
**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

MAURITIUS

The present document reproduces the text¹ of the Layout-Designs (Topographies) of Integrated Circuits Bill of 2000, as notified by Mauritius under Article 63.2 of the Agreement (see document IP/N/1/MUS/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

MAURICE

Le présent document contient le texte¹ du projet de loi de 2000 sur les schémas de configuration (topographies) de circuits intégrés, notifié par Maurice au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/MUS/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

MAURICIO

En el presente documento se reproduce el texto¹ del proyecto de Ley de Esquemas de Trazado (Topografías) de Circuitos Integrados, de 2000, que Mauricio notificó de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/MUS/1).

¹ In English only./En anglais seulement./En inglés solamente.

THE LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS BILL

(No. of 2000)

Explanatory Memorandum

The object of this Bill is to provide for the protection of layout-designs (topographies) of integrated circuits.

Clause 3 of the Bill states the basic principle of the protection of layout-design of integrated namely, that protection may only be obtained for layout designs that are original within the meaning of the Bill. Where the layout design has already been commercially exploited anywhere in the world the application for its registration must be filed within two years.

Clause 4 of the Bill provides that two conditions must be fulfilled in order to satisfy the requirement of originality, namely that the layout-design must be the result of the creator's own intellectual effort and that it must not be common place among creators of layout-design and manufacturers of integrated circuits at the time of its creation. This clause also deals with the situation in which a layout-design consists of a combination of elements that are common place. In such circumstances, protection shall be accorded to such a layout-design only if the combination, taken as a whole, satisfies the requirement of originality as set out.

Clause 5 of the Bill deals with the right to protection, and states the basic principle that the right of protection of a layout-design belongs to the creator. This right may be assigned or transferred by succession. This clause also states that where there are joint creators, the right to protection belongs to all creators jointly. Where the layout-design was created in the course of employment or by commission the right to protection shall belong, in the absence of contractual provisions to the contrary, to the employer or person who commissioned the work.

Clause 6 of the Bill deals with the scope of protection. It consists of the general rule and sets out the exceptions thereto.

Clause 6(1) sets out the acts concerning protected layout designs that can be lawfully performed only with the authorisation of the right holder. The first act requiring authorisation is the reproduction of a protected layout-

design, which includes the reproduction of a protected layout-design by the manufacturer of an integrated circuit incorporating such a layout-design.

Clause 6(2) (b) sets out the other acts which require the authorisation of the right holder, being the importation, sale or distribution for commercial purposes of the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit.

Clause 6(3) lists the exceptions and limitations of the rights of the right holder. Authorisation of the right holder is not required for the reproduction of a protected layout-design where the act is performed for private purposes or solely for the purpose of evaluation, analysis, research or teaching. Other exceptions include –

- (a) the case of ‘reverse engineering’ where a person may evaluate and analyse a protected layout-design and create a new layout-design;
- (b) “exhaustion of rights” where protected layout designs or integrated circuits incorporating such layout-designs have been put on the market by or with the consent of the right holder; and
- (c) in the case of a bona fide acquirer of integrated circuits in which a protected layout-design is incorporated such person, however, upon receiving sufficient notice that the layout design was unlawfully reproduced, may only import, sell or distribute such stock on hand or ordered before such time. Secondly, the person performing such acts after receiving such notice must pay the right holder such reasonable royalty as would be payable under a freely negotiated licence.

Clause 7 of the Bill deals with the commencement and duration of the protection. Protection commences either on the date on which the layout-design was first commercially exploited, anywhere in the world, or if the layout-design has not yet been commercially exploited, on the filing date of the application.

Clause 8 of the Bill sets out the requirements for filing an application for the registration of a layout-design. Applications are to be made on the prescribed form and be accompanied by a brief and precise designation. An application for protection of a layout-design shall be subject to the payment of the prescribed fee.

Clause 9 of the Bill makes provision for the maintenance and inspection of the Register of Layout-Designs, the requirements for a registration to be effected and with the contents of the registration and the publication.

Clause 10 of the Bill deals with the procedures to be applied where the essential content of the application has been taken from the layout-design of another person without his consent.

Clause 11 of the Bill makes provision for changes in ownership and the recordal thereof and submission of licence contracts to the [Registrar] [Controller].

Clause 12 of the Bill prescribes the conditions under which and procedures for the cancellation of the registration of a layout-design.

Clause 13 of the Bill provides that where an applicant's ordinary residence or business address is outside Mauritius he shall be represented by a legal practitioner resident and practising in Mauritius.

Clause 14 of the Bill deals with infringement and provides the definition of infringement as well as establish the entitlement of the right holder to enforce his rights by instituting legal proceedings against a person who has infringed or likely to infringe the rights conferred by the layout-design registration.

Clause 15 of the Bill provides for criminal sanction for intentional acts of infringement.

Clause 16 of the Bill introduces a measure by which the Government may in the public interest, exploit a protected layout-design.

Clause 17 of the Bill sets out the exercise of discretionary powers of the Controller including the discretion to extend the time for doing an act.

Clause 18 of the Bill gives the Supreme Court of Mauritius the jurisdiction to hear disputes relating to the application of the Layout-Design (Topographies) of Integrated Circuits Legislation.

J.K. Cuttaree

..... **2000**

*Minister of Industry, Commerce
and International Trade*

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

(NO. OF 2000)

ARRANGEMENT OF CLAUSES

Clause

PART I - PRELIMINARY

1. Short title
2. Interpretation

PART II - NATURE AND EXTENT OF PROTECTION

3. Protection
4. Originality
5. Right to protection
6. Effect of protection
7. Commencement and duration of protection

PART III - REGISTRATION

8. Application
9. Register, registration and publication
10. Right to transfer, rectification of register
11. Changes in ownership, contractual licences
12. Cancellation

PART IV - MISCELLANEOUS

13. Representation
14. Infringement
15. Offences
16. Exploitation by a government agency or third person
17. Exercise of discretionary powers, extension of time
18. Competence of court, appeals
19. Regulations
20. Commencement

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, 2000.

2. Interpretation

In this Act –

“Controller” means the Controller of Industrial Property appointed under section 36 of the Patents, Industrial Designs and Trademarks Act 2000 and any reference to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller;

“Court” means the Supreme 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 and/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 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 responsible for the subject of industrial property;

“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 6.

PART II - NATURE AND EXTENT OF PROTECTION

3. 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 4.

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

(3) Protection under this Act shall not be available for layout-designs which have been commercially exploited, anywhere in the world, for more than two years prior to the entry into force of this Act.

4. 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 inter-connections that are commonplace shall be protected only if 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 layout-design protection shall belong, in the absence of any express provisions to the contrary, to the person who commissioned the work or to the employer.

6. Effect of protection

(1) 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, the protection shall have the effect that the following acts shall be unlawful if performed without the authorization of the right holder -

- (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.

(3) The effect of protection of a layout-design under this Act shall 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 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) 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; 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) the performance of any of the acts referred to in subsection (2)(b) 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; however, after the time that the person referred to therein 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.
- (e) the performance of any act in respect of an identical layout design which is original and has been created independently by a third party.

7. Commencement and duration of protection

- (1) The protection 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) Protection 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 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 of the applicant and if different from the address, the habitual residence of the applicant;
 - (c) 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 but the application 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;
 - (d) specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and
 - (e) provide particulars establishing the right to protection under section 5.
- (4) 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 two months.
- (5) Where the defects are corrected within the time limit under subsection (4), 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.
- (6) Where the requirements of subsection (5) 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.
- (7) The Controller 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 deemed not to have been filed.

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

(10) Where the fee is not paid, the Controller shall notify the applicant that the application will be deemed not to have been filed unless payment is made within two 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. Register, registration and publication

(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 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 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 gazette.

10. Right to transfer, rectification of register

(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 Controller to transfer the application to him.

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

(3) The Controller shall send forthwith a copy of the request under subsection (2) to the right holder, and, the right holder may, within the

prescribed period and in the prescribed manner, send to the Controller a counter-statement of the grounds on which he relies.

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

11. Changes in ownership, contractual licences

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

(2) Once the layout-design has been registered, the change in ownership shall, at the request of any interested party, be made to the Controller, and thereby be recorded and published by the Controller; and such change shall have no effect against third parties until it has been recorded.

(3) Any licence contract 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.

12. Cancellation

(1) Any interested person may apply to the Court 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.

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

PART IV - MISCELLANEOUS

13. Representation

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

14. Infringement

(1) Infringement shall consist of the performance of any act which is unlawful under section 6(2).

(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 infringement or an imminent infringement, award damages and grant any other remedy available in law.

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

15. 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.

16. Exploitation by a government agency or third person

(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) the Court on application of any party finds 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 Minister is satisfied that the exploitation of the layout-design in accordance with this section would remedy such practice,

the Minister may decide that, even 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 the 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 therefor, 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) 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.

(4) Upon the request of the right holder, the Minister shall terminate the non-voluntary licence if 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 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.

(6) Where a third person has been 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 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.

(8) A decision of the Minister 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.

17. Exercise of discretionary powers, extension of time

(1) The Controller shall, before exercising any discretionary power vested in him by this Act adversely to any party to a proceeding before him, give that party an opportunity to be heard.

(2) Where the Controller is satisfied that the circumstances justify it, 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 and such extension may be granted notwithstanding the time for doing the act or taking the proceeding has expired.

18. Competence of court, appeals

(1) The Court shall have jurisdiction in cases of dispute relating to the application of this Act and in matters which, under this Act, are to be referred to the Court.

(2) No person who is aggrieved by the decision of the Controller shall appeal to the Court except within 28 days after the matter in dispute has been reviewed by the Committee under section 40 of the Patent, Industrial Designs and Trademarks Act and the Committee has given its findings.

19. Regulations

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

20. Commencement

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