

A BILL

for

AN ACT TO MAKE PROVISION FOR THE PROTECTION OF LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

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| Short title | 1. | (1) The Act may be cited as the Protection of Layout-Designs (Topographies) of Integrated Circuit Act 2001.

(2) This Act shall come into operation on a date to be proclaimed by His Majesty in Council. |
| Act binds the Crown | 2. | This Act binds the Crown. |
| Interpretation | 3. | In this Act, unless the context otherwise requires,

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

"layout-design" is synonymous with "topography" and means 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 dis areereep1.2()1.5nectansi0THout-1 |

- Protection** **4.** (1) Protection by way of registration under this Act may be obtained for layout-designs of integrated circuits if and to the extent that they are original within the meaning of section 5.
- (2) Registration may only be applied for if the layout-design has not yet been commercially exploited, or has been commercially exploited for not more than two years, anywhere in the world.
- Originality** **5.** (1) A layout-design shall be considered to be original if 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 reaction.
- (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 within the meaning of subsection (1).
- Right to protection** **6.** (1) The right to layout-design protection:
- (a) shall belong to the creator of the layout-design;
- (b) may be assigned or transferred by succession; or
- (c) where several persons have jointly created a layout-design, the right shall belong to them jointly.
- (2) Where the layout-design has been created in execution of a commission or an employment contract, the right to layout-design protection shall belong, in the absence of contractual provisions to the contrary, to the person who commissioned the work or to the employer.
- (3) Protection under this Aa

- (b) importing, selling or otherwise distributing for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an

- (e) the performance of any of the acts referred to in subsection (1)(b) where the act is performed in respect of an identical layout-design which is original and has been created

(4) Any person may consult the Register of Layout-Designs and obtain extracts therefrom, subject to the payment of the prescribed fee.

(5) The fact of the registration of a layout-design shall be published in the Gazette.

Transfer of application or registration 11.

(1) where the essential content of an application has been taken from the layout-design of another person without his consent, that other person may in writing, request the Registrar to transfer the application to him. Where the application has already resulted in a registration, that person may, within three years from the publication of the registration, in writing, request the Registrar to transfer the registration to him and to rectify the entry in the Register accordingly.

(2) the Registrar shall send forthwith a copy of such a request to the right holder, and, within the prescribed period and in the prescribed manner, the right holder may send to the Registrar a counter-statement of the grounds on which he relies.

(3) If the right holder sends a counter-statement, the Registrar shall furnish a copy thereof to the person requesting the transfer and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the application or registration should be transferred and, where applicable, whether the Register should be rectified.

Changes in the ownership 12.

(1) Any change in the ownership of a protected layout-design shall be in writing, Once the layout-design has been registered, the change in ownership shall, at the request of any interested party, made to the Registrar, be recorded and published by the Registrar. Such change shall have no effect against third parties until such recording is effected.

(2) Any licence contract concerning a layout-design shall, upon registration of the said layout-design, be submitted to the Registrar, who shall keep its contents confidential but shall publish a reference thereto. The licence contract shall have no effect against third parties until such submission has been made.

Cancellation 13.

(1) Any interested person may make a request to the Registrar that the registration of a layout-design be cancelled on the grounds that -

(a) the layout-design is not capable of protection under sections 3,4 and 5;

- (b) the right holder is not entitled to protection under section 6;
or
- (c) where the layout-design has been commercially exploited, anywhere in the world, before the filing of the application for registration of the layout-design, the said application was not filed within the time limit referred to in sections 4(2) and 8(1).

(2)

(2) The Court may also order the seizure, forfeiture and destruction of the layout-designs, integrated circuits or articles concerned and of any materials or implements the predominant use of which has been in the commission of the offence.

**Exploitation by a
Government agency
or third person**

- 17.** (1) Where -
- (a) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of protected layout-design for public non-commercial use; or
 - (b) a judicial or administrative body has determined that the manner of exploitation of a protected layout-design, by the right

(2) (a) The provisions of any international treaties to which subsection (1) applies shall be available for inspection and copying at the Registrar's office, or at any other office designated by him, by any person likely to be affected by it.

(b) Subject to subsection 2(a), no person shall be prosecuted or convicted for contravening the provisions of international treaties in subsection (1) if such provisions are not available for inspection or copying as required by subsection (2)(a), and it is a defence to such a prosecution to show that the contravened provisions were not so available as required.

(c) The defence available under subsection (2)(b) is not available to a person who had insufficient knowledge of the requirements of the contravened provisions for which he is