

(Text as applicable on: 27-10-2011)

Regulation Implementing the Trademarks Act for the BES Islands [*Wet Merken BES*]

Chapter 1. Definition of Terms

Article 1

1. For the purposes of this Order in Council and the provisions based upon it, the following definitions shall apply:
 - a. *the Act*: the Trademarks Act for the BES Islands;
 - b. [repealed]
 - c. *the Minister*: Our Minister of Economic Affairs, Agriculture and Innovation [*Economische Zaken, Landbouw en Innovatie*];
 - d. [repealed]
 - e. [repealed]
 - f. *the register*: the register defined in Article 10(5) of the Act;
 - g. *the Nice Agreement*: Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957;
 - h. *priority*: priority in accordance with the Paris Convention for the Protection of Industrial Property of 20 March 1883 [*Verdrag van Parijs tot bescherming van de industriële eigendom van 20 maart 1883*] or the right of priority pursuant to the Agreement on Trade-Related Aspects of International Property Rights of 15 April 1994 [*Overeenkomst inzake de handelsaspecten van de Intellectuele Eigendom van 15 april 1994*]; Appendix 1C to the Agreement Establishing the World Trade Organization [*Overeenkomst tot oprichting van de Wereldhandelsorganisatie*];
 - i. *address*: the street name or similar address designation, including the house number, if any, as well as the city or town, along with the postal code if available, should be stated, for persons residing outside Bonaire, Sint Eustatius or Saba as well for residents of the islands of Bonaire, Sint Eustatius or Saba: a post office box number may be stated, but may not replace a street name or similar address designation, including house number, unless the address is that of an agent;
 - j. [repealed]
 - k. *Protocol*: Protocol of 27 June 1989 to the Madrid Agreement Concerning the International Registration of Marks [*Overeenkomst van Madrid betreffende de internationale inschrijving van merken*].
2. Unless indicated otherwise, the terms used in this order in council that also appear in the Act shall share the same definition provided in the Act.

Chapter 2. Filing

Article 2

1. Filing a trademark shall take place in Dutch or English, by submitting to Our Minister a document stating:
 - a. the applicant's name and address; if the applicant is a corporate body, its legal form must be indicated, as well as the name and address of that body's agent;

- b. the trademark and an indication that the trademark is a verbal trademark, a figurative trademark, a semi-figurative trademark, a form trademark or any other type of trademark. In the latter case, the type of trademark should also be specified;
 - c. an indication of the colour or colours in words; where appropriate, accompanied by the corresponding colour code;
 - d. [repealed]
 - e. the statement of goods and services which the trademark is intended to cover;
 - f. an indication, where appropriate, that the filing concerns a collective trademark;
 - g. the signature of the applicant or his agent.
2. [repealed]
 3. [repealed]
 4. The depiction of the mark shall satisfy the requirements to be imposed by Our Minister.
 5. The goods and services shall be described precisely and shall, to the extent possible, be described using the terms of the alphabetical list for the international classification of goods and services provided for by the Nice Agreement. In any event, the goods and services shall be arranged according to class and following the order of these classes in said classification.
 6. [repealed]
 7. [repealed]

Article 3

The filing shall be accompanied by:

- a. in the case of a collective mark, a number of copies of regulations on use and control, said number to be established by Our Minister;
- b. [repealed]
- c. payment of fees or duties in an amount to be established by Ministerial order;
- d. a number of depictions of the trademark, said number to be established by Our Minister; these depictions must be in colour if the applicant is claiming the colour or colours to be a distinguishing characteristic.

Article 4

1. The requirements for establishing a filing date as laid down in Article 10(1) of the Act are those laid down in Article 2(1)(a), (b), (e) and (f), and in Article 3(a) and, with regard to basic fees or duties, (c).
2. The term referred to in Article 10(3) of the Act, to meet the other requirements imposed, shall be no less than one month. This term may be extended on request or ex officio but may not exceed six months after the date of the first notification.
3. [repealed]

Article 5

[repealed]

Article 6

- 1.** If a right of priority is claimed at the time of filing, the country, date, number and holder of the filing on which this right of priority is based must be indicated. If the trademark applicant in the country of origin is not the party who has made the filing in the country of origin, the latter must attach a certificate to his filing stating his rights.
- 2.** The special declaration of the right of priority referred to in Article 10(7) of the Act shall contain: the name and address of the applicant, his signature or that of his agent and, when the case arises, the name and address of his agent, an indication of the trademark and the information referred to in the first paragraph. Proof of the payment of fees or duties in an amount to be established by Ministerial order must be enclosed.
- 3.** An applicant claiming a right of priority shall present a copy of the documents providing evidence of this right of priority.
- 4.** If the conditions of the first, second and third paragraphs and Articles 13 and 15 are not met, Our Minister shall inform the party concerned without delay, setting a term of no less than one month to satisfy the conditions. This term may be extended on request or ex officio to six months after the date the first notification is dispatched. Failure to respond within the original or extended term shall cause the right of priority to lapse.

Chapter 3. Registration

Article 7

- 1.** Our Minister shall register the filing by stating:
 - a. [repealed]
 - b. the date and number of the filing
 - c. the information referred to in Article 2 and, as appropriate, the claim to the priority right and the information stated in Article 6(1);
 - d. the date of expiry of the registration;
 - e. the numbers of the classes of the international classification of goods and services referred to in the Nice Agreement, under which the goods and services listed in the statement of goods and services for the registered trademark will be placed.
- 2.** Registration shall take place in the language in which the filing is written.

Article 8

If a priority right has been claimed, Our Minister shall note this fact in the statement of the country, date, number and holder of the filing on which the priority right claimed is based.

Article 9

- 1.** Each application for amendments to the entry in the register shall be addressed to Our Minister and contain the registration number, the name and address of the rightholder, his signature or that of his agent and, when the case arises, the agent's name and address.

2. Amendments to the registration as defined in Article 29(1) of the Act shall take place in the same language as the registration, unless Our Minister decides otherwise in respect of the relevant application.
3. The application shall be accompanied by a copy of the deed which provides evidence of transfer, or other form of transfer, licence or pledge, as defined in Article 21(4) of the Act.
4. Cancellation of the registration of a transfer, other form of transfer, licence, pledge or attachment shall be carried out based on a supporting document.
5. In case of a reasonable doubt concerning the accuracy of the amendment requested, Our Minister may request additional information, such as the submission of original documents or certified copies thereof.

Chapter 4. Renewal

Article 10

1. The application for renewal of the registration of a filing shall take place by a form submitted to Our Minister and signed by the holder or his agent and containing the following information:
 - a. the name of the holder of the trademark;
 - b. the holder's address and, if the case arises, the agent's name and address;
 - c. if the description of the goods and services has been limited in comparison to the last publication, the list of goods and services, described as precisely as possible, to the extent possible using the terms of the alphabetical list for the international classification of goods and services provided for in the Nice Agreement; in any event, the goods and services shall be grouped together by class and following the order of classes in said classification;
 - d. the registration number.
2. [repealed]
3. The filing shall be accompanied by:
 - a. payment of fees or duties in an amount to be established by Ministerial order;
 - b. [repealed]
 - c. a number of depictions of the trademark, if Our Minister considers this necessary, when the case arises in colour if the applicant has required the colour or colours to be a distinguishing characteristic of the trademark.

Article 11

1. If, when the application for renewal is submitted, the provisions of Articles 10 and 13 are not fulfilled, or if Our Minister requires an authentication as defined in Article 13(6), Our Minister shall notify the applicant of that fact without delay and give him an opportunity to fulfil these requirements within a term of at least one month. This term may be extended on request or ex officio but may not exceed six months after the date the first notification is dispatched. If all or part of the payment is made after the expiry date of the registration, an additional fee shall be owed of which the amount shall be determined by Ministerial order.
2. Failure to respond within the original or extended term shall cause the renewal application to be disregarded.

Article 12

- 1.** Our Minister shall register the renewals by adding the new date upon which the registration expires:
 - a. the registration number;
 - b. the date of the renewal and the filing number;
 - c. the information referred to in Article 2, with due observance of the information referred to in Article 10(1).
 - d. the date of expiry of the registration;
 - e. the numbers of the classes of the international classification of goods and services referred to in the Nice Agreement, under which the goods and services listed in the statement of goods and services for the registered trademark are classified.
- 2.** Our Minister shall, without delay, send the holder proof of renewal of the registration containing the information contained in the register.
- 3.** Renewal of the registration shall take place in the same language as the previous registration, unless Our Minister has decided otherwise in respect of a particular application.

Chapter 5. Administrative Provisions

Article 13

- 1.** All documents to be addressed and submitted to Our Minister must be written in the Dutch or English language and be clearly legible. Letters and evidence originating from abroad may be written in another language. Evidence written in another language must be submitted along with a translation into Papiamentu, Dutch, English or Spanish. Our Minister shall refuse delivery of documents and packages that do not bear sufficient postage.
- 2.** The regulations for use and control relating to a collective mark must always be written in Papiamentu, Dutch, English or Spanish.
- 3.** The documents to be submitted to Our Minister shall be dispatched by post, signed fax or electronically.
- 4.** Our Minister may draw up rules for the electronic submission of documents.
- 5.** If any document submitted for entry into the register is signed on behalf of a legal entity, the signatory's due authorisation to sign such document shall be stated on said document.
- 6.** The signature on documents being submitted for registration need not be authenticated unless Our Minister considers this necessary.

Article 14

- 1.** In order to set the date on which a document is received by Our Minister, it shall be provided with the date, including the hour, day, month and year on which it is received immediately after such receipt.
- 2.** When delivering a document other than by post, the receipt of said document shall be acknowledged upon demand by duly stamping a proof of receipt that clearly and fully states the nature of the document in question.

3. Documents that are delivered after Our Minister's office closes, whether they be received at Our Minister's street address or post office box, shall be considered to have been delivered at 7:30 a.m. on the next business day. If multiple such submissions are received, Our Minister shall determine the order in which they will be processed.
4. [repealed]
5. Our Minister shall record the dispatching and receipt of documents. Such recording shall, unless there is evidence to the contrary, constitute proof of dispatching and receipt as well as the time when these operations took place.

Article 14a

1. The terms provided for in these Regulations and expressed in months shall start from the day on which the event is deemed to take place and shall expire in the relevant month and on the day corresponding to the day on which the term began to run. If the month to be taken into consideration does not have a corresponding day, the term shall expire on the last day of the month.
2. The terms provided for in these Regulations and expressed in weeks shall start from the day on which the event is deemed to take place and shall expire, in the relevant week and on the day corresponding to the day on which the term began to run.

Article 15

1. Every transaction at Our Minister as defined in this Act may be performed through the intermediation of an agent. The agent shall reside or have a registered office within the Kingdom.
2. In cases in which an agent is designated, every notification regarding the transactions he is authorised to perform shall be addressed to him.
3. Any person claiming to be acting as a representative of an interested person for the conduct of a transaction with Our Minister shall be presumed to have been authorised to do so by the interested person.
4. When a representative of Our Minister requests the cancellation of a registration, said agent shall submit an authorisation issued to that end.
5. If Our Minister has reason to doubt the correctness of a representative's authorisation as referred to in the third paragraph, he may as yet, regardless of the type of transaction, require that an authorisation be submitted within a term of one month. This term may be extended by one month upon request. The failure to respond within the original or extended term shall result in the application being disregarded.

Article 16

[repealed]

Article 17

If an application to register an amendment in the register does not satisfy the provisions of this order in council or if the relevant fees or duties have not been paid, or have not been paid in full, Our Minister shall notify the interested party of such fact without delay

and afford him a term of at least one month to satisfy the provisions. This term may be extended on request or ex officio but may not exceed six months after the date the first notification is dispatched.

Article 18

In exchange for payment of an amount in fees or duties to be established by Ministerial order, Our Minister shall provide interested parties with information and copies based on the register.

Article 19

Our Minister shall provide interested parties with documents regarding rights of priority in exchange for payment of an amount in fees or duties to be established by Ministerial order. Such a document may only be issued if the filing conditions laid down in Article 4(1) are fulfilled.

Article 20

Our Minister may make forms available for performing trademark-related transactions.

Article 21

Our Minister shall publish notifications as defined in Article 29(1)(b) of the Act exclusively in the language in which they are registered, these being:
the registered data regarding filing as mentioned in Articles 7, 9 and 10.

Chapter 6. Fees and Duties

Article 22

[repealed]

Article 23

[repealed]

Article 24

Rules regarding the amounts and payments of fees and duties shall be established by Ministerial order.

Chapter 7. Provisions Relating to the Application of the Act's Transitional Provisions

Article 25

- 1.** The confirmatory filing referred to in Article 43(1) of the Act shall take place in accordance with the provisions of Articles 2 and 3. Moreover, the date and number of the previously acquired right shall be stated thereon, and Our Minister shall be provided with evidence of the previously acquired right.
- 2.** The filing shall be accepted if Our Minister is notified of the date and number of the previously acquired right referred to in the first paragraph of this Article within the term provided for in Article 43(1) of the Act.
- 3.** If the filing does not fulfil the conditions of the first paragraph and Articles 2 and

- 3, the Office shall inform the interested party of that fact without delay, and grant him a term of no less than one month to satisfy the conditions. This term may be extended on request or ex officio but may not exceed six months after the date the first notification is dispatched.
4. If the provisions of this Article are not fulfilled within the term referred to in the third paragraph, this shall result in the documents received being disregarded. The interested party shall be notified of that fact.
 5. The provisions in Articles 7 and 8 shall apply likewise, it being understood that the registration also states the information referred to in the first paragraph regarding the previously acquired right, the data mentioned and the date on which the registration expires.
 6. The filings referred to in this Article shall be published in the language in which the registration was made, along with the information referred to in the fifth paragraph.
 7. The holders of filings referred to in this Article may correct, supplement or add documentation to the information referred to in the first paragraph and if they wish add supporting evidence. This information shall not affect the previously established expiry date of the registration.

Article 26

If on the date when the right obtained is invoked, the applicant also applies for the first renewal of the registration in accordance with Article 43(4) of the Act, he shall note this upon submitting the filing and shall pay an amount in fees or duties to be established by Ministerial order. The provisions laid down in Sections 25(3)-(6) shall apply accordingly.

Article 27

[repealed]

Chapter 8. International Filing

Article 28

The form for international registration must be completed in English.

Article 29

Pursuant to the provisions of Article 19(2) of the Act, an applicant has a term of at least one month after the date of the first notification to respond to a provisional refusal; this term may be extended on request or ex officio but may not exceed six months after the date of the first notification.

Article 30

The amount of the fees or duties for transactions relating to international filings shall be established by Ministerial order.

Section 9. Final Provisions

Article 31

This order in council shall enter into effect on the date on which all or part of the Act

enters into force.

Article 32

This Order in Council is based on Article 10(1), (3), (4) and (8), Article 11(3), Article 17(1), Article 18, Article 20(3) and (4), Article 21(4), Article 29(1) and (2) and Article 43 of the Trademarks Act for the BES Islands.

Article 33

This Order in Council shall be cited as: Regulation Implementing the Trademarks Act for the BES Islands.

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