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THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN

MINISTRY OF COMMERCE AND INDUSTRIES

**DRAFT LAW ON PROTECTION OF LAYOUT DESIGNS OF
INTEGRATED ELECTRONIC CIRCUITS
2013(1392)**

Law on Protection of Layout Designs of Integrated Circuits

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Law on Layout Designs of Integrated Circuits

Chapter One General Provisions

Basis

Article 1:

This Law is enacted in the light of Article forty seven of the Constitution of the Government of the Islamic Republic of Afghanistan.

Objectives

Article 2:

The objective of this Law is to regulate:

- 1) the rights and duties related to layout designs of integrated circuits;
- 2) the process for registering layout designs of integrated circuits; and
- 3) compulsory licenses of layout designs of integrated circuits.

Terms

Article 3:

Terms used in this Law have the following meanings:

Register: the Register of Layout of Designs of Integrated Circuits.

Registry: the Registry Office of the Afghanistan Central Business Registry.

Ministry: the Ministry of Commerce and Industries.

Integrated Circuit: a product, in its final form or intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material, which is intended to perform an electronic function.

Layout Design: the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

Protected Layout Design: a layout design that is accorded protection pursuant to the provisions of this Law.

Right holder: the natural person or the legal entity which, pursuant to the provisions of this Law, is the beneficiary of the protection of this Law.

Chapter Two Protection

The Register of Layout Designs of Integrated Circuits

Article 4:

1. The Registry will maintain a Register of Layout Designs of Integrated Circuits.
2. The Register will contain records of all information related to layout designs of integrated circuits registered in Afghanistan, including the following:
 - 1) the names and addresses of right holders of registered layout designs;
 - 2) registration certificates issued on such layout designs;
 - 3) any transfer, assignment or license granted by a right holder;
 - 4) any attachment, mortgage, lien or other encumbrance placed upon a registered layout design;
 - 5) any restrictions on the use of the registered layout design;
 - 6) any amendments, compulsory licenses, cancellations, judicial decisions or related matters affecting registered layout designs; and
 - 7) such other matters as may be required under this Law or the Regulations issued pursuant to it.
3. Recordation of any of the matters specified in paragraph 2 of this Article may be subject to fees as set out in the Regulations.
4. The public will have the right to view the Register and associated documents at no charge and under such conditions as will be stipulated in the Regulations.
5. The Registry will, on application and payment of the prescribed fee, provide any person with a copy, or a certified copy, of any public documents of the Register.
6. Data and documents retrieved from the Register and certified by the Registry will be initially presumed valid unless proven otherwise.

Protectable Subject Matter

Article 5:

1. A layout design must be registered to receive protection under this Law, and may be registered only if the following conditions are met:
 - 1) the layout design is original, in the sense that it is the result of its creator's own intellectual effort, and is not commonplace among creators of layout designs and manufacturers of integrated circuits at the time of its creation; and

2) an application for registration is filed in Afghanistan within two years from the date of the first ordinary commercial exploitation of the layout design, anywhere in the world.

2. A layout design that consists of a combination of elements and interconnections that are commonplace will be protected only if the combination, taken as a whole, fulfills the conditions referred to in subparagraph (1)(1) of this Article.

3. A layout design may be registered and protected under this Law whether or not the integrated circuit is incorporated in an article.

Owner of Rights

Article 6:

1. The right to register a layout design belongs to the creator, or his legal successor.

2. If a layout design is created through the joint efforts of more than one creator, the right to register belongs jointly and equally to those persons, unless they have agreed otherwise.

3. If a layout design is created independently by more than one person, the right to register belongs to the first creator to file an application for registration.

4. If a layout design is created pursuant to an employment contract which requires the employee to accomplish such a creation, the right to register belongs to the employer, unless otherwise stipulated by written contract.

Chapter Three Registration

Application for Registration of a Layout Design

Article 7:

1. An application for the registration of a layout design must be submitted to the Registry, on the form designated for this purpose, accompanied by all information, samples, and drawings required under the Regulations.

2. An application for registration of a layout design must relate to only one design.

3. If the application is filed by an applicant who is not a citizen or resident of Afghanistan, the applicant must appoint a legal representative in Afghanistan.

Filing Date, Inspection and Amendment

Article 8:

1. The date on which the Registry receives the application for registration of the layout design will be deemed to be the filing date, provided that the application fulfills all legal requirements, and includes all required data about the applicant and illustrating the layout design.
2. Where the Registry finds that the application does not fulfill the requirements of paragraph (1) of this Article, he will notify the applicant that he has a right to fulfill such requirements within thirty days of the notification. The date on which the applicant fulfills such requirements will be deemed the filing date of the application.
3. Amendments to an application made under this Article must not exceed the parameters of the original application.
4. If the applicant does not fulfill the application requirements within the prescribed period, the application will be deemed abandoned .

Acceptance of Application and its Publication

Article 9:

1. If the application for registration fulfills all the requirements set forth in this Law and any relevant Regulations, the Registry will issue a decision accepting the application within one month of the filing date .
2. The acceptance of the application will be published upon payment of the prescribed fees.

Objections

Article 10:

Third parties may after the publication of the acceptance of an application, in accord with objection provisions set forth in the Regulations, oppose the Registry's acceptance of that application on the grounds that the registration would be contrary to the provisions of this Law.

Registration and Certification

Article 11:

If no objection is submitted against the acceptance of an application for registration within [45] days after notice of that acceptance is published, or if submitted objections are duly rejected, the Registry will issue a decision of registration, and will issue a certificate thereof after collecting the prescribed fees from the applicant.

Term of Protection

Article 12:

- 1) Protection of a layout design is counted as from 10 years from the filing date of an application for registration or from the first commercial exploitation of the related layout design wherever in the world it occurs.
- 2) The term of protection of a layout design is whichever period described in section (1) is longer. In no case will that term of protection exceed a period of 15 years after the creation of the layout-design.

Chapter Four Rights in Layout Designs

Exclusive Rights and Exceptions

Article 13:

1. The following acts, if performed without the authorization of the holder of the rights in a layout design protected under this Law, constitute prohibited acts of infringement:
 - 1) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout design in its entirety or any part thereof, except where such reproduction:
 - a) relates to an element that does not comply with the requirement of originality referred to in Article 5 of this Law; or
 - b) is performed for private purposes or for the sole purpose of evaluation, analysis, research or teaching.
 - 2) the act of importing, selling or otherwise distributing for commercial purposes a protected layout design, an integrated circuit in which a protected layout design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout design.
2. The acts referred to in subparagraph (1)(2) of this Article will not be deemed unlawful where they relate to an integrated circuit incorporating an unlawfully reproduced layout design, or any article incorporating such an integrated circuit, provided that the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.
3. After such person referred to in paragraph (2) of this Article has received sufficient notice that the layout design was unlawfully reproduced, that person may perform any of the acts referred to in subparagraph (1)(2) of this Article with respect to the stock on hand or ordered before such time, but will be liable to pay the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.

4. Where a third party, on the basis of evaluation or analysis of a protected layout design permitted under paragraph 1(1)(b) of this Article, creates a second layout design complying with the requirement of originality referred to in Article 5 of this Law, that third party may incorporate the second layout design in an integrated circuit, or perform any of the acts referred to in paragraph (1) of this Article in respect of the second layout design, without being regarded as infringing the rights of right holder in the protected layout design.

5. The right holder in a layout design may not exercise his exclusive rights in respect of an identical original layout design that was independently created by a third party.

Exhaustion of Rights

Article 14:

The acts of importing, selling or distributing referred to in Article 13(1)(2) of this Law will not be deemed unlawful where performed in respect of a protected layout design, or in respect of an integrated circuit in which such a layout design is incorporated, that has been put on the market by, or with the consent of, the right holder.

Compulsory License

Article 15:

1. The Ministry may, without the consent of the right holder, grant a compulsory license for the exercise of a right or rights in a protected layout design, either:

- 1) for public non-commercial use, or
- 2) to remedy practices determined to be anti-competitive by a judicial or administrative authority.

2. An application for compulsory license under this Article will be considered on its individual merits.

3. The compulsory license will only be issued if the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions, and such efforts have not been successful within a reasonable period of time. The Ministry may waive this requirement, but must promptly inform the right holder of the application for compulsory license.

4. The scope and duration of the compulsory license must be limited to the purpose for which it is granted.

5. The compulsory license will be non-exclusive.

6. The compulsory license will be non-assignable, except with that part of an enterprise or goodwill which engages in the licensed use.

7. The compulsory license will be limited to use predominantly for the supply of the domestic market of Afghanistan. However, the Ministry may waive this requirement in cases of licenses to remedy practices determined to be anti-competitive.

8. Subject to adequate protection of the legitimate interests of the licensee, the compulsory license will be terminable if the circumstances which led to its grant cease to exist and are unlikely to recur.

9. The Ministry has the authority to review, upon motivated request, the continued existence of the circumstances referred to in paragraph (8) above.

10. The Ministry may refuse termination of a compulsory license as set forth in paragraph (8) above if the conditions which led to its grant are likely to recur.

11. A right holder whose protected layout design is a subject of a compulsory license must receive adequate remuneration under the circumstances of the case, taking into account the economic value of the authorization. In cases of licenses to remedy practices determined to be anti-competitive, the need to correct anti-competitive practices may be taken into account in determining the amount of remuneration.

12. The legal validity of any decision relating to the grant of a compulsory license, including any decision relating to remuneration, is subject to judicial review.

Cancellation

Article 16:

Any interested person may, during the term of protection of a layout design and in accord with the provisions of the Regulations, apply to the Registry for the cancellation of the registration of that layout design, on the grounds that the registration is contrary to the provisions of this Law.

Lapse of Protection

Article 17:

The rights in a layout design lapse in the following cases:

1. Termination of the term of protection;
2. Issuance of a final decision by the competent court canceling the registration of the layout design; or
3. Non-payment of maintenance fees, after the lapse of six months from the due date.

Appeals

Article 18:

1. A final decision by the Registry in an objection proceeding as set forth in Article 10 or in a cancellation proceeding as set forth in Article 16 is subject to judicial review.
2. The legal protection accorded to the layout design continues until the competent court issues its final decision.

Alienation, Encumbrance and Succession

Article 19:

1. Rights in a layout design may be transferred or assigned, completely or partially, and may be subject to attachment, mortgage or lien.
2. The matters referenced in paragraph 1 of this Article must be promptly published as well as recorded in the Register. They will not be effective as against third parties prior to the date of registration.
3. Rights in a layout design may pass by succession.

Licensing

Article 20:

1. A right holder may license a natural or legal person to exercise a right or rights in his layout design, according to a written agreement signed by the parties.
2. A license must be recorded in the Register, and will not be effective as against third parties prior to the date of registration. However, at the request of either party, the Registry must maintain the confidentiality of trade secrets or other confidential matters contained in the license contract.
3. The term of a license agreement may not exceed the term of protection stipulated in this Law.
4. A license may be exclusive or non-exclusive.

Chapter Five Penalties

Injunctive Remedies

Article 21:

1. The competent court will have the authority to order a party to cease actions in violation of any right set out in this Law, including the introduction into the channels of commerce in Afghanistan of imported articles that involve a violation of this Law.
2. The competent court will have the authority to order that articles 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 third parties.
3. The competent court will also have the authority to order that implements whose predominant use has been to create articles violating this Law be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.
4. Orders under paragraph (3) must take into account the need for proportionality between the seriousness of the violation and the remedies ordered, as well as the interests of third parties.

Damages

Article 22:

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

Indemnification

Article 23:

1. The competent court 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. The competent court will also have the authority to order the wrongful party in subparagraph (1) above to pay the defendant's expenses, which may include appropriate attorney's fees.

Chapter Six

Miscellaneous Provisions

Applicability and Non-Discrimination

Article 24:

1. The provisions of this Law apply equally to nationals of Afghanistan and to natural persons who are nationals or domiciliaries of any country with which Afghanistan has concluded a treaty related to intellectual property protection.
2. The provisions of this Law apply equally to legal entities which, or natural persons who, in the territory of any country described in paragraph 1 of this Article, have a real and effective establishment for the creation of layout designs or the production of integrated circuits.
3. The term “nationals” includes nationals of countries which are members of an intergovernmental organization which is a party to any treaty referenced in paragraph (1) of this Article.

Enactment of Regulations

Article 25:

The Ministry may draft, enact and approve Regulations and relevant procedures for better implementation of the provisions of this Law.

Date of Enforcement

Article 26:

This Law will come into force upon signature of the President and shall be published in the Official Gazette.