

CHAPTER 320A

INTEGRATED CIRCUITS

1998-21

This Act came into operation on 19th February, 2001 by Proclamation (S.I. 2001 No. 21).

Amended by:

2001-15

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1998

2002

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

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**BARBADOS****INTEGRATED CIRCUITS
1998-21**

An Act to provide for the protection of layout-designs, also called topographies, of integrated circuits and for related matters.

[Commencement: 19th February, 2001]

Short title

1. This Act may be cited as the *Integrated Circuits Act*.

Interpretation

2. For the purposes of this Act

“Director” means the Registrar of Corporate Affairs and Intellectual Property;

“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 inter-connections, are integrally formed in or 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 of 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;

“right holder” means the natural person who, or the legal entity which, is to be regarded as the beneficiary of the protection referred to in section 3.

Protection

- 3.(1) Subject to this Act, a layout-design may be protected under this Act
- (a) where and to the extent that it is original within the meaning of section 4;
 - (b) if the layout-design has not been commercially exploited at the date of receipt of the application by the Director; or
 - (c) where the layout-design has been commercially exploited by the right holder, if such exploitation anywhere in the world has been for not more than 2 years prior to the date of receipt of the application by the Director.
- (2) An application for the registration of a layout-design may be made
- (a) if the layout-design has not been commercially exploited; or
 - (b) where the layout-design has been commercially exploited by the right holder, if such exploitation, anywhere in the world, has been for not more than two years before the application for registration.

[2001-15]

Originality

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

Right to protection

5.(1) The right to protection of a layout-design vests in the creator of the layout-design.

(2) The right mentioned in subsection (1)

(a) may be transferred by the creator *inter vivos*; or

(b) may devolve by succession.

(3) Where two or more persons create a layout-design the right to protection vests in them jointly.

(4) Where a layout-design has been created in execution of a commission or an employment contract, the right to protection vests, in the absence of any agreement to the contrary, in the person who commissioned the work or in the employer, as the case may be.

Effect of protection

6.(1) An integrated circuit may be protected under this Act whether or not it is incorporated in an article.

(2) Subject to subsection (3) and to section 7, no person shall, without the express consent of the right holder,

(a) reproduce, whether by incorporation in an integrated circuit or otherwise, a protected layout-design or any part thereof, except any part of the design that does not comply with the requirement of originality defined in section 4;

(b) import, sell or otherwise distribute for commercial purposes

(i) a protected layout-design, or

- (ii) 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.
- (3) The consent of a right holder is not required
- (a) where a protected layout-design is reproduced for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
 - (b) where an original design within the meaning of section 4 is created as a result of evaluation or analysis referred to in paragraph (a) and that design is incorporated in an integrated circuit or is reproduced or sold or otherwise distributed for commercial purposes;
 - (c) for the performance of any act referred to in subsection (2) in respect of an original layout-design that has been independently created notwithstanding that it is identical to a protected layout-design; and
 - (d) for the performance of any of the acts referred to in subsection (2)(b) where the act is performed in respect of an integrated circuit, in which such a layout-design is incorporated, that has been put on the market by, or with the consent of, the right holder.

Innocent performance in respect of integrated circuits

7.(1) The protection of a layout-design under this Act shall not extend to the performance of any of the acts referred to in subsection (2)(b) of section 6 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.

(2) For the purposes of subsection (1), where the person referred to in that subsection has received notice that the layout-design referred to in that paragraph was unlawfully reproduced, that person may perform any act referred to in

subsection (2)(b) of section 6 only in respect of stock on hand or stock ordered before he received such notice and upon payment to the right holder of such an amount equal to a reasonable royalty as would be payable under a freely negotiated licence for such a layout-design.

Commencement and duration of protection

- 8.(1) 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, where an application for protection is made by the right holder within the period specified in section 3(2); or
 - (b) on the filing date 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) Protection of a layout-design under this Act terminates at the end of the tenth calendar year after the date of commencement of protection.

Application for registration

- 9.(1) An application for the registration of a layout-design must be made to the Director in the prescribed form.
- (2) An application referred to in subsection (1) must
- (a) indicate the name, address and nationality of the applicant;
 - (b) be accompanied by
 - (i) a power of attorney appointing the representative of the applicant, if any,
 - (ii) a copy or drawing of the layout-design;

- (c) indicate whether commercial exploitation of the layout-design has commenced and, where it has commenced, must
 - (i) specify the date and geographical location of first commercial exploitation of the layout-design; and
 - (ii) be accompanied by a sample of the integrated circuit and information defining the electronic function that the integrated circuit is intended to perform; and
 - (d) provide particulars establishing the right to protection under section 5.
- (3) The application referred to in subsection (2) may omit such parts of the copy or drawing referred to in sub-paragraph (ii) of paragraph (b) of that subsection as relate to the manner of manufacture of the integrated circuit if the parts submitted are sufficient to identify the layout-design.
- (4) Where the application does not comply with the requirements of subsection (2), the Director shall notify the applicant of the defects and invite him to correct them within 2 months.
- (5) Where the defects are corrected within the period specified in subsection (4), the Director shall accord as the filing date the date of receipt of the application if at the time of receipt the application contained an express or implied 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.
- (6) Where the requirements of subsection (5) were not complied with at the date of receipt of the application but are corrected within the period specified in subsection (4), the date of receipt of the required correction shall be deemed to be the filing date of the application, and the Director shall confirm the filing date and notify the applicant thereof.
- (7) Where the defects are not corrected within the time limit, the application shall be deemed not to have been filed.

(8) Each application for protection of a layout-design shall be accompanied by the prescribed fee.

(9) Where the application is not accompanied by the prescribed fee the Director shall notify the applicant that the application will be deemed not to have been filed unless payment is made within 2 months after the date of the notification.

(10) Where the application fee is not paid within the period specified in subsection (9), the application shall be deemed not to have been filed.

Register: registration and publication

10.(1) The Director shall maintain a register to be known as the “Register of Layout-Designs”, in this Act referred to as the “Register”, in which shall be registered each layout-design protected under this Act.

(2) Where an application for registration of a layout-design complies with the requirements of section 9, the Director shall register the layout-design without examination of

- (a) the originality of the layout-design;
- (b) the applicant’s entitlement to protection; or
- (c) the correctness of the facts stated in the application.

(3) The Register shall contain

- (a) the number, title and filing date;
- (b) the date of commercial exploitation, anywhere in the world, of the layout-design, where stated in the application under section 9(2)(c);
- (c) the name and address of the right holder; and
- (d) any other information, prescribed by regulations made under this Act.

(4) Any person may examine the Register and, upon payment of the prescribed fee, take extracts therefrom.

(5) The registration of every layout-design shall be published in the *Official Gazette*.

Right to transfer: rectification of register

11.(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, in writing, request the Director to transfer the application to him.

(2) Where the application has already been registered, the other person referred to in subsection (1) may, within three years after the publication of the registration, in writing, request the Director to transfer the registration to him and to rectify the entry in the Register accordingly.

(3) The Director shall send forthwith a copy of the request mentioned in subsection (2) to the right holder, and, within the prescribed period and in the prescribed manner, the right holder may send to the Director a counter-statement of the grounds on which he relies to maintain his registration as the right holder.

(4) Where the right holder sends a counter-statement, the Director shall

- (a) furnish a copy thereof to the person requesting the transfer;
- (b) hear the parties upon a request by either party to be heard; and
- (c) shall decide whether the application or registration should be transferred and, where applicable, whether the Register should be rectified.

(5) A change of ownership in the Register shall be published in the *Official Gazette*.

Change in ownership of layout-design

12.(1) Any change in the ownership of a layout-design must be in writing.

(2) Where a layout-design has been registered, any change in ownership thereof shall, at the request of any interested party, be recorded by the Director, who shall cause it to be published in the *Official Gazette*.

(3) A change in ownership referred to in subsection (2) does not bind third parties until it is recorded.

Registration re: licence contract

13. Where a licence has been granted in respect of a registered layout-design, particulars in respect of the grant of the licence shall be recorded in the Register, upon the application of the right holder or the licensee, and on the payment of the prescribed fee.

Cancellation

14.(1) Any interested person may apply to a Judge in chambers for the cancellation of the registration of a layout-design on the grounds that

- (a) the layout-design cannot be the subject of protection under this Act;
- (b) the right holder is not entitled to protection under this Act; or
- (c) where the layout-design had been commercially exploited before the filing of the application for registration of the layout-design, the application was not filed within the period specified in section 3(2).

(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) Where the registration of a layout-design or part thereof is cancelled the registration or part shall be deemed to have been void *ab initio*.

(4) The decision of the Court is final and shall be transmitted to the Director, who shall

- (a) record it in the Register; and

- (b) cause a statement of the cancellation to be published in the *Official Gazette* as soon as practicable.

Representation

15.(1) An applicant whose residence or principal place of business is outside Barbados shall be represented by an attorney-at-law.

(2) For the purposes of this Act, “attorney-at-law” has the meaning assigned to it by section 2 of the *Legal Profession Act*, Cap. 370A.

Infringement and enforcement of right

16.(1) Proceedings for specific relief relating to the infringement of any right under this Act may be instituted in the High Court by

- (a) the right holder; or
 - (b) by a licensee of the right holder, where the licensee has requested the right holder to institute proceedings and the right holder has refused or failed to do so within a reasonable time.
- (2) The High Court may
- (a) grant an injunction to prevent infringement or an imminent infringement;
 - (b) award damages; and
 - (c) grant any other remedy available to the right holder or licensee under the law.
- (3) Proceedings under subsection (2) may be brought only after an application for registration of the layout-design has been made.

Offence

17. Any person who, without consent of the right holder, knowingly performs any act that is contrary to section 6 is guilty of an offence and liable on summary conviction to a fine of \$10 000 or to imprisonment for 3 years or both;

and the Magistrate may, in addition to the fine and imprisonment, order the seizure and disposal of the layout-designs, integrated circuits or articles concerned and any materials or implements used in the commission of the offence.

Exploitation by a Government agency or third person

18.(1) Where

- (a) 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) a judicial or administrative body has determined that the manner of exploitation of a protected layout-design by the right holder or his licensee is anti-competitive and the Minister is satisfied that the exploitation of the layout-design in accordance with this section would remedy such practice,

the Minister may without the consent of the right holder authorise a Government agency or a third party designated by the Minister to exploit the layout-design.

(2) The exploitation of the layout-design shall be limited, in scope and duration, to the purpose for which it was authorised and shall be predominantly for the supply of the domestic market.

(3) The exploitation authorised pursuant to this section shall be non-exclusive and shall be subject to the payment to the right holder of an adequate remuneration therefor, taking into account the economic value of the use of the layout-design and, where applicable, the need to correct competitive practices.

(4) Upon 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 such variation.

(5) Upon the request of the right holder, the Minister shall terminate the authorisation if he is satisfied that the circumstances that led to his decision have ceased and are unlikely to recur or that the beneficiary of the authorisation has failed to comply with the terms of the authorisation.

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

(7) Where a third party has been designated by the Minister, 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.

(8) A request for the Minister's authorisation 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 that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.

(9) Subsection (8) shall not apply

- (a) in the event of the occurrence of a national emergency or other circumstances of extreme urgency; or
- (b) in the case of public non-commercial use.

(10) Where an authorisation is given in the instance set out in subsection (9), the right holder shall be notified of such authorisation as soon as reasonably practicable.

(11) Any person aggrieved by a decision of the Minister under this section may appeal to a Judge in chambers whose decision shall be final.

Exercise of discretionary powers: extension of time

19.(1) The Director shall give any party to any proceedings before him an opportunity of being heard before exercising any discretionary power vested in him by this Act that is likely to adversely affect the party.

(2) Where the Director is satisfied that the circumstances justify it, he may, upon receiving a written request therefore, upon such terms as he may direct extend the time for doing any act, for filing any application, or for taking any proceedings, under this Act.

(3) Where an extension is granted under subsection (2), the Director shall give notice of such extension to the parties concerned.

(4) The extension referred to in subsection (2) may be granted though the time for doing the act or taking the proceedings has expired.

(5) The time for filing an application referred to in section 3(2) may not be extended.

Appeals

20.(1) A person aggrieved by any determination of the Director regarding the registration of, or refusal to register, a layout-design under this Act may appeal to the High Court from that determination, within 14 days after the determination is made known to him.

(2) After hearing the appeal, the court may rescind or confirm the determination of the Director.

(3) The Registrar of the Supreme Court shall transmit a certified copy of the court's decision to the Director, who shall record the decision in the Register and publish a notice of it in the *Gazette*.

(4) The Director may be heard in person or by his attorney on an appeal under this section.

[2001-15]

Regulations

21. The Minister may make regulations generally to give effect to this Act.

[2001-15]