

REPUBLIC OF VANUATU

BILL FOR THE CIRCUIT LAYOUTS ACT NO. OF 2000

Explanatory Note

This note does not form part of the Bill.

The purpose of this Bill is to provide for the protection of layouts for integrated circuits.

The Bill reflects international trends towards greater uniformity in the field of intellectual property law. In particular, this Bill conforms with the minimum standards and principles prescribed for layout designs of integrated circuits in the international Agreement on Trade-Related Aspects of Intellectual Property Rights.

PART 1 - PRELIMINARY

This Part contains definitions and terms that are used frequently throughout this Bill.

PART 2 - EL RIGHTS IN ELIGIBLE LAYOUTS

REPUBLIC OF VANUATU

Assent: 29/12/2000

Commencement:

CIRCUIT LAYOUTS ACT NO. 51 OF 2000

Arrangement of sections

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2. Meaning of “eligible person”
3. Circuit layouts made before commencement of Act
4. What is commercial exploitation
5. Exclusive right and exclusive licence
6. Making an eligible layout
7. Originality
8. Licence of owner of EL rights
9. Substantial part of eligible layout

PART 2 - EL RIGHTS IN ELIGIBLE LAYOUTS

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REPUBLIC OF VANUATU

Assent 29 December 2000
Commencement

CIRCUIT LAYOUTS ACT NO. 51 OF 2000

An Act to provide for the protection of layouts for integrated circuits.

Be it enacted by the President and parliament as follows-

PART 1—PRELIMINARY

INTERPRETATION

1. In this Act, unless the contrary intention appears:

“circuit layout” means a representation, fixed in any material form, of the three-dimensional location of the active and passive elements and interconnections making up an integrated circuit;

“commercially exploited” has the meaning given by section 4;

“Court” means the Supreme Court;

“eligible foreign country” means a foreign country declared by the regulations to be an eligible foreign country for the purposes of this Act;

“eligible layout” means an original circuit layout:

- (a) whose maker was an eligible person when the layout was made; or
- (b) that was first commercially exploited in Vanuatu or in an eligible foreign country;

“EL rights” means the exclusive rights specified in section 11 for an eligible layout;

“exclusive licence” has the meaning given by section 5;

“exclusive right” has the meaning given in section 5;

“future EL rights” means EL rights that will come into existence at a future time or on the happening of a future event;

“integrated circuit” means a circuit:

- (a) whose purpose is to perform an electronic function; and
- (b) in which the active and passive elements, and any of the interconnections, are integrally formed in or on a piece of material; and
- (c) that is in a final form or an intermediate form;

“material form”, for a circuit layout, includes any form of storage (whether visible or not) from which the layout, or a substantial part of it, can be reproduced;

“prospective owner” means the person in whom future EL rights will vest (whether as owner or otherwise) when they come into existence;

“protection period”, for an eligible layout, means the period beginning on the day the layout was made and ending:

- (a) if the layout is first commercially exploited within 10 years after the end of the year the layout was made—at the end of the tenth year after the year the layout was first commercially exploited; and
- (b) in any other case—at the end of the period of 10 years after the year the layout was made.

MEANING OF ELIGIBLE PERSON

- 2 (1) An eligible person is:
- (a) a Vanuatu citizen or a person resident in Vanuatu; or
 - (b) a body corporate incorporated by or under a law in force in Vanuatu; or
 - (c) a citizen, national or resident of an eligible foreign country; or
 - (d) a body corporate incorporated by or under a law of an eligible foreign country.
- (2) A person who is ordinarily resident in Vanuatu or a foreign country but is temporarily absent from that country at

8. For the purposes of this Act, an act is taken to have been done with the agreement of the owner of EL rights if the act is authorised by an agreement binding the owner.

SUBSTANTIAL PART OF ELIGIBLE LAYOUT

9. In this Act:
- (a) a reference to doing an act (other than making) in relation to an eligible layout includes a reference to doing that act in relation to a substantial part of the layout; and
 - (b) a reference to a copy of an eligible layout includes a reference to a copy of a substantial part of the layout; and
 - (c) a reference to an integrated circuit made in accordance with an eligible layout includes a reference to an integrated circuit made in accordance with a substantial part of the layout.

- (2) The exclusive licensee's rights:
 - (a) cannot be exercised against the owner of the EL rights; and
 - (b) do not affect the owner's rights.

- (a) making a copy of the layout to evaluate or analyse the layout; or
 - (b) making an original circuit layout based on an evaluation or analysis carried out using that copy; or
 - (c) making an integrated circuit in accordance with that original circuit layout; or
 - (d) copying or commercially exploiting that original circuit layout in Vanuatu.
- (2) A person does not infringe the EL rights in an eligible layout by:

commercial exploitation does not infringe the copyright in that work, unless making that copy or adaptation infringed that copyright.

- (3) Expressions used in subsection (2) that are used in the Copyright and Related Rights Act No. 14 of 2000 have the same meanings as in that Act.

USE FOR DEFENCE OR SECURITY

19. (1) An act done by the Government of Vanuatu, or a person authorised in writing by the Government, is not an infringement of EL rights in an eligible layout if:
 - (a) the act is for the defence or security of Vanuatu; and
 - (b) the Government of Vanuatu or the authorised person has unsuccessfully taken all reasonable steps to obtain the agreement of the owner of the EL rights, on reasonable terms, to do the act.
- (2) The owner may give his or her agreement before or after the act is done.
- (3) The Government of Vanuatu must as soon as practicable:
 - (a) tell the owner of the EL rights in the layout that the act has been done; and
 - (b) tell the owner what the owner wants to know about the doing of the act, unless this would, or might reasonably be expected to, damage the defence or security of Vanuatu.
- (4) If the owner of the EL rights and the Government of Vanuatu cannot agree on the terms for doing the act in relation to the eligible layout, either the

PART 3—REMEDIES FOR INFRINGEMENTS OF EL RIGHTS

Division 1—Actions by owner of EL rights

ACTIONS FOR INFRINGEMENT

20. (1) The owner of EL rights may bring an action for an infringement of those rights.
- (2) The relief that the Court may grant includes:
- (a) an injunction (subject to any terms the Court thinks appropriate); and
 - (b) either damages or an account of profits.
- (3) If:
- (a) EL rights are infringed; but
 - (b) at the time of the infringement, the defendant was not aware, and had no reasonable grounds for suspecting, that he or she was infringing the EL rights;
- the plaintiff is entitled to an account of profits, but not damages, for the infringement (whether any other relief is granted or not).
- (4) If, having regard to:
- (a) the flagrancy of the infringement; and
 - (b) any benefit that accrued to the defendant because of the infringement; and
 - (c) all other relevant matters;
- the Court is satisfied that it is appropriate, the Court may award additional damages.

Division 3—Proof of facts in actions

PRESUMPTIONS AS TO EXISTENCE AND OWNERSHIP OF EL RIGHTS

27. In an action for infringement:
- (a) EL rights are presumed to subsist in the circuit layout if the defendant does not raise the question whether those rights subsist in the layout; and
 - (b) where EL rights subsist in the layout—the plaintiff is presumed to be the owner of the rights if:
 - (i) he or she claims to be the owner; and
 - (ii) the defendant does not raise the question of ownership.

(2) In subsection (1):

“distributed by way of trade” includes sold, let for hire, or offered or exposed for sale or hire or other distribution by way of trade;

“imported” means imported into Vanuatu for the purpose of distribution by way of trade;

“prescribed label or mark” means a label or mark:

- (a) that was clearly affixed to the eligible layout, the copy of the eligible layout or the integrated circuit made in accordance with an eligible layout or the package containing it, or the article in which the integrated circuit is incorporated; and
- (b) that bears a statement to the effect that EL rights subsist in the layout; and
- (c) that states the maker of the layout and the country and year when the layout was first commercially exploited.

PART 4—MISCELLANEOUS

JURISDICTION OF SUPREME COURT

29. The Supreme Court has jurisdiction to hear and determine matters under this Act.

APPEALS

30. An appeal lies from a decision of the Court to the Court of Appeal.

ELIGIBLE FOREIGN COUNTRIES