

**THE LAYOUT-DESIGNS (TOPOGRAPHIES)
OF INTEGRATED CIRCUITS BILL**

(No. XV of 2002)

Explanatory Memorandum

1. The object of this Bill is to give effect to the obligations of Mauritius under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in the context of the World Trade Organisation (WTO).
2. The Bill seeks to –
 - (a) define the concepts of layout designs (topographies) of integrated circuits;
 - (b) provide for the protection of layout designs (topographies) of integrated circuits;
 - (c) enunciate the basic principles regulating such protection such as conditions of registration, duration and procedures thereof;
 - (d) set out the exceptions relating thereto; and
 - (e) regulate the enforcement and infringement of the provisions thereof.

.....May 2002

J. K. Cuttaree
Minister of Industry and International Trade

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A Bill

To provide for the protection of layout-designs (topographies) of integrated circuits

ENACTED by the Parliament of Mauritius, as follows -

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Layout-Designs (Topographies) of Integrated Circuits Act 2002.

2. Interpretation

In this Act –

“competent authority” has the same meaning as in the Patents, Industrial Designs and Trademarks Act 2002;

“Controller” means the Controller of Industrial Property, appointed under section 3 of the Patents, Industrial Designs and Trademarks Act 2002;

“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 of which are integrally formed on a piece of material and which is intended to perform an electronic function;

“layout-design” is synonymous with “topography” and 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 inter-connections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;

“legal practitioner” has the same meaning as in the Law Practitioners Act;

“Minister” means the Minister to whom the responsibility for the subject of international trade is assigned;

“Register” means the Register of Layout-Designs (Topographies) of Integrated Circuits;

“right holder” means the person who is to be regarded as the beneficiary of the protection referred to in section 5;

“Tribunal” means the Tribunal set up under section 9 of the Patents, Industrial Designs and Trademarks Act 2002;

PART II - NATURE AND EXTENT OF PROTECTION

3. Protection

(1) Subject to subsection (2), registration for protection under this Act may be -

- (a) obtained for layout-designs of integrated circuits where they are original within the meaning of section 4;
- (b) applied for only where -
 - (i) the layout-design has not yet been commercially exploited; or
 - (ii) has been commercially exploited for not more than 2 years anywhere in the world.

(2) No protection under this Act shall be available for any layout-design which has been commercially exploited anywhere in the world for more than 2 years prior to the entry into force of this Act.

4. Originality

(1) A layout-design shall be considered to be original where 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) Where a layout design consists of a combination of its elements and inter-connections that are commonplace, it shall be protected only where the combination taken as a whole is original within the meaning of subsection (1).

5. Right to protection

(1) The right to layout-design protection shall belong to the creator of the layout-design and may be assigned or transferred by succession.

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

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

6. Effect of protection

(1) Any registration for protection under this Act shall not depend upon whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article.

(2) Subject to subsection (3) and to section 16, any act of -

- (a) reproducing, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 4;
- (b) importing, selling or otherwise distributing for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated, or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design,

shall, where performed without the authorization of the right holder, be unlawful.

(3) No act -

- (a) of reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
- (b) of incorporation in an integrated circuit of a layout-design created on the basis of such analysis or evaluation and which is itself original within the meaning of section 4 or the

performance of any of the acts referred to in subsection (2) in respect of that layout-design;

- (c) referred to in subsection (2)(b), where the act is performed in respect of -
 - (i) a protected layout-design; or
 - (ii) an integrated circuit in which such a layout-design is incorporated,

which has been put on the market by or with the consent of the right holder;

- (d) referred to in subsection (2)(b), and subject to subsection (4) in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such an act did not know and had no reasonable grounds to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design;
- (e) in respect of an identical layout design which is original and has been created independently by a third party,

shall be protected under this Act.

(4) Where, after the time that the person referred to in subsection 3(d) has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of those acts only with respect to the stock on hand or ordered before such time and shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design;

7. Commencement and duration of protection

(1) Any protection granted in respect of a layout-design under this Act shall commence –

- (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, provided that an application for protection is filed by the right holder with the Controller within the time limit referred to in section 3(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.

(2) Any protection granted in respect of a layout-design under this Act shall terminate at the end of the tenth calendar year after the date of commencement of protection.

PART III - REGISTRATION

8. Application

(1) An application for the registration of a layout-design shall be made on the prescribed form and shall be filed with the Controller.

(2) A separate application shall be filed in respect of different layout-designs.

(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 of the applicant and if different from the address, the habitual residence of the applicant;
- (c) be accompanied by the authorization of the agent appointing the representative of the applicant, if any;
- (d) subject to subsection (4), be accompanied by a copy or drawing of the layout-design together with information defining the electronic function which the integrated circuit is intended to perform;
- (e) specify the date of the first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and
- (f) provide particulars establishing the right to protection under section 6.

(4) Any copy or drawing referred in subsection (3) (d) may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design;

(5) Where an application does not duly comply with the requirements of subsection (3), the Controller shall immediately notify the applicant of the defects and invite him to correct them within 2 months.

(6) Where the defects are corrected within the time limit specified under subsection (5), the Controller shall accord as the filing date, the date of receipt of the application, provided that, at the time of receipt, the application contained an express or implicit indication that the registration of a layout-design is requested and indications allowing the identity of the applicant to be established and was accompanied by a copy or drawing of the layout-design.

(7) Where the requirements of subsection (6) were not complied with at the date of receipt of the application but are complied with within the time limit, the date of receipt of the required correction shall be deemed to be the filing date of the application.

(8) The Controller shall confirm the filing date and communicate it to the applicant.

(9) Where the defects are not corrected within the time limit, the application shall be deemed not to have been filed.

(10) Every application for protection of a layout-design shall be subject to the payment of the prescribed fee.

(11) Where the fee is not paid, the Controller shall notify the applicant that the application shall be deemed not to have been filed unless payment is made within 2 months from the date of the notification and, where the application fee is not paid within that time limit, the application shall be deemed not to have been filed.

9. Registration

(1) The Controller shall maintain a Register in which he shall record all matters required to be recorded by this Act.

(2) Where an application complies with the requirements of section 8, the Controller 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 appropriate, the date of the first commercial exploitation of the layout-design anywhere in the world as well as the name and address of the right holder and other prescribed particulars.

(4) Any interested person may consult the Register and obtain extracts therefrom, subject to the payment of the prescribed fee.

(5) The registration of a layout-design shall be published in the Government Gazette.

10. Right to transfer

(1) Where the essential content of the application has been taken from the layout-design of another person without his consent, that other person may, make a request to the Controller in writing to transfer the application to him.

(2) Where the application has already resulted in a registration, that other person may, within 3 years from the publication of the registration, make a request to the Controller in writing to transfer the registration to him and to rectify the entry in the Register accordingly.

(3) The Controller shall forthwith send a copy of the request under subsection (2) to the right holder, and the right holder shall, within the prescribed period and in the prescribed manner, send to the Controller and to the person requesting the transfer a counter-statement of the grounds on which he relies.

(4) Where the right holder sends a counter-statement, the Controller shall after hearing the parties, decide whether the application or registration should be transferred and, where applicable, whether the Register should be rectified.

11. Changes in ownership

(1) Any application for a change in the ownership of a protected layout-design shall be made, by any interested party, in writing to the Controller.

(2) Where an application has been made under subsection (1), the Controller shall record it and cause it to be published; and such change shall have no effect against third parties until it has been recorded and published.

12. Contractual Licence

Any licence concerning a layout-design shall, upon registration of the layout-design, be submitted to the Controller who shall keep its contents

confidential but shall publish a reference thereto and the licence contract shall have no effect against third parties until such submission has been made.

13. Cancellation

(1) Any interested person may apply to the Tribunal for the cancellation of the registration of a layout-design on the ground that –

- (a) the layout-design is not entitled to protection under sections 3 and 4;
- (b) the right holder is not entitled to protection under section 5;
or
- (c) the application was not filed within the time limit referred to in sections 3(2) and 7(1)(a) where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design.

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

(3) The registration of any layout-design, or part thereof, which is cancelled, shall be regarded as null and void from the date of the commencement of protection.

(4) The Registrar of the Tribunal shall notify the Controller of the decision of the Tribunal or the decision on any appeal therefrom and the Controller shall record and publish a reference thereto as soon as possible.

PART IV - MISCELLANEOUS

14. Representation

Where an applicant's ordinary residence or principal place of business is outside Mauritius, he shall be represented by a legal practitioner resident and practising in Mauritius.

15. Unfair Practice

(1) Any act described under section 6(2) shall amount to an act of unfair practice and may give rise to a claim in damages.

(2) On the request of the right holder, or of his licensee, if the latter 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 an unfair practice or an imminent unfair practice, award damages and grant any other remedy as it thinks fit.

(3) Any claim in respect of an unfair practice shall be instituted in accordance with the provisions of the Protection Against Unfair Practices (Industrial Property Rights) Act 2002.

(4) Any proceeding under subsection (2) may be initiated only after an application for registration of the layout-design has been filed with the Controller.

16. Offences

(1) Any person who, without authorization, knowingly performs any act which is unlawful under section 6(2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 250,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) 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, the predominant use of which has been in the commission of the offence.

17. Exploitation by a government agency or third person

(1) Where the competent authority—

- (a) is satisfied that the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of a protected layout-design for public non-commercial use; or
- (b) has, on an application of any party, determined that the manner of exploitation of a protected layout-design, by the right holder or his licensee, is anti-competitive; and after such determination, the competent authority is satisfied that it is necessary to remedy such anti-competitive practice,

it may, upon a request made, even without the authorisation of the right holder, authorise a Government agency or a third person to exploit the layout-design.

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

- (a) limited in scope and duration, to the purpose for which it was authorised;
- (b) non-exclusive; and
- (c) subject to the payment, to the right holder, of an adequate remuneration which takes into account the economic value of the authorisation of the competent authority and, where applicable, the need to correct anti-competitive practices.

(3) Upon request of the right holder or of the beneficiary of the authorisation, the competent authority may, after hearing the parties, vary the terms of the decision authorising the exploitation of the layout-design to the extent that changed circumstances justify such variation.

(4) Upon the request of the right holder, the competent authority shall terminate the non-voluntary licence where he is satisfied that the circumstances which led to his 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) Notwithstanding subsection (4), the competent authority shall not terminate an authorisation where he is satisfied that the adequate protection of the legitimate interests of the beneficiary of the authorisation justifies the maintenance of the authorisation.

(6) Where a third person has been designated by the competent authority 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 authorisation of the competent authority shall be accompanied by evidence that the right holder has received, from the person seeking the authorisation, a request for a contractual licence but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(8) A decision of the competent authority under this section may be the subject of an appeal to the court by any interested party within 2 months of the date of the decision.

18. Exercise of discretionary powers

(1) Where the Controller is satisfied that the circumstances so justify, he may, upon receiving a written request therefor, extend the time for doing any

act, other than the time limit set out in section 3(2) and 7(1)(a), for filing an application, or taking any proceeding under this Act, upon notice to the parties concerned and upon such terms as he may direct.

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

19. Competence of Tribunal

(1) The Tribunal shall have jurisdiction in cases of dispute relating to the interpretation of this Act and in matters which, under the Patents, Industrial Designs and Trademarks Act 2002, are referred to it.

(2) Any decision taken by the Controller under this Act, in particular the registration of a layout-design, may be the subject of an appeal by any interested party to the Tribunal.

20. Regulations

The Minister may make regulations prescribing all matters that are required or permitted by this Act or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

21. Commencement

This Act shall come into force on a date to be fixed by Proclamation.