



Tonga

PROTECTION OF GEOGRAPHICAL INDICATIONS REGULATIONS

Chapter 30.16.1

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PROTECTION OF GEOGRAPHICAL INDICATIONS REGULATIONS

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PROTECTION OF GEOGRAPHICAL INDICATIONS REGULATIONS ¹

Made under section 20 of the Protection of Geographical Indications Act

Commencement [8th December 2009]

1 Short Title

These Regulations may be cited as the Protection of Geographical Indications Regulations.

2 Interpretation

In the Regulations unless the context other requires:

“**Act**” means the Protection of Geographical Indications Act; and

“**Agent**” means a Law Practitioner resident and having a place of business in the Kingdom representing the applicant.

3 Fees

The fees to be paid in respect of matters arising under the Act or these Regulations shall be those specified in the Schedule I.

4 Forms

The forms referred to in these Regulations are those set out in Schedule II. The Registrar shall furnish copies of the printed forms free of charge.

5 Language of documents

Any document forming part of an application or submitted to the Registrar pursuant to the Act or these Regulations and which is in the Tongan language or any language other than English shall be accompanied by a translation into English.

6 Signatures by partnership, companies and associations

- (1) A document purporting to be signed for or on behalf of a –
 - (a) partnership shall contain the names of all the partners in full and shall be signed by all the partners or by any partner qualified to sign, stating that he sign on behalf of the partnership, or by any other person who satisfies the Registrar that he is authorized to sign the document;
 - (b) body corporate shall be signed by a director by the secretary or other principal officer of the body corporate, or by any other person who satisfies the Registrar that he is authorized to sign the document and shall bear the seal of the body corporate; or
 - (c) association of persons may be signed by any person who satisfies the Registrar that he is duly authorized.
- (2) The Registrar may, whenever he deems in necessary, request evidence of authorization to sign.

7 Agent

- (1) The appointment of an agent shall be by a power of attorney which shall be signed by the applicant or, if there are more than one, by each applicant.
- (2) The power of attorney shall be filed together with the application.

8 Application for registration

The applicant for the registration of a geographical indication shall be made in the form set out in Form 1 and accompanied by the prescribed fee.

9 Withdrawal

- (1) The application may be withdrawn by written declaration submitted to the Registrar.
- (2) The application fee shall not be refunded if the application is withdrawn.

10 Marking application

- (1) The Registrar shall, upon receipt mark on each document making up the application,

- (a) the actual date of receipt;
 - (b) the application number consisting of the letters TO, stroke, the letter GI, stroke, the last two digits of the year in which the initial papers were received, stroke, and a five-digit number allotted in the sequential order in which applications are received.
- (2) The Registrar shall mark any corrections or other later filed documents received on different dates, their actual date of receipt in the appropriate place in Form 1.
- (3) The application number allotted under sub regulation (1) shall be quoted in all communications concerning the application.

11 Publication

- (1) The Registrar shall notify an application whose application complete with section 11(1) of the Act, to pay the prescribed fee within one month from the date of notification.
- (2) The Registrar shall publish the application once the prescribed fee is paid, and such publication shall set out the following:
 - (a) the geographical indication;
 - (b) the name, address and nationality of the natural person or legal entity filing the application and the capacity in which the applicant is applying for registration;
 - (c) the name and address of the agent, if any;
 - (d) the address for service if an agent has not been appointed in accordance with Regulation 7;
 - (e) the demarcation of the geographical area to which the geographical indication applies;
 - (f) the goods for which the geographical indication is used;
 - (g) the quality, reputation or other characteristic of the goods for which the geographical indication is used, and any conditions under which the indication may be used; and
 - (h) the filing date and number of the application.
- (3) If the prescribed fee referred to in sub regulation (2) is not paid within the time limit prescribed, the application shall be considered withdrawn.

12 Opposition

- (1) A notice of opposition, under section 11(2)(b) of the Act, shall be given:
 - (a) within three months from the date of the publication in the form set out in Form 2.
 - (b) accompanied by the prescribed fee; and

- (c) accompanied by supporting evidence if any.
- (2) A counter-statement referred to in section 11(2)(c) of the Act shall be, subject to payment of the prescribed fees:
 - (a) submitted within two months from the date the applicant is notified of the opposition.
 - (b) in writing, stating the grounds upon which the applicant relies for his application; and
 - (c) accompanied by supporting evidence if any.
- (3) A request for a hearing under section 11(2)(d) of the Act shall be made to the Registrar in writing at any time after the filing of the notice of opposition but no later than one month after the expiry of the prescribed period for filing the counter-statement.
- (4) The Registrar shall give the parties at least one month's written notice of the date set for the hearing, and each party shall, within that period, pay the prescribed fee for the hearing.
- (5) Where the opponent or the applicant does not reside or carry on business in the Kingdom, the Registrar may require him to give security for the costs of the hearing for such amount as the Registrar thinks fit.
- (6) The Registrar shall notify the parties in writing of his decision and his reasons.
- (7) Where the Registrar decides to register the geographical indication, he shall require the applicant to pay the registration fee within one month of the notification of the decision.

13 Registration

- (1) The Registrar shall register the geographical indication once the application pays the prescribed fee.
- (2) The registration of the geographical indication shall include:
 - (a) the geographical indication registered;
 - (b) the demarcation of the geographical area to which the geographical indication applies;
 - (c) the name and address of the natural person or legal entity in whose name the indication is registered;
 - (d) the name and address of the agent, if any;
 - (e) the address for service if any agent has not been appointed in accordance with Regulation 7;
 - (f) the goods for which the geographical indication is used;

- (g) the quality, reputation or other characteristic of the goods for which the geographical indication is used and any conditions under which the indication may be used; and
 - (h) the filing date and number of the application as well as the date of registration.
- (3) The publication of the reference to the registration for a geographical indication shall contain the particulars specified in sub-regulation 2.
 - (4) The certificate of registration of the geographical indication shall be issued in the form set out in Form 3.

14 Cancellation or rectification of registration

- (1) The publication referred to in section 13(2)(b) of the Act, shall:
 - (a) identify the geographical indication by setting out the particulars referred to in Regulation 13(2);
 - (b) identify the person or authority which has applied for the cancellation or rectification of the registration of the geographical indication by setting out the name and address of the person or authority and of the representative or agent, if any; and
 - (c) specify the period within which the persons having the right to use the geographical indication under section 12 of the Act may apply to join in the proceedings.
- (2) The period to be specified by the Court under section 13(3) of the Act shall not be less than one month from the date of the notice or publication, as the case may be.
- (3) Where the Court notifies the Registrar under section 13 of the Act, that a decision has been taken to cancel or rectify the registration of a geographical indication, the Registrar shall, as the case may be, cancel or rectify the registration.

15 Misleading trademarks

- (1) A request under section 21 of the Act, to refuse or to invalidate the registration of a misleading trademark shall be made in the form set out in Form 4, and shall be accompanied by the prescribed fee.
- (2) The procedure set out in Regulation 12 shall apply.

16 Geographical indication for wines and spirit

- (1) A request under section 22 of the Act, to refuse or to invalidate the registration of a trademark which conflicts with a geographical indication for

wines and spirits shall be made in the form set out in Form 5 and shall be accompanied by the prescribed fee.

- (2) The procedure set out in Regulation 12 shall apply.

17 Publication of invalidation

- (1) The Registrar shall record and publish a reference to the invalidation of the registration of a trademark pursuant to sections 21 and 22 of the Act.
- (2) The publication of the reference to the invalidation of the registration of the trademark pursuant to section 21 of the Act shall include:
- (a) the representation of the mark;
 - (b) the registration number of the mark;
 - (c) the name and address of the registered proprietor;
 - (d) the date of registration;
 - (e) the list of goods and services in respect of which the mark as registered with an indication of the corresponding class or classes of the International Classification; and
 - (f) an indication of the grounds on which the registration of the mark has been invalidated.

SCHEDULE I**FEEES***(Regulation 3)*

Matter of Proceeding	Amount of Fee	Form
1. Application for registration of geographical indication (Section 9(1) and 10, Regulation 8)	\$100.00	Form No. 1
2. Request for hearing (Section 11(2)(d), Regulation 12(4))	\$100.00	
3. Request to the Registrar to state in writing grounds of decision to refuse application or to accept it subject to conditions (Section 11(1))	\$60.00	
4. Publication fee (Section 11(2)(a), Regulation 11)	\$50.00	
5. Notice of opposition to registration of geographical indication (Section 11(2)(b), Regulation 12(1))	\$100.00	Form No. 2
6. Counter-statement to notice of opposition (Section 11(2)(c), Regulation 12(2))	\$80.00	
7. Registration fee (Section 11(3), Regulation 13(1))	\$100.00	
8. Request to refuse or to invalidate the registration of a misleading mark (Section 21, Regulation 15(1))	\$100.00	
9. Request to refuse or to invalidate the registration of a mark which conflicts with a geographical indication for wines and spirits (Section 22, Regulation 16(1)).	\$100.00	

SCHEDULE II

(Regulation 8 and 10(2))

APPLICATION FOR REGISTRATION OF GEOGRAPHICAL INDICATION

INTELLECTUAL PROEPRTY OFFICE, TONGA	
To: The Registrar [address]	For Official Use Notice of opposition received on: Fees received on: Applicant's or [Agent's] File Reference:
I. IN THE MATTER OF: Application No. :..... For Registration of Geographical Indication Filing Date of Application: Published in the [Gazette] of the.....day of..... 19.....No..... page.....	
II. OPPONENT(S): * Name(s): Address(es): Additional information is contained in the supplemental box <input type="checkbox"/> Address for Service in Tonga **	

• If there is more than one person or competent authority, together, opposing the registration of the geographical indication, the data concerning each opponent must appear in this box or, if the space is not sufficient, in the supplement box.

** Where an [agent] has been appointed, the address of the [agent] shall be treated as the address to which communication shall be transmitted (Rule 22(2)).

II. AGENT			
The following agent has been appointed by the applicant(s) in the power of attorney.			
<input type="checkbox"/>	Accompanying this Form	<input type="checkbox"/>	to be filed within two months from the filing of the application for registration
Name:			
Address:			
Tel No.:	Telegraphic Address:	Telex No.:	Fax No.:
III. GEOGRAPHICAL INDICATION			
The geographical indication for which registration is sought is the following:			
IV. GEOGRAPHICAL AREA			
The following is the demarcation of the territory of the country, or region, or locally in that territory, to which the geographical indication applies, and from which the goods for which the geographical indication is used originate:			
Additional information, possibly in graphic form, maps, etc.:			
<input type="checkbox"/>	accompanies this form		
<input type="checkbox"/>	is contained in the supplemental box		
V. GOODS			
The goods for which the geographical indication is used are the following:			
VI. QUALITY, REPUTATION OR OTHER CHARACTERISTICS			
The quality, reputation or other characteristics of the goods for which the geographical indication is used, any conditions under which the indication may be used, are the following:			
<input type="checkbox"/>	Additional information is contained in the supplemental box		
<input type="checkbox"/>	Additional information accompanies this Form		
VII. FEES		accompany this Form	<input type="checkbox"/>
VIII. SUPPLEMENTAL BOX*			
IX. SIGNATURE(S).....(Applicant(s))**)			(Date)

TO BE FILLED IN BY THE REGISTRAR

Date of receipt of any corrections and later filed papers completing the application:

- Use this box if any of the boxes is not large enough to contain information to be furnished. Indicate the boxes continued in this box by their Roman numerals and title (e.g. **II. APPLICANT(S) (continued**)).
- ** Type name(s) under signature(s). The typed names and signature of all applicant should appear (one below the other).

FORM 2

*(Regulations 12(1))***NOTICE OF OPPOSITION**

INTELLECTUAL PROEPRTY OFFICE, TONGA	
To: The Registrar [address]	For Official Use Notice of opposition received on: Fees received on: Applicant's or [Agent's] File Reference:
I. IN THE MATTER OF: Application No. :..... For Registration of Geographical Indication Filing Date of Application: Published in the [Gazette] of the.....day of..... 19..... No..... page.....	
II. OPPONENT(S): * Name(s): Address(es): Additional information is contained in the supplemental box <input type="checkbox"/> Address for Service in Tonga **	

- If there is more than one person or competent authority, together, opposing the registration of the geographical indication, the data concerning each opponent must appear in this box or, if the space is not sufficient, in the supplement box.
- ** Where an [agent] has been appointed, the address of the [agent] shall be treated as the address to which communication shall be transmitted (Rule 22(2)).

III. GROUNDS FOR REQUEST: The grounds for the request to refuse or to invalidate the registration of the above identified mark are as follows: Additional information is contained in the supplemental box <input type="checkbox"/> Supporting evidence accompanies this form <input type="checkbox"/>			
IV. AGENT The following agent has been appointed by the applicant(s) in the power of Attorney <input type="checkbox"/> Accompanying this Form Name: Address: Tel No.: Telegraphic Address: Telex No.: Fax No.:			
V. FEES			accompany this Form <input type="checkbox"/>
VI. SUPPLEMENTAL BOX*			
VII. SIGNATURE(S).....(Applicant(s)/Agent**) <div style="text-align: right;">(Date)</div>			

- * Use this box if any of the boxes is not large enough to contain information to be furnished. Indicate the boxes continued in this box by their Roman numerals and title (e.g. **II. APPLICANT(S) (continued)**).*
- ** Type name(s) under signature and delete whichever does not apply. The typed names and signatures of all applicants should appear (one below the other)

FORM 3

(Regulation 13(4))

CERTIFICATE OF REGISTRATION OF GEOGRAPHICAL INDICATION

INTELLECTUAL PROPERTY OFFICE TONGA
<p>In accordance with Section 11(3) and Regulation 13(4), it is hereby certified that a geographical indication having the registration No.:..... has been registered in the name(s) of:</p> <p>Names:</p> <p>Address:</p> <p>on..... in respect of a geographical indication registered pursuant to an (date) application</p> <p>field..... (date)</p> <p>being a geographical indication used for : (goods)</p> <p>and which applies to : (geographical area)</p> <p>A description of the quality, reputation or other characteristic of the goods for which the geographical indication is used and any conditions under which the indication may be used accompanies this certificate.</p>
<p>Date :</p> <p>.....</p> <p>Controller</p>

FORM 4

REQUEST TO REFUSE OR INVALIDATE REGISTRATION OF MISLEADING MARK

(Regulation 15(1))

INTELLECTUAL PROPERTY OFFICE, TONGA	
<p>To. : The Registrar [address]</p>	<p>For Official Use</p> <p>Request received on:</p> <p>Fees received on:</p> <p>Applicant's or [Agent's] File Reference:</p>
<p>I. IN THE MATTER OF:</p> <p>Application for Registration/Registration No.* of Mark: Filing/Registration* Date:</p> <p>Application/Registration* Published in the [Gazette]:</p> <p>.....</p> <p>(No.) (page) (date)</p>	
<p>II. APPLICANTS:**</p> <p>Name(s):</p> <p>Address(es):</p> <p>Additional information is contained in the supplemental box <input type="checkbox"/></p> <p>Address for Service in Tonga ***</p>	

- Delete whichever does not apply.

** If there is more than one person or competent authority, together, requesting the refusal or invalidation of the registration of the trade mark, the data concerning each applicant must appear in this box or, if the space is not sufficient, in the supplemental box.

III. GROUNDS FOR REQUEST: The grounds for the request to refuse or to invalidate the registration of the above identified mark are as follows: Additional information is contained in the supplemental box <input style="width: 40px; height: 15px;" type="checkbox"/> Supporting evidence accompanies this form <input style="width: 40px; height: 15px;" type="checkbox"/>			
IV. AGENT The following agent has been appointed by the applicant(s) in the power of Attorney <input style="width: 40px; height: 15px;" type="checkbox"/> Accompanying this Form Name: Address: Tel No.: Telegraphic Address: Telex No.: Fax No.:			
V. FEES			accompany this Form <input style="width: 40px; height: 15px;" type="checkbox"/>
VI. SUPPLEMENTAL BOX*			
VII. SIGNATURE(S).....(Applicant(s)/Agent**) <div style="text-align: right;">(Date)</div>			

- * Use this box if any of the boxes is not large enough to contain information to be furnished. Indicate the boxes continued in this box by their Roman numerals and title (e.g. **II. APPLICANT(S) (continued)**).*
- ** Type name(s) under signature and delete whichever does not apply. The typed names and signatures of all applicants should appear (one below the other)

IV. AGENT The following agent has been appointed by the applicant(s) in the power of Attorney <input type="checkbox"/> Accompanying this Form Name : Address: Tel No.: Telegraphic Address: Telex No.: Fax No.:			
V. FEES		accompany this Form	
VI. SUPPLEMENTAL BOX *			
VII. SIGNATURE(S) (Applicant(s)/Agent **). <div style="text-align: right;">(Date)</div>			

* Use this box if any of the boxes is not large enough to contain information to be furnished. Indicate the boxes continued in this box by their Roman numerals and title (e.g. **II. APPLICANT(S) (continued)**).*

** Type name(s) under signature and delete whichever does not apply. Typed names and signatures of all applicants should appear (one below the other).

ENDNOTES

¹ GS 26/2009