COMMENTS ON THE DRAFT INTELLECTUAL PROPERTY (ENFORCEMENT AND COORDINATION) RULES, 2025

by

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PRELIMINARY SUBMISSIONS

1. These comments are respectfully submitted in response to the draft Intellectual Property (Enforcement and Coordination) Rules, 2025. At the outset, it may be observed that the object of strengthening the enforcement of intellectual property rights is both legitimate and important. The present concern is narrower: whether the means proposed remain within the authority conferred by the Intellectual Property Organization of Pakistan Act, 2012? While Section 34 of the Act permits rules for carrying out the purposes of the Act; it does not, with respect, appear to authorise the creation of a further adjudicatory forum, the transfer of infringement or offence trials from the Intellectual Property Tribunals, the prescription of penalties or blacklisting, the compulsion of incriminating counter-statements, the drawing of adverse presumptions, or the charging of a person for answering an accusation.

2. There can, of course, be no disagreement with the need for prompt and effective enforcement of intellectual property rights. The difficulty lies in the juridical character of the proposed mechanism through the present Rules. The lawful field available under sections 13(xviii) to 13(xx) of the Act appears to be administrative: the receipt and preliminary scrutiny of information concerning a suspected statutory offence; verification of registry particulars; collection of non-adjudicatory information; coordination with designated law-enforcement agencies; and referral where the prescribed legal threshold is met. Rules may properly regulate that process. The determination of infringement, civil title, guilt, liability, relief or punishment is stated humbly to stand utterly on a different footing.

3. The distinction is substantive rather than merely one of drafting. Sections 15 to 19 of the Act deliberately vest trials, civil-court powers, criminal-court powers and judicial proceedings in specially constituted Intellectual Property Tribunals, with an appeal to the High Court. Proposed Rules 3(xii), 5(iii)-(vii), 6(iii), 7 and the prescribed Forms nevertheless appear to establish a parallel executive hearing, seek an official conclusion that infringement "has happened", and permit that conclusion to set coercive enforcement in motion. Read as a whole, that arrangement may be difficult to reconcile with the allocation made by Parliament under the Constitution of Islamic Republic of Pakistan and various laws enacted thereunder.

4. Rule 12 should, however, be approached with some precision. It is not, upon its express wording, a finality or ouster clause. It substantially repeats the good-faith protection already contained in section 31 of the Act. It cannot exclude constitutional review, protect an act done without jurisdiction, validate mala fides, or prevent a

competent court from declaring an act to be without lawful authority. The more measured objection is that the provision is redundant, potentially overbroad and liable to convey an unintended impression of executive immunity.

5. In the respectful view expressed in these comments, the preferable course would therefore be to withdraw the present draft and recast it. Any revised instrument may appropriately be confined to non-binding offence-screening and inter-agency coordination; expressly preserve the jurisdiction of Registrars, Controllers, the IP Tribunals and Constitutional Courts; and omit penalties, blacklisting, defence fees, deemed admissions and executive findings upon the ultimate question of infringement.

I. RELEVANT STATUTORY AND CONSTITUTIONAL FRAMEWORK

A. Constitutional universe for law making

1. In Pakistan, any statutory allocation must be read in the light of Article 4, which guarantees that no detrimental action affecting liberty, reputation or property shall be taken except in accordance with law. An executive conclusion that a person is an infringer, followed by police, FIA or Customs action, may affect reputation, property, business and liberty. Consequences of that order require a clear parliamentary source, defined jurisdiction, fair procedure and effective legal review.

2. Article 10A guarantees fair trial and due process in the determination of civil rights and obligations and criminal charges. A seven-day response, a fee to submit a counter-statement, an adverse presumption from silence, absence of discovery or cross-examination, no stated evidentiary standard, no impartial adjudicator, no reasoned-decision requirement and no appeal are incompatible with that guarantee if the process is treated as determining infringement or criminality.

3. Article 13(b) protects an accused from being compelled to be a witness against himself. Since the Rules expressly operate in relation to "offences", compulsory production of a counter-statement and defence evidence, followed by a deemed absence of defence, creates a direct self-incrimination concern. A person may be invited to respond voluntarily, but silence cannot be converted by rules into proof of infringement or guilt.

4. Articles 18, 23 and 24 protect lawful business and property interests, subject to restrictions imposed by law. Intellectual-property rights, stock, equipment, business goodwill and commercial reputation may be seriously affected by enforcement referrals. A punitive or confiscatory consequence cannot rest on undefined executive opinion or a rule-made disability not authorised by the Act.

5. Article 25 is engaged by selective access and unequal procedural burdens: only registered complainants are admitted; defendants must pay to answer; "urgent" complainants can purchase accelerated treatment without criteria; and re-filing attracts a fivefold fee subject to the Director-General's uncontrolled permission. Distinctions affecting legal remedies require intelligible criteria and a rational connection with the statutory purpose.

6. Article 175(3) requires separation of the judiciary from the executive. Pakistani law permits statutory administrative and quasi-judicial functions, but they must be conferred by primary legislation and exercised within Constitutionally sufficient safeguards. Here the decisive point is not that every executive inquiry is forbidden; it is that Parliament expressly created a judicial Tribunal and did not confer competing adjudicatory power on the Director-General, Directorate or Registrars acting as enforcement experts.

7. Correspondingly, Article 199 remains available to restrain an executive functionary from doing that which the law does not permit and to declare an act without lawful authority and of no legal effect. *Ubi jus ibi remedium* — where there is a right, there is a remedy — reflects the same constitutional instinct. Neither a rule nor a statutory good-faith provision can neutralise that jurisdiction; an interpretation purporting to exclude review would itself raise grave constitutional difficulty.

B. Delegated legislation is ancillary, not creative of a new jurisdiction

8. Against that background, section 34 of the Intellectual Property Organization of Pakistan Act, 2012 ("the Act") authorises IPO, with the approval of the Federal Government and by notification in the official Gazette, to make rules "for carrying out the purposes" of the Act. The formulation is implementation-oriented. It does not appear to delegate Parliament's essential function of selecting a new adjudicatory forum, defining an offence, creating a penalty, imposing a disability, or excluding an existing judicial remedy.

9. The Hon'ble Supreme Court in Muhammad Amin Muhammad Bashir Limited v Government of Pakistan (2015 SCMR 630) explained that delegated legislation may translate and apply the substantive principles of the parent law and fill in details, but cannot vary the underlying statutory principles, add to or subtract from the basic law, or override legislative will. Jurists Foundation v Federal Government (PLD 2020 SC 1) similarly requires the legislature itself to determine essential policy and governing principles.

10. These principles have also been applied by the Hon'ble High Court of Sindh in holding that a delegate cannot clothe itself with a power absent from the statute, and that rules cannot enlarge the Act or create a materially different legal situation. The maxim *quando aliquid prohibetur ex directo, prohibetur et per obliquum* — what cannot lawfully be done directly cannot be achieved indirectly — is apposite. The point assumes particular importance where severe or punitive consequences are proposed to be placed in the hands of a single executive officer without statutory standards, safeguards or appeal.

11. The recital of section 13(xix), instead of section 34, is a serious drafting defect because section 13(xix) describes a function and does not itself contain the operative rule-making formula. A wrong statutory citation is not invariably fatal if the instrument is otherwise supportable under an existing lawful power. The present instrument, however, cannot be saved merely by substituting "section 34", because

many substantive provisions remain outside the purposes, structure and limits of the Act.

12. The statutory approval requirement must also be demonstrated in law and fact. Under Mustafa Impex v Government of Pakistan (PLD 2016 SC 808), Hon'ble Supreme Court has held that governmental business and delegated legislation must move through the constitutionally and statutorily prescribed channel. A bare recital cannot cure absence of the approval required by section 34, nor absence of prior Policy Board action where the Act separately requires it for fees, regulations, posts or policy.

C. Parliament has vested adjudication with the IP Tribunals

13. That limitation is reinforced by sections 15 to 19 of the Act, which constitute a complete and specific adjudicatory scheme. An accused is tried and prosecuted before the Tribunal; the Presiding Officer must possess judicial qualifications and is appointed after consultation with the Hon'ble Chief Justice concerned; the Tribunal has the powers of a Civil court and a Court of Session; its proceedings are judicial; infringement suits are instituted and tried there; offences fall within its exclusive jurisdiction; and a final judgment or order is appealable to the Hon'ble High Court.

14. By contrast, sections 11 and 12 identify the Chairman and Director-General as executive administrators. The Director-General is the functional head responsible for day-to-day administration, compliance with executive directions, policy assistance and resource management. Be advised that the Act supplies no qualification of judicial office, security of judicial tenure, evidentiary code, power to compel attendance, power to administer oaths, power to grant relief, power to punish, or appellate route for a Director-General's adjudicatory decision.

15. It follows that the general administrative powers in sections 13(i), (ii), (viii), (xxi), (xxii) and (xxvii) of the Act cannot displace the specific judicial allocation in sections 15 to 19. The familiar rule *generalia specialibus non derogant* — general provisions do not derogate from special provisions — is directly relevant. Nor, it is respectfully submitted, can the Board or Federal Government assign under section 13(xxvii) an essential judicial function which Parliament has expressly vested elsewhere.

16. Kindly also note that these respective statutory limits have been recognised in M/s Sadiq & Suharwardy v Ismail Industries Limited (Suit No. 200 of 2020, order dated 10 January 2024), the Hon'ble High Court directed the transfer to the Intellectual Property Tribunal of a suit seeking declarations, injunctions, damages and allied relief for trade mark and copyright infringement, upon the basis of sections 16 to 18 of the Act. Separately, in Jawed Iqbal (Applicant), Criminal Miscellaneous Application No. 364 of 2019 (order dated 27 November 2023), the Hon'ble High Court construed sections 13(xix) and 13(xx), in the context of alleged copyright offences, as requiring the complainant first to approach IPO-Pakistan for specialist scrutiny and, where appropriate, referral to the competent law-enforcement agency. Read together, the decisions preserve rather than obscure the statutory distinction: IPO-Pakistan may perform the preliminary inquiry and referral function, whereas the determination of

civil infringement, criminal guilt and consequential relief remains with the forum designated by Parliament.

D. CPC and Civil Jurisdiction

17. The same conclusion follows from section 9 of the Code of Civil Procedure, 1908, which embodies the general rule that civil courts try all suits of a civil nature unless cognisance is expressly or impliedly barred. In the intellectual-property field, sections 17 and 18 of the 2012 Act create the relevant special forum for infringement and confer CPC powers upon the Tribunal. The proposed Rules cannot add a further executive forum without displacing both the general civil-law principle and the specific Tribunal scheme enacted by Parliament.

18. Ownership and infringement must also be distinguished. A Registrar or Controller may determine a registration, opposition, rectification, invalidity or licensing matter only where the relevant scheduled IP law expressly says so. The Organization's administrative control over registries under section 13(viii) does not authorise the Directorate or Director-General to take over those statutory functions or dictate their outcome. A dispute about corporeal property remains for the competent civil court unless a statute validly provides otherwise; a dispute about an IP right must thus go to the forum identified by the applicable IP law and the relief claimed.

E. Evidentiary & Procedural Powers of the Statutory IP Officers

19. It may, at the outset, be acknowledged that the mere conferment of a limited power to receive or record evidence upon an executive officer is not, by itself, constitutionally impermissible. The governing intellectual-property enactments contain certain carefully defined instances in which Parliament has entrusted specified Registrars and Controllers with limited quasi-judicial functions. Those enactments are, however, equally instructive in demonstrating that such powers must emanate from the parent statute; must be exercised by the officer upon whom they have expressly been conferred; and must remain confined to the proceedings, purposes and procedural incidents identified by the Legislature.

20. The Patents Ordinance, 2000 furnishes one such example. Section 50 confers upon the Controller of Patents, in proceedings under that Ordinance, specified powers of a civil court trying a suit under the Code of Civil Procedure, 1908, in relation to summoning and enforcing the attendance of witnesses, examining them on oath, compelling discovery and production of documents, receiving evidence upon affidavit, issuing commissions for the examination of witnesses or documents, and awarding costs. These are enumerated procedural powers and not a general conferment of the entire jurisdiction of a civil court.

21. The same Ordinance also demonstrates the manner in which Parliament confers substantive decisional authority when it intends to do so. Section 36 expressly entrusts the Controller with the determination of certain disputes concerning entitlement to an invention arising between an employer and employee. The provision is significant

because the jurisdiction proceeds directly from the principal enactment and is confined to the particular controversy described therein. It cannot be enlarged by analogy, nor can it be treated as a source of general jurisdiction in the Director General or any other officer of IPO-Pakistan.

22. A similar legislative pattern appears in section 25 of the Registered Designs Ordinance, 2000. That provision expressly permits the Registrar—being the Controller of Patents and Designs—to receive affidavit evidence, take oral evidence in addition to or instead of evidence by affidavit, and allow the cross-examination of a person whose affidavit has been filed. It further confers the powers of a civil court in relation to the examination of witnesses on oath and the discovery and production of documents. Thus, where Parliament intended oral testimony and cross-examination before an executive IP officer, it conferred those powers in clear and unmistakable language.

23. Under section 78 of the Copyright Ordinance, 1962, the Registrar of Copyrights and the Copyright Board possess specified powers of a civil court in relation to summoning and enforcing attendance, examination on oath, discovery and production, affidavit evidence, commissions for the examination of witnesses or documents, and requisitioning public records. Section 79 provides for the execution of certain monetary orders as decrees of a civil court. The latter provision creates a legal fiction for the limited purpose of execution; it does not transform the Registrar into a civil court of plenary jurisdiction.

24. Section 111 of the Trade Marks Ordinance, 2001 likewise confers upon the Registrar of Trade Marks specified powers relating to the reception of evidence, administration of oaths, attendance of witnesses, discovery and production of documents, and issuance of commissions. Following the amendment made in 2023, section 111(1)(b) provides that evidence before the Registrar shall be given by affidavit. Section 114(3), separately and expressly, applies the Code of Civil Procedure to appeals before the Hon'ble High Court or the Intellectual Property Tribunal. Section 117, in turn, requires infringement suits to be instituted before the Intellectual Property Tribunal. These distinctions cannot be disregarded by treating registration proceedings before the Registrar and infringement proceedings before the Tribunal as interchangeable.

25. The foregoing provisions disclose a consistent legislative scheme. In each case, Parliament has identified: (i) the particular statutory officer; (ii) the proceedings in which the power may be exercised; (iii) the procedural powers borrowed from a civil court; and, where necessary, (iv) the particular dispute which that officer may determine. The enumeration of those matters is itself restrictive. The maxim *expressio unius est exclusio alterius* is apposite: where the Legislature has expressly conferred certain civil-court powers upon named officers, the omission of those powers from the statute governing another officer cannot ordinarily be supplied through subordinate legislation.

26. The expression "powers of a civil court", wherever employed in the foregoing enactments, must also be understood in its proper statutory setting. It does not make the Registrar or Controller a civil court for all purposes, nor does it import the Code of Civil Procedure in its entirety. It confers only the procedural powers expressly mentioned in the relevant provision. It does not, without further legislative authority, carry with it the jurisdiction to determine infringement, proprietary title, damages, permanent injunctive relief, criminal guilt or any other matter committed by law to a civil court, criminal court or Intellectual Property Tribunal.

27. Nor can the powers conferred separately upon the Controller of Patents, the Registrar of Designs, the Registrar of Copyrights and the Registrar of Trade Marks be collected together and assumed by the Director General. Each office is a creature of its respective statute and must act within the four corners of that enactment. The principle *delegatus non potest delegare* is material in this regard: a power entrusted by Parliament to a particular statutory functionary cannot be transferred to, or appropriated by, another functionary except where the governing enactment expressly permits such delegation or transfer.

28. The position is reinforced by the Qanun-e-Shahadat Order, 1984. Article 1(2) extends that Order to judicial proceedings before a Court, including proceedings before a tribunal or other authority exercising judicial or quasi-judicial powers or jurisdiction. Article 2(1)(a) defines "Court" as including all Judges and Magistrates and all persons, other than arbitrators, legally authorised to take evidence. The controlling words are "legally authorised". They presuppose an authority derived from the Constitution or a valid principal enactment; they do not themselves create such authority.

29. The Qanun-e-Shahadat Order is therefore regulatory and not jurisdiction-conferring. It governs the relevance, admissibility, reception and evaluation of evidence before a person already authorised by law to receive it. It cannot be relied upon as an independent source of power enabling an executive officer to administer oaths, compel attendance, order discovery, permit cross-examination or determine contested civil rights. To reason otherwise would reverse the statutory sequence: the officer must first be lawfully vested with the jurisdiction to receive evidence before the evidentiary law can regulate its exercise.

30. A distinction thus must correspondingly be maintained between collecting information during an administrative inquiry and formally recording evidence for the determination of rights or liabilities. An investigating authority may, within the limits of its enabling statute, obtain statements, documents and other information for the purpose of screening a complaint, conducting an inquiry or making a referral. Such material does not, merely by reason of its collection, become judicial evidence establishing infringement, ownership, civil liability or criminal guilt. It must be tendered and proved before the forum possessing jurisdiction, in accordance with the

Qanun-e-Shahadat Order and subject to the affected party's right to object, controvert and cross-examine.

31. Section 13(xix) of the Intellectual Property Organization of Pakistan Act, 2012 may, in that limited sense, support the conduct of inquiries, investigations and preliminary proceedings concerning intellectual-property offences. It may permit the Organization to examine complaints, collect material, coordinate with enforcement agencies and place an appropriate matter before the competent forum. With respect, however, it does not expressly confer upon the Director General the powers of a civil court; does not authorise him to administer oaths, compel testimony, order discovery or conduct cross-examination; and does not empower him to pronounce conclusively upon infringement, proprietary entitlement, civil liability or criminal guilt.

32. The proposed Rules cannot supply those substantive omissions. Rules may prescribe the manner in which an existing statutory power is exercised, but they cannot create an adjudicatory jurisdiction which the parent Act has not conferred. The incidental-powers principle—*quando lex aliquid concedit, concedere videtur et id sine quo res ipsa esse non potest*—extends only to those acts reasonably necessary for carrying an express statutory function into effect. It cannot sustain the creation of a trial forum, the compulsory recording of evidence, or the binding determination of private rights where the principal enactment contains no such grant.

33. Accordingly, if the proposed Rules purport to authorise the Director General to summon parties or witnesses, administer oaths, receive and adjudge evidence, compel discovery, conduct cross-examination, decide disputed questions of ownership or infringement, impose civil consequences, or render findings having conclusive or unreviewable effect, those provisions would travel beyond the Act. They would also disturb the statutory allocation of jurisdiction amongst the Registrars, Controllers and Intellectual Property Tribunals and would raise substantial concerns under Articles 4, 10A and 175 of the Constitution.

34. It is therefore respectfully suggested that any inquiry conducted by IPO-Pakistan under section 13(xix) should remain preliminary, administrative and recommendatory. Its purpose may legitimately be to receive a complaint, collect information, undertake specialist screening, coordinate enforcement and refer the matter to the forum constituted by law. The inquiry should neither assume the character of a civil or criminal trial nor culminate in a binding determination of infringement, ownership, liability or guilt. Any provision appearing to confer such authority ought either to be omitted or recast so as to preserve the jurisdiction of the competent Registrar, Controller, Intellectual Property Tribunal or ordinary Court, as the case may be.

II. OBJECTIONS OF A GENERAL NATURE

35. Before turning to the individual provisions, it may be noted that the draft supplied in August 2026 is internally dated 2025, describes itself as the 2025 Rules, places commencement before territorial extent. These may appear to be matters of form; yet, in an instrument capable of leading to investigation, police referral, fines, blacklisting and fees, certainty as to the version, date, approving authority and statutory source is a matter of legal substance, which are missing in the draft.

36. The instrument repeatedly treats "infringement", "violation" and "offence" as interchangeable. Which in fact and law, are not. An infringement may be a civil wrong without constituting a criminal offence; statutory exceptions, limitations, exhaustion, honest use, licence, consent, validity, proprietorship and mens rea may materially affect liability. Section 13(xix) is confined to proceedings "related to offences", and section 13(xx) is confined to referrals related to offences under laws specified in the Schedule.

37. The terminology of the draft also merits respectful reconsideration. Form E describes the Directorate as a "learned forum" and "learned Court"; the fee schedule calls the person complained against a "defendant"; and the process requires counter-statements and evidence, directs "disposal" of complaints, and obtains an "assessment" of infringement from the Registrar. Taken together, those expressions tend to give the proposed process an adjudicatory character, notwithstanding the later description of the exercise as "fact finding". Legal character must ultimately follow substance rather than nomenclature.

38. To the best of my reading, no governing standard is prescribed as the draft does not state whether a referral requires reasonable suspicion, prima facie evidence, probable cause, a registrable right, a cognisable offence, or satisfaction beyond any defined threshold. The phrase "if it appears that the infringement has happened" is conclusory, invites subjective decision-making and fails to separate a preliminary referral opinion from a judicial finding.

39. A related concern is the absence of express safeguards governing conflicts of interest, recusal, ex parte communications, access to the record, service, extension of time, legal representation, confidentiality, privilege, trade secrets, personal data, reasoned outcomes, correction of factual error, administrative review and preservation of constitutional remedies. The concern is heightened because the same institution manages the registries, seeks the expert opinion, investigates the complaint and makes the referral. The principle *nemo judex in causa sua* — no person should be a judge in his own cause — underlines the need for institutional separation and transparent safeguards, even at a preliminary stage.

40. The Rules also appear unduly weighted in favour of registered complainants. They do not sufficiently address pending invalidity, rectification, revocation or proprietorship proceedings, non-use, disclaimer, limitation, statutory defence, licence, parallel import, fair dealing or the presumption of innocence. Registration

may constitute evidence of a right, but it is not, without more, an executive warrant for a finding of infringement.

41. The proposed fee model presents a further concern as it treats a public-law enforcement screen as a paid service, including a charge upon the person complained against. This may create an appearance of revenue-linked processing and paid priority, place a disproportionate burden upon small businesses and individuals, and make the opportunity to be heard conditional upon payment. Such consequences would be difficult to reconcile with neutral enforcement and public confidence.

III. CLAUSE-WISE OBJECTIONS

Notification and enabling recital

42. With those general observations in view, it is respectfully suggested that the words "In exercise of the powers conferred by section 13(xix)" be reconsidered. Section 13(xix) identifies a function to be exercised in the "prescribed manner", whereas the general rule-making power is found in section 34. A valid recital should refer to section 34 read with the provisions being implemented, identify the approval of the Federal Government, and reflect any required action of the Board. Correcting the citation would not, however, cure provisions that remain substantively beyond the Act.

43. The phrase "with the approval of the Federal Government" must correspond to an actual, constitutionally valid approval. The record should show consideration by the competent Federal Government in accordance with Article 90, the Rules of Business and Mustafa Impex, as well as the Policy Board's action on policy, fees and posts where required. The final notification should not suggest that ministerial or departmental endorsement alone is interchangeable with statutory approval..

Rule 1 - Short title, extent and commencement

44. Sub-rules are misordered as (1), (3), (2). They should appear sequentially. "It extends" should read "They extend", referring to the Rules. The territorial clause cannot itself enlarge federal legislative or executive competence over provincial police procedure; every direction to an agency must remain subject to the Constitution, the parent Act and the agency's own governing law.

45. Immediate commencement is inappropriate for a scheme requiring designated directorates, notified territorial jurisdiction, forms, payment infrastructure, trained officers, confidentiality controls, service mechanisms and inter-agency protocols. If a lawful replacement is framed, commencement should follow publication and a reasonable implementation period, or be brought into force by a later notified date.

Rule 2 - Scope

46. The stated scope is acceptable only to the extent that it concerns coordination and preliminary action on complaints relating to legally defined offences. The words "Intellectual Property Rights violations" are broader than section 13(xix) and should

be replaced by “information alleging an offence defined under an Intellectual Property Law specified in the Schedule to the Act”.

47. “Initial inquiries” and “investigations deemed necessary” must be expressly non-adjudicatory. The Rules should state that the Organization neither determines infringement or guilt nor prejudices the jurisdiction or independent satisfaction of a Registrar, Controller, Tribunal, court or law-enforcement agency.

48. The Geographical Indications (Registration and Protection) Act, 2020 is invoked later in rule 4 although it is not one of the laws appearing in the attached Schedule to the 2012 Act. Unless a subsequent Act has lawfully amended that Schedule or separately authorises these Rules, section 13(xix) and (xx) cannot simply be expanded by definition. Any GI procedure must be traced to the GI Act’s own substantive and rule-making provisions.

Rule 3 - Definitions

Rules 3(i)-(iii): Act, Board and Chairman

49. These definitions are generally accurate, subject to consistent drafting and punctuation. “Section-9” should be “section 9”. Definitions should not reproduce statutory terms differently from the Act, and the instrument should use the statutory expression “Organization” consistently.

Rule 3(iv): Complainant/Applicant

50. The definition is unduly restrictive and legally inaccurate. Copyright ordinarily subsists by operation of law; registration may have evidential consequences but should not be converted by an IPO rule into a condition for protection or for reporting an offence. The definition also inadequately addresses exclusive licensees, authorised users, collecting societies, public prosecutors and persons permitted by a scheduled law to complain.

51. “Complainant” and “applicant” should not be conflated. An applicant for registration is not necessarily a complainant in enforcement. The revised Rules should identify who has standing by reference to each scheduled law and should not create or remove substantive standing by subordinate legislation.

Rules 3(v)-(vi): Director-General and law-enforcement agency

52. The Director-General definition is accurate, but it supplies no adjudicatory power. The LEA definition is overbroad because “other LEAs and Authorities” is undefined. Designation should be by an identifiable statute or Gazette notification, and every agency must act only within its territorial, subject-matter and procedural jurisdiction.

Rules 3(vii)-(ix): infringing goods/services, alleged infringer and IPRs

53. “Infringing Goods and Services” is circular and assumes the very fact to be judicially determined. At the screening stage, the neutral term should be “goods or services alleged to be connected with a suspected offence”. “Alleged infringer” should be replaced by “person complained against” to avoid institutional prejudgment.

54. The definition of IPRs is both overinclusive and underinclusive. It adds geographical indications and "all ancillary rights" while the operative procedure is restricted mainly to registered trade marks, copyright and GIs. A rule cannot alter the statutory Schedule or the substantive coverage of the Act. Rights must be identified by precise reference to the governing enactment.

Rule 3(x): "Initiate"

55. A definition cannot create a new power to commence infringement proceedings on a general direction of the Federal Government or Policy Board. Directions may trigger administrative examination of information within section 13(xix), but cannot predetermine a named person's liability, replace a complaint required by a scheduled law, or authorise civil infringement adjudication. "Public interest" is undefined and supplies no procedural safeguard against selective or politically directed enforcement.

Rule 3(xi): "Inquiry"

56. Limiting inquiry to information collected from the Organization's own registries is too narrow to amount to an investigation and too broad if treated as proof of infringement. Registry information may establish status, proprietor, specification, disclaimer and pendency. It ordinarily cannot establish market use, copying, confusion, substantial part, statutory defence, mens rea or territorial occurrence.

Rule 3(xii): "Investigation"

57. The principal difficulty in the definitions arises from rule 3(xii). It transforms an investigation into "hearing proceedings" between opposing parties. A complainant's purported "authorisation" cannot confer public jurisdiction upon the Organization; jurisdiction must proceed from legislation rather than consent. The language is also one-sided, grammatically uncertain and unsupported by a procedural code adequate for an adjudicatory hearing.

58. If retained, "investigation" should mean a non-binding administrative collection and verification of information solely for deciding whether to refer a suspected statutory offence. It should expressly exclude determination of infringement, ownership, guilt, civil liability, damages, injunction, seizure, cancellation or punishment.

Rules 3(xiii)-(xv): Tribunal, offences and Organization

59. The Tribunal and Organization definitions should track the Act exactly. "Offences" must not be defined as all "violations". It should mean only conduct expressly made a criminal offence by a law specified in the Schedule. This correction is essential because section 18(2) gives the Tribunal exclusive jurisdiction to try such offences.

Rule 4 - Application for enforcement action

Rule 4(1) and documents (i)-(v)

60. The opening provision appears, without adequate statutory basis, to condition access upon a "valid" registered right and selects three regimes without explaining the exclusion or treatment of other scheduled laws. The Organization may verify that a

complainant asserts standing under the relevant statute, but cannot amend substantive entitlement to complain or make registration universally mandatory.

61. Certificates and available evidence may properly be requested. “Evidence of infringement”, however, should be described as information supporting a suspected offence; otherwise the Directorate is invited to decide a civil cause. The required place of occurrence should be tied to territorial jurisdiction and the elements of the alleged offence.

62. The affidavit that no case is pending in any court is objectionable. Civil, criminal, registration and administrative remedies may coexist or address different issues. The Act contains no election-of-remedies bar of this kind. A pending matter should be disclosed so that conflicting action, contempt or prejudice can be avoided, but its existence should not automatically disable a lawful complaint or confer jurisdiction where none exists.

63. The phrase “any other information helpful in the process” is vague but can be retained if qualified by relevance, necessity, proportionality, privilege and confidentiality. The Directorate should have no power to compel privileged communications, trade secrets or personal data without statutory safeguards.

Rule 4(2)

64. Territorial directorates “notified from time to time” require a lawful institutional source, published boundaries and a clear filing rule. Internal administrative allocation is permissible, but it cannot create territorial criminal jurisdiction or invalidate a complaint filed in good faith at another IPO office. Transfer, rather than rejection, should be required.

Rule 4(3): fine and blacklisting

65. A more fundamental difficulty arises in rule 4(3). With the utmost respect, the provision appears to be ultra vires the Act and ought not to be retained in its present form. The Act does not create an offence of submitting false information to the Directorate, prescribe a fine of Rs.100,000, authorise blacklisting, define its duration or consequences, identify an adjudicator, prescribe a standard of proof, require mens rea, provide notice and hearing, or create an appeal. The principle *nullum crimen, nulla poena sine lege* — no offence and no penalty without law — is of direct application.

66. The provision also conflicts with sections 15 and 18(2), which reserve trial of offences to the Tribunal. A rule cannot make the Directorate complainant, investigator, adjudicator and punishing authority. Deliberately false evidence may be addressed under existing penal, perjury, forgery or contempt provisions where their statutory ingredients and competent forum are established; it cannot be replaced by an improvised executive penalty.

Rule 4(4)

67. The references contain incorrect statutory titles and unclear syntax. More importantly, an instruction to follow the “same course of action as defined under these laws and

Rules" cannot import procedures selectively or reconcile inconsistent regimes. Patent, design and layout-design complaints must be handled under their own statutes. If the proposed Rules do not govern them, they should be excluded from scope; if coordination is intended, the precise enabling provisions and compatible procedure must be stated.

Rule 4(5)

68. Written reasons for treating a complaint as incomplete are desirable. The provision should require identification of curable defects, a reasonable cure period, transfer where filed in the wrong office, and administrative reconsideration. "Refuse to entertain" should not be final or used to extinguish rights under another statute.

Rule 5 - Actions by the Directorate of IPR Enforcement

Rules 5(i)-(ii)

69. Numbering a complaint and requesting missing relevant documents are ordinary administrative functions and may be retained. The Rules should specify acknowledgement, date of receipt, service method, secure recordkeeping, limitation neutrality and a published checklist.

Rule 5(iii)

70. Within the same statutory boundary, calling the complainant for a statement may be permissible for clarification. A mandatory counter-statement and defence evidence from the person complained against, however, go beyond a request for information. There is no express statutory summons power, protection against self-incrimination, provision for counsel, extension mechanism, or lawful basis for treating non-response as substantive evidence.

71. If a response process is retained, it must be voluntary, free of charge, accompanied by the allegations and non-privileged material, allow reasonable time and counsel, preserve silence, and state that no failure to answer constitutes admission. Where immediate preservation action is lawfully required, that decision belongs to the competent LEA or Tribunal under its own statute.

Rule 5(iv)

72. The Registry may verify objective registry particulars. It should not be required to issue an "expert opinion" on infringement, particularly within seven days and before evidence is tested. The Registrar may later be required to exercise an independent statutory function concerning validity, rectification, opposition or proprietorship. A pre-judgment opinion creates apparent bias, prejudices parties and risks contaminating later proceedings.

Rule 5(v)

73. Processing against an unidentified or unserved person solely on a complainant's material may be appropriate only for confidential intelligence assessment. It cannot result in a finding, deemed admission or publicly attributable conclusion. Referral

must record the absence of a response and remain subject to independent investigation by the competent agency.

Rule 5(vi)

74. A factual referral memorandum may be prepared, but “Fact Finding Report” should be defined and confined. It should separately state verified registry facts, allegations, response, disputed issues, statutory offence invoked and reasons for referral or closure. It must not use conclusory language of infringement, be represented as a judgment, or be admissible as proof beyond the ordinary law of evidence.

Rule 5(vii)

75. The issue reaches its clearest form in the phrase “if it appears that the infringement has happened”. It is respectfully suggested that this expression be omitted, for it resembles an executive determination of the ultimate issue. A legally safer formulation would ask whether the available information discloses reasonable grounds for referring an allegation of a specifically identified statutory offence for independent action in accordance with law.

76. The referral should expressly be non-binding. The LEA must independently determine jurisdiction, cognisability, evidential sufficiency and procedure; the prosecutor must independently assess prosecution; and the Tribunal alone determines guilt or civil infringement within its jurisdiction.

Rules 5(viii)-(ix)

77. Informing the complainant of administrative status is acceptable subject to confidentiality and the integrity of an investigation. “Fix responsibility” under rule 4(3) cannot respectfully be supported because the underlying penalty and blacklisting are ultra vires and there is no lawful adjudicatory process.

Rule 6 - Actions by IP Registries

78. The position of the Registries follows from the same distinction. Rules 6(i) and (ii), insofar as they provide for verification of the complainant’s certificate and disclosure of relevant public-register particulars, are capable of lawful operation. Such verification may include status, specification, disclaimers, recorded assignments, expiry, cancellation, pending statutory proceedings and limits evident upon the register.

79. Rule 6(iii) should be divided. Reporting whether ownership, validity, opposition, rectification or related proceedings are pending is useful and neutral. Giving an “assessment” and “recommendation” whether infringement is occurring is not a registry-verification function and should respectfully be omitted. Infringement depends on facts and legal defences outside the register and belongs to the Tribunal or competent court.

80. The seven-day period in rule 6(iv) may be an internal service target, not a jurisdictional presumption. Complex records, archived files and pending proceedings may require more time. Rule 6(v), “any other assistance deemed necessary”, must be

limited to lawful, relevant, proportionate assistance within the Registry's statutory functions and section 23 confidentiality.

Rule 7 - Actions by the person complained against

81. Rule 7(1) should not impose a compulsory counter-statement within seven days. The Act does not authorise the Directorate to compel pleadings or defence evidence. Seven days may be manifestly inadequate for retaining counsel, locating historic records, obtaining foreign instructions or addressing technical patent and copyright questions. The Schedule's Rs.10,000 fee for a counter-statement further converts the opportunity to be heard into a paid privilege.

82. Relatedly, rule 7(2) is, with respect, difficult to reconcile with the guarantees of due process and fair hearing and should be reconsidered in its entirety. *Audi alteram partem* — hear the other side — does not permit silence to be converted into the absence of a defence. The burden remains upon the complainant and, where appropriate, the prosecution; infringement and guilt cannot be presumed; service may be defective; and the constitutional protection against self-incrimination cannot be penalised through an adverse executive inference. Disposal "on the available record" may support administrative closure or referral, but not a binding determination against an absent person.

Rule 8 - Action by law-enforcement agencies

83. Once a matter is referred, section 13(xx) permits referral and section 37 requires assistance; coordination and status reporting are therefore legitimate. The Rules should nevertheless make explicit that the receiving agency acts under its own statute, independently assesses jurisdiction and evidence, and is not bound by the Directorate's opinion.

84. A universal thirty-day requirement to "investigate and process" may conflict with statutory procedure, operational priorities, territorial competence and judicial supervision. A reasonable status report can be requested, but the Rules cannot command arrest, search, seizure, FIR registration, prosecution or a particular outcome. Nor can a federal administrative rule enlarge the powers of provincial police beyond applicable law.

Rule 9 - Out-of-court settlement

85. As to consensual resolution, rules 9(1) and (2) may properly require notification and reliable evidence of withdrawal for administrative closure. The expression "out of court" is, however, inapt because the Directorate is not a court; "voluntary settlement and request for administrative closure" would be preferable. A complainant's withdrawal cannot compound a non-compoundable offence or bind the police, prosecutor or Tribunal contrary to law.

86. Mandatory notarisation and a withdrawal fee are unnecessary barriers. The Organization can verify an authorised signed request and, where authenticity is disputed, seek further confirmation. Charging Rs.10,000 to withdraw may discourage

prompt closure, waste public resources and create pressure to maintain complaints no longer pursued.

87. Rule 9(3), however, appears to confer an indefinite discretion upon the Director-General without prescribing the circumstances in which reopening is permissible, whether fresh evidence or a new occurrence is required, the duration of the restriction, whether the other party is to be heard, whether reasons must be recorded, or how a refusal may be reviewed. It is this provision, rather than rule 12, which most closely gives rise to the concern that continuing access to the administrative process may depend upon executive permission.

88. The Director-General cannot permanently control access to law-enforcement machinery or a statutory remedy. A fresh occurrence or fresh statutory offence must be treated according to law. Reopening the same administrative file may be regulated by objective criteria, but no application should depend upon unguided personal permission plus a punitive Rs.50,000 fee.

Rule 10 - Monitoring and Enforcement Coordination Committees

89. Coordination is, in principle, well within the purposes of the Act. Rule 10(1) may therefore be supported by sections 13(xviii), 13(xxii) and 37, provided that the committees remain consultative and coordinative. They should not hear individual disputes, direct arrests, determine infringement, bring pressure to bear upon Registrars or Tribunals, or publish findings capable of prejudicing pending proceedings.

90. Rule 10(2) permits trade associations and "any other entity" to participate without conflict, confidentiality, competition-law or data-protection safeguards. Private competitors should not receive access to confidential complaints, registry material, enforcement intelligence or commercially sensitive information. Membership, terms, recusal and confidentiality undertakings must be published.

91. Rules 10(3) and (4) should distinguish aggregate policy data from case-specific information. Monitoring trends and sharing anonymised enforcement statistics are legitimate. Personal data, trade secrets, privileged material and active-investigation details require a clear legal basis and safeguards consistent with section 23.

92. Rule 10(5) appears to extend the statutory language beyond its proper scope. Section 37 makes assistance available as the Chairman or Director-General may lawfully demand for purposes of the Act. The draft instead allows "Committee members" to provide anything the "Organization" deems fit to demand. A rule cannot broaden the persons exercising the power, the category of compelled providers or the scope of demand. Requisition must be written, relevant, proportionate and attributable to the statutory officer.

Rule 11 - Directorate of Intellectual Property Rights Enforcement

93. Likewise, an internal directorate may be administratively useful; its creation, posts and appointments must nevertheless conform to section 24. Under section 24(1), the Organization may create posts and appoint officers with prior approval of the Board

upon prescribed terms. Section 24(2) gives the Director-General powers of transfer and posting; it does not appear independently to authorise the creation and appointment of the Executive Director and forty-two further posts through these Rules.

94. Rule 11(1) incorrectly refers to officers in Schedule II; the staffing structure appears in Schedule III. "Sub section (1)" in rule 11(2) should be "sub-rule (1)". The Service Rules, 2022 cannot be incorporated as an unexplained cure for statutory approval, appointment, budget and service-condition requirements.

95. The phrase "dispose of responsibilities provided under these Rules" is vague and, read with the hearing provisions, risks being treated as delegation of adjudication to the Executive Director. It should instead enumerate administrative functions and expressly exclude final determination of infringement, offence, ownership, punishment or civil relief.

Rule 12 - Protection of action taken under the Rules

96. Rule 12 calls for a careful distinction between protection for bona fide acts and immunity from review. It substantially repeats section 31 and may therefore be unnecessary. A rule cannot enlarge the immunity enacted by Parliament. If retained, it should reproduce section 31 accurately and include an avoidance-of-doubt proviso preserving constitutional review, statutory appeal, judicial declaration, disciplinary accountability, audit, proceedings founded upon mala fides, and liability for acts outside jurisdiction.

97. "Good faith" is not established merely because an officer invokes the Rules. It requires honesty, lawful purpose and action within the authority conferred. The Sindh High Court has held in the customs context that statutory good-faith protection is unavailable where conduct lacks good faith or lawful authority. Ultra vires action cannot acquire validity from an immunity clause.

98. The expression "rules or regulations made thereunder" is also defective: regulations are made under the Act, not under these Rules. More importantly, the provision says nothing about finality and cannot be read to make a Directorate report, Registrar opinion or Director-General refusal immune from Article 199. Any explanatory note or practice suggesting otherwise would itself be unlawful.

IV. CONSIDERATIONS OF PUBLIC INTEREST AND POLICY

99. Quite apart from questions of strict legality, the draft may permit IPO-Pakistan to be used as a comparatively inexpensive pressure forum parallel to the Tribunal. A registered proprietor might obtain an official infringement opinion and police referral without first satisfying the procedural and evidential safeguards required for injunction, trial or conviction. Competitors, distributors and small traders may consequently suffer reputational and operational harm before any impartial adjudication.

100. The scheme may also encourage forum selection and lead to inconsistent findings. The Directorate, Registrar, law-enforcement agency, Tribunal, High Court and registration forum may simultaneously confront overlapping questions of validity, proprietorship and infringement. The affidavit concerning pending cases does not adequately resolve that difficulty and may require a party to choose between otherwise lawful remedies. A coordination rule should manage such overlap rather than create a further merits forum.

101. Compelling a Registrar to pre-judge infringement undermines confidence in the Registry's later statutory decisions. Allowing trade associations on enforcement committees without conflict safeguards risks disclosure to competitors and private influence over public enforcement. The absence of recusal and confidentiality provisions threatens both fairness and investment confidence.

102. The fee schedule may disproportionately burden small enterprises and individual creators. The person complained against is required to pay in order to respond; a complainant is charged for withdrawal; and accelerated treatment is available upon payment. Such a model may favour larger right holders, chill legitimate trade and diminish access to justice without a demonstrated enforcement benefit.

103. The Rules may also, unintentionally, weaken rather than strengthen subsequent prosecutions. A conclusory IPO report prepared through a process open to legal challenge may complicate investigation, invite constitutional proceedings, create disclosure disputes and reduce the evidential weight of subsequent action. A disciplined, non-binding referral would better preserve the independence and evidential integrity of the law-enforcement agency and prosecutor.

104. Public interest undoubtedly favours prompt action against counterfeiting and piracy. That objective may, however, be better achieved through trained liaison officers, registry verification, secure evidence protocols, inter-agency contacts, reliable data collection and properly resourced Tribunals, rather than by combining investigation, adjudication and punishment within an executive directorate.

V. CONCLUSION

105. In conclusion, these objections are not directed against effective intellectual-property enforcement; rather, they seek to preserve it within the constitutional and statutory architecture enacted by Parliament. IPO-Pakistan has an important administrative, expert, coordinative and preliminary offence-screening role. That role may itself be weakened if the Rules expose the Organization to credible challenge for assuming the Tribunal's functions, creating penalties without primary legislation, compelling defence evidence, prejudging infringement or asserting an unduly broad immunity.

106. It is accordingly and respectfully proposed that the present draft be withdrawn and replaced after consultation with the superior judiciary, Intellectual Property Tribunals, Registrars, provincial and federal law-enforcement agencies, prosecutors,

right holders, industry, consumer representatives and the Bar. Any revised draft would benefit from an explanatory memorandum identifying the enabling provision and demonstrating, clause by clause, its consistency with the Act.

107. With the greatest respect, the resulting legal position may be summarised thus: neither section 13(xix) nor section 34 of the IPO-Pakistan Act, 2012 appears to authorise the Organization, Policy Board, Chairman, Director-General, Directorate of IPR Enforcement, or a Registrar acting for that Directorate, to determine civil infringement, ownership, guilt or punishment. Rules may prescribe the manner of preliminary inquiry, investigation and referral relating to statutory offences; they cannot create a parallel executive court, vary sections 15 to 19, impose a new fine or blacklisting, compel a paid defence, draw a presumption from silence, or exclude judicial scrutiny. To the extent that any provision purports to do so, it would be liable to challenge as ultra vires the Act, inconsistent with Articles 4, 10A, 13, 18, 23, 24, 25, 175 and 199 of the Constitution, and without lawful authority or legal effect.

End