

64. Subject matter of protection for layout designs(1) Protection under this Part may be obtained for layout designs of integrated circuits to the extent that layout designs are original within the meaning of section 65 (1).(2) Registration may only be applied for if the layout design has not been commercially exploited anywhere in the world and, where there has been commercial exploitation, it has not been for more than two years.65. Originality of layout design(1) A layout design shall be considered to be original if it is the result of the creator's own intellectual effort.(2) A layout design which, at the time of its creation, is common among creators of layout designs and manufacturers of integrated circuits shall not be considered original except where such a design consists of a combination of elements and interconnections that are common but the combination when taken as a whole is original in terms of subsection (1).66. Application for layout design(1) An application for the registration of a layout design shall be made to the Registrar in writing and shall-(a) indicate the name, address, nationality and habitual residence of the applicant;(b) contain a copy or drawing of the layout design and information defining the electronic function which the integrated circuit is intended to perform and may omit such parts of the copy or drawing relating to confidential information about the manufacture of the integrated circuit;(c) indicate whether or not there has been exploitation, and where there has been exploitation, specify the date of the first exploitation;(d) where the applicant is to be represented, contain a copy of the power of attorney appointing the representative; and(e) where the person making the application is not the owner of the layout design, furnish the Registrar with such proof of his or her title or authority to apply for registration as may be prescribed.(2) A separate application shall be made for each layout design.(3) The information supplied on the application together with any drawings or copies of the layout design must sufficiently allow for the identification of the layout design.(4) An application for the registration of a layout design shall be made subject to the payment of the prescribed fee.67. Filing date of application for layout design(1) The Registrar shall accord, as the filing date of an application for registration of a layout design, the date on which such application is received by the Office if at the time of its receipt, the application complies with the requirements of section 66 (1) (a) and (b).(2) Where the application does not comply with the requirements of subsection (1), the Registrar shall, in writing, request the applicant to supply the information lacking in the application within two months and shall accord to the application, as the filing date, the date on which the further information was filed.(3) If an applicant fails to comply with any request made by the Registrar under subsection (2), his or her application shall be treated as though it had never been filed.68. Registration of layout design(1) Where the application complies with the requirements of section 66, and the Registrar is satisfied that the requirements of this Act have been fulfilled, the Registrar shall register the layout design.(2) Where the Registrar registers a layout design, the Registrar shall, within such time as may be prescribed-(a) issue, to the applicant, a certificate of registration of the layout design;(b) record the number, title, filing date and any other details pertaining to the layout design in the register; and(c) publish, in the Journal, a reference to the registration of the layout design.(3) An application which, owing to any default or neglect on the part of the applicant, has not been completed for the registration to be effected within the prescribed period shall be deemed to have been abandoned.69. Rights conferred by registration(1) The registration of a layout design confers on its registered owner the right to prevent third parties who do not have the owner's consent from exploiting the layout design in Botswana, and in particular, from making, importing or selling any article bearing or embodying the registered layout design or a layout design not substantially different from the registered layout design.(2) For the purposes of this section, exploitation of a registered layout design means the doing of any act specified in subsection (1) including-(a) reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in section 65; and(b) importing, selling or otherwise distributing for commercial purposes a protected layout design or an integrated circuit in which a protected layout design is incorporated.(3) If two or more persons have created a layout design jointly, the right to that layout design shall belong to them jointly.(4) The right to a layout design may be transferred by cession, assignment, testamentary disposition or by operation of law.(5) The provisions of section 11 shall apply to layout designs.(6) Protection of a layout design shall not depend on whether or not the integrated circuit which incorporates the protected layout design is itself incorporated in an article.70. Exceptions to rights conferred by registration(1) The exclusive rights conferred by registration of a layout design shall not extend to the acts specified in section 25 (1) (a), (b), (c), (i) and (j).(2) Where a third party, on the basis of evaluation or analysis of the protected layout design, creates a layout design that is original as provided in section 65, that third party may incorporate such layout design in an integrated circuit or perform any of the acts referred to in subsection (1) in respect of that layout design without being regarded as infringing the protected layout design.(3) The holder of the right may not exercise his or her right in respect of an identical original layout design that was independently created by a third party.(4) Any person who acquires an integrated circuit or article incorporating an unlawfully reproduced layout design and does not know and has no reasonable grounds to know when acquiring that integrated design or article that it incorporated an unlawfully reproduced layout design shall, upon receiving sufficient notice that the layout design or article he or she has received was unlawfully reproduced, perform any of the acts under section 69 (2) with respect to the stock on hand or ordered before receiving such notice, but shall be liable to pay to the

right holder compensation equivalent to a reasonable royalty payable under a freely negotiated licence in respect of such a layout design.

71. Invalidation of registered layout design (1) Subject to the provisions of this Act, the Registrar or the High Court may, on the application of any interested person, invalidate the registration of a layout design on any of the following grounds- (a) that the layout design is not original in terms of section 65; (b) that the applicant for registration was not the owner; (c) where the layout design has been commercially exploited, that such exploitation occurred more than two years before the filing date accorded to the layout design; or (d) on any ground on which the Registrar could have refused to register the layout design. (2) Where the grounds of invalidation are established only to a part of the layout design, only that part shall be invalidated. (3) An application for the invalidation of a layout design shall be served on the person in whose name it is registered and, where applicable, lodged with the court in the manner and within the time prescribed. (4) Where a layout design is invalidated or transferred to its rightful owner, the Registrar shall, within such time as may be prescribed, publish a reference thereto in the Journal and the invalidated layout design or any part thereof shall be null and void from the date of commencement of its protection.

72. Duration of protection A layout design for an integrated circuit shall be protected for 10 years from the date of filing of the application for registration or from the first commercial exploitation wherever it occurs in the world, provided that protection shall in all cases lapse 15 years after the creation of the layout design.

73. Importation by persons other than owner (1) Any person, other than the owner of a layout design, may apply to the Minister to import any product covered by the integrated circuit of a layout design where- (a) the product covered by the integrated circuit of a layout design is available in a quantity that is not sufficient to meet the local demand in Botswana, or is available at an unreasonable low quality, or at prices which the Minister deems abusive; or (b) for any other reason of public interest. (2) The Minister may, after hearing the owner of the layout design and any other interested person wishing to be heard, authorise the importation of any product covered by the layout design. (3) The authorisation to import any products covered by the layout design shall be predominantly for the supply of the domestic market in Botswana. (4) Upon the request of the owner of the layout design or of any person authorised by the Minister to import the layout design, the Minister may, after hearing the parties, vary the terms of the decision authorising the importation of the layout design to the extent that those changed circumstances justify. (5) Upon the request of the owner of the layout design, the Minister shall revoke his or her decision if he or she is satisfied, after hearing the parties wishing to be heard, that the circumstances which led to the Minister's decision have ceased to exist and are unlikely to recur, or that the person authorised by the Minister has failed to comply with the terms of the authorisation. (6) Notwithstanding the provisions of subsection (5), the Minister shall not terminate the authorisation if he or she is satisfied that the need for the adequate protection of the legitimate interest of the person designated by him or her justifies the maintenance of his or her decision. (7) The authorisation to import products under a layout design shall not exclude- (a) the conclusion of licence contracts by the owner of the design; or (b) the continued exercise, by the owner of the design, of his or her rights under section 69. (8) An application for the Minister's authorisation to import products under a layout design shall be accompanied by evidence that the owner of the layout design has received, from the person seeking that authorisation, a request for a contractual licence, but that person has been unable, within a reasonable time, to obtain such a licence on reasonable commercial terms and conditions. (9) Any person aggrieved by the decision of the Minister may appeal to the High Court against that decision.