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# Industrial Property Code Enters Into Force in Turkey

*By ANIL UYSAL / Trademark Attorney at TAG-Legal*

**ANKARA** - Having been published in the Official Gazette on January 10, 2017, the long-awaited Industrial Property Code has entered into force in Turkey. This single IP Code replaces the former Decrees pertaining to the protection of Trademarks, Patents, Geographical Indications and Industrial Designs.

The IP Code has been prepared to provide compliance with the recent developments in the European IP Law, and to restore the gaps due to the decisions of the Constitutional Court cancelling various provisions of the Decrees.

The IP Code contains five (5) chapters and around 200 Provisions, with introductory provisions and common provisions. Book 1 of the Code regulates Trademarks, Book 2 regulates Geographical Indications, Book 3 regulates Designs and Book 4 regulates Patents.

One of the major changes brought by the new IP Code is the changing of the Turkish Patent Institute name into “Turkish Patent and Trademark Office”. The newly-stipulated law sets other major developments as follows:

## **Significant changes related to trademarks**

- The publication (opposition) period of a trademark application, which was three months earlier, has been decreased to two (2) months now.
- The principle of “co-existence” has been introduced into Turkish practice. In this sense, co-existence agreements and letters of consent shall be accepted in overcoming prior identical or confusingly similar trademarks when ex-officio cited by the Turkish Patent and Trademark Office.
- Cancellation actions based on non-use shall be examined by the Turkish Patent and Trademark Office. However, the enforcement date of this provision has

been postponed for 7 years with an additional provision. Therefore, until 2023, cancellation actions are still to be filed before the Turkish IP Courts.

- During the opposition proceedings before the Turkish Patent and Trademark Office, opponents shall have to prove genuine use or provide justified reasons for the non-use of their trademarks which are the basis of opposition and registered at least for a period of five years, if and when requested by the applicant. The opposition shall be rejected if such use cannot be proven or a justified reason for non-use is not submitted. Such request could also be used as a defense in an infringement action.
- The protection of well-known trademarks in terms of Paris Convention, which was recently cancelled by the Constitutional Court, has been re-introduced as a relative ground for opposition and cancellation.
- “Bad-faith” of the applicant or registrant shall be considered another ground for opposition and cancellation.
- Signs which contain geographical indications cannot be registered as a trademark.

### **Significant changes related to industrial designs**

- Novelty examination has been introduced for design applications. The Turkish Patent and Trademark Authority shall ex-officio conduct such examination and shall decide whether to publish an application or not.
- Grounds for opposition have been broadened. “Bad faith” of the applicant and “unauthorized use of an IP right” in a design have also been added as

valid grounds for opposition.

- The name of the related chapter has been changed from “Industrial Designs” to “Designs” and all designs shall be protected regardless of being industrial or not.
- The criterion for distinctiveness has been changed to “difference” from “significant difference”.
- The opposition term has been shortened to three (3) months from six (6) months.
- Unregistered designs shall be protected for three years as of the date when such design is revealed to the public.
- Unseen parts/devices (e.g. parts of an engine) cannot be registered as designs now.

### **Significant changes related to patents**

- Turkish IP Courts cannot rule upon premature cancellation actions - filed after the first grant decision while the opposition is ongoing before the Turkish Patent and Trademark Office - unless the opposition proceedings before the Turkish Patent and Trademark Office become finalized. However, this provision shall only apply to national patent applications. As for European patents, third parties are entitled to file cancellation actions before national courts while the EPO deals with the issues of patentability.
- A post-grant opposition system has been introduced in line with the Article 101 of the EPC. Through the introduction of this system, patent owners shall be entitled to amend the patent during the opposition phase, after the first grant decision.
- All criminal penalties in case of patent infringement have been deleted from the provisions.

- The grounds for compulsory licensing have been broadened. In particular, the IP Code introduces the provision that compulsory licensing could be claimed for even in case the patent is used; however, “such use is not sufficient to fulfill the needs of the national market”.

### **Common Provisions**

- A trademark/ patent/ design registrant can no longer claim for its registered rights as defense in an infringement action filed by a priority right holder. Consequently, having a registration shall not mean that there is no infringement.
- The principle for the national exhaustion of IPRs has been changed to “international exhaustion of IPRs”.

The new IP Code could be considered to be a favorable development by the stakeholders in general, as the Turkish Constitutional Court had annulled various provisions of the Decrees during the last years. While there are some intense discussions on some points, the IP Code is expected to resolve some major issues for IP right owners.

The new IP Code has entered into force as of January 10, 2017 except for some of the provisions; however, for the trademark, design and patent applications which were filed before the effective date of the new IP Code, the former legislation, namely the Decrees pertaining to the protection of Trademarks, Patents and Industrial Designs shall still apply until their registration processes are completed.





# Sheikh Khalifa Approves New Anti-Commercial Fraud Law

*By Laith Abu-Qauod/ Legal Counsel at TAG-Legal Dubai*

**ABU DHABI** - A new Federal Law has been approved recently by the UAE President, HH Sheikh Khalifa bin Zayed Al Nahyan, for combating commercial fraud. The new Law No. (19) of 2016 has been published in the Official Gazette on December 15, 2016, and has come into force the following day replacing Law No. 4 of 1979.

The law brought many positive developments and features, as it meant to step up efforts to fight fraud and trade in fake goods, with unscrupulous inland and free zone traders. It has also provided more precise definitions of the term (Goods) as it categorizes goods into merely Goods, Adulterated Goods, Spoilt Goods, and Counterfeit Goods.

The law provides a broader definition for counterfeit goods stating that counterfeit goods are “The goods that, without permission, bear a trademark that is identical or similar to the legally-registered trademark.”. Under this definition, not only identical trademarks fall under the scope of the violation of the law, but

similar trademarks are included as well. However, the anti-fraud law leaves no

certainty on how the trademark shall be determined whether it is sufficiently similar with a registered trademark or not, as this shall be determined upon the decision of the Higher Committee for Combating Commercial Fraud, which will be established under the provisions of this law to be affiliated to the Ministry of Economy and which will be responsible of reviewing reports related to counterfeit goods cases.

Furthermore, the law also grants the Higher Committee the right to hire consultants and experts as it deems appropriate, which means that the Higher Committee may hire a trademark expert who shall determine whether the confiscated goods bear a similar trademark or not. Nevertheless, the law states in Article 5 that the opinion of the expert is considered as supplementary, and the final decision shall be issued by the Higher Committee.

Meanwhile, it is not clear yet whether the hired expert will examine only the

similarity degree between the imitated trademark and the registered trademark, or he shall also investigate the public's confusion further.

A main development in this new law is the heavy stipulated penalties, where it imposes an imprisonment up to two years and fines that would reach 250,000 Dirham (\$68, 500) or both, in addition to the destruction of the counterfeit goods. The new law further provides for a higher fine that reaches up to 1 million Dirhams (\$274,000) if the counterfeit products are in the nature of or related to human foods, animal foods, medical drugs, agricultural crops or organic foodstuffs.

Another major development according to Article 4, is that the law provides the authorities with the right to request all information, documents and invoices related to the counterfeit goods, and traders are obliged to comply with such requests.

Pursuant to Article 6, a Sub-Committee shall be set in each Emirate who shall study reports on fraud cases referred to it by the specialized authorities and take the appropriate measures. In addition, the Law grants the concerned persons the right to appeal the verdict of the Sub-Committee to the Higher Committee in order to challenge the resolutions of closure. However, the right of appeal according to Article 7 is limited to the closure of the violating facilities.

Moreover, the new law regulates settlements with respect to breaches of the law. In this regard, a request for settlement must be made by the offender to the Sub-Committee, and the amount payable in

settlement shall not be less than double the minimum fine set forth in this Law. In case the offender rejects a settlement, the Sub-Committee shall transfer the matter to the Public Prosecutor for further prosecution. The Executive Regulations and Resolutions are yet to be published which shall provide further specifications on how the law shall be implemented.

### **Conclusion**

The new law is defiantly a positive step towards IP enforcement framework in the UAE, and is expected to boost the effectiveness protection mechanisms which reflects the country's commitment to provide businesses and brand owners with a competitive environment.



# New Companies Law Deadline Extended

**DOHA-** The Qatari Ministry of Economy and Commerce has extended the grace period for another six months for companies to comply with the new Commercial Companies Law No (11) of 2015.

The new grace period will start from February 2, 2017. The extension came following the Decision of the Minister of Economy and Commerce No. (485) for the year 2016 which was issued on December 26, 2016 to extend the grace period for the companies to upgrade themselves as per Provisions of new Commercial Companies Law.

The Council of Ministers had approved this decision during the ordinary meeting No. (22) for the year 2016 that was held on June 1, 2016 to extend the grace period, said a statement.

The Decision to extend the grace period comes to a third term, that is consistent with the strategic directions of the government to facilitate the act of practicing and setting up business, to enhance the resilience of the national economy and enable its

competitiveness both locally and abroad, and to improve the role of the private sector and its contribution to the economic development of the country.

The Decision aims at providing all means of support and flexibility for businesses before implementing the new Labor Act through giving them additional period of time to amend their contracts, documents

and its basic regulations in line with the new provisions of the Commercial Companies Law and to avoid the imposition of sanctions on such companies as part of not modifying their conditions within the specified time period which will raise the confidence level of the business environment in the country and will strengthen the partnership with the private sector, thus achieving the Qatar National Vision 2030, that comprises a competitive, diverse and sustainable economy. It's worth mentioning that the new Commercial Companies Law has granted the existing businesses in the state before the law was passed six months to adjust their situation in accordance with its terms, from the date of its application which ended on February 7, 2017.

*Source: The Peninsula Qatar*





## Algeria Raises VAT by 2 Percent

**ALGIERS** – Pursuant to a ministerial decision amending Article No. 21 of the charges law, the Algerian government raised Value Added Tax (VAT) from 17% to 19%.

Accordingly, AGIP will amend its VAT rate and post it on the website: [www.agip.com](http://www.agip.com)

For more information, please contact AGIP Algeria office at the following address:

Address: Centre Commercial et d’Affaires (El-Qods) 9th Floor, Office No. 09-22

P.O. Box: 148, Cheraga, Algiers, Algeria

Telephone: 21321341419

Fax: 21321341423

Email: [algeria@agip.com](mailto:algeria@agip.com)

Contact: Gasmi Tahar (Mr)

*Source: [Agip.com](http://Agip.com)*





# Plans for Single Window Clearance for Mining Projects in Oman

*By A E JAMES*

**MUSCAT** - A one-stop-shop facility for investors applying for a mining license is under the consideration of the Public Authority for Mining (PAM) of Oman. The proposed facility will become a part of the new mining law.

The move is expected to check any delay and hassles faced by the investors, including foreign ones, in developing mines in the country.

“Going forward, we will be having a different approach to offer opportunities to investors by allocating blocks and finalizing ourselves all the permits required to be issued by the various ministries. These will then be offered to the investors,” said Hilal Al Busaidi, chief executive officer of the Public Authority for Mining (PAM).

It is a single window clearance system and the investors will receive the block ready to start mining activity. In 2017, the PAM will be able to introduce a major part of the single window clearance system.

Al Busaidi stated that it is illegal to transfer a mining license in the country. “We have to legalize the transfer of licenses and it is already included in the new law.” However, the first license holder has to achieve 40 per cent of the project execution and then seek an approval from the Public Authority for Mining to become eligible for transferring of the license.

Al Busaidi said the PAM has issued a total 500 licenses to the private sector investors for all types of minerals, including permanent and temporary licenses.

He added that the prices of minerals dropped as in case of any other commodity in 2015 and 2016. “But we hope that as oil prices recover this year, the mining sector will also flourish.”

“Our expectations from the data available so far are that Oman has a lot of minerals, both metallic and non-metallic, and both need a bit of discovery and appraisal activity.”

*Source: Times of Oman*

# Turkey Increases Official IP Fees

**ANKARA** – The Turkish Patent Institute announced that Intellectual Property (IP) official fees have been increased in Turkey as from January 1, 2017.

The increase in official fees affect the following services:

- The official fees of trademark and design renewals, patent and utility model annuities, EP Validation and search / examination fees have been dramatically increased.
- Change of name / legal structure / address can be filed without official fees. The system does not require separate applications for each IP matters and each file, as one request is reflected to all the records (trademark, patent and design).

In the meantime, the Decree for trademark, patent and design has been adopted as Law.

Accordingly, AGIP will amend its schedule of charges and posts it on the website: [www.agip.com](http://www.agip.com)

For more information, please contact AGIP Turkey office at the following address:

Address: Tunus Cad. No. 15/4, 06680, Kavaklıdere, Ankara-Turkey

P.O. Box: Telephone: (00 90-312) 417 6095

Fax: (00 90-312) 417 0091

Email: [turkey@agip.com](mailto:turkey@agip.com)

Contact: Hatice Toksoy (Mrs.)

*Source: [Agip.com](http://Agip.com)*





# 1,568 New Companies Registered in Qatar

**DOHA-** In its monthly report for commercial registration, the Ministry of Economy and Commerce, said it has registered 1,568 new companies, in which new registrations accounted for 1,059 and registration of new branches 509.

Limited liability companies (LLCs) topped the number of registrations at 77 percent, and individual corporations came second with 15 percent and single-person companies were third with seven percent.

According to the Ministry's monthly Business Progress Report on the Commerce Sector, contracting companies topped the list of the most common activities, with 330 commercial registrations issued in this field, besides 183 commercial records for construction.

Commercial registrations for restaurants and fast food outlets accounted for 162, and some 118 registrations were for general trading and garments shops.

The Ministry's report also indicated that the total number of licenses issued or renewed or modified during the same

month with 6306 licenses. Where the total number of new licenses issued by the ministry were reached 1390m, and the number of modified licenses 835, and renewed with 4081 commercial licenses.

The number of companies shut down in December reached 273 companies, counting 17.4 percent of the new companies registered within the same period.

As per the report a total of 25360 transactions were processed through the ministry's outside branches.

In the field of protection of property rights, the report pointed out that the Ministry received in December a total of 54 applications for issuance of new patents and 107 applications for renewal of patents.

The number of commercial brands registered during the month of December reached 2743, whereas the number of certificates issued for copyrights and related rights were 19 certificates.

*Source: The Peninsula Qatar*

# Where We Operate

## **General Administration**

Email: [taglegal@tag-legal.com](mailto:taglegal@tag-legal.com)

## **Abu Dhabi, UAE**

Email: [abudhabi@tag-legal.com](mailto:abudhabi@tag-legal.com)

## **Algeria, Algeria**

Email: [mea@tag-legal.com](mailto:mea@tag-legal.com)

## **Amman, Jordan**

Email: [jordan@tag-legal.com](mailto:jordan@tag-legal.com)

## **Beirut, Lebanon**

Email: [lebanon@tag-legal.com](mailto:lebanon@tag-legal.com)

## **Cairo, Egypt**

Email: [egypt@tag-legal.com](mailto:egypt@tag-legal.com)

## **Damascus, Syria**

Email: [syria@tag-legal.com](mailto:syria@tag-legal.com)

## **Casablanca, Morocco**

Email: [mea@tag-legal.com](mailto:mea@tag-legal.com)

## **Doha, Qatar**

Email: [qatar@tag-legal.com](mailto:qatar@tag-legal.com)

## **Dubai, UAE**

Email: [uae@tag-legal.com](mailto:uae@tag-legal.com)

## **Jebel Ali Free Zone Area, UAE**

Email: [jafza@tag-legal.com](mailto:jafza@tag-legal.com)

## **Jeddah, KSA**

Email: [ksa@tag-legal.com](mailto:ksa@tag-legal.com)

## **Kabul, Afghanistan**

Email: [asia@tag-legal.com](mailto:asia@tag-legal.com)

## **Karachi, Pakistan**

Email: [asia@tag-legal.com](mailto:asia@tag-legal.com)

## **Khartoum, Sudan**

Email: [mea@tag-legal.com](mailto:mea@tag-legal.com)

## **Kuwait City, Kuwait**

Email: [kuwait@tag-legal.com](mailto:kuwait@tag-legal.com)

## **Manama, Kingdom of Bahrain**

Email: [bahrain@tag-legal.com](mailto:bahrain@tag-legal.com)

## **Moscow, Russia**

Email: [eu@tag-legal.com](mailto:eu@tag-legal.com)

## **Muscat, Oman**

Email: [oman@tag-legal.com](mailto:oman@tag-legal.com)

## **New Delhi, India**

Email: [asia@tag-legal.com](mailto:asia@tag-legal.com)

## **Nicosia, Cyprus**

Email: [eu@tag-legal.com](mailto:eu@tag-legal.com)

## **Ramallah, Palestine**

Email: [mea@tag-legal.com](mailto:mea@tag-legal.com)

## **Riyadh, KSA**

Email: [ksa@tag-legal.com](mailto:ksa@tag-legal.com)

## **Sana'a, Yemen**

Email: [mea@tag-legal.com](mailto:mea@tag-legal.com)

## **Shanghai, China**

Email: [asia@tag-legal.com](mailto:asia@tag-legal.com)

## **Tunis, Tunisia**

Email: [mea@tag-legal.com](mailto:mea@tag-legal.com)

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For inquiries: Quality Control Department

Talal Abu-Ghazaleh Legal (TAGLegal) / [quality.legal@tag-legal.com](mailto:quality.legal@tag-legal.com)

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