

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Macau, China

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedure and remedies

1. Specify the courts which have jurisdiction over IPR infringement cases.

Pursuant to the provisions of article 10 of Law N° 9/99 of 20 December 1999, the following Courts of First Instance operate in Macau, China: Judicial Generic Court and Audit Tribunal and Court of Appeal – Courts of Second Instance and Last Instance.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

Pursuant to article 20 of Decree-Law N° 97/99/M of 13 December 1999, the right to file a suit in local courts assists any person who has a legitimate interest to uphold. Where intellectual property rights are concerned, in particular, article 197 of Decree-Law N° 43/99/M of 16 August 1999 foresees representation before local courts of proxies of right holders.

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence that lies within its control?

Judicial authorities are empowered to request all and any evidence necessary to be produced. Moreover, administrative authorities are also empowered to inspect, seize and order forfeiture of goods in Macau, China.

4. What means exist to identify and protect confidential information brought forward as evidence?

Confidentiality of information brought forward is foreseen and enforced by the “Confidentiality Clause” under the provisions of article 76 of Decree-Law N° 48/96/M of 2 September 1996.

¹ Document IP/C/5.

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use;

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

The protection and remedies conferred to intellectual property right owners are provided for and guaranteed under the Legal System Governing Industrial Property enacted by Decree-Law N° 97/99/M of 13 December 1999, namely articles 299 through 314. Where copyright is concerned, protection is provided for under articles 201 to 209 and 215 to 219 of Decree-Law N° 43/99/M of 16 August 1999. Finally, liability and penalties for activities involving illicit copying of computer programs, phonograms and videograms (including commercialization thereof) is described and ruled by articles 28 to 46 of Decree-Law N° 51/99/M of 27 September 1999.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods of services found to be infringing and of their channels of distribution?

Pursuant to the provisions of article 340 of the Penal Proceedings Code (PPC) in force approved under the auspices of Decree-Law N° 48/96/M of September 1996, judicial authorities are empowered to take into consideration supervening facts or circumstances.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

Public servants and officers, while discharging their duties, are exclusively acting in public interest and required to carry out their duties in an honourable manner, as stipulated in the Code of Practice of the Macau Civil Servants (CPMCS), whose obligations are provided for, namely, in its article 279 paragraph 2 (the CPMCS was enacted by Decree-Law N° 62/98/M of 28 December 1998 and re-published under Governor's Decision N° 42/GM/99 of 22 March 1999). Any infringement to those "obligations" shall be liable to disciplinary action foreseen and punished by article 280 and following of the said Code.

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

All relevant bodies of the Public Administration must discharge their duties pursuant to the principles legally stipulated, one of them being the duty to abide by the "Principle of the (Legal) Decision", as provided for in article 9 of the Administrative Proceedings Code, enforced by Decree-Law N° 35/94/M of 18 July 1994. Failure to, within the deadline stipulated for a final decision to be made, issue such decision on an application submitted to the relevant administrative body, entitles the interested party, unless otherwise stipulated, to infer that such application has not been authorized, upon which the latter may exercise his right to contest (the deadline thereto is of sixty days – please refer to article 96).

(b) *Administrative procedures and remedies*

- 9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.**

Please refer to the answer to question 5 above.

Provisional Measures

(a) *Judicial measures*

- 10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.**

Please refer to the answer to question 5 above.

- 11. In what circumstances may such measures be ordered *inaudita altera parte*?**

Please refer to the answer to question 5 above.

- 12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.**

The means and provisions available for protection of the legitimate interests of the defendant are provided for in article 163 of the PPC through the “seizure of goods” which, other than the other legal dispositions applicable as referred to in the answer to question 5 above, may be authorized, ordered or validated by decision of the relevant judicial authority.

- 13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.**

The duration of criminal proceedings is foreseen in article 224 and following of the PPC, it being important to note that such duration may vary depending on various circumstances that might occur in the course of the relevant proceedings.

(b) *Administrative measures*

- 14. Reply to the above questions in relation to any administrative provisional measures.**

Please refer to the answer to question 5 above.

Special Requirements Related to Border Measures

- 15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis imports*). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?**

Pursuant to the provisions of article 47 and following of Decree-Law N° 66/95/M of 21 December 1995 the Macau Marine Police and Customs (MMPC) and the Macau Economic Services (MES) are the bodies responsible for seizing, as a precautionary measure, all goods that are presumed to be infringing rules and regulations in force, namely products suspected of being counterfeit or in any way violating intellectual property rights (please refer to specific legislation enacted for this purpose under Decree-Law N° 51/99/M of 27 September 1999).

- 16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

Goods object of seizure as referred to above, may be released against payment of a bond or bank guarantee in the same amount as the value of the relevant goods and objects (article 47 of Decree-Law N° 66/95/M of 21 December 1995).

- 17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?**

The deadline for the administrative proceedings is foreseen in article 58 of the Administrative Proceedings Code (APC), approved by Decree-Law N° 35/94/M of 18 July 1994.

- 18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?**

Pursuant to the provisions of article 51 of Decree-Law N° 66/95/M of 18 December 1995, whenever an authority or officer thereof witnesses any infringement to the stipulations of the Decree in question, he must launch an investigation, or order it to be launched, which is subsequently forwarded to the MES. Whenever the suspicion arises that a crime is involved, such investigation shall only be forwarded to the Office of the Public Prosecutor, within the following five days. On the other hand, article 26 of Decree-Law N° 16/97/M of 12 May 1997 stipulates that, where verification of economic-related legislation is concerned, particularly in matters of intellectual property, the officers of the Inspection of Economic Activities Department (under the MES) are considered as criminal police agents. Any penal proceedings acts and deeds are delegated by the relevant judiciary authority on the inspectors appointed for that purpose.

- 19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.**

Please refer to the answer to question 12 above.

Criminal Procedures

- 20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.**

Please refer to the answer to question 1 above.

- 21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?**

Infringements considered to be a crime against intellectual property rights are foreseen in articles 289 to 294 of Decree-Law N° 97/99/M of 13 December 1999. With regard to copyright, the same are listed in articles 209 to 214.

- 22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?**

The MES (and its Inspection of Economic Activities Department) and all criminal police bodies (Judiciary Police, Public Security Police and the MMCP).

- 23. Do private persons have standing to initiate criminal proceedings and, if so, who?**

Pursuant to the provisions of articles 209 and 210 of Decree-Law N° 43/99/M of 16 August 1999, it is up to the interested/injured party or **on the basis of** a complaint.

- 24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:**

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

Pursuant to all legal dispositions quoted above, all infringements to intellectual property rights are liable to administrative and penal sanctions: administrative fines, seizures as precautionary measure, forfeiture and destruction of products, fines and prison sentences. Offenders may also see sentences recorded in their criminal records.

- 25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.**

Pursuant to the stipulations of the "Principle of Independence of Powers", it is incumbent on the courts and the Office of the Public Prosecutor to decide on the duration of proceedings of criminal and civil cases, the length of which is regulated in the relevant Codes and special laws. Schedules of proceedings costs are available to the general public, as well as their periodic revision.
