

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from Mongolia

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

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

The courts with jurisdiction over IPR infringement cases are the District Court in Ulaanbaatar and provincial court (Articles 19 and 82 of the Code of Civil Procedure "CCP")

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?

Right holders, and those claiming such rights have standing before the Court. Such persons may be represented by solicitor/attorney (Articles 3, 30, 31 CCP and Article 27 of the Patent Law, Articles 24, 25 of the Copyright Law, Article 20 of the Trademark and Trade Name Law). A person represented by a lawyer shall be present before the court.

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 which lies within its control?

The judge in charge of the proceeding may order the other litigant or a third party to disclose documents or other evidence he deems necessary to include in the case file at the request of any party (Article 37 CP).

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

Under the Constitution of Mongolia, justice is required to be administered in public, unless otherwise prescribed by law.

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;**

¹ Document IP/C/5.

- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

A judge may order an injunction prohibiting the use of a trademark or patent as a provisional decision until a final judgment is reached (Article 69 CCP). A judge may order, in the judgment settling the litigation, that the person infringing a patent and copyright shall pay for actual damages suffered and for lost profits in future sales in addition to paying the costs of the proceeding (Article 155 Civil Law).

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 or services found to be infringing and of their channels of distribution?

When questioning the party, whether in accordance or not with specific rules, a judge may ask which subjects are involved in the production or distribution of the goods or services infringing a patent and copyright.

The Court has the authority to order the infringer to inform the right holder about a third party involved in the infringing acts (Article 27 CCP).

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?

An injunction is usually granted on the undertaking of the person seeking it to pay damages if it transpires that the defendant was wrongfully accused. The person seeking the injunction may have to pay damages to the defendant in these cases.

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

The Court of First Instance must decide the civil case within two months from the date of decision to open the case (Article 71 CCP). This period may be extended, if necessary.

The Appeal Court (Aimag and Capital City Court) must decide within 30 days and the Supreme Court must decide 21 days from receiving date of opposition (Articles 71, 170, 182 CCP).

The following fees shall be collected for the issue of documents by a court, and for the submission of applications, complaints and claims to the Court for settlement.

- (a) Claims for loss in respect of tangible assets:

| Amount of claim | Fee |
|-------------------------|-------------------------------|
| Up to 1,000 Tugriks | 20 Tugriks |
| 1,001-3,000 Tugriks | 50 Tugriks |
| 3,001-10,000 Tugriks | 2 percent of fee price index |
| 10,001-50,000 Tugriks | 3 percent of fee price index |
| 50,001- Tugriks or over | 4 percent of fee price index. |

- (b) 50 Tugriks shall be payable for claims for loss in respect of intangible assets.
- (c) 5 Tugriks per page for the reissue of court documents, court decisions, copies of case evidence, court recommendations, sentencing documents and invoices (Article 6 Law of Mongolia on State Stamp Duties).

1 US\$ = 850 Tugriks.

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

There are no applicable administrative procedures and remedies.

Provisional Measures

(a) *Judicial measures*

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

There is no provision on seizure and provisional measures. The Government is preparing a draft law related to provisional measures.

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

Please see the response to question 10.

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.

Please see the response to question 10.

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

Please see the response to question 10.

(b) *Administrative measures*

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

There are no applicable administrative procedures and remedies.

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?

Customs authorities may suspend the importation of suspected goods. However, there is no provision and regulation concerning seizure of infringed goods. The Government is preparing a draft law related to border measures and provisional measures.

- 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?**

Please see the response to question 15.

- 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?**

Please see the response to question 15.

- 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?**

Please see the response to question 15.

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

Please see the response to question 15.

Criminal Procedures

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

The Courts with jurisdiction over criminal acts of infringement of IPRs are the District, Provincial Court of First Instance, the Appeal (City and Aimag Court) Court and the Supreme Court (Article 35 Law of Criminal Procedure).

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

Criminal procedures and penalties are available in respect of the following activities:

- production for sale or rental of infringing copies of the work;
- using illegally a scientific, literary, artistic work created by others;
- abuses in other ways of a copyright for the distribution or sale;

- distribution of goods without prior approval of the inventor of an invention;
- production of counterfeit goods in violation of a foreign and local trademark and the illegal use of trademarks, label and quality of goods.

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?

Prosecutor, detective and organization of crime registration are responsible for initiating criminal proceeding.

Criminal proceedings are generally initiated in response to complaints (Article 117 Criminal Procedure Law).

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

Private persons have standing to initiate criminal proceedings (Article 113 CPL).

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.**

A person infringing an IPR shall be liable to a fine of 50,000-150,000 Tugriks or sentenced to corrective labour up to one and a half years.

A person who distributes beforehand work of discoveries without authorization of the inventors shall be liable to a fine of 60,000-250,000 Tugriks or corrective labour for one and a half years.

A person who wilfully makes counterfeits of foreign and local trademarks and illegally makes and uses mark, label and quality of goods, shall be liable to a fine of 50,000-150,000 Tugriks and imprisonment of up to three years.

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.

For both civil and criminal proceedings relating to IPR violation, the period of time for courts to decide a case is two months, an extension of this time-period is however possible.

For the costs involved in civil proceedings, see the reply to question 8 above. There are no costs involved in criminal proceedings.
