

ACT 667

**LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS
ACT, 2004**

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ACT 667

**LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS
ACT, 2004¹**

AN ACT to provide for the protection of layout-designs (topographies) of integrated circuits and for related matters.

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1. This Act was assented to on 25th March, 2004 and notified in the *Gazette* on 2nd April, 2004.

1. Protection

(1) Protection under this Act may be obtained for layout-designs of integrated circuits if and to the extent that they are original within the meaning of section 2.

(2) Registration may only be applied for if the layout-design has not been commercially exploited or has been commercially exploited for not more than two years, anywhere in the world.

2. Originality

(1) A layout-design shall be considered to be original if it is the result of its creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(2) A layout-design consisting of a combination of elements and interconnections that are commonplace is protected only if the combination taken as a whole is original within the meaning of subsection (1).

3. Right to protection

(1) The right to a layout-design protection belongs to the creator of the layout-design and may be assigned, transferred or devolve by succession.

(2) Where several persons have jointly created a layout-design, the right to the layout-design protection belongs to them jointly.

(3) Where the layout-design is created in execution of a commission or an employment contract, the right to the layout-design protection belongs, in the absence of any contractual provisions to the contrary, to the person who commissioned the work or to the employer.

4. Effect of protection

(1) Protection under this Act does not depend on whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article.

(2) Subject to subsection (3) and section 16, the following acts if performed without the authorisation of the right holder is unlawful:

- (a) an act which reproduces, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or a part of it, except the act of reproducing a part that does not comply with the requirement of originality referred to in section 2;
- (b) the act of importing, selling or otherwise distributing for commercial purposes,
 - (i) the protected layout-design,
 - (ii) an integrated circuit in which the protected layout-design is incorporated, or
 - (iii) an article incorporating the integrated circuit,

in so far as the integrated circuit or article continues to contain an unlawfully reproduced layout-design.

- (3) The effect of protection of a layout-design under this Act does not extend to
- (a) the reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
 - (b) the incorporation in an integrated circuit of a layout-design created on the basis of the analysis or evaluation and which is itself original within the meaning of section 2 or the performance of any of the acts referred to in subsection (2) in respect of that layout-design;
 - (c) the performance of any of the acts referred to in subsection (2) (b), where the act is performed in respect of
 - (i) a protected layout-design that has been put on the market by or with the consent of the right holder, or
 - (ii) an integrated circuit in which the layout-design is incorporated has been put on the market by or with the consent of the right holder;
 - (d) the performance of any of the acts referred to in subsection (2) (b) in respect of
 - (i) an integrated circuit which incorporates an unlawfully reproduced layout-design, or
 - (ii) an article incorporating such an integrated circuit,
 where the person performing or ordering the act did not know or did not have reasonable grounds to know at the time when acquiring the integrated circuit, that it incorporated an unlawfully reproduced layout-design;
 - (e) the performance of any of the acts referred to in subsection (2) (b), where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party.
- (4) Where the person who performs or orders the act under paragraph (d) of subsection (3) receives sufficient notice that the layout design was unlawfully reproduced,
- (a) that person may perform any of the acts only with respect to the stock on hand or ordered before notice was given, and
 - (b) that person is liable to pay to the right holder a sum of money equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of the layout-design.

5. Commencement

Protection of a layout-design under this Act commences

- (a) on the date of the first commercial exploitation, anywhere in the world, of the layout-design by or with the consent of the right holder on the condition that, an application for protection is filed by the right holder with the Registrar within the time limit referred to in section 1 (2), or
- (b) on the filing date accorded to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.

6. Duration of protection

Protection of a layout-design under this Act shall terminate at the end of ten years after the date of commencement of protection.

7. Filing requirements

(1) An application for the registration of a layout-design shall be in writing and shall be filed with the Registrar.

(2) A separate application shall be filed for each layout-design.

(3) The application shall

- (a) contain a request for registration of the layout-design in the register and a brief and precise designation of the layout-design;
- (b) indicate the name, address, nationality and residence of the applicant;
- (c) be accompanied with a power of attorney appointing the representative of the applicant, if any;
- (d) be accompanied with a copy or drawing of the layout-design together with information defining the electronic function which the integrated circuit is intended to perform but the application may omit parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, in so far as the parts submitted are sufficient to allow the identification of the layout-design;
- (e) specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that the exploitation has not commenced; and
- (f) provide particulars establishing the right to protection under section 3.

(4) Where an application does not comply with the requirements of subsection (3), the Registrar shall notify the applicant of the defects and invite the applicant to correct the defects within the prescribed period.

(5) Where the defects are corrected within the prescribed period, the Registrar shall accord as the filing date, the date of receipt of the application, on condition that at the time of receipt, the application

- (a) contained an express or implicit indication that the registration of a layout-design is requested;
- (b) contained indications allowing the identity of the applicant to be established, and
- (c) was accompanied with a copy or drawing of the layout-design.

(6) Where the requirements of subsection (5) are not complied with at the date of receipt of the application but are complied with within the prescribed period, the date of receipt of the required correction is the filing date of the application.

(7) The Registrar shall confirm the filing date and communicate it to the applicant.

(8) Where the defects are not corrected within the time limit the application shall be treated as if it had not been filed.

(9) An application for protection of a layout-design is subject to the payment of the prescribed fee.

(10) Where the fee is not paid, the Registrar shall notify the applicant that if the payment is not made within a prescribed period the application shall be treated as if it had not been filed.

8. Registration and publication

(1) The Registrar shall maintain a register in which matters required to be registered under this Act are registered.

(2) Where an application complies with the requirements of section 7, the Registrar shall register the layout-design in the register without examination of the originality of the layout-design, the applicant's entitlement to protection or the correctness of the facts stated in the application.

(3) The register shall contain the number, title, filing date, and where indicated in the application under section 7 (3) (e), the date of first commercial exploitation anywhere in the world of the layout-design as well as the name and address of the right holder and any other prescribed particulars.

(4) A person may consult the register and obtain extracts from it after the payment of the prescribed fee.

(5) The Registrar shall publish the registration of a layout-design registered under this Act in the prescribed manner.

9. Right to transfer; rectification of register

(1) Where the essential content of an application has been taken from the layout-design of a person without the person's consent, that person may, in writing, request the Registrar to transfer the application to that person.

(2) Where the application has already resulted in a registration, that person may, in writing within three years from the publication of the registration, request the Registrar to transfer the registration to the person and to rectify the entry in the register.

(3) The Registrar shall send a copy of the request to the right holder, and, within the prescribed period and in the prescribed manner, the right holder may send to the Registrar a counter-statement of the grounds on which the person whose name for the time being appears in the register as the right holder relies.

(4) Where the right holder sends a counter-statement, the Registrar shall furnish a copy of it to the person requesting the transfer and, after hearing the parties if either or both wish to be heard, and considering the merits of the case decide whether the application or registration should be transferred and, where applicable, whether the register should be rectified.

10. Changes in ownership

(1) A change in the ownership of a protected layout-design shall be in writing.

(2) Where the layout-design is registered, a change in ownership shall, at the request of an interested party made to the Registrar, be recorded and published by the Registrar and the change shall not have an effect against third parties until it has been recorded.

11. Contractual licences

A licence contract concerning a layout-design shall, on registration of the layout-design, be submitted to the Registrar who shall keep its contents confidential but shall publish a reference to it and the licence contract shall not have an effect against third parties until the submission has been made.

12. Cancellation

(1) An interested person may apply to the Court for the cancellation of the registration of a layout-design on the grounds that

- (a) the layout-design does not qualify as a layout-design of an integrated circuit as provided for under this Act;
- (b) the layout-design is not protectable under sections 1 and 2;
- (c) the right holder is not entitled to protection under section 3; or
- (d) where the layout-design has been commercially exploited anywhere in the world, before the filing of the application for registration of the layout-design, the application was not filed within the time limit referred to in sections 1 (2) and 5 (a).

(2) Where the grounds for cancellation are established with respect to only a part of the layout-design, only the corresponding part of the registration shall be cancelled.

(3) A cancelled layout-design registration or part of it is void from the date of the commencement of the protection.

(4) The registrar of the Court shall notify the Registrar of the decision of the Court or the decision on an appeal and the Registrar shall record the decision and publish a reference to it as soon as possible.

13. Representation

If the ordinary residence or principal place of business of an applicant under this Act is outside the country, the applicant shall be represented by a legal practitioner resident and practising in the country.

14. Infringement; enforcement of exclusive right

(1) Infringement consists of the performance of an act which is unlawful as mentioned in section 4.

(2) On the request of the right holder, or of the right holder's licensee if the licensee has requested the right holder to institute court proceedings for a specific relief and the right holder has refused or failed to do so within a reasonable time, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy the Court considers fit.

(3) Proceedings under subsection (2) may be initiated only after an application for registration of the layout-design has been filed with the Registrar.

15. Offence

A person who, without authorisation knowingly performs an act which is unlawful under section 4 commits an offence and is liable on summary conviction to a fine not exceeding two thousand penalty units or to a term of imprisonment not exceeding two years and the Court may also order the seizure, forfeiture and destruction of the layout-designs, integrated circuits or articles concerned and of any materials or implements, predominantly used in the commission of the offence.

16. Exploitation by a government agency or third person

(1) Where

- (a) the public interest, in particular, national security, nutrition, health or the development or other vital sectors of the national economy requires the exploitation of a protected layout-design for public non-commercial use, or
- (b) a judicial or administrative body has determined that the manner of exploitation of a protected layout-design, by the right holder or the right holder's licensee, is anti-competitive and the Minister is satisfied that the exploitation of the layout-design in accordance with this section would remedy that practice,

the Minister may decide that, without the authorisation of the right holder, a Government agency or a third person designated by the Minister may exploit the layout-design.

(2) The exploitation of a layout-design under subsection (1) shall be

- (a) limited, in scope and duration, to the purpose for which it was authorised;
- (b) predominantly for the supply of the domestic market;
- (c) non-exclusive; and
- (d) subject to the payment to the right holder of an adequate remuneration taking into account the economic value of the Minister's authorisation, as determined in the Minister's decision and, where applicable, the need to correct anti-competitive practices.

(3) On request of the right holder or of the beneficiary of the authorisation, the Minister may, after hearing the parties, if either or both wish to be heard, vary the terms of the decision authorising the exploitation of the layout-design to the extent that changed circumstances justify the variation.

(4) On the request of the right holder, the Minister shall terminate the non-voluntary licence if the Minister is satisfied that the circumstances which led to the Minister's decision have ceased to exist and are unlikely to recur or that the beneficiary of the authorisation has failed to comply with the terms of the authorisation.

(5) Despite subsection (4), the Minister shall not terminate an authorisation if the Minister is satisfied that adequate protection of the legitimate interests of the beneficiary of the authorisation justifies the maintenance of the authorisation.

(6) Where a third person is designated by the Minister in accordance with subsection (1), the authorisation may only be transferred with the enterprise or business of the beneficiary of the authorisation or with the part of the enterprise or business within which the layout-design is being exploited.

(7) A request for the Minister's authorisation shall be supported by evidence that the right holder has received, from the person seeking authorisation, a request for a contractual licence but that, that person has been unable to obtain the licence on reasonable commercial terms and conditions and within a reasonable time.

(8) A decision of the Minister under this section is subject to an appeal to the Court.

17. Exercise of discretionary powers

The Registrar shall, in exercising a discretionary power conferred by this Act comply with the provisions of article 296 of the Constitution.

18. Extension of time

(1) Where the Registrar is satisfied that the circumstances justify it, the Registrar may, on receipt of a written request extend the time for doing an act other than the time limit set out in sections 1 (2) and 5 (a), for filing an application or taking a proceeding under this Act, on notice to the parties concerned and on the terms directed by the Registrar.

(2) The extension under subsection (1) may be granted although the time for doing the act or taking the proceeding has expired.

19. Appeals

A person may appeal to the Court against a decision taken by the Registrar under this Act.

20. Application of international treaties

The provisions of an international treaty to which the country is a party shall apply to the matters dealt with by this Act and in case of a conflict with the provisions of this Act, the provisions of the International treaty shall prevail.

21. Regulations

The Minister may by legislative instrument, make Regulations for the effective implementation of this Act, and, in particular, prescribing

- (a) the fees payable under this Act;
- (b) the details of the requirements of application;
- (c) the procedure for the publication of the registration of a layout-design; and
- (d) conditions of appeal.

22. Interpretation

In this Act, unless the context otherwise requires,

“**Court**” means the High Court;

“integrated circuit” means a product, in its final form or an intermediate form in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function;

“layout-design (topography)” means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and some or all of the interconnections of an integrated circuit or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;

“Minister” means the Minister responsible for Justice;

“register” means the register of Layout-Designs (Topographies of Integrated Circuits established under section 8;

“Registrar” means the Registrar-General;

“right-holder” means the natural person who, or the legal entity which, according to this Act is regarded as the beneficiary of the protection.

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