession   | <p><b>276.</b> (1) The Office shall be the successor of the former institutions.</p> <p>(2) (a) For purposes of this part “former institutions” means—</p> <p>(i) Kenya Industrial Property Institute;</p> <p>(ii) Kenya Copyright Board; and</p> <p>(ii) Anti-Counterfeit Authority;</p> <p>(b) “appointed day” means the day on which this Act comes into force.</p>   |
| Statutory instruments                                | <p><b>277.</b> Any statutory instrument in force made under the repealed Acts immediately before the appointed day, shall remain in force as if it were made under this Act.</p>   |
| Rights and Obligations                               | <p><b>278.</b> Any rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on a former institutions shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Office.</p>   |
| Application to works made before commencement of Act | <p><b>279.</b> (1) This Act shall apply to—</p> <p>(a) works, performances, sound recordings and broadcasts made prior to the commencement of this Act, where the term of protection had not expired under the former Act or under the legislation of the country of origin of such works;</p> <p>(b) performances, sound recordings or broadcasts that are to be protected under an international treaty to which Kenya is a party.</p> <p>(2) This Act shall not affect contracts on works, performances, sound recordings and broadcasts concluded before the commencement of this Act</p>  |

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| Intellectual property rights                | <p><b>280.</b> (1) Where an intellectual property right was granted or registered under any of the repealed Acts, the privileges and rights conferred by the grant or registration immediately before the appointed day, shall be treated as if it were so granted or registered under this Act.</p> <p>(2) Applications for grant or registration of intellectual property rights received before the appointed day under any of the repealed Acts shall be processed as if it the applications were made under this Act and shall retain the filing date or validly claimed priority date which was accorded under the repealed Act.</p> <p>(3) Applications for renewal or change of particulars for granted or registered intellectual property received before the appointed day under any of the repealed Acts shall be processed as if it the applications were made under this Act</p>   |
| Licenses, Provisional licenses              | <p><b>281.</b> (1) Where a license was granted or registered or a provisional license issued under any of the repealed Acts, the privileges and rights conferred by the grant or registration or issuance immediately before the appointed day, shall be treated as if it were so granted or registered under this Act.</p>  |
| Enforcement of intellectual property rights | <p><b>282.</b> (1) Any application for enforcement of intellectual property rights made to a former institution, before the appointed day shall be deemed to have been made under this Act and processed under the provisions of this Act.</p>   |
| Staff                                       | <p><b>283.</b> (1) Any person who, immediately before the commencement date was an officer or member of staff of the former institutions, not being then under notice of dismissal or resignation shall, on the commencement of this Act, become an officer or staff of the Office on such terms and conditions of service as the Council may determine.</p> <p>(2) Despite subsection (1), a member of staff or officer who was serving in a former institution as a substantive member of staff or officer, seconded member of staff or officer, deployed member of staff or officer, shall upon the commencement of this Act be given an option to elect to serve in the Office or be redeployed in the Public Service within a period of one year.</p> <p>(3) A member of staff or officer of a former institution may within a period of one year, on the basis of abolition of office, opt to retire as the Council may determine.</p> |

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| Tenure of Chairperson and member of Board of former institutions      | <b>284.</b> The tenure of a Chairperson or member of a Board of a former institution shall expire upon the commencement of this Act.   |
| Tenure of Chairperson and member of Tribunals under the repealed Acts | <b>285.</b> The tenure of a Chairperson or member of a tribunal established under the repealed Acts shall expire upon the commencement of this Act.  |
| Assets and liabilities  | <b>286.</b> (1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before that date were vested in a former institution shall vest in the Office.<br><br>(2) On the appointed day, all rights, powers and liabilities, which immediately before that date were vested in, imposed on or enforceable against a former institution shall be vested in, imposed on or enforceable against the Office.  |
| Reference to former institution                                       | <b>287.</b> Any reference in any written law or in any document or instrument to a former institution shall, on and after the appointed day, be construed to be a reference to the Office.   |
| Proceedings   | <b>288.</b> Any proceedings pending immediately before the appointed day to which—<br>(a) a former institution was a party;<br>(b) before a former institution;<br>(c) before a tribunal established under a repealed Act; or<br>(d) before a court of competent jurisdiction;<br><br>shall be continued as if the proceedings were instituted under the provisions of this Act.   |
| Agreements, deeds, bonds or other instruments                         | <b>289.</b> Every agreement, deed, bond or other instrument to which a former institution was a party or which affected the former institution and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Office were a party thereto or affected thereby instead of the former institution and as if for every reference, whether express or implied, therein to the former institution there were substituted in respect of anything to be done on or after the appointed day. |
| Administrative decisions  | <b>290.</b> The administrative decisions made by a former institution or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were decisions made by the Office or the Cabinet Secretary under this Act.  |

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| <p>Transition Management Committee</p> | <p><b>291.</b> (1) There shall be a Transition Management Committee to manage transition matters of the Office for a maximum period of one year or until a substantive Board is put in place, whichever is earlier.</p> <p>(2) The committee under subsection (1) shall comprise—</p> <p>(a) the Principal Secretary responsible for intellectual property matters or a designated representative who shall be the chairperson;</p> <p>(b) the Principal Secretary responsible for information and communications technology or a designated representative;</p> <p>(c) the Attorney General or a designated representative;</p> <p>(d) the Executive Director or Managing Director of each of the former institution;</p> <p>(e) the Secretary of the State Corporations Advisory Committee; and</p> <p>(f) two other members to be appointed by the Cabinet Secretary.</p> <p>(3) The functions of the committee shall be to provide overall direction and to take the necessary decisions to ensure a coherent and co-ordinated approach is taken by the Office in the transition implementation process.</p> <p>(4) The transition management committee shall at all times be responsible to and report to the Cabinet Secretary.</p> |
| <p>Disciplinary proceedings</p>        | <p><b>292.</b> (1) Where on the appointed day—</p> <p>(a) any disciplinary proceedings against any member of staff of a former institution are in the course of being heard or instituted, or have been heard or investigated by the former institution but no order or decision has been made thereon;</p> <p>(b) any such member of staff is interdicted or suspended, the Office shall—</p> <p>(i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and</p> <p>(ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.</p> <p>(1) Where on the appointed day, any penalty, other than dismissal, has been imposed on any member of staff of a former institution pursuant to disciplinary proceedings and the penalty has not been, or remains to be, served by such member of staff, the member shall</p>  |

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|   | <p>upon transfer to the Office, serve or continue to serve such penalty to its full as if it had been imposed by the Office.</p> <p>(2) Despite the generality of subsection (1) the provisions on discipline in the human resource instruments of the former institutions shall apply until conclusion of the disciplinary process.</p>  |
| Pension   | <p><b>293.</b> (1) A member of staff of a former institution who becomes a member of staff of the Office shall continue to be governed by the existing Government or any other statutory voluntary pension scheme.</p> <p>(2) Where any person whose services are transferred to the Office is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Office shall be deemed to be service in the former institution.</p> <p>(3) The Council may, by order, make provisions with respect to pension or provident fund benefits of the members of staff of the Office and with respect to the pension scheme and provident fund of the former institutions.</p> |
| Registrars, Deputy Registrars, Inspectors and Prosecutors | <p><b>294.</b> (1) Any officer or member of staff of a former institution gazetted as a registrar, deputy registrar, inspector or prosecutor pursuant to the repealed acts shall be deemed to be properly gazetted under this Act, for a period not exceeding one year, for purposes of the functions of this Act.</p> <p>(2) The Council shall appoint and gazette the Registrar, Deputy Registrars, Inspectors and Prosecutors as are necessary for the functions under this Act.</p>   |
| Regulations   | <p><b>295.</b> (1) The Cabinet Secretary may, on the advice of the Council, make regulations generally for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing, the Cabinet Secretary may make regulations on—</p> <p>(a) registration of industrial designs;</p> <p>(b) any inventory to be prepared or made pursuant to seizure of counterfeit goods or infringed works or articles;</p>   |

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|                           | <ul style="list-style-type: none"> <li>(c) any matter necessary or expedient for the proper and effective control, management and administration of a counterfeit good depot and the proper care of the good detained therein;</li> <li>(d) the manner and procedures for the proper disposal of counterfeit goods;</li> <li>(e) restrict the right of an author to control the translation or reproduction of his work up to the extent permitted by any conventions for the time being in force in Kenya;</li> <li>(f) operation of designated inspectors under section *****;</li> <li>(g) application for copies of statements, inspection of seized goods, works or articles and taking of samples under section *****;</li> <li>(h) release of seized goods, works or articles;</li> <li>(i) laying of a complaint under section *****;</li> <li>(j) application to the Commissioner to seize suspect goods, works or articles;</li> <li>(k) submission of particulars of intellectual property rights;</li> <li>(l) appointment of agent by an intellectual property right owner;</li> <li>(m)</li> <li>(n)</li> </ul> |
| Exemption from Stamp Duty | <b>296.</b>   |
| Repeal                    | <p><b>297.</b> (1) The following written laws are hereby repealed—</p> <ul style="list-style-type: none"> <li>(a) the Industrial Property Act;</li> <li>(b) the Trademarks Act;</li> <li>(c) the Copyright Act;</li> <li>(d) the Anti-counterfeit Act.</li> </ul> <p>(2) All other law relating to intellectual property shall be construed with the alterations, adaptations, qualifications and exceptions necessary to give effect to this Act.</p>  |

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