

Draft Law No. () for the year....

On Industrial Designs

Article (1):

This Law shall be called (Industrial Designs Law)

Article (2):

For the purpose of implementing the provisions of this Law, the following terms and phrases shall have their corresponding meanings unless context suggests otherwise:

Ministry: Ministry of Industry and Trade

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Regulation: The executive regulation of this Law

Court: The competent commercial court

Department: General Department for Protection of Industrial Designs at the Ministry

Registrar: General Director of the Competent Department

Gazette: A periodical paper issued by the Department in which all rights related to industrial property are published.

Article (3):

The Industrial Design is any combination that with lines or colors or any solid shape with or without colors that can be used in the industrial production either manually or automatically including textile designs provided that such a combination or shape should give a special appearance to the industrial or the handcraft product.

Article (4):

The industrial design can be eligible for registration once the following requirements are met:

- 1- It should be new and not revealed to the public, anywhere in the world, by any means including its use or concretely publication before the date of lodging the registration application or the date of priority of registration application if any. Any revealing of the industrial design shall not be taken into consideration during the six months that precede the date of filing a registration application or the date of claiming priority as a result of an action done by the registration applicant or due to unjustifiable act by another party against him.
- 2- It should have been created in a new form.
- 3- It should not violate the public order or morals or incorporate religious slogans or signs, or flags of the Republic of Yemen or any other regional or international organizations.
- 4- Any industrial design imposed basically by the technical or occupational product's considerations shall not be registered.

Article (5):

The right to register an industrial design is granted as follows:

- 1- For the inventor or any one to whom the rights of the industrial design are devolved.
- 2- If the industrial design is the outcome of collective work, the rights for its registration is equally granted for the participants except if agreed otherwise.
- 3- For holder of the first application based on the date in case if more than one application was independently filled for the same industrial design if they are separate from each other.

Article (6):

A registry called "Industrial Designs Registry" shall be prepared by the Department to record all data related to industrial designs and any changes such as assignment, transfer, mortgage, licensing, renewal or erasure. Any interested party has the right to obtain a copy of the data recorded in the registry after paying the due fees.

Article (7):

The application to register an industrial design shall be submitted to the competent Department according to the requirements and the procedures set forth by the regulation. The application should include, in particular, the following data:

- 1- Name, nationality and address of the applicant.
- 2- Drawings, photographs and explanatory data related to the industrial design.
- 3- Products for which the industrial design is to be registered.

Article (8):

The applicant may include in his request his claim of the priority registration based on a prior filed request in any country that is a member of Paris Convention for the Protection of Industrial Property provided that filing the request in Yemen should be submitted within a period not exceeding six months from the date of the first filed request. The applicant shall provide a copy of the first filing of the request certified by the entity to which it was lodged in the other country. The filing date of the first request should be the same date of the filing request in the Republic of Yemen.

Article (9):

The regulation shall identify procedures and timeframe to revise and check the application.

Article (10):

The Registrar may provide certain amendments to the industrial design to avoid any overlapping with another design already protected by this Law.

Article (11):

The registrar shall issue a decision on the design registration application and the applicant should be notified in writing in case the application is rejected or needs to be amended.

Article (12):

The registration applicant may appeal the registrar's decision indicated in Article (11) of this Law before the court within 30 days from the notification, or otherwise he shall be deemed assignor of his request.

Article (13):

Once registration application of the industrial design is accepted, the registrar shall publish it in the gazette at his own expense.

Article (14):

- 1- Any interested party can submit a written protest to the registrar against the application to register the industrial design showing reasons behind the protest and within 90 days from the date of the published announcement.
- 2- The registrar shall provide the applicant with a copy of the protest, and the applicant shall respond to the protest within 30 days from the notification date, otherwise he shall be deemed assignor of his request.
- 3- The registrar shall issue a decision either to accept, turn down or amend the protest. Each party has the right to appeal the decision before the court within 30 days from the date of the decision notification. The court may uphold, amend or nullify the decision.

Article (15):

- A. If the grace period for the protest ended according to Article (14) and no protest was made on the registration application of the industrial design, the design shall be registered and a registration certificate should be issued as per the procedures indicated in the regulation.

- B. The applicant for the registration of the industrial design shall be given six months grace period from the date of the end of the protest period indicated in Article (14), or from the date of issuance of the decision in the protest or issuance of the court order to finalize procedures related to the registration of the industrial design, otherwise he shall be deemed assignor of his request.

Article (16):

Registration of the industrial design grants its owner the following rights:

- 1- A ten-year non-renewable protection period for the industrial design from the date of filing application.
- 2- Preventing others from using the industrial design to either manufacture, sell or import products having the shape of the protected industrial design according to the provisions of this Law.
- 3- The right to act on the industrial design either to assign, license or mortgage it to others in line with the procedures set forth by the regulation. Allowing the use of the design should be in writing and documented and it shall not be taken into consideration unless it is registered and published in the gazette.

Article (17):

The industrial design protection excludes the following:

- 1- Using it for scientific research purposes.
- 2- Using it for training or learning purposes.
- 3- Using it for non-commercial purposes.
- 4- Other uses which do not contradict unreasonably with normal use of the protected industrial design and in such a way that do not prejudice the legitimate interests of the design owner.

Article (18):

The competent minister can – for the sake of public interest – issue a justifiable order to grant any other person a mandatory non-monopolistic license to use the protected industrial design against fair compensation. The executive regulation shall define conditions, requirements and procedures to grant such a licence.

Article (19):

The industrial design's owner shall submit a request to the department to record changes to the owner's name, nationality or address according to the terms and procedures set forth by the regulation.

Article (20):

Temporary protection shall be given to an industrial design exhibited at national or international fairs held in Yemen. The regulation shall also define the relevant regulatory terms and procedures.

Article (21):

Any interested party may request the court to nullify the industrial design registration if it is registered illegally. The Department shall terminate the registration once an enforceable final order is received.

Article (22):

The owner of the industrial design shall ask the court upon filing a civil/criminal action or at the time of looking into the case to take provisional measures to prevent any infringement to his rights including preventing others from producing, selling or importing goods which use the protected design in their production either partially or wholly for commercial purposes. He shall also ask the court to seize products, goods, packages, documents or others like machinery and tools that used in the infringement.

Article (23):

The applicant for goods seizure must deposit a financial guarantee estimated by the court before issuing the seizure order. The seizer should also file an objective action within ten days from the issuance date of the seizure order otherwise he shall be deemed assignor of his request and seized against can file a compensation case.

Article (24):

The regulation shall indicate the financial charges to be collected by the Ministry from beneficiaries for services and procedures arising as a result of implementing this law.

Article (25):

The court is assigned to look into the legal actions and disputes arising as a result of implementing this Law.

Article (26):

Staff of the competent department shall be given the capacity of judicial controllers.

Article (27):

Natural or Judicial persons – Yemeni or foreigners- who belong to or carry out a real and effective business in one of the countries linked with Yemen through international agreements on intellectual property protection or on a reciprocity basis, have the right to ask for the registration of an industrial design according to the provisions of the Law and its regulation.

Article (28):

The executive regulation of this Law shall be issued by a Prime Minister's decree based on the minister's proposal.

Article (29):

The Minister shall issue the necessary decisions, regulations and instructions to apply the provisions of this Law.

Article (30):

Provisions related to industrial designs stipulated in the Republican Decree No. (19) for the year 1994 regarding intellectual right should be repealed.

Article (31):

This Law comes into effect one month after publication in the official gazette with consideration to transitional and permission periods Yemen gets upon accession to the WTO.