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**REGULATION ON LICENSING, MANUFACTURE,
IMPORT AND EXPORT OF OPTICAL DISKS
2012(1391)**

**Regulation on Licensing, Manufacture, Import and Export of Optical Disks
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In the Name of Allah, the Most Merciful and Compassionate

Regulation on Licensing, Manufacture, Import and Export of Optical Disks

**Chapter One
General Provisions**

Necessity Of Enactment

Article 1:

This Regulation is enacted in order to better regulate the licensing of manufacture, import and export of optical disks.

Objective

Article 2:

The objectives are as follows:

1. to set the mechanism for how to license the manufacture, import and export of optical disks in the Islamic Republic of Afghanistan;
2. to promote legitimate copyright industries that rely on optical disks for distribution, such as film, music or computer software;
3. to protect the rights of holders of copyrights and related rights pursuant to the Copyright Law

Terms

Article 3:

Terms in this Regulation have the following meanings:

Optical Disk: any medium, regardless of format, which may be used for the electronic storage of data in digital form, which is capable of being written and/or read by means of a laser or any other means, whether or not any readable data has been stored on it.

Copyright Law: the Law on the Support the Right of Authors, Composers, Artists and Researchers.

Manufacture: the processes and activities involved in the production of optical disks, including mastering, replicating, or both.

Manufacture License: an official license issued by the Ministry of Information and Culture (MoIC) to manufacture based on this Regulation.

License for Export or Import: An official document issued for export and import based on this regulation.

Manufacturing Equipment: any item intended, designed or used for the manufacture of optical disks or of parts thereof, excluding optical disk writers and like items used in personal computers and not for commercial purposes.

Raw Material: optical-grade polycarbonate suitable for use in the manufacture of optical disks.

Place: any area on land or water, including any building, structure or enclosure, whether moveable or not.

Person: means a legal entity or a natural person.

Implementer Authority

Article 4:

- 1- The MoIC has the authority to implement this Regulation.
- 2- The registrar works under the MoIC structure and is responsible to manage the related affairs in regard to licensing of manufacture, export and import of optical disks based on this regulation and relevant procedures.

Types of Optical Disks

Article 5:

Examples of Optical Disks include:

- 1- CDs (including CD-ROM, CD-R, CD-RW, CD-W)
- 2- DVDs (including DVD-R, DVD-RW, DVD-ROM)
- 3- LDs (laser disc)
- 4- MDs (mini disc); and
- 5- VCDs (video compact disc).

Chapter Two Licenses

License Requirement

Article 6:

No person without having a License may manufacture optical disks for commercial purpose, or may import or export optical disks, manufacturing equipment or raw materials.

Application for License

Article 7:

1. In order to get the license based on article 6 of this regulation, the applicant is obliged to submit his/her application together with Special Information Form to the registrar.
2. The Special Form mentioned in subsection 1 of this article shall be prepared by the registrar based on the provisions of this regulation and the applicant can take it in exchange of 100 Afghani.
3. The applicant is obliged to submit the following documents together with Special Information Form based on subsection (1) of this article to the registrar:

- 1) –National ID card (Tazkear) or Recognition Document, or equivalent identification of the applicant, or if the applicant is a legal entity, of the responsible officer or other representative of the entity.
 - 2) - Photo of the applicant, or if the applicant is a legal entity, of the responsible officer or other representative of the entity.
 - 3) - License of company, if applicable
 - 4) - License of Investment from AISA
 - 5) - Where the application concerns a license to manufacture, the address and a description of the proposed manufacturing facility or facilities, and an indication of the nature of the optical disks proposed for manufacture;
 - 6) - Where the application concerns a license to import or export, an indication of the nature of optical disks, manufacturing equipment, or raw materials that are the subject of the application.
 - 7) - An affidavit representing that the applicant, including the applicant’s responsible officers if the applicant is a legal entity, has not committed any action described in Article 19 of this Regulation.
4. An applicant may withdraw an application before it is approved or denied.
5. Where an applicant for a manufacture license proposes to manufacture optical disks at more than one place, he may submit a single application for a license in respect of all those places.

Consideration of Applications; Issuance of License

Article 8:

1. Based on the conditions fixed under this regulation and related procedures, the registrar is obliged to review the submitted application in order to determine whether to approve or reject the application, and to inform the applicant of the decision thereon, within 18 official working days of the submission of the application. If the registrar cannot approve or reject the application and provide notification thereof during the mentioned time, the registrar can extend the period for another extra 10 official working days upon prompt notification of the extension to the applicant.
2. The registrar is obliged to deny an application where:
 - 1) The application does not meet the conditions under this regulation
 - 2) The Application contains false or misleading information
3. Where the registrar denies an application, the registrar is obliged to notify the applicant in writing, and mention the reason(s) for the denial.
4. The registrar’s decision on an application may be appealed to the Professional Board of the Registrar within the MoIC. A decision made by the Professional Board of the Registrar in case of dissatisfaction, may be appealed to the relevant court.
5. Where the registrar approves an application, the registrar is obliged to notify the applicant in writing in accordance with the provisions of this regulation.
6. Where the registrar approves an application, the registrar is obliged to promptly issue a license which will include such express conditions as he deems necessary to:

- 1) Prevent the manufacture, export or import of items which infringe works protected under the Copyright Law; and
- 2) Protect the rights of holders of copyrights and related rights pursuant to the Copyright Law.

Special Provisions for Licenses to Manufacture, Import or Export

Article 9:

1. Where there are different places for the manufacturing of optical disks, the registrar shall issue a separate license for each manufacturing place.
2. A license belongs to the licensee and is non-transferable.
3. A manufacture licensee is obliged at all times to display his manufacture license in a conspicuous location at his licensed premise.
- 4- On granting a license for export or import, the registrar is obliged to provide a copy of that license, along with copies of the licensee's application submissions under Article 7(3) of this regulation, to the Customs Office, and to notify the Customs Office, in writing, of any subsequent renewal, expiration, alteration, suspension, revocation, or surrender of that license.
- 5- No Person may export or import optical disks that do not bear a legitimate manufacturer's code.
- 6- The fees for licenses are:
 - 1- Manufacture license: 10.000 Afghani
 - 2- Import license: 20.000 Afghani
 - 3- Export license: 5.000 Afghani

Period of License; Renewal

Article 10:

1. A license issued under the provisions of this regulation is valid for 3 years, unless sooner suspended, revoked, or surrendered.
2. For the renewal of a license, a licensee is obliged to apply to the registrar not less than 40 official working days before the date of the expiry of the license.

Alteration of License

Article 11:

1. The registrar may, with written notice at any time after a license is granted or renewed, add to, vary or revoke any terms or conditions on the license as necessary to:
 - 1) Prevent or stop breaches of the present regulation
 - 2) Reflect a material change that has occurred in any information related to the license.
2. The registrar is obliged, before taking any action under subsection (1) of this Article, to afford the licensee
 - 1) written notice of the registrar's intent; and

2) the opportunity to submit, within 10 working days of the service date of the notice, his/her written grounds for opposing the proposed action of the registrar.

3. Taking into consideration any representations submitted by the licensee, the registrar shall decide whether or not to take any action under subsection (1) of this Article; shall provide the licensee with prompt written notice of his decision; and shall, as needed, promptly re-issue an altered license with appropriate terms and conditions.

4. Where there has been a material change in any information specified in a license or in the underlying application, the licensee is obliged, in order to maintain the validity of the license, to re-apply for an appropriate license based on this regulation.

5. Material changes requiring reapplication under subsection (4) of this Article include, but are not limited to:

1. Changes in the location of the manufacturing facilities;
2. Changes in the ownership of the licensee, if the licensee is a legal entity; and
3. A conviction of the licensee or any director, manager or similar officer of the licensee of an offense under the Copyright Law.

Suspension or Revocation of License

Article 12:

1. The registrar in the following situations can suspend or revoke a license on the following grounds:

- 1) There exists a ground for denial of an application under Article 8(2) of this regulation;
- 2) The licensee has violated any term or condition of the license, or any provision of this regulation; or
- 3) The licensee has ceased to carry on the business of manufacturing, exporting or importing;

2. The registrar is obliged, before suspending or revoking a license under subsection (1), to afford the licensee

- 1) a written notice of the registrar's intent; and
- 2) an opportunity to submit written representations, within 10 working days from the date of service of that notice, of cause as to why the license should not be suspended or revoked.

3. Taking into consideration any representations submitted by the licensee, the registrar is obliged to decide whether or not to suspend or revoke the license, and to provide the licensee with written notice of that decision within 5 working days.

4. A suspension or revocation of a license takes effect:

- 1) Where there is no timely appeal against the suspension or revocation under Article 15, upon the service of the registrar's decision under subsection (3) of this Article; or
- 2) Where there is an appeal against the suspension or revocation under Article 15, when the registrar's decision is confirmed by the Professional Board of the Registrar.

Surrender of License

Article 13:

1- A licensee may surrender his license by forwarding it to the registrar with a written notice of its surrender.

2- The surrender takes effect on the date the registrar receives the license and notice under subsection (1) or, where a later date is specified in the notice, on that later date.

Effect of Expiration, Suspension, Revocation or Surrender of License

Article 14:

Upon the expiration, suspension, revocation or surrender of a license, the licensee must immediately cease to carry on the activities permitted by the license.

Appeal

Article 15:

1. The licensee, in case of alteration, suspension or revocation of his/her license, may, within 10 working days of the date of receipt of the notification of the relevant decision, officially appeal to Professional Board of the Registrar.

2. The Professional Board of the Registrar shall, in accordance with the provisions of this regulation, affirm, amend or reverse the registrar's decision, or give such directions in the matter as appropriate.

Chapter Three Manufacturer's Code; Records

Assignment of Manufacturer's Code

Article 16:

In connection with granting a manufacture license, the registrar is obliged to assign to the licensee a manufacturer's code which consists of any combination of letters, numbers, marks, signs, symbols or devices, as may be prescribed by the registrar.

Marking with Manufacturer's Code

Article 17:

Every manufacture licensee is responsible for ensuring that each optical disk manufactured by him is marked with the manufacturer's code assigned to him under Article 16, in accordance with the standards set out under Article 18.

Marking Standards

Article 18:

The registrar is obliged to prescribe standards for the marking of manufacturer's codes on optical disks, including:

1. Different standards in relation to different classes or descriptions of optical disks;
2. Standards specifying how in detail to mark manufacturer's codes on optical disks; and
3. Previously published standards with or without modification.

Prohibited Actions

Article 19:

1. No person may forge or falsely apply to an optical disk a manufacturer's code or any mark so resembling a manufacturer's code as to be calculated to deceive, or cause the foregoing to be done.
2. No person may make, dispose of, or possess any tool, machine or other instrument for the purpose of forging, or which is capable of being used for forging, a manufacturer's code, or cause the foregoing to be done.
3. In case of violation of subsection 1 and 2 of this article, based on the existing laws of Afghanistan, the offenders shall be prosecuted by the relevant authorities.

Register

Article 20:

1. The registrar is obliged to establish and maintain a Register of the licenses granted and manufacturer's codes assigned under this regulation, in such form and manner as prescribed by the related procedures.
2. The registrar is obliged to make the Register available to the public, subject to such terms or conditions as prescribed by related procedures.

Maintenance of Records by Licensee

Article 21:

1. A licensee is obliged to maintain complete, up-to-date, and accurate business records in such form and content as prescribed by the related procedures.
2. The licensee's records must be available at all times for examination by the registrar or by law enforcement officials.
3. A licensee must furnish any records, documents or information as may be required by the registrar or his authorized agent, within the time specified by the registrar, subject to appropriate protections for any trade secrets contained in the required materials in accordance with the law.

Chapter Four Oversight

Monitoring and Inspection

Article 22:

- 1- Members of the Professional Board of the Registrar, when acting against any person under this regulation, will declare his office and will, on demand, produce to such person his official identity or authority card.
- 2- Members of the Professional Board of the Registrar, for the purpose of enforcing the provisions of this regulation, shall have the responsibility and authority to do the following
 1. Visit, enter, inspect or monitor, with or without notice, any licensed premises or place, or any person thereat;
 2. Require the production of specified information, records, books, accounts, computerized data or documents kept by any licensee or person associated therewith, and inspect, copy, seize or retain any item or thing in licensed premises;
 3. In case of non-cooperation of a licensee or relevant responsible persons, seek the police cooperation in the activities mentioned in paragraph (2) subsection (1) of this article.
 4. Require the production of any exemplars of optical disks (original or copies);
 5. Require the production of any necessary document from any person in relation to violation of the provisions of this regulation;
 6. Make technical examinations or inquiries as may be necessary to ascertain whether the provisions of this regulation have been complied with.

Access to Computers and Data

Article 23:

1. Members of the Professional Board of the Registrar will, in the course of monitoring or conducting an inspection for purposes of enforcing the provisions of this regulation, be entitled to have access to any computer system, as well as any associated apparatus, material, or data.
2. Members of the Professional Board of the Registrar are entitled to obtain passwords, codes, software, hardware and any other means necessary to enable access to computerized data from any relevant responsible person.

Chapter Five Establishment of Professional Board; Cautionary Measures

Establishment of Professional Board

Article 24:

- 1- For better management of manufacture, import and export of optical disks and related affairs, the MoIC is obliged to establish the Professional Board of the Registrar in accordance with the related procedures.
- 2- The Board mentioned in subsection (1) of this article has the following duties and responsibilities:
 - 1) Addressing appeals of the registrar's decisions regarding licensing applications
 - 2) Monitoring and evaluating the activities of the registrar
 - 3) Monitoring the proper implementation of this regulation
 - 4) Approval of the registrar's cautionary measures

Cautionary Measures

Article 25:

In case of violation of any provision of this regulation, the Professional Board of the Registrar defined in article (24) of this regulation, may, in accordance with the situation, take any of the following measures:

- 1- Advising orally or issuing a written notice
- 2- Issuing a formal written warning notice
- 3- Cash penalty up to 100000 Afghani in accordance with the situation
- 4- Suspension of license for up to 60 working days
- 5- Revoking the license
- 6- Referring natural or legal persons to relevant judicial authorities for proper prosecution .

Appeal to Court:

Article 26:

The decisions of Professional Board of the Registrar in case of satisfaction of related persons shall be considered as final and applicable. The decisions of the Professional Board of the Registrar in case of dissatisfaction can be appealed to the authorized court through the registrar.

Chapter Six Miscellaneous Provisions

Protection from Personal Liability

Article 27:

The identity of persons who cooperate with the relevant authorities in good faith with intention for better enforcement of this regulation will not be disclosed and the mentioned persons shall be protected by law.

Applicability and Non-Discrimination

Article 28:

1. The provisions of this regulation apply equally to nationals of Afghanistan and to nationals or domiciliaries of any country with which Afghanistan has concluded an applicable treaty.
2. The provisions of this Law apply equally to legal entities which, or natural persons who, in the territory of any country described in paragraph 1 of this Article, have a real and effective business establishment.

3. Any person who owns, directs, manages or otherwise has control of a business which undertakes manufacturing, import or export of optical disks for a commercial purpose will be deemed to engage in those activities and is subject to this Regulation.

Formulation of Procedures

Article 29:

The MoIC, for the better implementation of the provisions of this regulation, will formulate required procedures.

Transitional Provisions

Article 30:

1. Any person who is engaged in the manufacture of optical disks before the date of commencement of this regulations is obliged, within a maximum of 90 working days after the enactment of this regulation, to submit his application for a manufacture license to the registrar.
2. Until the issuance of the license under part (1) of this article, the applicant is considered to be temporarily licensed.
3. Where a license applied for under this Article is not granted by the registrar, the applicant cannot continue his activities. In case of dissatisfaction, the applicant can officially appeal to the Professional Board of the Registrar.

Date of Enforcement

Article 31:

This regulation after the approval will be enacted and promulgated in the Official Gazette.