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**The Law of Islamic Republic of Afghanistan**

**Draft Law on Industrial Designs**

# **Industrial Designs**

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## **Chapter One** **General Provisions**

### **Article 1. Basis**

This Law is enacted pursuant to the Article 47 of the Constitution of Islamic Republic of Afghanistan.

### **Article 2. Objectives**

The objectives of this law are as follows:

1. To protect, encourage and enforce the intellectual property rights of the creators and owners of industrial designs;
2. To facilitate the registration of industrial designs; and
3. To promote technological innovation and the dissemination of technology.

### **Article 3. Terms**

Terms in this Law shall have the following meanings:

1. Industrial Design: A two-dimensional design or three-dimensional model that enhances the appearance of an industrial product by means of its form or of a particular combination of lines, colors or other features that appeal to the eye;
2. Rights in Industrial Designs: A privilege granted to a right holder in accordance with the provisions of this Law;
3. Registrar: Is an office which will be established under the office of Intellectual Property Rights and will register the Industrial Designs
4. Original Designer: The initial author or developer of an industrial design.

### **Article 4. Registrar**

1. There shall be a Registrar of Industrial Designs within the Ministry of Commerce under the office of Intellectual Property Rights.

2. A document bearing the Registrar's official seal, and purporting to be signed or issued by the Registrar or his designee, shall, in the absence of proof to the contrary, be deemed to be signed or issued by or under the direction of the Registrar.

#### **Article 5. Register of Industrial Designs**

1. The Registrar shall establish and maintain a Register of Industrial Designs in accordance with this Law.

2. The Register shall be kept in such form as the Registrar considers appropriate, and may be kept in electronic form.

3. The responsible authority if needed may correct any obvious errors in, or omissions from, the Register.

#### **Article 6. Public Access**

1. Any person may have access to the Register at no charge for the purpose of inspection during any working day, at such times as the Registrar shall determine.

2. The Registrar shall, on application and payment of the prescribed fee, furnish to any person a copy, or a certified copy, of any particulars on the Register.

3. A certified copy of particulars on the Register, signed by the Registrar and sealed with the Registrar's seal, shall be received in evidence for all purposes as conclusive evidence that the particulars shown on the certified copy have been duly registered.

## **Chapter two**

### **Ownership of Industrial Designs**

#### **Article 7. Ownership**

1. The original designer (creator) of an industrial design is presumed to be its owner.

2. Notwithstanding paragraph 1 of this Article, where the original designer executes a design under agreement and for consideration for a third party, that third party shall be the presumed owner of the industrial design.

#### **Article 8. Assignment and License**

1. Rights in industrial designs may be assigned or licensed, in whole or in part, by written instrument.
2. Any assignment or license shall be recorded on the Registry in the manner prescribed by regulation, upon payment of the designated fee.

## **Chapter three** **Registration of Industrial Designs**

### **Article 9. Registrability**

1. Independently created industrial designs which are new or original may be registered and protected under this Law.
2. Designs shall not be considered new or original if they do not significantly differ from known designs or combinations of known design features.
3. No industrial design may be registered if it is identical with or so closely resembles any other design already registered as to be confused therewith.
4. Protection under this Law shall not extend to designs dictated essentially by technical or functional considerations, or to any method or principle of manufacture or construction.
5. No industrial design may be registered if it is contrary to public morality or order.
6. Textile designs which meet the requirements for protection under this Law may be registered and protected under this Law.

### **Article 10. Application to Register an Industrial Design**

1. The owner of an industrial design, his successor, or his legal representative may apply to register the design by filing an application with the Registrar in the prescribed form.
2. An application for registration of an industrial design shall include:
  - the name and address of the owner and, if a different party, the original designer;
  - the address of the owner's principal office or place of business in Afghanistan, if any; if the owner has no office or place of business in Afghanistan, the name and address of his agent for service of process in Afghanistan;
  - a drawing or photograph of the design;
  - a description of the design;
  - a declaration that the design was not, to the owner's knowledge, in use by any person other than the original designer at the time the design was adopted by him;

- if applicable, the date, place of issue and registration number of any prior foreign registration of the same design;
- such other information as shall be prescribed under the regulations; and
- the prescribed application fee, which shall not be refundable.

3. The application for registration shall be submitted in one of the official languages of Afghanistan and shall bear the date and the signature of the applicant.

#### **Article 11. Priority**

An application for the registration of an industrial design filed in Afghanistan by or on behalf of any person who has previously filed a regular application for the registration of the same industrial design in a foreign country has the same force as the same application would have if filed in Afghanistan on the first foreign filing date of that application, if the following conditions are met:

- (a) the application in Afghanistan is filed within six months from the date on which the foreign application was filed; and
- (b) the applicant requests priority in respect of the application filed in Afghanistan in accordance with applicable regulations, and complies with applicable regulations promulgated in accord with Article 4 of the Paris Convention for the Protection of Industrial Property.

#### **Article 12. Receipt**

Upon receipt of an application made in accordance with this Chapter, the Registrar shall provide the applicant with a dated, time-stamped receipt, and shall also record in the Registrar's records the time and date of receipt of the application.

#### **Article 13. Formal Examination; Supplementation**

1. The Registrar shall, within 20 days of receiving application for registration of an industrial design, examine the application for formal compliance with the requirements of this Chapter, and inform the applicant in writing either that the application is deemed complete, or that the application is deficient on specific points.
2. Where the Registrar has identified formal deficiencies in the application, the applicant shall address those deficiencies within 20 working days of receiving notice thereof. The Registrar shall promptly inform the applicant in writing either that the application is deemed complete, or that the application is rejected on formal grounds.
3. Failure to cure the deficiencies within the initial time allotted shall constitute abandonment of the application.

#### **Article 14. Substantive Examination**

1. Upon confirmation of a complete application under Article 13 of this Law, the Registrar shall undertake a substantive examination of the application and determine whether the design for which registration is sought meets the requirements of this Law for registration, and in particular the requirements of Article 9.
2. The Registrar shall, within 20 working days of confirmation of the completed application, inform the applicant in writing of its determination and the legal basis there for.
3. Where the Registrar finds that a design does not meet the requirements for registration, the Registrar shall notify the applicant in writing of the particular deficiencies that the Registrar has identified in the application and of the period for reply as set out in the regulations promulgated under this Law.
4. If the applicant does not file a reply within the designated period, the application shall be considered abandoned and the Registrar shall not enter the design in the Register.

#### **Article 15. Registration**

1. Upon a positive determination under Article 14 of this Law, the Registrar shall enter the industrial design into the Registry.
2. The Registry entry shall include the following information with respect to the registered design:
  - (a) the name and address of the owner and, if a different party, the original designer;
  - (b) the subject matter and a brief description of the design;
  - (c) the dates of both application and registration, both in Afghanistan and, if applicable, in a foreign country;
  - (d) the term of validity of the registration; and
  - (e) the registration number of the design.
3. Any subsequent assignments of rights under Article 8 of this Law shall be recorded on the Registry entry for the corresponding industrial design.

#### **Article 16. Certificate of Registration**

Upon registering an industrial design, the Registrar shall issue to the applicant a Certificate of Registration, dated and signed by the Registrar and sealed with the Registrar's seal. The Certificate shall include the name of the owner and the original designer, the subject matter of the design, the registration number, the term of validity of the registration, and a declaration that the industrial design has been registered in accordance with this Law.



### **Article 17. Publication**

Upon a positive determination under Article 14 of this Law, the Registrar shall, promptly upon notifying the applicant of his decision, cause notice of the registration of the industrial design to be published in the Official Gazette in the prescribed manner, which shall include notice of procedures for objections.

### **Article 18. Marking**

1. The owner of a registered industrial design shall have the right to affix [designated sign], along with the name, or the usual abbreviation of the name, of the owner of the design, to any article embodying the design and/or to the labels or packaging associated with those articles which are circulated in trade.
2. Such marking shall create constructive notice of the registration to the public. However, marking shall not be required as a condition of protection.

### **Article 19. Application to Supplement or Alter a Registered Industrial Design**

1. The owner of any registered industrial design may apply to the Registrar for permission to supplement or alter such industrial design in any particular not being an essential particular.
2. Notice of any requested supplementation or alteration shall be published in the Official Gazette in the time and manner prescribed, along with notice of procedures for objections.
3. The Registrar, taking into account the application and any objections, shall refuse or grant the application on such terms as he may think fit.
4. Any supplementation or alteration to a registered design shall be reflected in the Registry and on the Certificate of Registration.

### **Article 20. Termination of Registration**

1. An industrial design registered under this Law may be removed from the Register upon petition of an interested party or on the initiative of the Registrar, on the grounds that the conditions for registration are not met, or that the applicant is not the owner of rights in the industrial design.
2. A notice of intention to terminate a registration, and the legal grounds there for, must be served on the registered owner in the time and manner prescribed.

3. After service of notice of intention to terminate, the owner shall file a response with the Registrar and serve a copy on the petitioning party, if any, in the time and manner prescribed.
4. If the registered owner does not file and serve a response in a timely manner, the industrial design shall be removed from the Register and the owner shall promptly be informed of such in writing.
5. If the owner files and serves a response in a timely manner, the Registrar shall afford the owner and the petitioning party, if any, the opportunity to present at a hearing evidence and testimony to support their respective positions.
6. After considering the totality of the evidence, the Registrar shall, within the time prescribed, make a final determination on the whether the industrial design shall be removed from the Register.
7. The Registrar shall notify the registered owner and the petitioning party, if any, in writing of the final determination and the legal basis there for.

## **Chapter 4**

### **Protection of Industrial Designs**

#### **Article 21. Term**

Subject to the provisions of Article 23, the term of protection for exclusive rights in an industrial design is ten years, beginning on the date of the registration of the design.

#### **Article 22. Temporary Protection at International Exhibitions**

1. Temporary protection shall be extended to industrial designs of goods exhibited at official or officially recognized international exhibitions held in the territory of Afghanistan.
2. Such temporary protection shall not extend the priority period provided under Article 11 of this Law.

#### **Article 23. Maintenance Fees**

1. The owner of a registered industrial design shall, to maintain the exclusive rights accorded by the registration of the design, pay to the Registrar's office such fees, in respect of such periods, as may be prescribed.
2. Where the owner fails to pay fees required under paragraph 1 of this Article within the time provided, the term of protection for the registered industrial design shall be deemed to have expired.

3. A grace period of six months shall be allowed for the payment of the fees prescribed under this Article, subject to the payment of a surcharge.
4. To better facilitate the process, the office will create a bank account.

#### **Article 24. Exclusive Rights**

The owner of an industrial design registered under this Law shall, with regard to that design and during the protection term stated under Article 21 of this Law, have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

## **Chapter 5** **Penalties**

#### **Article 25. Action**

An action for infringement of an exclusive right in a registered industrial design may be brought in the commercial court by the owner of the design, or by an exclusive licensee of any right therein, subject to any agreement between the owner and the licensee.

#### **Article 26. Damages**

1. The judicial authorities shall have the authority to order a violator of this Law to pay an injured party damages adequate to compensate for the injury sustained because of the violation.
2. The judicial authorities shall also have the authority to order the violator to compensate the injured party for his expenses, which may include appropriate attorney's fees.

#### **Article 27. Injunctive Remedies**

1. The judicial authorities shall have the authority to order a party to desist from actions in violation of any right under this Law, including the introduction into the channels of commerce in Afghanistan of imported goods that involve a violation of this Law.
2. The judicial authorities shall have the authority to order that goods that they have found to violate this Law be, without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the owner of the registered industrial design concerned.

3. The judicial authorities shall also have the authority to order that materials and implements whose predominant use has been to create goods violating this Law be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risk of further violations. In considering requests for relief under this paragraph, the need for proportionality between the seriousness of the violation and the remedies ordered, as well as the interests of third parties, shall be taken into account.

#### **Article 28. Indemnification**

1. The judicial authorities may order a party at whose request enforcement measures were taken, and who has abused enforcement procedures, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

2. In such a case, the judicial authorities shall also have the authority to order the applicant to pay the defendant's expenses, which may include appropriate attorney's fees.

## **Chapter 6** **Final Provisions**

#### **Article 29. Appeals**

1. The commercial court shall have jurisdiction to hear appeals on any administrative decision made by the Registrar under this Law.

2. An appeal made pursuant to this Article shall follow the prescribed form and procedure of the commercial court, and shall be subject to payment of the prescribed fee.

#### **Article 30. Implementation**

The Ministry of Commerce and Industries shall implement this Law.

#### **Article 31. Enactment of Regulations and Procedures**

The Ministry of Commerce and Industries may promulgate regulations and adopt by-laws and procedures for better implementation of the provisions of this Law.

#### **Article 32. Date of Enforcement**

The present Law shall come into force on the date which it is published in the Official Gazette.