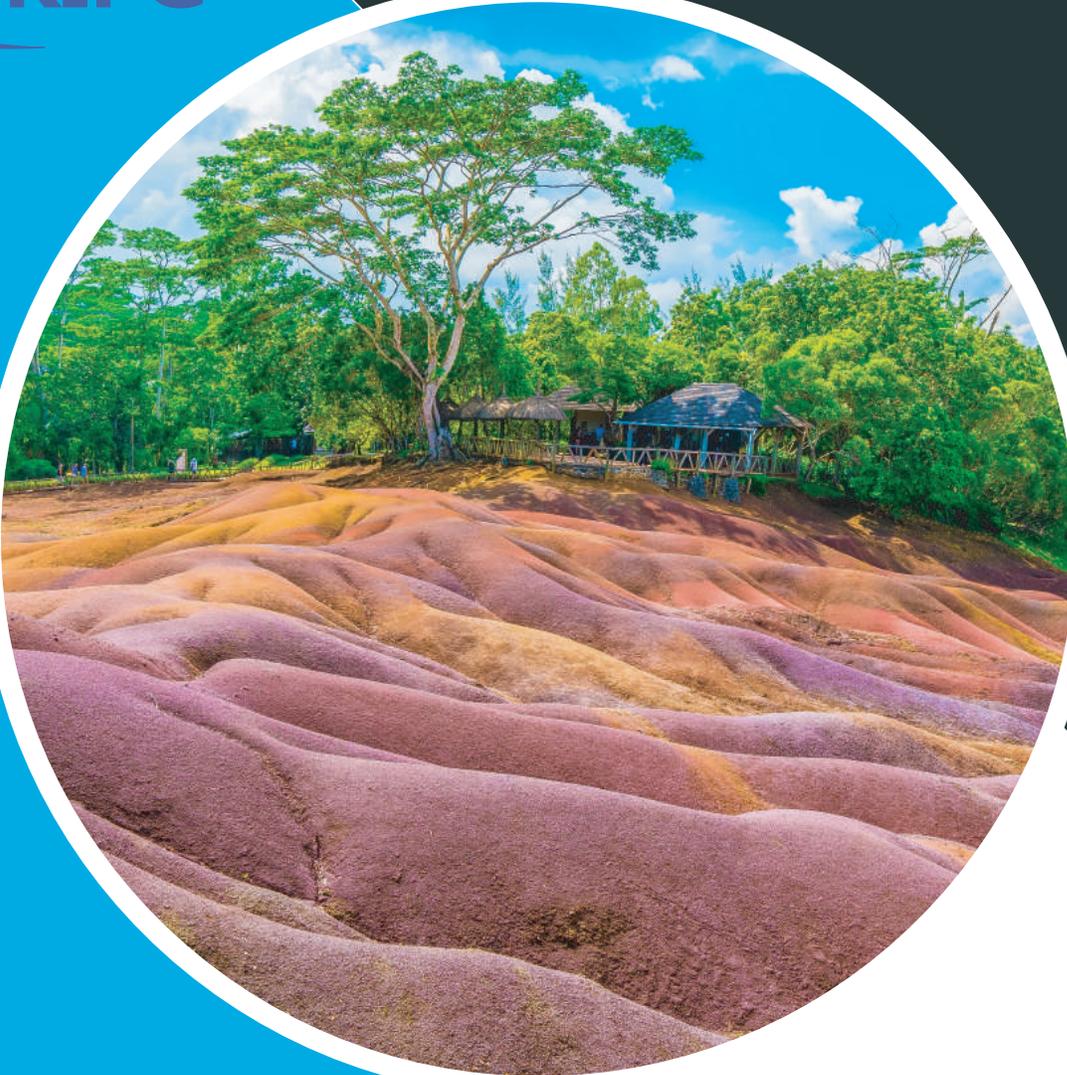


Kashish Intellectual Property Group



Mauritius The Industrial Property Act 2019 (Amendment)



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Introduction of The Industrial Property Act 2019

The Industrial Property Act 2019 has been recently passed by the Mauritius Parliament on 30th July 2019 with an objective of updating and strengthening Intellectual Property Protection in a way that is harmonized to deal with the challenges faced in the present globalized economy. The Act received approval on 9th August 2019 from the Interim President of the Republic of Mauritius and published in the Mauritius Government Gazette on 10th August 2019. The Act shall come into effect from the date of proclamation (as decided by the Parliament) and the dates for the coming into operation of the various section of the Act may be different as well.

The Industrial Property Act 2019 consists of several measures that will make the Mauritian Intellectual Property (IP) system more responsive to the needs of researchers, investors, and entrepreneurs. The new Act has consolidated all IP-related matters in one statute, including:

1. Introduction of The Industrial Property Act 2019
2. Overview of The Industrial Property Act 2019
2. Patents, Utility Models, and Patent Cooperation Treaty
3. Layout-Designs of Integrated Circuits
4. Plant Varieties
5. The Industrial Designs
6. The Madrid Protocol (Trademark), Trademarks and Trade Names
7. Geographical Indications



Overview of The Industrial Property Act 2019

REGISTRATION, PROTECTION, AND MANAGEMENT OF IP RIGHTS

The Act aims to promote creativity and innovation, facilitate and encourage both the registration and protection of Industrial Property Rights by further creating better conditions for attracting high-quality investment. It calls for adequate enforcement mechanisms corresponding to both civil and criminal procedures, which shall help the IP holders in cases of violation or infringement of their IP Rights.

ENHANCED INSTITUTIONAL FRAMEWORK

For enhancing the institutional framework and administering the industrial property legislation in Mauritius, the Act provides a department within the Ministry, which shall be named as The Industrial Property Office of Mauritius (IPOM), administered by a Director. The Director will be a public officer appointed by the Public Service Commission and will be responsible for controlling, operating, and managing the daily operations of the department. The new IPOM shall implement and administer the Act and further assist in the development, promotion, and protection of the industrial property governed by the proposed Industrial Property Act 2019. Other responsibilities of the IPOM include implementing strategies and actions for the development of the industrial property, compiling and maintaining a database for the industrial property, devising and assisting in the preparation of educational and sensitization programs on industrial property, and assisting in researching industrial property.

FORMATION OF INTELLECTUAL PROPERTY COUNCIL

The Act has also made a provision for the formation of an Intellectual Property Council, an independent overarching institution in Mauritius, looking at all the IP-related issues.



It will regroup representatives from several departments, ministries, and private sectors involved in the generation, enforcement, and protection of IP assets and portfolio services. The Council shall advise the Minister on matters related to Intellectual Property and ensure coordination among the public and private sectors in the formulation of intellectual property policies, and enforcement of intellectual property rights.

JURISDICTION OF TRIBUNAL

1. The Tribunal shall have jurisdiction to hear and determine:
 - An appeal by any person who feels aggrieved by a decision of the Director to reject his application for a certificate;
 - An appeal by any person who feels aggrieved by a decision of the Director to reject his opposition to the registration of an industrial property;
 - An application by any interested person, to the Tribunal, to invalidate the grant of a patent or the protection of a plant variety, or the registration of a utility model, a layout-design, an industrial design, a mark or a geographical indication.



Patents, Utility Models, Patent Cooperation Treaty

PATENTS

PATENTABLE INVENTION

1. An invention shall be patentable if it is:
 - New;
 - Industrially applicable;
 - Involving an inventive step.
2. An invention shall be considered 'New' if it is not anticipated by prior art.

NON-PATENTABLE SUBJECTS

The following matters shall be excluded from Patent Protection:

- Discoveries, scientific theories and mathematical methods;
- Literary, dramatic, musical or artistic works and any other aesthetic creation;
- Schemes, rules or methods for doing business, performing purely mental acts and playing games;
- Computer programmes;
- Methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods practiced on the human or animal body;
- Known substances for which a new use has been discovered and not applicable to the use itself, where they constitute a patentable invention;
- Plants and animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes; and
- An invention, the primary or intended use of which would be contrary to public



RIGHT TO PATENT

1. Any invention claimed in an application for a patent filed by an employee within one year from the date of termination of an employment contract which falls within the scope of the former employer's main business shall be presumed to have been made under the terminated contract, unless the employee produces proof to the contrary.
2. Any promise made or undertaking given by an inventor to his employer to the effect that he waives any remuneration he is entitled to under this section shall be void and of no effect.
 - 3A.
 - The obligation of an employer to pay compensation shall arise from the making, and the exploitation, of a patentable invention.
 - The failure or negligence of an employer to successfully procure a patent shall not exempt him from paying compensation to the employee.
 - 3B.
 - An employer may, within 60 days from the date of receipt of a communication from an employee about the making of the invention, give written notice to the employee that he is not interested in the invention and that the employee may procure the right to the patent exclusively.
 - Where an employer fails to give the notice, he shall be deemed to be interested in the invention.
 - 3C.
 - Where an employee carries out the commercial exploitation of an invention, the employer shall be entitled to compensation that is proportionate to the economic value of the materials, data or know-how used by the employee in making the invention.
4. Where an employer fails to file an application for a patent within one year from the date



he receives written notification from an employee of the making of an invention, the right to the patent shall belong to the employee.

5. An inventor shall be named as such in the patent unless he requests the Director, in writing, not to do so.

APPLICATION FOR PATENT

1. The description of the patent included in the Patent Application shall contain a clear identification of:
 - The origin of genetic or biological resources collected in Mauritius and directly or indirectly used in the making of the invention; and
 - Any element of traditional knowledge associated or not associated with those resources, which was, with the prior informed consent of Mauritius, directly or indirectly used in the making of the claimed invention.
2.
 - The Director shall, in the case of a patent application concerning microorganisms, consider that the description of the invention included in the patent application has been complied with where the applicant submits the application with a declaration that the microorganism has been deposited with an international depositary authority, in accordance with the Budapest Treaty.
 - The Director shall accept the deposit and its date as indicated by the international depositary authority, where the applicant provides him with a copy of the receipt of the deposit issued by the international depositary authority.

PUBLICATION OF PATENT APPLICATION

1. The Director may give notice of the opening of the application for inspection on the website of the Office.
2. An applicant for a patent may, on payment of the prescribed fee, at any time from the



filing date till the end of the period of 18 months (18 months from the filing date) request the Director to open the application for public inspection and to give notice in the Gazette of the opening of the application for inspection.

RIGHTS CONFERRED BY PATENT

1. The rights conferred by the grant of a patent shall not extend to:
 - Acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the patent or with his consent;
 - The use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;
 - Acts done privately and on a non-commercial scale or for a non-commercial purpose, which do not significantly prejudice the economic interests of the patent owner;
 - Acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical practitioner, a dental specialist or a dental surgeon;
 - Acts done for experimental and scientific research on or with the subject matter of the patented invention;
 - Acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the patent owner;
 - Acts performed by any person who, in good faith, before the filing date or, where applicable, the priority date of the application on which the patent is granted, was using the invention or was making effective and serious preparations for such use in Mauritius; or



- Acts performed by any person to make, construct, use or sell the patented invention solely for any use reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.

DURATION OF PATENT

1. A patent shall expire 20 years after the filing date of the application for the patent.
2. If the annual fee isn't paid within the subscribed time, the Director may grant to the patent owner a delay of 6 months for the payment of the annual fee and such surcharge as may be prescribed.

COMPULSORY LICENCE FOR PATENT

1. Where the competent authority is satisfied that:
 - The public interest, including national security, nutrition, health or the development of other vital sectors of the national economy, so requires;
 - A judicial or administrative body has determined that the manner of exploitation, by the owner of a patent or his licensee, is anti-competitive, and that the exploitation of the invention in accordance with this subsection would remedy such practice;
 - The owner of the patent is abusively exercising his exclusive rights or neglecting to take measures to prevent his licensee from abusively exercising those rights; or
 - The invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Mauritius, he may, without the consent of the owner of the patent, authorize a Government agency or a third party to exploit the patented invention.
2.
 - Where the competent authority is satisfied that, without infringing a first patent,



an application for a second patent relates to an invention which involves an important technical advancement of considerable economic significance in relation to an invention claimed in the first patent, it may, on an application from the new inventor and without the consent of the owner of the first patent, issue a compulsory licence to the inventor of the second patent on payment of the prescribed fee.

- An application for the issue of a compulsory licence shall be accompanied by the payment of such non-refundable fee as may be prescribed.
3. An application for a compulsory licence shall be accompanied by evidence that the owner of the patent has received, from the person seeking the compulsory licence, a request for an authorisation to exploit the second patent, but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time which shall, unless the competent authority in exceptional circumstances otherwise determines, be 6 months from the date on which the request for authorisation to exploit the second patent was made.
 4. No evidence of a request for an authorisation shall be required in cases of national emergency, circumstances of extreme urgency, cases of public non-commercial use or where the compulsory licence is to be granted to remedy a practice determined, after judicial or administrative process, to be anti-competitive, where the owner of the patent is, as soon as reasonably practicable, notified of the decision of the competent authority.
 5. No request for a compulsory licence on the ground of insufficient availability shall be made before the expiry of a period of:
 - 4 years from the filing date of the application for the patent; or
 - 3 years from the date of the grant of the patent, whichever period expires last.



6. A request shall be refused where the owner of the patent justifies his inaction or insufficient action by legitimate reasons.
7. The owner of a patent or any interested party may make a request to be heard by the competent authority before it makes a decision.
- 8A. The exploitation of the invention shall be:
 - Limited to the purpose for which it was licensed; and
 - Subject to the payment of an adequate remuneration, to be determined by the competent authority depending on the circumstances of each case, to the owner of the patent.
- 8B. The competent authority shall, in determining the remuneration take into account:
 - The economic value of his decision; and
 - The need to correct anti-competitive practices.
- 8C. The competent authority shall, in determining the remuneration with respect to the compulsory licence for a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, prescribe an alternative process of making the same product which is not known or is unavailable, by taking into account, where applicable, the terms and conditions of the decision of 30 August 2003.
9. The owner of a patent or holder of a compulsory licence may request the competent authority to vary the terms of the decision authorising the exploitation of the patented invention on the ground of changed circumstances after hearing the parties.
10. The owner of a patent may make a written request to the competent authority to terminate a compulsory licence.
11. Where, after hearing the parties, the competent authority is satisfied that:
 - The circumstances which led to its decision have ceased to exist and are unlikely to recur;
 - The holder of a compulsory licence has failed to comply with the terms of its decision; or



- The need for adequate protection of the legitimate interests of the holder of the licence does not justify the maintenance of its decision, he shall terminate the compulsory licence.
12. A compulsory licence may only be transferred to:
- The enterprise or business of the holder of the licence; or
 - The part of the enterprise or business where the patented invention is being exploited.
13. A compulsory licence shall be non-exclusive and shall not exclude:
- The exploitation of the invention by the patent owner himself, through manufacture in Mauritius or through importation, or both;
 - The conclusion of licence contracts by the owner of the patent; and
 - The continued exercise, by the owner of the patent, of his rights.
14. The exploitation of an invention by the holder of a compulsory licence shall predominantly be for the supply of the market in Mauritius except where:
- It is permitted to remedy a practice which is anti-competitive;
 - The compulsory licence concerns a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, and the purpose of the licence is to export the patented products;
 - The products manufactured by the patented process are for a foreign territory or country with no, or with insufficient, manufacturing capacity, in accordance with the terms and conditions of the decision of 30 August 2003.
15. Where a compulsory licence is granted:
- The owner of the first patent shall be entitled to a cross-licence, on reasonable terms, to use the invention claimed in the second patent; and
 - The use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.



16. Where appropriate and with such modifications as may be necessary, to a pending application for a patent except in the case of insufficient availability of the patented product or of the product manufactured with the patented process.

APPEAL AGAINST DECISION GRANTING COMPULSORY LICENCE OR REMUNERATION

An applicant for a patent or the owner of a patent may appeal by judicial review to the Supreme Court against a decision of the competent authority regarding the grant of a compulsory licence or remuneration payable.

INVALIDATION OF GRANT OF PATENT

1. An interested person may apply to the Tribunal for the invalidation of a patent where:
 - The matter is excluded from patent protection;
 - Any of the requirements of matters excluded from patent protection, patentable invention, unity of invention, amendment and division of application, has not been fulfilled;
 - The owner of the patent is not the inventor or his successor in title; or
 - The owner of the patent is shown to have engaged in inequitable conduct in order to be granted the patent.
2. Where the ground for invalidation is proved as regards a part of the invention, only that corresponding claim shall be invalidated.

UTILITY MODELS

MATTERS EXCLUDED FROM UTILITY MODEL PROTECTION

The following shall be excluded from Utility Model Protection:

- Discoveries, scientific theories and mathematical methods;
- Literary, dramatic, musical or artistic work and any other aesthetic creation;



- Schemes, rules or methods for doing business, performing purely mental acts and playing games;
- Computer programmes;
- Plants and animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes;
- Inventions, the primary or intended use of which would be contrary to public order or morality; and
- Inventions having as subject matter a process or a method.

REGISTRABLE UTILITY MODEL

1. An invention may be registered as a utility model where it is:
 - New; and
 - Industrially applicable.
2. An invention shall be new where it is not anticipated by prior art.
3. An invention shall be industrially applicable where it can be made or used in an industry.

RIGHTS CONFERRED BY UTILITY MODEL

1. The rights conferred by the registration of a utility model shall not extend to:
 - Acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the utility model or with his consent;
 - The use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;
 - Acts done privately and on a non-commercial scale or for noncommercial purpose, which do not significantly prejudice the economic interests of the utility model owner;



- Acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical practitioner, a dental specialist or a dental surgeon;
- Acts done for experimental and scientific research on or with the subject matter of the utility model invention;
- Acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the utility model owner;
- Acts performed by any person who in good faith, before the filing date or, where applicable, the priority date of the application on which the utility model is granted, was using the invention or was making effective and serious preparations for such use in Mauritius; or
- Acts performed by any person in order to make, construct, use or sell the utility model invention solely for any use reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.

DURATION OF UTILITY MODEL

1. The registration of a utility model shall be for a period of 6 years from the filing date of the application for registration.
2. The registration of a utility model may be renewed for 2 further consecutive periods of 2 years on payment of such renewal fee, within such time, as may be prescribed; and subject to compliance with such conditions as may be prescribed.
3. Where the renewal fee is not paid within the time prescribed, the Director may grant to the utility model owner a delay of 6 months for the payment of the renewal fee and such surcharge as may be prescribed.



CONVERSION OF PATENT APPLICATION OR UTILITY MODEL

- At any time before the grant or refusal of a patent, an applicant for a patent may, on payment of the prescribed fee, convert his application into an application for a utility model.
- At any time before a utility model certificate is granted or refused, the applicant for a utility model certificate may, on payment of the prescribed fee, convert his application into an application for a patent.
- The converted application shall be attributed the filing date of the initial application for a patent or utility model, as the case may be.

INVALIDATION OF REGISTRATION OF UTILITY MODEL

1. An interested person may apply to the Tribunal for the invalidation of the registration of a utility model where:
 - The person requesting the invalidation proves that any of the requirements of Unity of Invention, Amendment and Division of Application, Matters Excluded from Utility Model Protection, and Registrable Utility Model, has not been fulfilled;
 - The utility model owner is not the inventor or his successor in title; or
 - The utility model owner is shown to have engaged in inequitable conduct in order to have the utility model registered.
2. Where the ground for invalidation is proved as regards a part of the invention, only the corresponding claim shall be invalidated.

PATENT COOPERATION TREATY

FUNCTIONS OF OFFICE

The Office, acting in its capacity as designated Office or elected Office, shall not process an international application before the expiry of the time limit specified in the Patent



Cooperation Treaty unless the applicant files with the Office a request for early commencement of the processing of the international application and complies with the requirements.

ENTERING NATIONAL PHASE

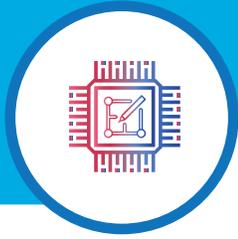
An applicant shall, in respect of an international application designating Mauritius and before the expiry of the time limit specified in of the Patent Cooperation Treaty or such later time limit as may be prescribed, pay the prescribed fee to the Office and, where necessary, file with it a translation of the international application into a prescribed language.

REINSTATEMENT OF RIGHT FOLLOWING FAILURE TO ENTER THE NATIONAL PHASE

1. Where an international application is considered to have been withdrawn, the applicant may make a request to the Office, in the prescribed form, to have his rights reinstated provided he has a reasonable excuse
2. The Office shall, when considering an application give the applicant an opportunity to make observations, in writing, on his application, within the prescribed time limit

RESTORATION OF RIGHT OF PRIORITY

1. An applicant may, where he has an international filing date which is later than the date on which the priority period expired, but within the period of 2 months from the date the priority period expired, request that the right of priority of the earlier application be restored.
2. The Director shall restore the right of priority with respect to that international application where he finds that the failure to file the international application within the priority period:
 - Was unintentional; and
 - Occurred in spite of due care having been taken by the applicant.



Layout-Designs of Integrated Circuits

REGISTRATION OF LAYOUT-DESIGN

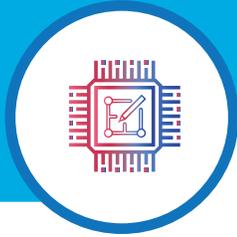
1. Where the Director is satisfied that:
 - An application complies with the requirements of Application of Registration of a Layout-Design;
 - The layout-design is original, has not been commercially exploited, or has been commercially exploited for not more than 2 years, he shall issue to the applicant a certificate and record the registration of the layout-design in the appropriate register.

ORIGINALITY

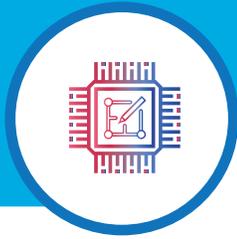
1. A layout-design shall be considered to be original if it is:
 - The result of its creator's own intellectual effort; and
 - Not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.
2. A layout-design consisting of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original.

SCOPE OF PROTECTION

1. The registration of a layout-design shall confer on its registered holder the right to prevent any unauthorised person from exploiting the design.
2. The rights conferred by the registration of a layout-design shall not prevent:
 - The reproduction or use of the protected layout-design for private non-commercial purposes;
 - Acts done in respect of the protected layout-design for the purpose of teaching,



- education or scientific research in academic, educational or research institutions;
- The reproduction or use of the protected layout-design for the sole purpose of its evaluation or analysis;
 - The incorporation, in an integrated circuit, of a layout-design created on the basis of evaluation or analysis and which is original within the meaning of Originality of a layout-design or the performance of any act in respect of a layout design so created;
 - The performance of any act of the definition of 'exploit' where the integrated circuit in which such a layout-design is incorporated, or the article incorporating such an integrated circuit, has been put on the market in Mauritius or in another State by the right holder or by a person acting with the right holder's consent or having an economic tie with the right holder;
 - The performance of any act of the definition of 'exploit' 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 the act did not know and had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design;
 - The performance of any act of the definition of 'exploit' where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party; or
 - The use of an integrated circuit in which the layout-design is incorporated, or of an article incorporating such an integrated circuit, in the body or gear of an aircraft, a land vehicle or vessel that temporarily or accidentally enters the jurisdiction of Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, vehicle or vessel.



3. Where a person receives notice that a layout-design was unlawfully reproduced, he:
 - May perform an act of the definition of “exploit” only with respect to stock in hand or ordered before he received the notice; and
 - Shall be liable to pay to the right holder a sum equivalent to the reasonable royalty that would be payable under a freshly negotiated licence.

COMMENCEMENT AND DURATION OF PROTECTION

1. Any protection granted in respect of a layout-design under this Act shall commence:
 - 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 Director within the time limit;
 - On the filing date granted to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.
2. Any protection granted in respect of a layout-design under this Act shall lapse at the end of 10 years from the date of commencement of the protection.

INVALIDATION OF REGISTRATION OF LAYOUT-DESIGN

1. An interested person may apply to the Tribunal for the invalidation of the registration of a layout-design, where:
 - The layout-design is not entitled to protection under Originality of Layout-Design;
 - The right holder is not entitled to protection under the Right to Protection to a Layout-Design.
2. Where the ground for invalidation is established with respect only to a part of the layout-design, only the corresponding part of the registration shall be invalidated.



Plant Varieties

INTERPRETATION

A 'Breeder' means:

- A person who has bred, or discovered and developed, a plant variety;
- The person who is the employer of a person referred to in the previous point or who has commissioned the latter's work; or
- The successor in title of the person referred to in the point 1 or 2 (mentioned above).

"Breeder's Right" means the right of a breeder provided for in this part;

"Member of UPOV" means a party to the UPOV Convention;

"National", in relation to a member of UPOV, means:

- Where the member of UPOV is a State, a national of that State;
- Where the member of UPOV is an inter-governmental organisation, a national of any of the States which are members of that organisation;

NATIONAL TREATMENT

Without prejudice to the rights specified in this Part, the nationals of a member of UPOV and the persons resident in, or having their registered office within, the territory of a member of UPOV shall, insofar as the grant and protection of breeder's rights in Mauritius are concerned, enjoy the same treatment as is accorded to nationals of Mauritius.

CONDITIONS FOR PROTECTION

A breeder's right shall be granted where a variety is:

- New;
- Distinct;



- Uniform; and
- Stable.

NOVELTY

1. A variety shall be considered to be new where, at the date of filing of the application for a breeder's right; propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for the purpose of exploitation of the variety:
 - In Mauritius earlier than one year before the filing date; or
 - In a State other than Mauritius earlier than 4 years or, in the case of trees or vines, earlier than 6 years before the filing date.
2. Where the application for a breeder's right is made within one year from the commencement of this Act, the variety shall be considered to be new notwithstanding the fact that propagating or harvested material of the variety has been sold or disposed of to others for the purpose of exploitation of the variety, in Mauritius, within 4 years, or, in the case of trees or vines, within 6 years, before the filing date of the application.

DISTINCTNESS

1. A variety shall be considered to be distinct where it is clearly distinguishable from any other variety the existence of which is a matter of common knowledge at the time of the filing of the application for the grant of a breeder's right.
2. Where an application for the grant of a breeder's right or for the entering of another variety in the relevant register of varieties is made and granted in any State, it shall be taken to render that other variety a matter of common knowledge from the date of the application.



UNIFORMITY

A variety shall, subject to any variation that may be expected from the particular features of its propagation, be considered to be uniform where it is sufficiently uniform in its relevant characteristics.

STABILITY

A variety shall be considered to be stable where its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle

PROVISIONAL PROTECTION

1. The interests of an applicant for a breeder's right shall be provisionally protected from the date of publication of the application for the grant of a breeder's right till the date of the grant of that right.
2. The holder of a breeder's right shall be entitled to equitable remuneration from any person who, during the period does an act which, upon a breeder's right being granted, requires the breeder's authorisation.

RIGHT OF PRIORITY

1. A breeder who files an application for the protection of a variety in one of the member States of UPOV shall, for the purpose of filing an application with the Office, for the grant of a breeder's right for the same variety, enjoy a right of priority for a period of 12 months from the filing date of the first application.
- 2A. A breeder who wishes to benefit from the right of priority shall, in the application filed with the Office, claim the priority of the first application.



2B.

The Director shall require a breeder to furnish, within 3 months from the filing date of an application for the grant of a breeder's right:

- A copy of the documents which constitute the first application, certified to be a true copy by the authority with which the first application was filed; and
- Samples or other evidence which show that the variety which is the subject matter of both applications is the same.

2C.

Where a breeder fails to comply with the previous point mentioned, the application shall be dealt with as if no priority is claimed.

3. The breeder shall be allowed a period of 2 years from the expiry of the period of priority or, where the first application is rejected or withdrawn, a period of 3 months from such rejection or withdrawal, to furnish to the Office all necessary information, document and material required for the purpose of the examination of an application.
4. Any event which occurs within the period such as the filing of another application or the publication or use of the variety that was the subject of the first application, shall not constitute a ground for rejecting the application or give rise to any third party right

SCOPE OF BREEDER'S RIGHT

1. Any of the following acts in respect of the propagating material of a protected variety, shall require the authorisation of the breeder for:
 - Production or reproduction (multiplication);
 - Conditioning for the purpose of propagation;
 - Offering for sale;
 - Selling or other marketing;
 - Exporting;



- Importing; or
 - Stocking for any of the purposes.
2. Subject to Exceptions to Breeder's Right and Exhaustion of Breeder's Right, any of the acts in respect of:
- Harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety, shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the propagating material;
 - Products made directly from harvested material of the protected variety falling within the provisions through the unauthorised use of the harvested material, shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the harvested material.
3. The two points mentioned above shall also apply in relation to varieties:
- Which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
 - Which are not clearly distinguishable from the protected variety; and
 - The production of which requires repeated use of the protected variety.
4. A variety shall be considered to be essentially derived from another variety (the "initial variety") where:
- It is predominantly derived from the other variety, or from a variety which is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics which result from the genotype or combination of genotypes of the initial variety;
 - It is clearly distinguishable from the initial variety; and
 - Except for the differences which result from the act of derivation, it conforms to



the initial variety in the expression of the essential characteristics which result from the genotype or combination of genotypes of the initial variety.

5. Essentially derived varieties may be obtained by:
- Selection of a natural or induced mutant;
 - Selection of a somaclonal variant;
 - Selection of a variant individual from plants of the initial variety;
 - Backcrossing; or
 - Transformation by genetic engineering.

DURATION OF BREEDER'S RIGHT

1. A breeder's right shall remain valid for 25 years from the date of the grant of the right.
- 2A. For the purpose of maintaining a breeder's right, the owner of a breeder's right shall pay to the Director such annual fee, at such time, as may be prescribed.
- 2B. Where the annual fee is not paid within the time prescribed, the Director may grant to the owner of a breeder's right a delay of 6 months for the payment of the annual fee and such surcharge as may be prescribed.
- 2C. Where the annual fee is not paid in accordance with this subsection, the application for breeder's right shall be considered to have been withdrawn and the breeder's right shall lapse.
- 2D. Where the owner of a breeder's right gives reasonable justification for the non-payment of the annual fee and the Director is satisfied that rights of third parties which may have arisen are not unreasonably infringed, the Director may, not later than one year from the date the payment should have been made under point 2B. (Mentioned above), restore the lapsed breeder's right.



EXCEPTIONS TO BREEDER'S RIGHT

1. A breeder's right shall not extend to an act done:
 - Privately and for non-commercial purposes;
 - For experimental purposes; or
 - For the purpose of breeding other varieties, and except where point 3 under the heading 'Scope of Breeder's Right applies, acts referred to in points 1 and 2 under the heading 'Scope of Breeder's Right' in respect of such other varieties.
2. Notwithstanding 'Scope of Breeder's Right', a breeder's right may, under such conditions as may be prescribed, be restricted in relation to the varieties specified in a list, to be drawn up by the Office after consultation with the Ministry responsible for the subject of agriculture, of agricultural and vegetable crops with a historical common practice of saving seed in Mauritius in order to permit farmers to use, for propagating purposes on their own holdings, the product of the harvest which they have obtained by planting on their own holdings the protected variety or a variety covered by point 3 under the heading 'Scope of Breeder's Right', where this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.
3. Fruits, ornamentals and forest plants shall be excluded from the list.

EXHAUSTION OF BREEDER'S RIGHT

1. A breeder's right shall not extend to an act concerning any material of the protected variety or of a variety covered by point 3 under the heading 'Scope of Breeder's Right', which has been sold or otherwise marketed in Mauritius by the breeder or with his consent, or any material derived from the said material, unless the act involves:
 - Further propagation of the variety; or
 - An export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to



which the variety belongs, unless the exported material is for final consumption.

2. “Material”, in relation to a variety, means:
 - Propagating material of any kind;
 - Harvested material, including entire plants and parts of plants; or
 - Any product made directly from the harvested material.

RESTRICTION ON EXERCISE OF BREEDER’S RIGHT

1. Subject to this Act, the exercise of a breeder’s right shall not be restricted unless the Office considers that it is in the public interest to do so.
2. Where any restriction has the effect of the Office authorising a third party to perform an act for which the breeder’s authorisation is required, the third party shall pay reasonable compensation to the breeder.

VARIETY DENOMINATION

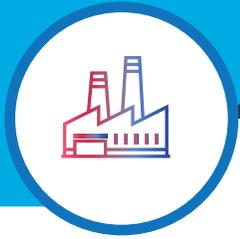
1. A variety shall be designated by a denomination which shall be its generic designation.
- 2A. The Director shall ensure that the relevant authority of every member of UPOV is informed of the submission, registration and cancellation of a variety denomination.
- 2B. Any authority wishing to make observations on the registration of a denomination may address its observations to the Office.
3. Where, by virtue of a prior right, the use of a denomination for a variety is not allowed to a person who, in accordance with the point mentioned below, would be obliged to use it, the Director shall require the breeder to submit another denomination for the variety.
4. Any person who, in Mauritius, offers for sale or markets propagating material of a variety protected in Mauritius is obliged to use the denomination of that variety, even after the expiry of the breeder’s right in that variety, except where, in accordance with the point mentioned above, prior rights prevent the use.



5. Where a variety is offered for sale or marketed, it shall be permitted to associate a trade mark, geographical indication, trade name, business sign or other similar indication with a registered variety denomination.

INVALIDATION OF BREEDER'S RIGHT

1. An interested person may apply to the Tribunal for the invalidation of a breeder's right.
2. A breeder's right shall be invalidated where it is established that:
 - Any of the requirements specified under the sections of Novelty, Distinctness, Uniformity, and Stability (mentioned above in this part), was not satisfied at the time the breeder's right was granted;
 - The grant of the breeder's right was based on false, misleading or incomplete information and documents furnished by the breeder; or
 - The breeder's right has been granted to a person who is not entitled to it and such right is not transferred to the person who is entitled to it.



Industrial Designs

INDUSTRIAL DESIGNS EXCLUDED FROM PROTECTION

An Industrial Design shall not be registered where:

- Its features are solely dictated by technical or functional considerations; or
- Its commercial exploitation may be contrary to public order or morality.

APPLICATION FOR REGISTRATION OF INDUSTRIAL DESIGN

An application may contain:

- Up to 100 industrial designs provided they all refer to products that belong to the same class of the International Classification; and
- A request that publication of the industrial design be deferred for a specified period not exceeding 12 months from the filing date or, where applicable, from the priority date of the application.

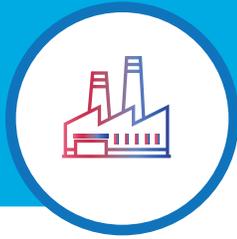
RIGHTS CONFERRED BY REGISTRATION OF INDUSTRIAL DESIGN

Where an industrial design is registered for a part of a product that is integral and inseparable from that product, any infringement of the registered design shall be assessed taking into account the overall appearance of the product embodying the registered design, and not only that part in isolation.

LIMITATIONS AND EXCEPTIONS

No right conferred by the registration of an industrial design shall prohibit:

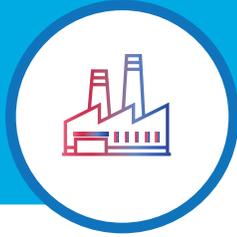
1. An act in respect of a product that embodies the industrial design, after the product has been put on the market in Mauritius or abroad by the registered holder or by a person



- acting with the holder's consent or having an economic tie to the holder;
2. The use of the industrial design in the body or gear of any aircraft, land vehicle or vessel that temporarily or accidentally enters Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, land vehicle or vessel.
 3. An act done:
 - Privately and for a non-commercial purpose;
 - For the purpose of teaching, education or scientific research in academic, educational or research institutions; or
 - Only for experimental purposes relating to the industrial design;
 4. The reproduction of any features of the industrial design:
 - Dictated solely by functional or technical considerations or necessary to fulfill a technical purpose;
 - In their exact form in order to permit the product in which the design is embodied to be mechanically connected to or placed in, around or against, another product so that each product may perform its function; or
 - Embodied in a component part of a complex product, where that part is used for the purpose of repairing that product so as to restore its original appearance.

DURATION OF INDUSTRIAL DESIGN

1. The registration of an industrial design shall be valid for a period of 5 years from the filing date of the application for registration.
2. The registration of an industrial design may be renewed for 3 further consecutive periods of 5 years:
 - On payment of the prescribed fee; and
 - Subject to the conditions determined by the Director having been complied with.



INVALIDATION OF REGISTRATION OF INDUSTRIAL DESIGN

1. Any interested person may apply to the Tribunal for the invalidation of the registration of an industrial design where:
 - The industrial design is not entitled to protection under Conditions for Protection of Industrial Designs;
 - The right holder is not entitled to protection under Right to Protection;
 - The registered owner of the industrial design is not the creator or his successor in title.
2. Where a ground for invalidation is proved with respect to only one or some of the designs included in the registration, that design or those designs, as the case may be, shall be invalidated.





The Madrid Protocol (Trademark), Trademarks, and Trade

THE MADRID PROTOCOL (TRADEMARK)

EFFECT OF INTERNATIONAL REGISTRATION

1. An international registration shall have the same effect as an application for registration of a trademark filed with the Office as regards the date of the international registration.
2. Where the Director:
 - Does not notify a refusal to the International Bureau in accordance with the Madrid Protocol and the Common Regulations;
 - Notifies a refusal which is subsequently withdrawn; and
 - Sends the statement of grant of protection,the trademark which is subject to international registration in Mauritius shall be considered to be protected in Mauritius as from the date of the international registration.

INVALIDATION

Where an international registration is invalidated in Mauritius and the invalidation is no longer subject to appeal, the Director shall notify the International Bureau in accordance with the Madrid Protocol and the Common Regulations.

TRADEMARKS

DIVISION, WITHDRAWAL AND AMENDMENT

- 1A. The applicant may divide his application into 2 or more applications in order to separate the goods or services specified in the initial application.
- 1B. Every divisional application made under paragraph (a) shall retain the filing date and,



where applicable, the right of priority of the initial application.

- 1C. After a division, every application shall be independent and any publication of the application effected prior to the division shall be effective for each divisional application.
2. An applicant may, at any time before a trademark is registered, withdraw his application, limit the list of goods or services covered in the application or amend his application provided that the amendment does not substantially affect the identity of the trademark.

DURATION OF TRADEMARK

Where the Director is satisfied that:

- There has been, during 3 years immediately preceding the removal of the trade mark from the register, bona fide use of the trademark; or
- No deception or confusion is likely to arise from the use of the trademark which is the subject matter of the application for registration, by reason of any previous use of the mark,

he shall register the trademark.

INVALIDATION OF REGISTRATION OF TRADEMARK

1. An interested person may apply to the Tribunal for the invalidation of the registration of a trademark, totally or partially, where:

The registered sign does not comply with the definition of a trademark; or

The trademark does not comply with subject-matter criteria of trademark registration.

2. The invalidation of the registration of a trademark shall be effective from the date of registration of the trademark.



REMOVAL ON GROUND OF NON-USE

1. An interested person may request the Director to remove from the relevant register a trademark in respect of any goods or services in respect of which it is registered on the ground that up to one month before the filing of the request, the trademark had, after its registration, not been in use by the registered owner or a licensee during a continuous period of not less than 3 years.
2. Notwithstanding the previous point, a trademark shall not be removed from the register where the Director is satisfied that there:
 - Were reasonable circumstances that prevented the use of the trademark; and
 - Was no intention not to use or abandon the trademark in respect of those goods or services.

CANCELLATION OF REGISTERED TRADEMARK AND LIMITATION OF GOODS AND SERVICES

The owner of a registered trademark may apply for the cancellation of the trademark or a limitation in respect of some or all of the goods or services for which it is registered.

TRADE NAMES

PROTECTION OF TRADE NAME

1. Notwithstanding any other enactment providing for an obligation to register trade names, such names shall be protected, even before or without registration, against an unlawful act committed by a third party
2. For the purpose of the previous point, the use of an existing trade name by a third party as a trade name or a trademark or collective mark, or the use of a similar trade name or mark which is likely to mislead the public, shall be unlawful.



GEOGRAPHICAL INDICATIONS

SCOPE OF PROTECTION

The following shall not be protected as geographical indications:

- An indication the use of which needs to be prevented on the ground of public order or morality;
 - A geographical indication that is not, or that ceases to be, protected in its country of origin, or which has fallen into disuse in that country; and
 - An indication that is identical with the term customary in common language in

Mauritius as the common name for the relevant goods or services.

SCOPE OF EXCLUSIVE RIGHT

No person other than a group of producers or a legal entity that groups the producers and carrying on an activity in the relevant geographical area shall have the right to use a registered geographical indication in the course of trade with respect to the goods specified in the relevant register.

LIMITATIONS AND EXCEPTIONS

1. Where registration of a mark has been applied for and the mark has been registered in good faith, or where rights to a mark have been acquired through use in good faith, before the commencement of this Act, or before the geographical indication is protected in its country of origin:
 - The registration or the validity of the registration of that mark; or
 - The right to use that mark,shall not be affected on the ground that the mark is identical with, or similar to, a geographical indication.



DURATION OF GEOGRAPHICAL INDICATION

1. The registration of a geographical indication shall be for a term of 10 years from the filing date of the application for registration.
- 2A. The registration of a geographical indication may be renewed for consecutive periods of 10 years on payment of such renewal fee as may be prescribed and on such conditions as the Director may determine.
- 2B. The Director may, on an application for the renewal of the registration of a geographical indication, request the applicant to furnish such other information and documents as he may determine
3. Where the renewal fee is not paid within the prescribed time, the Director may grant to the registered owner a delay of 6 months for the payment of the renewal fee and such surcharge as may be prescribed.

INVALIDATION OF REGISTRATION OF GEOGRAPHICAL INDICATION

An interested person may apply to the Tribunal for the invalidation of the registration of a geographical indication where:

- It does not qualify for protection;
- The geographical area specified in the registration does not correspond to the geographical indication; or
- The indication of the products for which the geographical indication is used or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.



CANCELLATION OF REGISTRATION

A person who has an interest in a geographical indication may request the Director to cancel the registration of the geographical indication on the ground that it does not qualify or no longer qualifies for protection by virtue of Scope of Protection and Application for Geographical Indication.





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