

**THE LAYOUT-DESIGNS OF INTEGRATED
CIRCUITS ACT, 2016**

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GOVERNMENT OF ZAMBIA

ACT

No. 6 of 2016

Date of Assent: 5th April, 2016

An Act to establish a register for layout-designs or topographies of integrated circuits; to provide for a transparent legal framework for the protection, registration, rights over, infringement or use of, and access to, layout-designs or topographies of integrated circuits; to recognise, protect and support the inalienable rights and duties of qualified owners over their layout-designs or topographies of integrated circuits; to provide for the authorisation of exclusive assignments or licences by a qualified owner or prospective qualified owner of layout-design rights to an assignee or a licensee; to establish streamlined procedures for obtaining a compulsory licence, licence to remedy anti-competitive practices and use of layout-designs or topographies of integrated circuits for public or non-commercial purposes; to give effect to the provisions of the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights, and any other relevant international treaty or convention to which Zambia is a State Party; and to provide for matters connected with, or incidental to, the foregoing.

[6th April, 2016

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Layout-designs of Integrated Circuits Act, 2016, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title

- Interpretation 2. (1) In this Act, unless the context otherwise requires—
- Act No. 15 of 2010 “Agency” means the Patents and Companies Registration Agency established under the Patents and Companies Registration Agency Act, 2010;
- “appropriate institution” means any Ministry having responsibility for, or such public or statutory officer or body having powers under any other law over, the regulation, collection, use, compilation or dissemination of information in relation to layout-designs or topographies of integrated circuits;
- Act No. 15 of 2010 “Board” means the Board of the Agency constituted in accordance with the Patents and Companies Registration Agency Act, 2010;
- “commercially exploit” in relation to a layout-design, a copy of the layout-design or an integrated circuit in which the layout-design is incorporated, whether or not the integrated circuit is contained in another article, means to—
- (a) sell, let for hire or otherwise distribute by way of trade;
 - (b) offer or expose for sale or hire or other distribution by way of trade; or
 - (c) import for the purpose of sale, letting for hire or other distribution by way of trade; and
- “commercially exploited”, “commercially exploiting” and “commercial exploitation” shall be construed accordingly;
- “compulsory licence” means a licence granted by the Registrar in accordance with, and for the purposes stated in, section *thirty-nine*;
- “creator” means a person who came up with the layout-design for an integrated circuit a computer;
- “examiner” means an officer who determines whether or not a layout-design should be registered in accordance with section *fifteen*;
- “exclusive licence” means a licence, in writing, signed by or on behalf of a qualified owner authorising the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right that would otherwise be exercisable exclusively by the qualified owner, and

“exclusive licensee”, “exclusive assignee” and “exclusive assignment” shall be construed accordingly, with the necessary modifications;

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

“layout-design” means a functional design which consists of the pattern, shape or configuration of the three-dimensional disposition of the electrical, electromagnetic or optical elements and circuitry of an integrated circuit, and “integrated circuit” and “topography” shall be construed accordingly;

“material form” means any form of storage, whether visible or not, from which a layout-design, or a substantial part of the layout-design, can be reproduced;

“officer” means an employee or agent of the Agency;

“original” in relation to a layout-design, means the result of a creator’s own intellectual effort or which is not commonplace, at the time it was made, among creators of layout-designs and manufacturers of integrated circuits;

“prospective qualified owner” means, with respect to future layout-design rights that are—

(a) not the subject of an agreement of the kind referred to in subsection (1) of section *thirty-seven*, the person who will be the qualified owner of those rights when they come into existence; or

(b) the subject of an agreement of the kind referred to in subsection (1) of section *thirty-seven*, the person in whom those rights shall vest under that subsection when they come into existence;

“protected layout-design” means a layout-design or topography in respect of which the conditions of protection specified in this Act are fulfilled;

“public non-commercial purpose” means an act which is done—

(a) for the defence or national security of Zambia; or

(b) to assist in the exercise of powers and the implementation of civil defence measures during a state of emergency;

“qualified owner” means a person who is the owner of a layout-design or topography of integrated circuits, in accordance with section *fifteen*, or who is the owner of a layout-design which was not commercially exploited anywhere else in the world before it was commercially exploited in Zambia or in a qualifying country, and includes a person, whether or not that person is a qualified person, who is a successor in title to a qualified owner;

“qualified person” means—

(a) a natural person—

- (i) who is a citizen of or is domiciled or ordinarily resident in Zambia or a qualifying country; or
- (ii) who has a real and effective industrial or commercial establishment for the creation of layout-designs or for the production of topographies of integrated circuits in Zambia in a qualifying country; or

(b) a person, other than a natural person—

- (i) whose place of incorporation or place of business is in Zambia or qualifying country; or
- (ii) which has a real and effective industrial or commercial establishment for the creation of layout-designs or for the production of topographies of integrated circuits in Zambia or qualifying country;

and includes the Government and the government of a qualifying country;

“qualifying country” means—

(a) a country or territory, other than Zambia, which is a member of the World Trade Organisation; or

(b) a country or territory designated by the Minister as a qualifying country in accordance with section *four*;

“register” means the register of layout-designs and integrated circuits registered and maintained in accordance with section *twelve*;

“registered layout-design” means a layout-design registered in accordance with this Act or any other law before the commencement of this Act;

“Registrar” means the person appointed as Registrar under the Patents and Companies Registration Agency Act, 2010;

Act No. 15
of 2010

“reproduction” means the act or process of copying a layout-design in material form, whether directly or indirectly;

“World Trade Organisation” means the World Trade Organisation established by the Marrakesh Agreement done at Marrakesh on 15th April, 1994; and

“writing” includes an electronic message if the information contained therein is accessible so as to be usable for subsequent reference.

(2) In this Act a reference to—

(a) doing an act to a layout-design includes doing that act to a substantial part of the layout-design; and

(b) a copy of a layout-design includes a copy of a substantial part of the layout-design.

3. (1) This Act shall apply to registered layout-designs and topographies of integrated circuits.

Application

(2) Notwithstanding subsection (1), an action relating to a layout-design, a copy of the layout-design or an integrated circuit, registered under any other law, before the commencement of this Act, shall be dealt with in accordance with the law that applied before the commencement of this Act.

(3) Nothing in this Act shall be considered to affect any action taken under any other written law relating to the protection of intellectual property rights that is pending on the commencement of this Act and such action shall be continued and determined in accordance with the applicable written law.

(4) Despite subsection (1), this Act shall not apply to any idea, process or system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in a layout-design.

Designation of qualifying country **4.** The Minister may, by statutory instrument, designate a country or territory as a qualifying country if the Minister considers that provision has been or shall be made under the laws of that country or territory that shall give to a qualified owner, who is a qualified person, adequate protection in that country or territory in respect of a protected layout-design in which the qualified owner has rights.

Supremacy of Act **5.** Subject to the Constitution, where there is any inconsistency between this Act and any other written law relating to layout-designs or topographies of integrated circuits this Act shall prevail to the extent of the inconsistency.

Act to bind Republic **6.** This Act binds the Republic.

PART II

ADMINISTRATION AND REGISTRATION OF LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Administration of act and use of seal of Agency **7.** (1) The Agency is responsible for the administration and implementation of this Act.

(2) The Board may delegate the functions and powers of the Agency, specified under this Act, to the Registrar or an appropriate institution where the Board considers it necessary and expedient to do so for the better implementation of this Act.

Act No. 15 of 2010 (3) The seal of the Agency, kept in terms of the Patents and Companies Registration Agency Act, 2010, shall be used for the purposes of this Act and the impression made for such purposes shall be judicially noticed.

Functions of Registrar and delegation of functions Act No. 15 of 2010 **8.** (1) The Registrar shall, in addition to the Registrar's other functions and powers specified in the Patents and Companies Registration Agency Act, 2010, and any other law, exercise the powers and perform the functions conferred on the Registrar in this Act.

(2) The Registrar may, in writing, delegate to an officer, appointed under section *nine*, any of the functions and powers vested in the Registrar under this Act, except the power of delegation.

Appointment of officers **9.** The Board shall appoint one or more assistant registrars, such examiners and other officers as may be necessary for the implementation of this Act and who shall, subject to the control of the Registrar, exercise the powers or perform the functions conferred by this Act on an officer or as may be delegated by the Registrar.

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- 10.** An examination, investigation or any act undertaken in accordance with this Act shall not warrant the validity of such examination, investigation or act and no liability shall be incurred by a member of the Board, Agency, Registrar or any officer by reason of, or in connection with, any examination, investigation, act or other consequent proceeding. Non-warranty and non liability
- 11.** The provisions of the Patents Act relating to patent agents apply, with the necessary modifications, to this Act. Patent agents Cap. 400
- 12.** The Agency shall establish and maintain a register of layout-designs and integrated circuits, in which shall be entered— Register of layout-designs and integrated circuits
- (a) particulars of layout-designs of integrated circuits;
 - (b) notices of matters which are required by or under this Act to be entered in the register; and
 - (c) such other matters affecting the validity or proprietorship of layout-designs of integrated circuits as the Registrar considers necessary.
- 13.** A layout-design shall be eligible for protection, by registration in accordance with this Part, if the layout-design qualifies for registration as specified in section *fifteen*. Protection of layout-designs
- 14.** A qualified owner who is a qualified person may apply for the registration of a layout-design in the prescribed manner and form accompanied by prescribed fee. Application for registration
- 15.** (1) A layout-design may be registered if it is owned by a qualified owner, who is a qualified person, and— Registration of layout-designs
- (a) is original; or
 - (b) the layout-design consists of a combination of elements and interconnections that are not commonplace, the combination, taken as a whole, is original.
- (2) Subject to section *twenty-four*, where there exist identical and independently created layout-designs which satisfy the requirements of subsection (1), the layout-designs shall be protected regardless of when they were created.
- (3) A layout-design shall be considered not to have been created until it has been recorded in written form or incorporated into an integrated circuit, whichever is earlier.
- (4) The Registrar shall examine an application for registration of a layout-design and may refuse the application or accept the application unconditionally or subject to such amendments or modification as the Registrar considers necessary.

(5) The Registrar may, where the Registrar determines after accepting an application for registration of a layout-design but before registering the layout-design that the layout-design does not comply with subsection (1), and after hearing the applicant on the matter, withdraw the acceptance of the application.

(6) A layout-design when registered in accordance with subsection (5) is be deemed to have been registered from the date of application.

Advertise-
ments of
application

16. (1) Where an application of a layout-design has been accepted, the applicant shall, as soon as may be after acceptance, advertise the application as accepted in the prescribed manner, and the advertisement shall set forth all amendments or modifications subject to the application.

(2) Where after advertisement of an application:

(a) an error in the application has been corrected; or

(b) the application has been permitted to be amended under section *eighteen*,

the Registrar may in the Registrar's discretion cause the application to be advertised again or, in any case falling under subsection 2(b), may, instead of causing the application to be advertised again, notify the applicant in the prescribed manner the correction or amendment made in the application.

Opposition
to
Registration

17. (1) Any person may, within two months from the date of the advertisement or re-advertisement of an application for registration give notice to the Registrar in writing in the prescribed manner and accompanied by a statement of the grounds of opposition.

(2) The Registrar may allow for an extension of the notice period, not exceeding one month on application made to the Registrar in the prescribed manner.

(3) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counterstatement of the grounds on which the applicant relies for the application and if the applicant does not do so, the applicant is deemed to have abandoned the application.

(4) The Registrar may after considering the evidence and hearing any representations or arguments by the parties, decide whether registration is to be permitted and, if it is, with what amendments, modifications, conditions or limitations it is to be permitted.

(5) An appeal shall lie from any decision of the Registrar under this section to the High Court.

18. The Registrar may upon payment of a prescribed fee by the applicant permit—

Corrections
and
Amendments

- (a) at any time whether before or after acceptance of an application of registration under section *sixteen*, the correction of any error in or in connection with the application or permit an amendment of the application; or
- (b) the correction of any error in or an amendment of, a notice of opposition or counterstatement under section *seventeen*.

19. (1) Subject to the provisions of section *fifteen* (5), when an application for the registration of the layout-design has been accepted and either—

Registration

- (a) the application has not been opposed and time for notice of opposition has expired; or
- (b) the application has been opposed and the opposition has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error or unless the Tribunal or Supreme Court otherwise directs, register the layout-design, and once registered, the date of the application is deemed to be the date of registration, except that the foregoing provisions of this subsection, relating to the date as of which a layout-design shall be registered and to the date to be deemed to be the registration, shall, as respects a layout-design registered under this Act with the benefit of any enactment relating to international arrangements, have effect subject to the provisions of the enactment.

(2) On the registration of a layout-design, the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the Layout-Design of Integrated Circuits Registry.

(3) Where registration of a layout-design is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

Certificate of registration

20. The Registrar shall, after entering the layout-design in the register, as provided in subsection (5) of section *fifteen*, issue a certificate of registration, in the prescribed form, to the qualified owner and cause to be published, in the prescribed form, a notice of the registration in the Industrial Property Journal.

Effect of registration of layout-design

21. The effect of registration of a layout-design shall be to protect the layout-design and grant a qualified owner, within Zambia, subject to this Act, for the duration of the registration, the right to exclude other persons from reproducing, making, importing, using or disposing of the registered layout-design.

Disclosure without qualified owner's knowledge or consent

22. The registration of a layout-design shall not be invalid if the layout-design was disclosed, used or known prior to the registration of the layout-design without the knowledge or consent of the qualified owner and the qualified owner applied for registration of the layout-design with all reasonable diligence before learning of the disclosure, use or knowledge.

Refusal to register

23. Where an application is not compliant with section *fifteen*, is not made in the prescribed manner and form or if the qualified owner has not paid the prescribed fee, the Registrar shall refuse to register the layout-design and return the application to the qualified owner.

Duration of protection

24. (1) A registered layout-design shall be protected for a period of ten years from the date of application for registration and may be renewed for a period of five years, subject to payment of a prescribed renewal fee.

(2) Where the prescribed renewal fee is not paid, within a prescribed period, the registration of the layout-design shall lapse, except that the Registrar may on application and subject to the payment of such additional prescribed fee, extend the period for the payment of the prescribed renewal fee for a period not exceeding six months.

(3) Notwithstanding subsection (1), the protection granted to a layout-design shall cease after fifteen years from the date of application for registration of the layout-design.

25. (1) Where the registration of a layout-design has lapsed owing to non-payment of the prescribed renewal fee within the prescribed period or the extended period, in accordance with subsection (2) of section *twenty-four*, the qualified owner may, in the prescribed manner and form and on payment of the prescribed fee, apply to the Registrar, within six months from the extended period, for the restoration of the registration of the layout-design.

Restoration
of lapsed
registration

(2) If the Registrar is satisfied that the omission to pay the prescribed renewal fee was unintentional and that no undue delay has occurred in the making of the application, the Registrar shall advertise the application in the prescribed manner, and any person wishing to object to the registration shall do so within a prescribed period, manner and form.

(3) The Registrar shall, where there is no objection to the restoration of the lapsed registration, subject to the payment of such fee that remains to be paid, restore the registration of the layout-design and issue a certificate of payment of renewal fee to the qualified owner.

(4) The Registrar shall, where there is an objection to the restoration of the lapsed registration, after investigating the matter and hearing the applicant and the objector, restore the registration and issue a certificate of payment of renewal fee to the qualified owner or dismiss the application for restoration of the lapsed registration of the layout-design.

26. Subject to this Act, the Registrar shall, upon request of any person and on payment of a prescribed fee, furnish copies of any document lodged in the register or particulars from the register.

Registrar to
furnish
information
from register

27. The Registrar may, upon request of any person and on payment of a prescribed fee, issue a certificate of status of a registered layout-design which shall be conclusive evidence of the registered layout-design as of the date and time of the issuance of the certificate of status.

Certificate of
status

28. Where the Registrar is satisfied that a certificate of registration issued in accordance with section *twenty* has been lost or destroyed, the Registrar may, on payment of a prescribed fee, cause a duplicate of the certificate of registration to be sealed and issued to the qualified owner.

Loss or
destruction
of certificate

Correction of
clerical errors

29. The Registrar may, on application made in the prescribed manner by a registered user of a layout-design, and after notice to the qualified owner, correct any clerical error, or enter any change in the name, address or description of the registered user.

Amendment
of registered
layout-
design

30. (1) A qualified owner of a layout-design may apply to the Registrar, in the prescribed manner and form, for the amendment of the registered layout-design and shall, in making the application, set out the nature of the proposed amendment and furnish full reasons for the amendment.

(2) An application for amendment, as specified in subsection (1), shall be published and served, by the applicant requiring the amendment, on such persons as the Registrar may consider necessary, in the prescribed manner and form.

(3) Where an application for an amendment has been published and served, as specified in subsection (2), any person may oppose the application, made in accordance with subsection (1), within a prescribed time, form and manner.

(4) If an application for an amendment has been published and served, as specified in subsection (2), and there is no objection to the amendment, the Registrar shall make a decision on the matter.

(5) If an application for an amendment has not been published and served, as specified in subsection (2), or there is an objection to the amendment, the qualified owner or the person raising the objection may take the matter to the High Court for determination.

(6) An application for amendment of a registered layout-design, as specified in subsection (1), shall not be allowed if—

(a) the effect of the amendment would be to introduce new matter or substantive matter not disclosed in the application for the registration of the layout-design; or

(b) the scope of registration after amendment would be wider than before the amendment.

Correction of
Register

31. (1) The Registrar may, on application made in the prescribed manner by the qualified owner—

(a) correct any error in the name, address or description of the qualified owner of a layout-design, or any other entry relating to the layout-design;

- (b) enter any change in the name, address or description of the person who is registered as qualified owner of a layout-design; or
- (c) cancel the entry of a layout-design on the register, and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to the Registrar.

(2) The Registrar may, on application by a qualified owner of a layout-design made in accordance with subsection (1) of this section and section *eighteen* or on the Registrar's self initiative, order the register to be rectified by making a correction, an amendment or a deletion of any entry in the register.

(3) The Registrar may, on application made in the prescribed manner by a registered user of a layout-design, and after notice to the qualified owner, correct any error, or enter any change in the name, address or description of the registered user.

(4) Where the Registrar intends to make an order without the application of the qualified owner or the registered user, the Registrar shall give notice of the intention to do so to the qualified owner or the registered user and shall give the qualified owner or the registered user an opportunity of being heard before making the order.

32. (1) A person may apply to the High Court for the revocation of the registration of a registered layout-design on the following grounds:

Grounds for
revocation of
registration
of registered
design

- (a) that the application for the registration of the registered layout-design was not made by the qualified owner as specified in section *fifteen*;
- (b) that the registration of the layout-design was done fraudulently;
- (c) that the layout-design was not qualified to be registered as provided in section *fifteen*;
- (d) that the application for the registration of the layout-design contains a false statement or representation which is material and which the qualified owner knew was false at the time when the statement or representation was made; or

(e) that the Registrar should have refused to register the layout-design in accordance with section *twenty-three*.

(2) An order of the High Court revoking the registration of a registered design, in accordance with this section, shall be served on the qualified owner or person purporting to be the qualified owner and lodged with the Registrar in the prescribed manner.

Inspection
of register
and
evidentiary
proof

33. (1) Subject to this Act, the register shall, on payment of the prescribed fees, be open for inspection by the public during prescribed hours.

(2) The register is *prima facie* evidence of any matters required or authorised by or under this Act to be entered therein.

(3) A copy of any entry in the register or an extract from the register, certified by the Registrar shall be admitted in evidence without further proof and without production of the original copy.

(4) An officer need not verify whether authorisation to access the register has been granted to a person undertaking a search of the register.

Regulations
on
registration
processes
and
procedures

34. (1) The Minister may, by statutory instrument, make regulations for, or with respect to, any matter under this Part that is to be prescribed or necessary for carrying out or giving effect to registration processes and procedures.

(2) Without limiting the generality of subsection (1), regulations made in accordance with that subsection, may be made on the following matters:

(a) the format of applications for the registration of layout-designs of integrated circuits;

(b) the payment of fees in respect of any matter or anything done or provided for under this Part;

(c) the procedure to be followed in connection with any application or request to the Registrar or any proceeding before the Registrar;

(d) the provision of copies of any documents registered in the register and the certification of such copies;

(e) the making of searches to the register, including the times when, and the manner in which, the searches may be made;

- (f) the service of notices and other documents with respect to the register; or
- (g) any matter required to be provided for in relation to the register.

35. (1) The Registrar shall arrange the periodic publication of an Industrial Property Journal which shall contain particulars of applications for layout-designs or topographies of integrated circuits and other proceedings or matters which the Registrar may consider desirable or which shall be published in the Journal.

Industrial
property
journal

(2) The Registrar shall make provision for selling of copies of the Industrial Property Journal at such price and in such manner as the Board may direct.

PART III

OWNERSHIP, LAYOUT-DESIGN RIGHTS AND LICENSING

36. (1) Subject to this Act or an agreement referred to in subsection (1) of section *thirty-seven*, the qualified owner of a layout-design shall be as follows:

Ownership
of layout-
design

- (a) where the layout-design is not created as a result of a commission or in the course of employment, the creator of the layout-design;
 - (b) where the layout-design is created as a result of a commission, the person who commissioned the layout-design; and
 - (c) where the layout-design is not created as a result of a commission but is created by an employee in the course of employment, the employer.
- (2) Any condition in a contract of employment is void if it—
- (a) requires an employee to assign to the employer a layout-design made by the employee otherwise than within the course of employment; or
 - (b) restricts the right of an employee in a design made by the employee more than one year after the termination of the contract of employment.

(3) A qualified person may be a qualified owner even if the qualified person shares ownership with a person who is not a qualified person.

(4) Where a layout-design is owned by more than one qualified owner, references in this Act to the qualified owner shall be to all the qualified owners so that any requirement for the consent of a qualified owner includes the consent of all qualified owners.

Prospective
ownership
of layout-
design

37. (1) Where, by an agreement made in relation to a future right in a layout-design that is signed by or on behalf of the person who would be the qualified owner of the right on its coming into existence, the person assigns the future right in the layout-design, wholly or partially, to an assignee, the right, on coming into existence, vests in the assignee or the assignee's successor in title.

(2) Where, at the time a layout-design right comes into existence, the person who would have been entitled to the right dies, the right shall devolve as if, immediately before the person's death, the person had been the qualified owner of the right.

(3) A licence granted in respect of a future layout-design right to a prospective qualified owner binds each successor in title to the prospective qualified owner, except a purchaser in good faith for value without actual or constructive notice of the licence and a person who derives title from the purchaser.

Exclusive
rights of
qualified
owner

38. A qualified owner has the exclusive right to—

- (a) reproduce and authorise the reproduction of all or part of the registered layout-design, whether by incorporation into an integrated circuit or otherwise;
- (b) commercially exploit and authorise the commercial exploitation of the registered layout design; and
- (c) prevent any person without the qualified owner's consent from using, offering for sale, selling, distributing or importing for such purposes of a registered layout-design or an integrated circuit incorporating such a registered layout-design or an article incorporating such integrated circuit containing such registered layout-design for the use of which such person is not entitled under this Act.

Compulsory
licence

39. (1) A person who claims that the person requires a licence to do any act, specified in section *thirty-eight*, may apply to the High Court, giving legitimate reasons, for the grant of a compulsory licence on any of the following grounds:

- (a) there is no production of the protected layout-design in Zambia;
- (b) there is no production for sale in Zambia of the protected layout-design; or

(c) there is production of the protected layout-design in Zambia but the protected layout-design produced is sold at unreasonably high prices or does not meet the public demand without any legitimate reason.

(2) An application to the High Court, in accordance with subsection (1), shall only be made after the applicant for the compulsory licence has made efforts to obtain authorisation from the qualified owner, on reasonable commercial terms and conditions, but such efforts have not been successful within a reasonable period of time.

(3) If the High Court is satisfied that any of the grounds referred to in subsection (1) has been established, the High Court may make an order for the grant of a compulsory licence in accordance with the application made to the High Court.

(4) The High Court shall, where it makes an order for the grant of a compulsory licence, specify in the order the remuneration to be paid to the qualified owner, taking into account the economic value of the compulsory licence granted.

(5) A compulsory licence granted, in accordance with subsection (3), shall be—

(a) non-exclusive and non-assignable; and

(b) subject to the payment of the remuneration specified in accordance with subsection (4).

(6) A compulsory licence granted, in accordance with this section may, on the application of the qualified owner, be terminated by the High Court if the Court is satisfied that the ground on which the compulsory licence was granted has ceased to exist.

40. (1) A right in a registered layout-design is movable property and is transmissible by any means by which such property may be lawfully transmitted, including assignment, licence, testamentary instrument and operation of law.

Transmission
of layout-
design

(2) A transmission of a layout-design, as provided in subsection (1), may be total or partial and shall not be effective unless it is in writing, signed by or on behalf of the qualified owner and registered in accordance with this Act.

(3) A transmission of a layout-design, as provided in subsection (1), binds each successor in title to the qualified owner, except a purchaser in good faith for value without actual or constructive notice of the transmission and a person who derives title from the purchaser.

Registration
of
Assignments
and
Transmissions

41. (1) Where a person becomes entitled by assignment or transmission to a registered layout-design, the person shall apply in the prescribed manner to the Registrar to register the person's title, and the Registrar shall, on receipt of the application and on proof of the person's title to the Registrar's satisfaction, register the person as the proprietor of the layout-design and shall cause particulars of the assignment or transmission to be entered on the register.

(2) Where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the party have been determined by a competent court.

(3) Except for the purpose of an application before the Registrar under subsection (1) or an appeal from an order thereon, or an application under section *forty* or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with subsection (1), shall not be admitted in evidence by the Registrar or the High Court in proof of title to the layout-design by assignment or transmission unless the Registrar or the High Court, as the case may be, otherwise directs.

Registered
Users

42. Subject to the provisions of section *thirty-eight*, a person other than the qualified owner of a layout-design may be registered as a registered user thereof.

Registration
as Registered
User

43. (1) Where it is proposed that a person should be registered as a registered user of a layout-design, the qualified owner and the proposed registered user shall jointly apply in writing to the Registrar in the prescribed manner and every such application shall be accompanied by—

(a) the agreement in writing or a duly authenticated copy thereof, entered into between the qualified owner and the proposed registered user with respect to the permitted use of the layout-design; and

(b) an affidavit or solemn declaration made by the qualified owner or by some person authorised to the satisfaction of the Registrar to act on the person's behalf.

(2) Where the requirements of subsection (1) have been complied with, the Registrar shall register the proposed registered user.

(3) The Registrar shall issue notice in the prescribed manner of the registration of a person as a registered user to other registered users of the layout-design, if any.

(4) The Registrar shall, if so requested by the applicant, take steps to secure the information given for the purposes of an application under this section from being disclosed to rivals in trade, other than matters entered in the register.

44. (1) An exclusive assignee or licensee has the same rights against a successor in title to the qualified owner as against the assignor or licensor.

Rights of
exclusive
assignee or
licensee

(2) An exclusive assignee or licensee has, except against the qualified owner, the same rights and remedies in respect of matters occurring after the transmission effected in accordance with section *forty*.

(3) An exclusive assignee's or licensee's rights and remedies are concurrent with those of the qualified owner.

(4) In any proceedings brought by an exclusive assignee or licensee, a defendant may avail any defence that would have been available if the proceedings had been brought by the qualified owner.

(5) Nothing in this Act shall confer on a registered user or licensee of a layout-design any assignable or transmissible right to the use thereof, except in the following circumstances:

(a) where the registered user being an individual enters into a partnership with any other person for carrying on the business concerned; but in any such case the firm may use the layout-design, if otherwise in force, only for so long as the registered user is a member of the firm; or

(b) where the registered user being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the layout-design, if otherwise in force, only for so long as any partner of the original firm at the time of its registration as registered user, continues to be a partner of the reconstituted firm.

45. (1) Without prejudice to the provisions of section *forty-three*, the registration of a person as registered user—

Cancellation
of Registered
User

(a) may be cancelled by the Registrar on application in writing in the prescribed manner of the qualified owner or of the registered user or of any other registered user of the layout-design;

(b) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:

- (i) that the registered user has used the layout-design otherwise than in accordance with the agreement under of section *forty-three*;
- (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for registration which if accurately represented or disclosed would not have justified the registration of the registered user;
- (iii) that the circumstances have changed since the date of registration in such a way that at the date of such application for cancellation they would not have justified registration of the registered user; or
- (iv) that the registration ought not to have been effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested.

(c) may be cancelled by the Registrar on the Registrar's own motion or on the application in writing in the prescribed manner by any person on the ground that any stipulation in the agreement between the qualified owner and the registered user regarding the layout-design is either not being enforced or is not being complied with; or

(d) may be cancelled by the Registrar if the layout-design is no longer registered.

Call for
information
relating to
registered
user
agreements

46. (1) The Registrar may, at any time during the continuation of the registration of the registered user, by notice in writing, require the qualified owner to confirm to the Registrar within one month that the agreement filed under section *forty-three* continues to be in force.

(2) If the qualified owner fails to furnish the confirmation within one month as required under section *forty-three*, the registered user ceases to be the registered user on the day immediately after the expiry of the said period and the Registrar shall notify the same.

PART IV

PUBLIC NON-COMMERCIAL PURPOSES

- 47.** An act done by the Government, or by a person authorised, in writing, by the Government, in relation to a protected layout-design shall not be an infringement of the rights of the qualified owner in the layout-design if the act is done for a public non-commercial purpose. Use for public non-commercial purpose
- 48.** The right to do an act in relation to a protected layout-design in accordance with section *forty-seven*— Scope and nature of right
- (a) is non-exclusive and non-assignable;
 - (b) is limited to a public non-commercial purpose;
 - (c) is subject to the terms of any authorisation referred to in that section;
 - (d) shall not permit the sale of the layout-design, a copy of the layout-design or an integrated circuit in which the layout-design is incorporated, whether or not the integrated circuit is contained in another article; and
 - (e) is limited to the doing of the act in the Republic.
- 49.** (1) Where an act has been done in accordance with section *forty-seven*, the Government shall— Duty to inform qualified owner
- (a) if the act has been done in situations of national emergency or other circumstances of extreme urgency, as soon as reasonably practicable, inform the qualified owner that the act has been done; or
 - (b) in any other case, inform the qualified owner promptly that the act has been done.
- (2) The Government shall give to the qualified owner such information about the acts, done in accordance with subsection (1), as the qualified owner requires.
- (3) Nothing in subsection (1) or (2) requires the Government to inform the qualified owner or disclose information to the qualified owner if doing so shall or may prejudice the defence or security of the Republic.
- 50.** Where an act is done in accordance with section *forty-seven*, the Government shall pay such compensation to the qualified owner— Qualified owner entitled to remuneration
- (a) as may be agreed between the Government and the qualified owner;

- (b) as may be determined by a method agreed between the Government and the qualified owner; or
- (c) in default of agreement, as is determined by the High Court on the application of either the Government or the qualified owner.

Reference of
disputes as
to
government
use

51. (1) Any dispute as to—

- (a) the exercise by the government or a person authorised by the Minister of the powers conferred by section *forty-seven*;
- (b) the terms for the use of a registered layout-design for the service of the State under section *forty-seven*; or
- (c) the right of any person to receive any payment determined in terms of paragraph (b);

(2) A dispute referred to under subsection (1) may be referred to the High Court by any party to the dispute.

(3) In any proceedings under this section to which a government or a person authorised is party to, the Minister may—

- (a) if the qualified owner of the registered design concerned is a party to the proceedings, apply for revocation of the registration of the design upon any ground upon which its registration may be revoked under section *thirty-two*; or

(b) in any case, put in issue the validity of the registration of the design concerned without applying for its revocation.

(4) In determining any dispute arising from section *fifty-one*, as to terms for the exploitation of a registered layout-design for the service of the State, the High Court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received or may be entitled to receive, directly or indirectly, from the government in respect of the design in question.

Licence to
remedy anti-
competitive
practice

52. (1) A person who claims that the person requires a licence to do any act referred to in section *forty-seven*, may apply to the High Court for the grant of a licence on the ground that the grant of the licence is necessary to remedy an anti-competitive practice.

(2) If the High Court is satisfied that the ground, referred to in subsection (1), has been established, the Court may make an order for the grant of a licence in accordance with the application upon such terms as the Court considers appropriate in the circumstances.

(3) The High Court shall specify, in the order granting the licence, such remuneration that is to be paid to the qualified owner for the licence, as the Court considers reasonable.

- 53.** (1) A licence granted under section *forty-two* is—
- (a) non-exclusive and non-assignable; and
 - (b) subject to the payment to the qualified owner of the compensation specified in the court order as provided in that section.

Scope and
nature of
licence

(2) Any licence granted under section *forty-two* may, on the application of the qualified owner, be terminated by the High Court where the Court is satisfied that the ground on which the licence was granted ceased to exist.

PART V

INFRINGEMENT OF RIGHTS IN LAYOUT-DESIGNS

54. A registered layout-design is infringed by a person who, not being the qualified owner of the layout-design or a registered user thereof, does any acts specified in section *thirty-eight*.

Infringement
of layout-
design

55. It is not an infringement of a qualified owner's right in a protected layout-design—

Non-
infringing
acts

- (a) if the reproduction is of any part of a protected layout-design that does not comply with the requirement of originality as specified in section *fifteen*;
- (b) if the reproduction is done for a private purpose and not for the purpose of commercial exploitation;
- (c) if the reproduction is done for the sole purpose of evaluation, analysis, research or teaching;
- (d) if it is to use the results of an evaluation, analysis or research to create a different layout-design that complies with the requirement of originality specified in section *fifteen*;
- (e) if it is to do any act specified in section *fifteen* in respect of the different layout-design referred to in paragraph (d);
- (f) if it is to do any act specified in section *fifteen* for a qualified owner of another protected layout-design—
 - (i) that is identical to the first-mentioned protected layout-design; and
 - (ii) that is independently created; or

(g) if it is to commercially exploit a copy of the protected layout-design, an integrated circuit in which the layout-design is incorporated or an article that contains an integrated circuit in which the layout-design is incorporated after the reproduction, integrated circuit or article has been commercially exploited, whether in the Republic or elsewhere, by, or with the consent of, the qualified owner.

Innocent
infringement

56. (1) The rights of a qualified owner in a protected layout-design shall not be infringed by a person who unknowingly commercially exploits or authorises the commercial exploitation of—

- (a) a copy of a protected layout-design;
- (b) an unauthorised integrated circuit, being an integrated circuit in which the protected layout-design is incorporated; or
- (c) an article that contains an integrated circuit;

if, at the time when the person acquired the copy, integrated circuit or article, the person did not know and could not be reasonably expected to have known that the copy or the integrated circuit was unauthorised or that the article contained an unauthorised integrated circuit.

(2) Where the person, referred to in subsection (1), becomes aware or could reasonably be expected to have become aware that the copy or the integrated circuit was unauthorised or that the article contains an unauthorised integrated circuit, that subsection continues to apply to any subsequent commercial exploitation of the copy, integrated circuit or article only if the person pays to the qualified owner such remuneration—

- (a) as may be agreed between the person and the qualified owner;
- (b) as is determined by a method agreed between the person and the qualified owner; or
- (c) in default of agreement, as is determined by the High Court on an application made by either the person and the qualified owner, taking into account such royalties as would reasonably be payable under a freely negotiated licence in respect of the protected layout-design.

(3) In this section—

- (a) a reproduction of a protected layout-design is unauthorised if it is made without the consent of the qualified owner of the layout-design; or
- (b) an integrated circuit which incorporates a protected layout-design is unauthorised if such incorporation is done without the consent of the qualified owner of the layout-design.

57. (1) Where the qualified owner of a right in a layout-design, an exclusive assignee or licensee brings proceedings for any infringement of a layout-design in respect of which the qualified owner or registered user has concurrent rights of action, the qualified owner or registered user need not—

Infringement proceedings where concurrent rights exist

- (a) join the other as a plaintiff; or
- (b) add the other as a defendant;

unless the High Court otherwise orders.

(2) A qualified owner or registered user who is added as a defendant, in accordance with subsection (1), shall not be liable for costs in the proceedings unless the qualified owner or registered user takes part in the proceedings.

(3) Where any proceedings for infringement of a qualified owner's right in a layout-design is brought and the proceedings relate wholly or partly to an infringement in respect of which a qualified owner and registered user have concurrent rights of action, the High Court shall—

- (a) in assessing damages, take into account the terms of the assignment or licence and any pecuniary remedy previously awarded or available to either of them in respect of the infringement;
- (b) if an account of profits is directed, apportion the profits between them as the High Court considers just, subject to any agreement between them; and
- (c) not, if an award of damages has been made or an account of profits has been ordered in favour of either of them, direct that an account of profits be made in favour of the other in respect of the infringement.

58. (1) A qualified owner may take proceedings and seek a remedy by way of damages, injunctions, delivery up, accounts or otherwise with respect to an infringement of the rights in a protected layout-design as are available with respect to other property rights.

Remedies for infringement

(2) In any proceedings in which damages may be awarded, the High Court may, having regard to all of the circumstances of the case including the flagrancy of the infringement and any benefit accruing to the defendant by reason of the infringement, award additional damages.

Order for
delivery up

59. (1) Where a person has in the person's possession, custody or control—

(a) for commercial exploitation, an integrated circuit in which a protected layout-design is incorporated; or

(b) any article which the person knows or has reason to believe has been or is to be predominantly used to make integrated circuits in which a protected layout-design is incorporated;

a qualified owner of the protected layout-design may apply to the High Court for an order that the integrated circuit or article, referred to in paragraph (b), be delivered to the qualified owner or to another person that the Court specifies.

(2) A qualified owner shall, by post or otherwise, notify a registered user who has a concurrent right of action in respect of an infringement of a layout-design before applying for an order for delivery up in accordance with subsection (1).

(3) The High Court may, on the application of an exclusive assignee or exclusive licensee, make an order for delivery up which the Court considers just, having regard to the terms of the assignment or licence.

(4) The High Court shall not make an order for delivery up unless it also makes, or it appears to the Court that there are grounds for making, an order in accordance with section *sixty*.

(5) A person to whom an integrated circuit or an article, referred to in paragraph (b) of subsection (1), is delivered up shall retain the integrated circuit or article pending the making of an order, or a decision not to make an order, in accordance with section *sixty*.

Order for
forfeiture,
destruction
and disposal

60. (1) An application may be made to the High Court for—

(a) an order that the integrated circuit or article delivered up, in accordance with section *fifty-nine*, be forfeited to the qualified owner, destroyed or disposed of as the Court considers appropriate, in accordance with laws relating to public health and the environment; or

(b) a decision that no order be made under subsection (a).

(2) In deciding what order or decision to make, in accordance with subsection (1), the High Court shall have regard to whether other remedies available to the plaintiff would be adequate to compensate the plaintiff and protect the interests of the plaintiff.

(3) The High Court shall issue directions as to the service of notice on persons having an interest in the integrated circuit or article delivered up.

(4) A person having an interest in the integrated circuit or article delivered up is entitled to—

- (a) appear in proceedings for an order under this section, whether or not the person is served with notice; and
- (b) appeal against any order made, whether or not that person appears in the proceedings.

(5) An order made in accordance with this section shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(6) Where there is more than one person interested in the integrated circuit or article delivered up, the High Court may direct that the integrated circuit or article be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it considers appropriate.

(7) If the High Court decides that no order should be made in accordance with this section, the person in whose possession, custody or control the integrated circuit or article was before being delivered up is entitled to its return.

61. A person shall not institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered layout-design.

No action
for
infringement
of an
unregistered
layout-
design

62. (1) In any proceedings to enforce a qualified owner's rights in accordance with this Part, evidence may be submitted by affidavit asserting relevant facts showing that the—

Affidavit
evidence

- (a) plaintiff is a qualified owner of the layout-design; and
- (b) layout-design is a protected layout-design.

(2) Where the High Court considers, on the application of a party, that the deponent to an affidavit should be available to be cross-examined with respect to matters asserted in the affidavit, it shall exclude the admission of the affidavit without the appearance of the deponent.

Groundless
threat of
infringement
proceedings

63. (1) Where a person, by means of circulars, advertisements or otherwise, threatens another person with proceedings in respect of an infringement of a right under this Part, whether or not the person making the threat is a qualified owner, the High Court may, on the application of a person aggrieved, do any of the following:

(a) declare that the threat is unjustified;

(b) grant an injunction against the continuance of the threat;

or

(c) award compensation for any damage sustained.

(2) The High Court shall not make any order, as specified in subsection (1), if the defendant satisfies the Court that the acts in respect of which the proceeding was threatened constituted, or would constitute, an infringement of a qualified owner's right under this Part.

(3) The mere notification of the existence of a right, as specified in this Part, shall not constitute a threat of a proceeding for the purposes of subsection (1).

(4) An application may not be brought under this section where the threat is to bring a proceeding for an infringement that is alleged to consist of making or importing anything.

(5) Nothing in this section shall render a legal practitioner liable to an action under this section in respect of an act done by the legal practitioner in a professional capacity on behalf of a client.

PART VI

GENERAL AND ENFORCEMENT PROVISIONS

Proceedings
before
Registrar

64. (1) The Registrar has the power to hold proceedings for purposes of an opposition to Registration under section *seventeen*.

(2) Subject to this Act, evidence in any proceedings before the Registrar shall be given by affidavit, except that the Registrar may, if the Registrar considers it appropriate in any particular case, take oral evidence on oath in lieu of, or in addition to, the evidence given by affidavit and may allow a witness to be cross-examined on the affidavit or oral evidence.

(3) In all proceedings before the Registrar, the Registrar has power to award to any party such costs as the Registrar may consider reasonable and to direct how and by what party they are to be paid.

(4) Where there is no agreement as to costs, the costs shall be taxed by the High Court and payment may be enforced in the same manner as if they were costs allowed by the High Court.

65. The powers, rights and privileges of the Registrar in proceedings before him under this Act shall be the same as those conferred upon commissioners by the Inquiries Act and the provisions of that Act shall, with the necessary modification, apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before the Registrar.

Registrar's
powers in
obtaining
evidence
Cap. 41

66. The Registrar shall not, in the discharge of any function or exercise of any power, be bound by the rules of evidence or by rules of procedure of any court and may conduct proceedings in such manner as the Registrar considers appropriate and admit any evidence, written or oral, whether or not such evidence would be admissible in civil or criminal proceedings.

Rules of
evidence or
procedure

67. The Registrar may fix the time and place at which proceedings held before the Registrar may take place.

Time and
place of
sitting

68. If, due to circumstances beyond the control of a person, a relevant act that is required, by this Act, to be done within a prescribed time is not or cannot be done within that time, the Registrar may, on application by the person, extend the time for doing the act.

Extension of
time

69. Where the Registrar is required, as provided in this Act, to do any act or thing and no time or period is provided within which the act or thing is to be done, the Registrar is to do the act or thing as soon as practicable.

Registrar to
act as soon
as
practicable

70. Any action or proceeding relating to the infringement of a right provided for in this Act shall be brought before the High Court.

Infringement
of rights

71. (1) Where a person is not satisfied with the decision of the Registrar, the person may appeal against the decision to the High Court.

Appeals

(2) Subject to this Act, an appeal against a decision of the Registrar shall be brought within three months after the date of the receipt of the decision or within such further time as the High Court may allow.

References
to High
Court

72. When any matter, that is to be decided by the Registrar, appears to involve a complex point of law, the Registrar may, after giving notice to the parties, refer the matter to the High Court for determination and the Registrar shall act in accordance with the decision of the High Court.

Assessors
to appear in
High Court

73. In any proceeding before the High Court, the Court may call assessors who are experts in intellectual property or the relevant field.

Lodging and
authentication
of
documents

74. (1) Any application, notice or document authorised or required, in accordance with this Act, to be lodged, made or given at the Agency, to the Registrar or to any other officer may be delivered by hand, sent by registered post or lodged electronically.

(2) An authentication shall not be required in respect of any document lodged in the Agency.

Expenses
relating to
administra-
tion

75. All monies necessary for the administration and implementation of this Act shall be paid out of monies appropriated for the purpose by Parliament.

Use of
“registered”

76. For the purposes of this section, the use in the Republic in relation to a layout-design of the word “registered”, or of any other word or symbol importing a reference, express or implied, to registration shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in the Republic and that the design is in fact so registered for the goods or services in question.

Authorisation
to publish
advertisement
or notice

77. (1) An advertisement or notice required to be published under this Act, other than a notice issued by the Minister, shall not be published unless it is in the prescribed form and the Registrar has approved the contents of the advertisement or notice.

(2) An advertisement or notice that is published in contravention of subsection (1) shall have no legal effect for purposes of this Act.

78. A person who makes or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, commits an offence.

Falsification
of entries in
register

79. A person who makes a representation—

(a) with respect to a layout-design not being registered to the effect that it is registered;

(b) with respect to a part of a registered layout-design not being a part separately registered as a design to the effect that it is so registered; or

(c) to the effect that the registration of a layout-design gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not give that right;

Falsely
representing
a layout-
design as
registered

commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

80. A person who alters or defaces, makes any additions to it or partly removes, erases or obliterates any document issued by the Registrar commits an offence.

Altering of
documents

81. (1) A person who—

(a) for the purpose of deceiving the Registrar or any other officer in the execution of this Act;

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder; or

(c) makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false;

Deceiving or
influencing
Registrar or
officer

commits an offence and is liable, on conviction, to a fine not exceeding one hundred and fifty thousand penalty units or to imprisonment for a term not exceeding two years or to both.

(2) A person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omitting to do anything in relation to this Act or any matter thereunder and who, on becoming aware that such statement or representation was false, fails to

advise the Registrar forthwith of such falsity commits an offence and is liable, on conviction, to a fine not exceeding one hundred and fifty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Witness
giving false
evidence

82. Any person who, after having been sworn, willfully gives false evidence before the Registrar concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true commits an offence.

Manufacture
and
possession
of die for
use in
commission
of offence

83. (1) A person commits an offence if the person makes a die, plotter, block, machine or instrument—

(a) knowing that it is likely to be used for, or in the course of, committing an offence against a registered layout-design; or

(b) reckless of whether or not it is likely to be used for, or in the course of, committing an offence against registered layout-design.

(2) A person commits an offence if the person draws, or programs a computer or other device to draw a registered layout-design or part of a registered layout-design—

(a) knowing that the design or part of the layout-design is likely to be used for, or in the course of, committing an offence against a registered layout-design; or

(b) reckless of whether or not the design or part of a design is likely to be used for, or in the course of, committing an offence against a registered layout-design.

(3) A person commits an offence if intentionally the person has in the person's possession, or disposes of—

(a) a die, plotter, block, machine or instrument;

(b) a computer, or other device, programmed to draw a registered layout-design or part of a registered layout-design; or

(c) a representation of a registered design or of part of a registered design; knowing that, or reckless of whether or not, the die, block, machine, instrument, computer, device or representation is likely to be used for, or in the course of, committing an offence against a registered layout-design.

(4) For the purposes of an offence against subsection (1), (2) or (3), strict liability applies to the physical element of the offence.

- 84.** A person commits an offence if the person intentionally—
- (a) sells goods;
 - (b) exposes goods for sale;
 - (c) has goods in his or her possession for the purpose of trade or manufacture; or
 - (d) imports goods into Zambia for the purpose of trade or manufacture; knowing that, or reckless of whether or not:
 - (e) a falsified registered layout-design is applied to them or in relation to them; or
 - (f) a registered layout-design has been unlawfully removed from them; or
 - (g) a registered design is falsely applied to them or in relation to them.

Selling goods with false layout-designs

85. (1) The Registrar may impose an administrative penalty on any person for any failure to comply with this Act which does not amount to an offence.

Administrative penalties

(2) An administrative penalty referred to in subsection (1) may not exceed the amount prescribed by the Minister for each day during which such failure continues.

(3) An administrative penalty imposed under subsection (1) shall be paid to the Agency within the period specified by the Registrar.

(4) If any person fails to pay an administrative penalty, within the period specified under subsection (2), the Registrar may, by way of civil action in a competent court, recover the amount of the administrative penalty from such person as an amount due and owing to the Agency.

86. A person who contravenes any provision of this Act where no specific penalty has been provided shall be liable, on conviction, to a fine not exceeding four hundred thousand penalty units or to imprisonment for a term not exceeding four years, or to both.

General penalty

87. (1) The Minister may, in consultation with the Board by statutory instrument, make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

Regulations

- (2) Without derogation from the generality of the provisions of subsection (1), regulations made by the Minister may provide—
- (a) for regulating the practice under this Act, including the service of documents;
 - (b) for making or requiring duplicate representations of layout-designs and other documents;
 - (c) for the fees which may be prescribed under this Act;
 - (d) generally for regulating the business of the Agency in relation to layout-designs and all things by this Act placed under the direction or control of the Registrar.
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