

# INTEGRATED CIRCUITS BILL, 2013

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## INTEGRATED CIRCUITS BILL, 2013

### A BILL FOR AN ACT TO PROVIDE FOR THE PROTECTION OF LAYOUT DESIGNS, ALSO CALLED TOPOGRAPHIES, OF INTEGRATED CIRCUITS AND FOR RELATED MATTERS.

Enacted by the Parliament of The Bahamas

#### 1. Short title and commencement.

- (1) This Act may be cited as the Integrated Circuits Act, 2013.
- (2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette, appoint.

#### 2. Interpretation.

In this Act —

“**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 inter-connections, are integrally formed in or on a piece of material and which is intended to perform an electronic function;

“**Intellectual Property Office**” means the Intellectual Property Office referred to in section 3 of the Patents Act;

“**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 inter-connections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture;

“**Minister**” means the Minister with responsibility for integrated circuits and lay-out designs;

“**Register**” means the Register of Lay-Out Designs;

**“Registrar”** means the Registrar of the Intellectual Property Office and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar;

**“right holder”** means the natural person who, or the legal entity which, is to be regarded as the beneficiary of the protection referred to in section 3.

### **3. Protection.**

- (1) Subject to this Act, layout-designs of integrated circuits may be protected under this Act —
  - (a) where and to the extent that they are original within the meaning of section 4; and
  - (b) where an application has been made for the registration of the layout-design.
- (2) An application for the registration of a layout-design may be made—
  - (a) if the layout-design has not been commercially exploited; or
  - (b) where the layout-design has been commercially exploited by the right holder, if such exploitation anywhere in the world, has been for not more than two years before the application for registration.

### **4. Originality.**

- (1) A layout-design is original if it is the result of its creator’s own intellectual effort and is not common place among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.
- (2) A layout-design that consists of a combination of elements and inter-connections that are commonplace shall be protected only if the combination, taken as a whole, is original within the meaning of subsection (1).

### **5. Right to protection.**

- (1) The right to protection of a layout-design vests in the creator of the layout-design.
- (2) the right mentioned in subsection (1) —
  - (a) may be transferred by the creator *inter vivos*; or
  - (b) may devolve by succession.
- (3) Where two or more persons create a layout-design the right to protection vests in them jointly.
- (4) Where a layout-design has been created in execution of a commission or an employment contract, the right to protection vests, in the absence of

any agreement to the contrary, in the person who commissioned the work or in the employer, as the case may be.

## **6. Effect of protection.**

- (1) An integrated circuit may be protected under this Act whether or not it is incorporated in an article.
- (2) Subject to subsection (3) and section 7, no person shall, without the express consent of the right holder —
  - (a) reproduce, whether by incorporation in an integrated circuit or otherwise, a protected layout–design or any part thereof, except any part of the design that does not comply with the requirement of originality defined in section 4;
  - (b) import, sell or otherwise distribute for commercial purposes —
    - (i) a protected layout–design, or
    - (ii) an integrated circuit in which the protected layout design is incorporated or an article incorporating such an integrated circuit insofar as it continues to contain an unlawfully reproduced layout–design.
- (3) The consent of a right holder is not required —
  - (a) where a protected layout–design or any part thereof is reproduced for private purposes or for the sole purpose of evaluation, analysis, research or teaching;
  - (b) where an original design within the meaning of section 4 is created as a result of evaluation or analysis referred to in paragraph (a) and that design is incorporated in an integrated circuit or is reproduced or sold or otherwise distributed for commercial purposes;
  - (c) for the performance of any act referred to in subsection (2) in respect of an original layout–design that has been independently created notwithstanding that it is identical to a protected layout–design; and
  - (d) for the performance of any of the acts referred to in subsection (2) (b) where the act is performed 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.

## **7. Innocent performance in respect of integrated circuits.**

- (1) The protection of a layout–design under this Act shall not extend to the performance of any of the acts referred to in section 6(2)(b) in respect of an integrated circuit incorporating an unlawfully reproduced layout–design or any article incorporating such an integrated circuit where the person performing or ordering such an act did not know and had no

reasonable grounds to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design.

- (2) For the purposes of subsection (1), where the person referred to in that subsection has received notice that the layout-design referred to in that subsection was unlawfully reproduced, that person may perform any act referred to in section 6(2)(b) only in respect of stock on hand or stock ordered before he received such notice and upon payment to the right holder of such an amount equal to a reasonable royalty as would be payable under a freely negotiated licence for such a layout-design.

## **8. Commencement and duration of protection.**

- (1) Protection of a layout-design under this Act commences —
  - (a) on the date of the first commercial exploitation, anywhere in the world, of the layout-design by, or with the consent of, the right holder, where an application for protection is made by the right holder within the period specified in section 3(2); or
  - (b) on the filing date to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.
- (2) Protection of a layout-design under this Act terminates at the end of the tenth calendar year after the date of commencement of protection.

## **9. Application for registration.**

- (1) An application for the registration of a layout-design shall be made to the Registrar in the prescribed form.
- (2) An application referred to in subsection (1) shall —
  - (a) indicate the name, address and nationality of the applicant;
  - (b) be accompanied by —
    - (i) a power of attorney appointing the representative of the applicant, if any,
    - (ii) a copy or drawing of the layout-design;
  - (c) indicate whether commercial exploitation of the layout-design has commenced and where it has commenced and —
    - (i) specify the date and geographical location of first commercial exploitation of the layout design, and
    - (ii) be accompanied by a sample of the integrated circuit and information defining the electronic function that the integrated circuit is intended to perform; and

- (d) provide particulars establishing the right to protection under section 5.
- (3) The application referred to in subsection (2) may omit such parts of the copy or drawing referred to in paragraph (b)(ii) of that subsection that relate to the manner of manufacture of the integrated circuit if the parts submitted are sufficient to identify the layout–design.
- (4) Where the application does not comply with the requirement of subsection (2), the Registrar shall notify the applicant of the defects and invite him to correct them within two months.
- (5) Where the defects are corrected within the period specified in subsection (4), the Registrar shall deem as the filing date the date of receipt of the application, if at the time of receipt the application contained an express or implied indication that the registration of a layout–design is requested and there are indications allowing the identity of the applicant to be established and the application was accompanied by a copy or drawing of the layout–design.
- (6) Where the requirements of subsection (5) were not complied with at the date of receipt of the application but are corrected within the period specified in subsection (4), the date of receipt of the required correction shall be deemed to be the filing date of the application, and the Registrar shall confirm the filing date and notify the applicant thereof.
- (7) Where the defects are not corrected within the time limit, the application shall be deemed not to have been filed.
- (8) Each application for protection of a layout–design shall be accompanied by the prescribed fee.
- (9) Where the application is not accompanied by the prescribed fee, the Registrar shall notify the applicant that the application will be deemed not to have been filed unless payment is made within two months after the date of the notification.
- (10) Where the application fee is not paid within the period specified in subsection (9), the application shall be deemed not have been filed.

## **10. Registration and publication.**

- (1) The Registrar shall maintain a Register in which shall be registered each layout-design protected under this Act.
- (2) Where an application for registration of a layout-design complies with the requirements of section 9, the Registrar shall register the layout-design without examination of —
  - (a) the originality of the layout-design;
  - (b) the applicant’s entitlement to protection; or

- (c) the correctness of the facts stated in the application.
- (3) The Register shall contain —
  - (a) the number, title and filing date;
  - (b) the date of commercial exploitation, anywhere in the world, of the layout-design where stated in the application under section 9(2)(c);
  - (c) the name and address of the right holder; and
  - (d) any other information, prescribed by regulations made under this Act.
- (4) Any person may examine the Register and upon payment of the prescribed fee, take extracts therefrom.
- (5) The registration of every layout–design shall be published in the Gazette.

#### **11. Right to transfer and rectification of register.**

- (1) Where the essential content of the 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.
- (2) Where the application has already been registered, the other person referred to in subsection (1) may, within three years after 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.
- (3) The Registrar shall send forthwith a copy of the request mentioned in subsection (2) 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 to maintain his registration as the right holder.
- (4) Where the right holder sends a counter-statement, the Registrar shall —
  - (a) furnish a copy thereof to the person requesting the transfer;
  - (b) hear the parties upon a request by either party to be heard; and
  - (c) shall decide whether the application or registration should be transferred and, where applicable, whether the Register should be rectified.
- (5) A change of ownership in the Register shall be published in the Gazette.

#### **12. Change in ownership of layout–design.**

- (1) Any change in the ownership of a layout-design shall be in writing.
- (2) Where a layout-design has been registered any change in ownership thereof shall, at the request of any interested party, be recorded by the Registrar who shall cause it to be published in the Gazette.

- (3) A change in ownership referred to in subsection (2) shall bind third parties as of the that it is published in the Gazette.

### **13. Registration of licences.**

- (1) Where a licence has been granted in respect of a registered layout-design, particulars in respect of the grant of the licence shall be recorded in the Register.
- (2) A right holder or a licensee, as the case may be, shall submit an application in the prescribed manner and pay the prescribed fee for registration of the licence.

### **14. Cancellation.**

- (1) Any interested person may apply to a Judge in Chambers for the cancellation of the registration of a layout-design on the ground that —
  - (a) the layout-design cannot be the subject of protection under this Act;
  - (b) the right holder is not entitled to protection under this Act; or
  - (c) where the layout-design has been commercially exploited before the filing of the application for registration of the layout-design, the application was not filed within the period specified in section 3(2).
- (2) Where the round for cancellation is established with respect only to a part of the layout-design, only the corresponding part of the registration shall be cancelled.
- (3) Where the registration of a layout-design, or part thereof is cancelled the registration or part shall be deemed to have been void ab initio.
- (4) The decision of the Court is final and shall be transmitted to the Registrar who shall —
  - (a) record it in the Register; and
  - (b) cause a statement of the cancellation to be published in the Gazette as soon as practicable.

### **15. Representation.**

- (1) An applicant whose residence or principal place of business is outside The Bahamas shall be represented by a counsel and attorney.
- (2) For the purposes of this Act, “counsel and attorney” has the meaning assigned to it by section 2 of the Legal Profession Act (*Ch. 64*).

### **16. Infringement and enforcement of right.**

- (1) Proceedings for specific relief relating to the infringement of any right under this Act may be instituted in the Supreme Court by —



- (a) the right holder; or
  - (b) by a licensee of the right holder where the licensee has requested the right holder to institute proceedings and the right holder has refused or failed to do so within a reasonable time.
- (2) The Supreme Court may —
- (a) grant an injunction to prevent infringement or an imminent infringement;
  - (b) award damages; and
  - (c) grant any other remedy available to the right holder or licensee under the law.
- (3) Proceedings under subsection (2) may be brought only after an application for registration of the layout–design has been made.

**17. Offence.**

Any person who, without the consent of the right holder, knowingly performs any act that is contrary to section 6 is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years or both; and the Magistrate may, in addition to the fine and imprisonment, order the seizure and disposal of the layout–designs, integrated circuits or articles concerned and any materials or implements used in the commission of the offence.

**18. Exercise of discretionary powers: extension of time.**

- (1) The Registrar shall give any party to any proceedings before him an opportunity to be heard before exercising any discretionary power vested in him by this Act that is likely to adversely affect the party.
- (2) Where the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request therefor upon such terms as he may direct, extend the time for doing any act, for filing an application, or for taking any proceedings under this Act.
- (3) Where an extension is granted under subsection (2), the Registrar shall give notice of such extension to the parties concerned.
- (4) The extension referred to in subsection (2) may be granted though the time for doing the act of taking the proceedings has expired.
- (5) The time for filing an application referred to in section 3(2) may not be extended.

## **OBJECTS AND REASONS**

The Bill seeks to provide for the protection of layout–designs of integrated circuits.

Clause 2 defines certain terms used throughout the Bill. Of note are the definitions of “integrated circuit” and “layout–design”. “Integrated circuit” means a product in which the elements and the inter–connections are formed as a whole or a piece of material which is intended to perform an electronic function. “Layout–design” means the three–dimensional disposition of the elements.

Clause 3 states that a layout design of an integrated circuit is protected where it is original and an application is made for its registration.

Clause 4 declares that a layout–design is original if it is the result of its creator’s own intellectual effort.

Clause 5 states that the right to protection of a layout–design lies in its creator and may be transferred by him while he is alive or may devolve on his death.

Clause 6 declares that no person, without the express consent of the holder shall reproduce, import, sell or distribute a protected layout–design. Consent, however, is not required where the layout–design is reproduced for private purposes or for evaluation, analysis, research or teaching.

Clause 7 provides that protection of a layout–design will not extend where a person imports, sells or otherwise distributes for commercial purposes an integrated circuit and did not or had no reason to believe that the integrated circuit incorporated an unlawfully reproduced layout–design.

Clause 8 states that protection of a layout–design commences on the date of the first commercial exploitation if application for registration is made within 2 years of such exploitation, or on the filing date of the application for registration where there has been no commercial exploitation. Protection will be for a period of 10 years.

Clause 9 provides that application for registration of a layout–design must be made to the Registrar of the Intellectual Property Office accompanied by the prescribed fee and must include the matters set out in the clause.

Clause 10 states that the Registrar must maintain a register to be known as the “Register of Layout–Designs” in which must be registered all protected layout–designs.

Clause 11 provides that where the essential content of the application has been taken from the layout–design of another person without his consent the other person may request the Registrar to transfer the application to him. After hearing both parties the Registrar will decide whether or not the application will be transferred.

Clause 12 provides that any change in the ownership of a layout–design may be recorded by the Registrar at the request of any interested person.

Clause 13 provides that particulars of a licence granted in respect of a registered layout–design must be recorded in the Register.

Clause 14 provides that any interested person may apply to a judge in chambers for the cancellation of the registration of a layout–design of any of the grounds specified in the clause.

Clause 15 provides that an applicant whose address is outside The Bahamas must be represented by a counsel and attorney.

Clause 16 provides that proceedings for infringement of a right may be brought in the Supreme Court.

Clause 17 provides that where any person without the consent of the holder reproduce, imports, sells or otherwise distributes for commercial purposes a protected layout–design he shall be liable to a fine of \$10,000.00 or imprisonment for 2 years.

Clause 18 declares that the Registrar must give any party to any proceedings before him an opportunity of being heard before exercising any discretionary power given to him by the Act.