



ARIPO
African Regional Intellectual
Property Organization



**Administrative
Instructions under the
Regulations for
Implementing the
Swakopmund Protocol**

**ADMINISTRATIVE INSTRUCTIONS
UNDER THE
REGULATIONS FOR IMPLEMENTING
THE SWAKOPMUND PROTOCOL FOR THE
PROTECTION OF TRADITIONAL KNOWLEDGE
AND EXPRESSIONS OF FOLKLORE
WITHIN THE FRAMEWORK OF
THE AFRICAN REGIONAL INTELLECTUAL
PROPERTY ORGANIZATION (ARIPO)**

**ARIPO Office
Harare, Zimbabwe
2019**

Administrative Instructions-Swakopmund Protocol

Administrative Instructions-Swakopmund Protocol

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Administrative Instructions under the Regulations for Implementing the Swakopmund Protocol on the Protection of Traditional Knowledge & Expressions of Folklore

The Administrative Instructions are established by the Director General of the African Regional Intellectual Property Organization (ARIPO) in accordance with Rule 23 of the Regulations.

PRELIMINARY

Short Title and Date of Operation

1. These Administrative Instructions may be cited as the Administrative Instructions under the Swakopmund Protocol, and shall come into operation on January 01, 2019.

Interpretation

2. In these Administrative Instructions:

- (i) “*Protocol*” means the Swakopmund Protocol on the Protection of Traditional Knowledge & Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization (ARIPO);
- (ii) “*Section*” refers to the specific Section of the Protocol;
- (iii) “*Regulations*” mean the Regulations made under the Protocol;
- (iv) “*Rule*” refers to the specified Rule of the Regulations;
- (v) “*Instruction*” refers to the specified instruction of these Administrative Instructions;
- (vi) “*ARIPO Office*” means the Office of the African Regional Intellectual Property Organization;

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- (vii) “*Director General*” means the Director General of the ARIPO Office;
- (viii) “*Designated State*” means a State designated, in accordance with Rule 1 of the Regulations.

Fees and Form of Payment of Fees

- 3. (a) The fees to be paid in respect of any matters arising under the Protocol, the Regulations or these Administrative Instructions shall be those specified in the Schedule of Fees annexed to and forming part of the Regulations and in Schedule 3 of these Administrative Instructions.
- (b) Rule 10 shall apply, *mutatis mutandis*, to the form of payment of any fees due under the Protocol, the Regulations or these Administrative Instructions.

Forms

- 4. (a) The forms referred to in these Administrative Instructions are those set out in Schedules 1, 2 and 3 hereto.
- (b) Copies of the printed forms shall be furnished free of charge by the ARIPO Office and by the Competent National Authorities of the Contracting States or shall be obtained from the ARIPO website or from any other electronic media.

REGISTERS

Request for Alteration of Names and Addresses and for Correction of Errors Inspection

- 5. (a) A request, by the owner of a registered traditional knowledge or expressions of folklore for the alteration of a name or address entered in the traditional knowledge or expressions of folklore register in respect of his traditional

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knowledge or expressions of folklore or a request for the correction of an error in the said registers or in any document filed at the ARIPO Office in connection with a registration shall be submitted by the applicant to the ARIPO Office.

(b) Before acting on such a request, the Director General may require such justifications as he deems fit and, if satisfied, shall alter or correct the relevant register or document accordingly.

(c) The traditional knowledge and expression of folklore registers or entries or reproduction of entries therein shall be made available for consultation by the public between the hours of 8:00 a.m. and 4:30 p.m. on working days or from the ARIPO website or any other electronic media.

ARIPO OFFICE

Hours of Business

6. The ARIPO Office shall be open for the transaction of any business between the hours of 8:00 a.m. and 4.30 p.m.

DOCUMENTS

Directions as to Furnishing of Documents, Information or Evidence

7. At any stage of any proceedings before the ARIPO Office, the Director General may direct that such documents, information or evidence as he may require shall be furnished within such period as he may fix.

Corrections and Rectifications

8. Any document filed in any proceedings before the ARIPO Office may, if the Director General deems fit, be corrected or

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altered, and any irregularity in procedure in or before the ARIPO Office may be rectified on such terms as he may direct.

Translations

9. (a) Where any document or part of a document which is in a language other than English is filed at the ARIPO Office or sent to the Director General in pursuance of the Protocol, the Regulations or these Administrative Instructions, it shall be accompanied by a translation into English of the document or that part thereof, verified to the satisfaction of the Director General as corresponding to the original text.
- (b) Any application, document or part thereof will be deemed not to have been filed until any required translation is also filed.

Signatures by Partnerships, Companies, Associations or Indigenous and Local Communities

10. (a) A document purporting to be signed for or on behalf of a partnership shall contain the names of all the partners in full and shall be signed on behalf of the partnership, or by any other person who satisfies the Director General that he is authorized to sign the document. A document purporting to be signed for or on behalf of a body corporate shall be signed by a Director or by the Secretary or other Principal Officer of the body corporate, or by any other person who satisfies the Director General that he is authorized to sign the document. A document purporting to be signed for or on behalf of an association of persons may be signed by any person who satisfies the Director General that he is duly authorized. A document purporting to be signed for or on behalf of local or indigenous community or communities may be signed by any person(s) who satisfies the Director General that such person(s) is/are duly authorized.

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(b) The Director General may, whenever he deems it necessary, request evidence of authorisation to sign.

Dispatch by Post

11. Any notice or other document sent by post or by electronic means by the ARIPO Office shall be deemed to have been given or made 21 days from the date on which it was sent.

APPLICATION FOR REGISTRATION OF TRADITIONAL KNOWLEDGE OR EXPRESSIONS OF FOLKLORE

Request for Registration of Traditional Knowledge or Expressions of Folklore

12. Application for the registration of traditional knowledge and expressions of folklore shall be made on ARIPO Form T1 and Form F1 respectively. Registration may be requested for one or more of the Contracting States.

Applicant's Name

13. For purposes of Rule 3 (2) (a), "family name" shall mean surname and "given name(s)" shall mean first name(s).

Indication of Nationality and Residence

14. (a) The applicant's nationality shall be indicated by the name of the State of which he is a national; legal entities shall indicate the name of the State under whose laws they are constituted.
(b) The applicant's residence shall be indicated by the name of the State of which he is a resident.

Power of Attorney

15. The appointment of a representative shall be made on a prescribed Form, to be filed together with the application or with the ARIPO

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Office; if the appointment is not thus made or if the representative does not have the right to represent applicants before the Competent National Authority, any procedural steps other than the filing of the application taken by the representative shall be deemed not to have been taken.

Drawings

16. (a) Drawings shall be required when they are necessary for the understanding of the disclosure.
- (b) Flow sheets, diagrams, photographs and video recordings are considered drawings.

Abstract

17. (a) The abstract shall merely serve the purpose of technical information.
- (b) The abstract shall be so drafted that it can efficiently serve as a scanning tool for purposes of publication and public disclosure.
- (c) The abstract shall consist of a summary of the disclosure and may contain drawings.
- (d) The abstract shall be as concise as the disclosure permits (preferably 50 to 150 words).

Number of Copies and Physical Requirements

18. (a) The application and any accompanying statements or documents to be filed with the Competent National Authority shall be filed in three copies (except where the application is filed electronically) and those to be filed with the ARIPO Office shall be filed in two copies, but the Director General may require the applicant to supply additional copies.

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- (b) All elements of the application shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset and microfilming.
- (c) Only one side of each sheet contained in the application shall be used.
- (d) All elements of the application shall be on paper which is flexible, strong, white, smooth, non-shiny and durable.
- (e) The size of the sheets shall be A4 (29.7cm x 21cm), although the Director General may accept sheets of other sizes.
- (f) The minimum margins of sheets shall be as follows:
- | | |
|---|-------|
| (i) upper margin of each page, except the first page: | 20 mm |
| (ii) upper margin of the first page: | 30 mm |
| (iii) side margin adjacent to the binding: | 25 mm |
| (iv) other side margin: | 20 mm |
| (v) bottom margin: | 20 mm |
- (g) (i) All sheets shall be numbered at the top of the sheet, in the middle, in consecutive Arabic numerals.
- (ii) In effecting the sequential numbering of the sheets, the elements of the application shall be placed in the following order: the request, the description, the abstract, and the drawings.
- (h) The sequential numbering of the sheets shall be effected by using three separate series of numbering, the first series applying to the request only and commencing with the first sheet of the request, the second series commencing with the first sheet of the description and continuing until the last sheet of the abstract, and the third series being applicable to the sheets of the drawings only and commencing with the first sheet of the drawings.

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- (i) The text matter of the application shall be typed; graphic symbols, chemical or mathematical formulae and certain characters, if necessary, may be handwritten or drawn.
- (j) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes without colourings.

Amendment of Application

- 19. The applicant may amend the application, provided that the amendment shall not go beyond the disclosure in the initial application.

TRANSMITTAL OF APPLICATIONS BY COMPETENT NATIONAL AUTHORITY

Verification by Competent National Authority that Application Fulfils Certain Requirements

- 20. (a) If the Competent National Authority finds that the requirements have not been fulfilled (Rule 2), it shall notify the applicant and the application shall not be transmitted until the said requirements have been fulfilled. The Competent National Authority shall invite the applicant to file the required correction, together with the payment of the prescribed fee (Form T5).
- (b) The applicant shall have two months from the date of the said invitation to comply therewith or to request the Competent National Authority nonetheless to transmit all documents making up the application to the ARIPO Office. If the applicant complies with the said invitation, the Competent National Authority shall indicate the date of receipt of the required correction on any relevant documents and

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on ARIPO Form T1 or F1. If the applicant does not comply with the said invitation but requests the Competent National Authority nonetheless to transmit all documents making up the application to the ARIPO Office, the Competent National Authority shall do so. If the applicant does not comply with the said invitation and does not make such a request, the Competent National Authority shall treat the application as if it had not been filed.

Allotment of Application Number by Competent National Authority

21. The Competent National Authority shall allot application number consisting of two-letter country code for the Competent National Authority, a slant, the letters AP, a slant, the letter T or F, a slant, and the number allotted internally by the Competent National Authority.

Acknowledgement by Competent National Authority of Receipt of Application

22. The Competent National Authority shall acknowledge receipt of the application.

Transmittal of Application to the ARIPO Office

23. (a) The time for transmitting all documents making up the application shall be not more than 30 days from the date on which all such documents were received by the Authority. If the applicant is notified, pursuant to non-compliance with the requirements, then that time shall be not more than 14 days from the date on which the requirements were complied with. If the applicant was invited to file any corrections, then that time shall be not more than 21 days from the date on which any required correction or request for transmittal of documents was received by the said office.

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(b) The documents making up the application shall be transmitted (in three copies). The Competent National Authority shall retain one copy of the application and of any accompanying documents filed with it.

(c) The Competent National Authority shall notify the applicant of the transmittal of the application and its accompanying documents to the ARIPO Office.

DATE OF RECEIPT

Allotment of Application Number by ARIPO Office and the According and Notification of Date of Receipt

24. (a) Upon receiving the application, the ARIPO Office shall:

(i) mark, on each document making up the application, the application number, consisting of the letters AP, slant, the letter T for Traditional Knowledge and the letter F for Expressions of Folklore, slant, the year (e.g. 2015) in which such papers were received, slant, and a six-digit number allotted in sequential order corresponding to the order in which applications are received e.g. 000001;

(ii) confirm that the application, on the face of it, fulfils the requirements (Rule 2) of registration; if it finds that it does, it shall record the date of receipt; if it finds that it does not, it shall invite the applicant to file the required correction, together with the payment of the prescribed fee. Form T3 or F3.

(b) The applicant shall have two months from the date of the said invitation to comply therewith. If the applicant complies with the said invitation, the ARIPO Office shall indicate the date of receipt of the required correction on any relevant documents and on ARIPO Form T1 or F1; otherwise, it shall treat the application as if it had not been filed.

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- (c) The notification shall be made on Form T2 or F2.
- (d) The application number allotted under paragraph (1) (i) hereof shall be quoted in all subsequent communications concerning the application.

EXAMINATION AS TO ADMINISTRATIVE REQUIREMENTS

Administrative Requirements

- 25. For purposes of the examination as to administrative requirements, the ARIPO Office shall also examine whether the application complies with the requirements contained in Rule 2 in respect of traditional knowledge and Rule 3 in respect of expression of folklore and shall be examined only whether the application contains the items required. The application shall also be examined whether it complies with the physical requirements with respect thereto.

Processes for the Registration and Administration of Traditional Knowledge and Expressions of Folklore

- 26. (a) The processes for the registration of traditional knowledge, folklore and associated genetic resources will involve the following;
 - (b) Filing of the application;
 - (c) Administrative requirements - Examination including verification of prior informed consent/mutually agreed terms;
 - (d) Registration, i.e. issuance of certificates,
 - (e) Licenses and assignments,
 - (f) Access to databases, and
 - (g) Contractual agreements

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Registration Requirements for the Protection of Traditional Knowledge and Expressions of Folklore under the Swakopmund Protocol

27. (a) Completion of application form to provide details of the applicant.
- (b) Full description of the traditional knowledge and expressions of folklore including:
- i) The inter-generational transmission of the knowledge
 - ii) Distinctively or integral with the local or traditional communities
 - iii) Drawing/video of the embodiment
- (c) Signing of a declaration of ownership/submission of prior informed consent form where applicable
- (d) Signing of non-disclosure agreement with the ARIPO Office
- (e) Payment of fees

Invitation to Correct Application

28. The applicant shall be invited to correct the application where necessary.

Missing Drawings

29. Where the application refers to drawings which in fact are not included in the application, the ARIPO Office shall invite the applicant to furnish the missing drawings; if the applicant fails to furnish such drawings as requested, any reference to the said drawings will be treated as non-existent.

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Missing Abstract

30. Where no abstract is provided, the ARIPO Office shall invite the applicant to correct the deficiency either by providing an abstract or by paying the prescribed fee for the preparation of the abstract by the ARIPO Office itself.

Notification of Compliance with Administrative Requirements

31. The ARIPO Office shall notify the applicant and the Competent National Authorities (where applicable) that the application complies with the prescribed administrative requirements on Form T8 or F8

Decision Refusing Application on Grounds of non-Compliance with Administrative Requirements

32. Any decision refusing the application on grounds of non-compliance with the prescribed formal requirements shall be in writing and shall state the reasons for the rejection made on Form T9 or F9.

Request to Reconsider Decision Refusing Application on Grounds of non-Compliance with Administrative Requirements

33. (a) The applicant may request that the ARIPO Office reconsiders its decision on the grounds of non-compliance with administrative requirements.
- (b) If the applicant does not request the ARIPO Office to reconsider its decision or if the ARIPO Office refuses the application, notwithstanding such a request, it shall forthwith notify that fact to the applicant and the Competent National Authority as the case may be.

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Refusal of Application not Affecting Date of Receipt

34. Refusal of the application shall not affect its date of receipt which shall remain valid.

WITHDRAWAL OF APPLICATION

Declaration of Withdrawal

35. (a) The written declaration of withdrawal of application shall be made and signed by the applicant or the representative of the indigenous or the local community concerned.
- (b) Upon receipt of the application, copies may be sent to the Competent National Authority.
- (c) The application fee shall not be refunded if the application is withdrawn.

REGISTRATION, RECORDAL AND PUBLICATION OF TRADITIONAL KNOWLEDGE OR EXPRESSIONS OF FOLKLORE

Contents and Numbering of Traditional Knowledge and or Expressions of Folklore

36. (a) The traditional knowledge or expressions of folklore shall be registered on ARIPO Form No. T11 or F11.
- (b) The ARIPO Office shall allot to each traditional knowledge or expressions of folklore it registers a number (i.e., registration number of the traditional knowledge or expressions of folklore) in the sequential order of registration.

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Certificate of Registration

37. The certificate of registration of a traditional knowledge or expressions of folklore shall be issued by the ARIPO Office.

LICENCES, ASSIGNMENTS, TRANSMISSIONS AND OTHER SIMILAR RIGHTS

Registration of Assignment, Transmission or other Form of Transfer

38. (a) Application to register an assignment, transmission or other form of transfer pertaining to registered traditional knowledge or expressions of folklore under the Protocol, shall be made on ARIPO Form No. T15 or F15, respectively.
- (b) Such application shall be accompanied by documents proving, to the satisfaction of the ARIPO Office.

Publication of Assignment, Transmission or other Form of Transfer

39. The ARIPO Office shall publish, in the ARIPO Journal, a reference to the registration, of the assignment, transmission or other form of transfer in respect of a registered traditional knowledge or expressions of folklore.

Registration of Licence

40. Application to register a licence or other similar right pertaining to registered traditional knowledge or expressions of folklore under the Protocol, shall be made by the licensor to ARIPO together with the documents evidencing the licence or other similar rights, and shall be signed by or on behalf of the licensor.

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Notification of Recordal of Licences/Assignments / Correction of Errors / Change of Applicant Details

41. The ARIPO Office shall record all such licences/ assignments/correction of errors or change of applicant details according to the Protocol, Regulations and these Instructions.

Request and Grant of Time Limits

42. The Director General may extend time limits in respect of any office action by the applicant.

MISCELLANEOUS

Communications

43. Any communications by or with the ARIPO Office in relation to any matters arising under the Protocol, the Regulations or these Administrative Instructions shall be effected by registered airmail or by personal delivery or by any electronic means.

Effective Date

44. These Administrative Instructions are effective from this
.....day of

.....

Fernando dos Santos
Director General



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