THE INDUSTRIAL PROPERTY BILL
(No. ..... of 2016)

Explanatory Memorandum

The main object of this Bill is to bring together in one enactment the provisions of the law relating to the protection of industrial property rights namely, patents, utility models, layout-designs of integrated circuits, plant breeder’s rights, industrial designs, marks including geographical indications and trade names.

2. The Bill provides for the Industrial Property Office headed by a Director, for the setting up of the Intellectual Property Council which is advisory in nature and for the jurisdiction of the Industrial Property Tribunal to which appeals against a decision of the Director may be addressed.

S. LUTCHMEENARAI DOO, G.C.S.K.
Minister of Foreign Affairs, Regional Integration and International Trade

............................ 2016

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A BILL

To provide for ..............................................................................................................

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Industrial Property Act 2016.

2. Interpretation

In this Act –

“appearance” means the packaging, shape, colour or other non-functional characteristic of a product;

“certificate” means the title granted to protect a patent, a utility model, a layout-design, a breeder’s right, an industrial design, a mark or a geographical indication against the exploitation by others of a registered right;

“certification mark” means a sign certified by the owner of a mark as being capable in respect of the origin, material or mode of manufacture of goods, the performance of services or their quality, standard, or other characteristics, of distinguishing goods or services from other goods or services not so certified;

“collective mark” means a sign designated as such in an application for registration which is capable of distinguishing the goods or services of the owner of the mark or of its members from those of any other enterprise;

“competent authority” means the Supervising Officer;

“compulsory licence” means an authorisation given by the competent authority to a person to exploit a patent or a utility model, without the consent of the right holder;

“Council” means the Industrial Property Council;

“decision of 30 August 2003” means the decision of the General Council of the World Trade Organisation on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health;

“Director” means the Director of the Office referred to in sections 3 and 4;

“economic tie” means a tie between 2 persons where –

(a) one of them may exercise on the other; or

(b) a third party may exercise on both of them,

a decisive influence with respect to the exploitation of an industrial design;

“exploit”, in relation to a design, means make, sell or import articles bearing or embodying a design which is a copy, or substantially a copy, of the registered design, offer, put on the market or sell articles that embody the design, or import such articles for those purposes;

“geographical indication” means an indication which identifies any goods as originating in the territory of a country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

“industrial design” means the appearance of a product resulting from its features, particularly the shape, lines, contours, colours, texture or materials of the product or its ornamentation;
“Intellectual Property Council” means the Council referred to in section 7;

“Industrial Property Tribunal” means the Tribunal referred to in section 8;

“industry” –

(a) means any human economic activity leading to the production of goods or services; and

(b) includes handicraft, agriculture, fisheries and other services;

“integrated circuit” means a product in its final or an intermediate form –

(a) in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material; and

(b) which is intended to perform an electronic function;

“Industrial Property Office” means the Industrial Property Office referred to in section 3;

“International Bureau” means the “Bureau” of the World Intellectual Property Organisation;

“International Classification” means, as regards –

(a) a patent, the classification established by the Strasbourg Agreement concerning International Patent Classification of 24 March 1971;

(b) an industrial design, the classification according to the Locarno Agreement establishing an International Classification for Industrial Designs of 8 October 1968;

(c) a mark, the classification according to the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957;

(d) a mark, the Vienna Classification, an international classification of the figurative elements of marks established by the Vienna Agreement (1973);

“invention” means an idea of an inventor that permits, in practice, the solution to a specific problem in the field of technology and may be, or may relate to, a product or a process;

“layout-design” means the 3-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
3-dimensional disposition prepared for an integrated circuit intended for manufacture;

“mark” –

(a) means a visually perceptible sign or combination of signs, capable of distinguishing the goods or services of one enterprise from those of other enterprises; and

(b) includes –

(i) a certification mark and a collective mark;

(ii) words, letters, numerals, figures, pictures, combination of colours, the shape of goods or parts of the goods, or the packaging or other conditioning of goods;

“Minister” means the Minister to whom responsibility for the subject of International Trade is assigned;

“Office” means the Industrial Property Office;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20 March 1883;

“patent” means the title granted to protect an invention;

“priority date” means the date of the filing of an earlier application that serves as the basis for claiming priority under this Act and as provided for under the Paris Convention;

“product” means any natural or agricultural product or any product of handicraft or industry;

“producer” means –

(a) a producer of agricultural products or a person exploiting natural products; and

(b) a manufacturer of products of handicraft or industry;

“Register” means the register referred to in section 6;

“trade name” means a name or designation used to identify an enterprise in the course of trade;

“Tribunal” means the Industrial Property Tribunal;
“TRIPS Agreement” means the Agreement on Trade Related Aspects of Intellectual Property, contained in Annex 1C of the Agreement establishing the World Trade Organisation, concluded in Marrakesh on 15 April 1994;

“utility model” means a technical creation that consists of a new shape or configuration of an object or of a component of an object that increases its functionality or utility.

PART II – ADMINISTRATION

3. Industrial Property Office

(1) There shall be a department within the Ministry which shall be known as the Industrial Property Office of Mauritius

(2) The Office shall be administered by a Director who shall be a public officer.

(3) There shall be posted to the Office such public officers as may be necessary for the proper discharge of the functions of the Office.

(4) The objects of the Office shall be to –

(a) administer and implement the provisions of this Act; and

(b) assist in the protection, promotion and development of industrial property governed by this Act.

(5) The Office shall have such powers as are necessary to attain its objects effectively and may, inter alia –

(a) implement strategies, programmes and action plans for the development of industrial property;

(b) compile and maintain a database for industrial property;

(c) devise and assist in the preparation of educational and sensitisation programmes on industrial property;

(d) undertake and assist in conducting research in industrial property.

(6) The Minister may give, to the Office and to the Director, such directions of a general character, not inconsistent with this Act, as he thinks necessary, and the Office and, as the case may be, the Director shall comply with those directions.

4. Functions of Director

(1) The Director shall –
(a) upon receiving an application for a certificate under this Act –

(i) grant a filing date;

(ii) examine the application;

(iii) grant the patent where appropriate;

(iv) grant the breeder’s right where appropriate;

(v) register any utility model, layout-design, industrial designs, mark including geographical indication and trade name where appropriate;

(vi) cause publication of the application made;

(b) keep a register in which he shall record the particulars of any application for a certificate received under this Act and the decision arrived at;

(c) either on his own initiative or upon a complaint made, investigate into any allegation of an offence under this Act; and

(d) ensure that the policies and procedures of the office are in compliance with relevant international standards and guidelines as regards to rights under this Act.

(2) Where after an investigation referred to in section (1) (c), the Director concludes that an offence under this Act has been committed, he shall refer the matter to the Director of Public Prosecutions.

5. Powers of Director

(1) The Director shall have such powers as may be necessary to carry out the functions of the Office and to enforce any right granted or registered under this Act, and in particular to

(a) require any person who is being investigated to provide such information or document as may be relevant to the investigation;

(b) require any public officer to provide such information or document in his custody;

(c) apply to the Judge in Chambers for an order authorising him or any of his officers to enter and search, at all reasonable times, any premises, secure and detain any document or material which is of relevance to the investigation being conducted.

(2) Where the Director is satisfied that the circumstances so justify, he may,
upon receiving a written request, extend the time for doing any act upon giving notice to the parties concerned and upon such terms as he may direct.

(3) The Director may correct any error of translation or transcription, clerical error or mistake, in any application or document filed with the Director or in any recording effected pursuant to this Act subject to any regulations as may be prescribed.

6. **Register**

(1) The Office shall maintain separate registers for patents, utility models, layout-designs, plant breeder’s rights, industrial designs, marks including geographical indications and trade names.

(2) All the entries and recordings provided for in this Act shall be inserted in the appropriate register.

7. **Intellectual Property Council**

(1) There shall be an Intellectual Property Council which shall consist of –

   (a) a Chairperson to be appointed by the Minister after consultation with the Prime Minister;

   (b) the Director;

   (c) a representative of the Ministry responsible for the subject of agriculture;

   (d) a representative of the Ministry responsible for the subject of arts and culture;

   (e) a representative of the Ministry responsible for the subject of education;

   (f) a representative of the Ministry responsible for the subject of information and communication technology; and

   (g) 3 representatives from the private sector associated with intellectual property, as appointed by the Minister.

(2) (a) The members of the Council referred in subsection (1)(a) and (g) shall hold office for 2 years and may be reappointed for a further period of 2 years.

   (b) The members of the Council shall be paid such allowance as the Minister may determine.

(3) (a) The Council shall –
(i) advise the Minister on any matter relating to intellectual property; and

(ii) ensure coordination among the public and private sectors in intellectual property formulation and enforcement.

(b) At any meeting of the Council, 5 members shall constitute a quorum.

(4) (a) The Council shall meet at least once a month at such time and place as the Chairperson shall determine.

(b) Where the Chairperson is absent at a meeting, the members present shall elect a member to chair the meeting.

(c) The Director shall designate an officer of the Office to act as Secretary to the Council.

(5) The Council may set up such committees as it thinks necessary to assist it in the discharge of its functions.

(6) Subject to this section, the Council shall regulate its proceedings in such manner and as it may determine.

8. Industrial Property Tribunal

(1) There shall be an Industrial Property Tribunal which shall consist of –

(a) a Chairperson, who shall be a law practitioner of not less than 5 years' standing having experience in industrial property; and

(b) not more than 3 other persons, one of whom shall have experience in the field of finance or business administration.

(2) (a) The members of the Tribunal shall be appointed by the Minister, after consultation with the Prime Minister and shall hold office for 3 years.

(b) For the purpose of hearing any matter, the Tribunal shall consist of the Chairperson and not less than 2 other members.

(c) The members of the Tribunal shall be paid such allowance as the Minister may determine.

(3) The Head of the Civil Service may designate such public officers as he may determine to assist the Tribunal in the exercise of its functions, including an officer to act as registrar.

(4) The Tribunal shall exercise such jurisdiction as may be conferred on it by this Act.
9. **Jurisdiction of Tribunal**

(1) The Tribunal shall have jurisdiction to hear and determine –

   (a) an appeal by any person who feels aggrieved by a decision taken by the Director;

   (b) an application by a person to the Tribunal for a ruling on the interpretation of any provision of the Act;

   (c) whether an application by any interested person to invalidate the grant of a patent, registration of a mark, an industrial design, a utility model, a geographical indication, a layout-design and the protection of a plant variety, is to be permitted;

(2) Any appeal to the Tribunal, under subsection (1)(a) shall be made within 28 days of the decision of the Director.

(3) The Tribunal shall sit at such time and place as the Chairperson may determine.

(4) The Tribunal shall, subject to such regulations as may be prescribed, regulate its own proceedings and may –

   (a) make such orders for requiring the attendance of persons and the production of articles or documents, as it thinks necessary for the conduct of its business; and

   (b) take evidence on oath.

(5) On the hearing of an appeal, the Tribunal may confirm, amend or cancel a decision made by the Director or give such determination as it considers appropriate.

(6) On the hearing of an appeal under subsection (1)(a) or an application under subsection (1)(c), the Tribunal shall, if necessary, hear the parties and shall make an order determining whether, and subject to what conditions or limitations as to the mode or place of use or otherwise, the grant of a patent, registration of a mark, an industrial design, a utility model, a geographical indication, a layout-design and the protection of a plant variety, is to be permitted.

(7) In proceedings under subsection (1)(a), no grounds of opposition to the grant of a patent, registration of a mark, an industrial design, a utility model, a geographical indication, a layout-design and the protection of a plant variety, other than those stated by the party in his notice of opposition, shall, except by leave of the Tribunal, be allowed to be considered by the party giving notice of opposition or the Director.
Where, after the Tribunal has allowed any further ground of opposition, under subsection (7), the respondent decides to withdraw his application, he shall give notice to the Tribunal and any other party to the appeal accordingly within one month of the leave being granted, and no costs shall be awarded against him.

In any appeal under this section, the Tribunal may, after hearing the parties to the appeal, order that any industrial property proposed to be registered or granted, be modified in any manner not substantially affecting its identity.

Any modification of an industrial property under subsection (9), shall be advertised in the Gazette and in 2 daily newspapers by the applicant, one of which shall be approved by the Director before it is registered or granted.

Where any party who has applied for an invalidation or has given notice of appeal does not reside or carry on business, and does not possess property, in Mauritius, the Tribunal may require him to give security for costs of the proceedings prior to the invalidation or hearing of an appeal, and, in default of such security being given, may treat the invalidation or appeal as abandoned.

PART III – PATENTS, UTILITY MODELS, PATENT COOPERATION TREATY
Sub-Part A-Patents

10. Matters excluded from patent protection

The following shall be excluded from patent protection –

(a) discoveries, scientific theories and mathematical methods;

(b) literary, dramatic, musical or artistic works or any other aesthetic creation whatsoever;

(c) schemes, rules or methods for doing business, performing purely mental acts or playing games;

(d) computer programs;

(e) methods for the treatment of the human or animal body, by surgery or therapy, as well as diagnostic methods practiced on the human or animal body;

(f) known substances for which a new use has been discovered and not applicable to the use itself, where they constitute a patentable invention under section 11;

(g) plants or animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-mesbiological and microbiological processes; and
(h) an invention, the primary or intended use of which would be contrary to public order or morality whether or not the exploitation of the invention is prohibited by law.

11. **Patentable inventions**

   (1) An invention shall be patentable where it –

   (a) is new;

   (b) involves an inventive step; and

   (c) is industrially applicable.

   (2) (a) An invention shall be new where it is not anticipated by prior art.

   (b) For the purpose of paragraph (a) –

       “prior art” includes everything disclosed to the public anywhere in the world by publication in tangible form, by oral disclosure, by use or in any other way, before the filing or, where applicable, the priority date, of the application claiming the patent.

   (c) For the purpose of paragraph (b), the disclosure of an invention to the public shall not be taken into consideration where it occurred –

       (i) within the 12 months preceding the filing date or, where applicable, the priority date of the application; and

       (ii) by reason or in consequence of an act committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.

   (3) An invention shall involve an inventive step where, having regard to the differences and similarities between the claimed invention and the prior art, the claimed invention as a whole would not have been obvious to a person having ordinary skill in the art at the filing date or, where applicable, the priority date of the claimed invention.

   (4) An invention shall be industrially applicable where it –

       (a) can be made or used in any industry; or

       (b) has specific, substantial and credible utility.

12. **Right to patent**

   (1) The right to a patent shall belong to the inventor.
(2) Where 2 or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(3) Where 2 or more persons have made the same invention independently of each other, the person who filed his application for a patent first shall have the right to the patent.

(4) (a) Subject to paragraph (b), where an invention is made in the execution of an employment contract, the right to the patent shall, in the absence of any contrary contractual provision, belong to the employer.

(b) Where the economic gains obtained by the employer are disproportionately high as compared to the employee’s salary and the reasonable expectations of gain that the employer had from his employee’s inventive output at the time he hired him, the employee shall be entitled to appropriate compensation.

(5) Where –

(a) an invention is made by an employee, otherwise than in the execution of an employment contract but

(b) the employee used material, data or know-how of the employer to make the invention,

the right to the patent shall, in the absence of any contrary contractual provision, belong to the employer, but the employee shall be entitled to appropriate compensation.

(6) Any invention claimed in an application filed by an employee for a patent within one year after the expiry of an employment contract that falls within the scope of the former employer’s main business shall be presumed to have been made under the expired contract, unless the employee produces proof to the contrary.

(7) Any promise or undertaking by an inventor made to his employer to the effect that he will waive any remuneration he is entitled to under this section shall be void and of no effect.

(8) (a) The employee shall be entitled to compensation that is not less than one third of the net direct and indirect gains obtained by the employer from exploiting the invention.

(b) (i) The obligation of an employer to pay compensation shall arise from the making and the exploitation of a patentable invention.

(ii) The failure or the negligence of an employer in successfully procuring a patent shall not exempt him from paying compensation.
An employer may, within 60 days from the receipt of a communication on the making of the invention, give notice to the employee that he is not interested in the invention and the employee may procure the right to the patent exclusively.

Where an employee carries out the commercial exploitation of an invention, the employer shall be entitled to compensation that is proportionate to the economic value of the materials, data or know-how used by the employee in making the invention.

Where an employer fails to file an application for a patent within one year from the date on which an employee communicated to him the making of an invention, the right to the patent shall belong to the employee.

Any right to a patent may be assigned, or may be transferred by succession.

An inventor shall be named as such in the patent unless he requests the Director in writing not to do so.

Any promise or undertaking by an inventor made to any person to the effect that he will make a request under paragraph (a) shall be void and of no effect.

13. Application for patent

The application shall include –

(a) the name of and other prescribed data concerning the applicant, the inventor and his agent, if any;

(b) the title and a description of the invention, claims, any drawing and an abstract;

(c) where the applicant is not the inventor, a statement justifying the applicant’s right to the patent; and

(d) where the applicant’s ordinary residence or principal place of business is outside Mauritius, an address within Mauritius for service of any document.

Any description referred to in subsection (2)(b) shall –

(i) explain the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art; and
(ii) indicate the best mode for carrying out the invention known to the inventor at the filing date or, where applicable at the priority date of the application.

(b) Where a patent for an invention is claimed, and the process for making that invention is not generally known, including by means of its description in the specifications of another patent application, the patent application shall also describe it in a manner that is sufficiently clear and complete for that process to be carried out by a person having ordinary skill in the art.

(c) Where the description provides sufficient information to allow that invention to be made and used by a person skilled in the art on the filing date, without undue experimentation, the description of the claimed invention shall be sufficiently clear and complete.

(d) Any description shall contain a clear identification of the origin of genetic or biological resources that are collected in Mauritius and directly or indirectly used in the making of the invention as well as of any element of traditional knowledge associated or not with those resources, that was directly or indirectly used in the making of the claimed invention with the prior informed consent of the State.

(e) The Director may, at any time before the grant of a patent, require the description in a foreign patent application to be adapted to the ordinary skill in the art of a citizen of Mauritius in order to ensure technology dissemination.

(f) (i) The Director shall, in the case of a patent application concerning microorganisms, consider that paragraph (a) has been complied with where the applicant submits the application with a declaration that the microorganism has been deposited with an international depositary authority, in accordance with the Budapest Treaty.

(ii) The Director shall accept the deposit and its date as indicated by the international depositary authority, where the applicant provides him with a copy of the receipt of the deposit issued by the international depositary authority.

(4) Any claim under subsection (2)(b) shall –

(a) define the matter for which protection is sought;

(b) be clear, concise and fully supported by the description;

(c) be fully supported by the description, where the claim reasonably conveys to a person having ordinary skill in the art that the applicant was in possession of the claimed invention at the filing date.

(5) The applicant shall include any drawings in the application where they are necessary for understanding the invention.
An abstract shall –

(a) be concise and precise;
(b) merely serve the purpose of technical information;
(c) not be taken into account for the purpose of interpreting the scope of the protection; and
(d) unless otherwise indicated by the Director, be of 50- to 150 words.

Where the prescribed fee is not paid, the Director shall notify the applicant that the application shall be considered not to have been filed unless payment is made within 2 months from the date of the notification.

An applicant may, before an application is granted, withdraw the application on payment of the prescribed fee.

Where an application has been withdrawn without having been opened to public inspection and no rights have been claimed or are outstanding in connection with the application, a subsequent application may be made in respect of the same invention.

No priority right may be claimed on the withdrawn application after the lodging of the subsequent application.

14. **Unity of invention, amendment and division of application**

(1) An application for a patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) An applicant may amend an application where the amendment does not go beyond the matter claimed in the initial application.

(3) (a) An applicant may, before the application is open for public inspection, divide an application into 2 or more divisional applications which shall not go beyond the matter disclosed in the initial application.

(b) Every divisional application shall be entitled to the filing date or, where applicable, the priority date of the initial application.

(4) Where a patent has been granted following an application that did not comply with the requirement of unity of invention under subsection (1), the failure shall not be a ground for the invalidation of the patent.

15. **Right of priority**
(1) An application for a patent may contain a declaration claiming, in accordance with the Paris Convention, priority for one or more earlier national or regional applications filed by the applicant or his predecessor in title, in or for any State party to the Convention or any member of the World Trade Organisation, at any time not later than 12 months from the filing date of the application.

(2) (a) Where an application contains a declaration under subsection (1), the Director may request the applicant to furnish within the prescribed period, a copy of the earlier application certified as correct by the Issuing Authority with which it was filed.

(b) The Director shall accept the form and the content of the certification referred to in paragraph (a) as determined by the certifying authority with which the application was filed.

(c) The Director may retrieve a document referred to in paragraph (a) from a database, which he may have formally accepted for that purpose.

(3) Where it appears to the Director that this section has not been complied with, the declaration shall be void and of no effect.

(4) Where an application contains a declaration in accordance with subsection (1) –

(a) the application may not be invalidated because of an act done during the preceding 12-month period; and

(b) no such act shall give rise to a third party right or right of personal possession.

16. Information concerning foreign application

(1) An applicant shall, at the request of the Director, furnish the date and particulars of any application for a patent filed abroad by him or his predecessor relating to the same or essentially the same invention as that claimed in the application.

(2) The applicant shall in relation to a foreign application referred to in subsection (1), furnish a copy of –

(a) any communication received by him concerning the result of any search or examination carried out in respect of the foreign application;

(b) the patent granted on the basis of the foreign application;

(c) any final decision rejecting the foreign application or refusing the grant requested in the application; and
any final decision invalidating the patent granted on the basis of the foreign application.

17. **Filing date and classification of patent**

   (1) The Director shall consider the date of receipt of an application for a patent as the filing date where, at the time of receipt, the application is accompanied by the prescribed fee and contains –

   (a) an express or implied indication that the granting of a patent is sought;

   (b) an indication about the identity of the applicant and the place where he may be contacted by the Office; and

   (c) a description of the invention.

   (2) (a) Where an application does not, at the time of receipt, comply with subsection (1), the Director shall invite the applicant to file the required correction within such time as he may determine.

   (b) Where the applicant does not file the necessary correction within the required time limit, the application shall be considered to be abandoned.

   (3) The Director shall, after granting a filing date to the application, proceed to classify the invention in accordance with the International Patent Classification.

18. **Examination of patent**

   (1) The Director shall, after classifying the invention, examine the application to verify that –

   (a) it complies with section 13; and

   (b) any information requested under section 16 has been furnished.

   (2) For the purpose of subsection (1), the Director shall take into account any document referred to in section 13.

   (3) (a) Where the application does not fulfill the requirements of subsection (1), the Director shall invite the applicant to correct the defects in the application within such time as he may determine.

   (b) Where a request made under paragraph (a) is not complied with, the application shall be considered to be abandoned.

19. **Publication of patent**

   (1) (a) The Director shall after 18 months from the filing date –
(i) open an application for a patent for public inspection; and

(ii) give notice of the opening of the application for inspection in the Gazette.

(b) The notice shall set out –

(i) the number and the filing date of the application;

(ii) the title of the invention;

(iii) the priority data, where applicable;

(iv) the name of the applicant(s) and of the inventor(s);

(v) the International Patent Classification;

(vi) one drawing, if any, that depicts the main element(s) of the invention; and

(vii) the abstract.

(c) The Director may give notice of the opening of the application for inspection on the official website.

(d) Any interested person shall receive a copy of the full contents of a patent application opened for public inspection on payment of the prescribed fee.

(2) An applicant for a patent may on payment of the prescribed fee, at any time between the filing date and the end of the period of 18 months referred to in subsection (1), request the Director to open the application for public inspection and to publish the notice referred to in that subsection.

(3) (a) An interested party may, within such period and subject to payment of such fees as may be prescribed, file a notice of opposition with the Director.

(b) A notice of opposition shall identify the opponent, as well as the grounds that the opponent may consider relevant to bar the grant as well as all relevant evidence.

(c) The Director shall give a copy of the notice of opposition to the applicant.

(d) The applicant of the patent may, within the prescribed time limit, file a counter-statement.
(e) The Director may grant a hearing at which the applicant for the patent and the opponent may argue and counter-argue their case and submit additional evidence, if available, including oral evidence.

20. Grant or refusal of patent

(1) Where the Director considers that an application for a patent complies with the conditions specified in sections 13 and 18, he shall grant the patent.

(2) Where the Director refuses an application for a patent, he shall notify the applicant in writing.

(3) Where a patent is granted, the Director shall –

(a) issue to the applicant a certificate of the grant of the patent and a copy of the patent;

(b) record the patent;

(c) publish a reference to the grant of the patent in the Gazette in such form and manner as may be prescribed; and

(d) make available copies of the patent to the public, on payment of the prescribed fee.

(4) (a) Subject to paragraph (b), the Director may, at the request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred.

(b) The Director shall not make any change, which shall result in having the protection conferred under the patent going beyond the protection claimed in the initial application.

21. Rights conferred by patent

(1) (a) A patent shall confer on its owner the right to prevent any other person from exploiting the patented invention.

(b) The rights of the patent owner shall be defined by the claims set out in the application.

(2) The rights under the patent shall not extend to –

(a) acts in respect of articles which have been put on the market in Mauritius or abroad by the owner of the patent or with his consent;

(b) the use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;
(c) acts done privately and on a non-commercial scale or for non-commercial purpose, which do not significantly prejudice the economic interests of the patent owner;

(d) acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical or dental practitioner;

(e) acts done for experimental and scientific research on or with the subject matter of the patented invention; or

(f) acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the patent owner; or

(g) acts performed by any person who in good faith, before the filing or, where applicable, the priority date of the application on which the patent is granted, was using the invention or was making effective and serious preparations for such use in Mauritius;

(h) acts performed by any person in order to make, construct, use or sell the patented invention solely for uses reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.

22. Duration of patent

(1) Subject to subsection (2), a patent shall expire 20 years after the filing date of the application.

(2) (a) For the purpose of maintaining a patent or patent application, an annual fee may be prescribed which shall be payable by the patent owner to the Director at such time as may be prescribed.

(b) The Director may allow a delay of 6 months for the late payment of the prescribed annual fee subject to payment of a surcharge fee.

(c) Where the prescribed annual fee is not paid in accordance with this subsection –

(i) the application for patent shall be considered to have been withdrawn; and

(ii) the patent shall lapse.

(d) Where the Director is satisfied that the non-payment of the prescribed annual fee was justifiable, and that rights of third parties that may have
arisen are not unreasonably infringed, the Director may, not later than one year after
the time at which the payment should have been made, restore the lapsed patent
subject to the payment of the prescribed fee.

23. Compulsory licence for patent

(1) Subject to subsection (3), where the competent authority is satisfied that –

(a) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires;

(b) a judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or his licensee, is anti-competitive, and that the exploitation of the invention in accordance with this subsection would remedy such practice;

(c) the owner of the patent is abusively exercising his exclusive rights or neglecting to take measures to prevent his licensee from abusively exercising those rights;

(d) the invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Mauritius,

it may, without the consent of the owner of that patent, authorise a Government agency or a third party to exploit the patented invention.

(2) Subject to subsection (3), where the competent authority is satisfied that without infringing the first patent, a second patent is an invention that involves an important technical advance of considerable economic significance in relation to an invention claimed in a first patent, it may without the consent of the owner of the first patent, issue a compulsory licence to the second patent.

(3) Where a request is made under subsection (2), it shall be addressed to the competent authority and be accompanied by evidence that the owner of the patent has received, from the person seeking the compulsory licence, a request for a contractual licence, but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time which shall, unless the competent authority in exceptional circumstances otherwise determine, be 6 months from the date on which the request was made.

(4) No evidence concerning a request for a contractual licence shall be required in cases of national emergency, circumstances of extreme urgency, cases of public non-commercial use or when the compulsory licence is to be granted to remedy a practice determined after judicial or administrative process to be anti-competitive, where the owner of the patent is assigned, as soon as reasonably practicable, notified of the decision of the competent authority.
(5) No request for compulsory licence shall be made on the ground of insufficient availability as specified in subsection (1)(d), before the expiry of a period of –

(a) 4 years from the filing date of the application for patent; or

(b) 3 years from the date of the grant of the patent,

whichever period expires last.

(6) A request under subsection (1) shall be refused where the owner of the patent justifies his inaction or insufficient action by legitimate reasons.

(7) An owner of the patent and any interested party may make a request to be heard by the competent authority before it makes a decision under subsection (1).

(8) (a) The exploitation of the invention shall be –

(i) limited to the purpose for which it was licensed; and

(ii) subject to the payment of an adequate remuneration to the owner of the patent in the circumstances of each case.

(b) The competent authority shall, in determining the remuneration under subsection (8)(a)(ii), take into account –

(i) the economic value of its decision; and

(ii) the need to correct anti-competitive practices.

(c) A competent authority shall, in determining the remuneration with respect to the compulsory licence of a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, prescribe an alternative process of making the same product is not known or not available, take into account, where applicable, the terms and conditions of the decision of the General Council of the World Trade Organisation of 30 August, 2003.

(9) An owner of the patent or holder of the compulsory licence may request the competent authority to vary the terms of the decision authorising the exploitation of the patented invention on the ground of changed circumstances after hearing the parties.

(10) An owner of the patent may request the competent authority to terminate a compulsory licence.

(11) Where, after hearing the parties, the competent authority is satisfied that –
(a) the circumstances which led to its decision under subsection (1) have ceased to exist and are unlikely to recur; or

(b) the holder of the compulsory licence has failed to comply with the terms of the decision; or

(c) the need for adequate protection of the legitimate interests of the holder of the licence does not justify the maintenance of the decision,

it shall terminate the compulsory licence.

(12) A compulsory licence may only be transferred to –

(a) the enterprise or business of the holder of the licence; or

(b) the part of the enterprise or business within which the patented invention is being exploited.

(13) A compulsory licence shall be non-exclusive and shall not exclude –

(a) the exploitation of the invention by the patent owner himself, through manufacture in Mauritius or through importation, or both;

(b) the conclusion of licence contracts by the owner of the patent; and

(c) the continued exercise, by the owner of the patent, of his rights under section 21(1)

(14) The exploitation of an invention by the holder of a compulsory licence shall be, predominantly, for the supply of the market in Mauritius except where –

(a) it is permitted to remedy a practice determined to be anti-competitive according to subsection (1)(c);

(b) the compulsory licence concerns a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, and the purpose of the licence is to export the patented products;

(c) the products manufactured by the patented process are for a foreign territory or country with no or with insufficient manufacturing capacity, in accordance with the terms and conditions of the decision of 30 August, 2003.

(15) Where a compulsory licence is granted under subsection (2)–
(a) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(b) the licence of the first patent shall be non-assignable except with the assignment of the second patent.

(16) This section shall apply, where appropriate and mutatis mutandis, to a pending application for a patent except in the case of insufficient availability of the patented product or of the product manufactured with the patented process.

(17) The request for the issuance of a compulsory licence shall be subject to payment of the prescribed fee.

24. Appeals against decisions granting compulsory licences and remuneration

Any decision of the competent authority regarding the request or grant of compulsory licence, including the decision relating to remuneration may be subject to appeal by the patent applicant or owner or requested party.

25. Invalidation of patent

(1) Any interested person may apply to the Tribunal for the invalidation of the grant of a patent where –

(a) it is excluded from patent protection under section 10;

(b) any of the requirements of sections 10, 11 and 14 have not been satisfied;

(c) the owner of the patent is not the inventor or his successor in title;

(d) the patent owner is shown to have engaged in inequitable conduct during the procurement of the patent.

(2) Where the grounds for invalidation are proved as regards a part of the invention, only that corresponding claim shall be invalidated.

(3) An invalidated patent shall be considered as null and void ab initio.

(4) The final decision of the Tribunal shall be notified to the Director who shall record it and publish a reference thereto as soon as possible.

Sub-Part B –Utility Models

26. Matters excluded from utility model protection

The following shall be excluded from utility model protection –
(a) discoveries, scientific theories or mathematical methods;
(b) literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever;
(c) schemes, rules or methods for doing business, performing purely mental acts, playing games;
(d) computer programs;
(e) plants or animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes;
(f) inventions, the primary or intended use of which would be contrary to public order or morality; and
(g) inventions having as subject matter a process or method.

27. Registrable utility model

(1) An invention may be registered as a utility model where it is –

(a) new;
(b) industrially applicable.

(2) (a) An invention shall be new where it is not anticipated by prior art.

(b) For the purpose of paragraph (a) –

"prior art" includes everything disclosed to the public by publication in tangible form, by oral disclosure, by use or in any other way, before the filing or, where applicable, the priority date, of the application claiming the utility model.

(c) For the purpose of paragraph (b), the disclosure of an invention to the public shall not be taken into consideration where it occurred –

(i) within the 12 months preceding the date of filing or, where applicable, the priority date of the application; and

(ii) by reason or in consequence of an act committed by the applicant or his predecessor in title or of an abuse committed by a third party with regard to the applicant or his predecessor in title.
(3) An invention shall be industrially applicable where it can be made or
used in any industry.

(4) Sections 12 to 14 shall, mutatis mutandis to an application for a utility
model certificate as it applies to an application for a patent.

28. Application of utility model

An application for a utility model shall be –

(a) filed with the Director in such form and manner as may be
prescribed;

(b) subject to payment of the prescribed fee.

29. Filing date of utility model

(1) The Director shall consider the date of receipt of an application for a
utility model as the date of filing where, at the time of receipt, the application is
accompanied by the prescribed fee and contains –

(a) an express or implied indication that the granting of a utility
model is sought;

(b) an indication about the identity of the applicant and the place
where he may be contacted by the Office; and

(c) a description of the invention.

(2) Where an application does not, at the time of receipt, comply with
subsection (1), the Director shall invite the applicant to file the required correction
within such time as he may determine.

(3) Where the applicant does not file the necessary correction within the
required time limit, the application shall be considered to be abandoned.

30. Examination and registration of utility model

(1) The Director shall, after issuing a filing date, examine whether –

(a) the application complies with section 27 and any other
provisions of this Act; and

(b) any information requested under section 15 has been provided.

(2) Where the conditions referred to in subsection (1) have been satisfied, the Director shall –

(a) register the utility model;

(b) record the utility model;
(c) issue to the applicant a certificate of the registration of the utility model and a copy of the description of the utility model;

(d) publish a reference to the registration of the utility model in the Gazette in such form and manner as may be prescribed; and

(e) make available copies of the utility model to the public on payment of the prescribed fee.

(3) Where an application fails to comply with the conditions referred to in subsection (1), the Director shall reject the application and notify the applicant of his decision.

31. Rights conferred by utility model

(1) (a) A utility model shall confer on its owner the right to prevent any other person from exploiting the utility model invention.

(b) The right of the utility model owner shall be defined by the claims set out in the application.

(2) The right under the utility model shall not extend to –

(a) acts in respect of articles which have been put on the market in Mauritius or abroad by the owner of the utility model or with his consent;

(b) the use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;

(c) acts done privately and on a non-commercial scale or for non-commercial purpose, which do not significantly prejudice the economic interests of the utility model owner;

(d) acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical or dental practitioner;

(e) acts done for experimental and scientific research on or with the subject matter of the utility model invention; or

(f) acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the utility model owner; or
(g) acts performed by any person who in good faith, before the filing or, where applicable, the priority date of the application on which the utility model is granted, was using the invention or was making effective and serious preparations for such use in Mauritius;

(h) acts performed by any person in order to make, construct, use or sell the utility modeled invention solely for uses reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.

32. Duration of a utility model

(1) The registration of any utility model shall be for a period of 6 years from the filing date of the application for registration.

(2) The registration of any utility model may be renewed for 2 further consecutive periods of 2 years upon –

(a) payment of a renewal fee; and

(b) compliance with any conditions as may be prescribed.

(3) The Director may allow a delay of 6 months for the late payment of the prescribed renewal fee subject to the payment of a surcharge fee.

(4) Where the renewal is not effected in accordance with this section, the registration of the utility model shall lapse.

33. Conversion of application of patent or utility model certificate

(1) (a) At any time before the grant or refusal of a patent, an applicant for a patent may, on payment of the prescribed fee, convert his application into an application for a utility model certificate.

(b) At any time before a utility model certificate is granted or refused, the applicant for a utility model certificate may, on payment of the prescribed fee, convert his application into an application for a patent.

(c) The converted application shall be given the date of filing of the initial application.

(2) An application under subsection (1)(a) or (b) shall not be receivable more than once.

34. Invalidation of utility model
Any interested person may apply to the Tribunal for the invalidation of the registration of a utility model where –

(a) the person requesting the invalidation proves that any of the requirements of sections 14, 26 and 27 have not been satisfied;

(b) the owner of the utility model is not the inventor or his successor in title;

(c) the utility model owner is shown to have engaged in inequitable conduct during the procurement of the utility model.

Where the grounds for invalidation are proved as regards a part of the invention, only that corresponding claim shall be invalidated.

An invalidated utility model shall be considered as null and void ab initio.

The final decision of the Tribunal shall be notified to the Director who shall record it and publish a reference thereto as soon as possible.

Sub-Part C – Patent Cooperation Treaty

35. Interpretation of Sub-part C

In this Sub-part –

“designate”, “designated office”, “elect”, “elected office”, “international application”, “international filing date”, “international preliminary examination”, “priority” and “receiving office” have the same meaning as in the Patent Cooperation Treaty;


36. International application designating Mauritius

Subject to this Part, an international application designating Mauritius shall be treated as an application for a patent or utility model certificate filed under this Act, and shall have as its filing date the international filing date accorded under the Patent Cooperation Treaty.

37. Functions of Office

(1) The Office shall act as a receiving office in respect of an international application filed with it by a resident or national of Mauritius in a prescribed language and accompanied by the prescribed transmittal fee.
(2) The Office shall act as a designated office in respect of an international application in which Mauritius is designated for the purpose of obtaining a national patent or other protection under this Act.

(3) The Office shall act as an elected office in respect of an international application in which Mauritius is designated where the applicant files a demand for the purposes of international preliminary examination under Chapter II of the Patent Cooperation Treaty.

(4) (a) The Office, acting in its capacity as designated office or elected office, shall not process an international application before the expiry of the time limit referred to Article 22, unless the applicant files with the Office a request for early commencement of the processing and complies with the requirements thereof.

(b) Where the applicant does not comply with Article 22, the international application shall be considered to be withdrawn.

38. Entering national phase

An applicant shall, in respect of an international application designating Mauritius and before the expiry of the time limit applicable under Article 22(1) or 39(1)(a) of the Patent Cooperation Treaty or of such later time limit as may be prescribed, pay the prescribed fee to the Office and, where necessary, file with it a translation of the international application into a prescribed language.

39. Reinstatement of rights after failure to enter national phase

(1) Where an international application is withdrawn under section 37 (4) (b), the applicant may make a request to the Office in the prescribed form to have his rights reinstated where he can show a reasonable excuse.

(2) The Office shall, while considering an application made under subsection (1), not refuse an application without giving the applicant an opportunity to make observations on the intended refusal within the prescribed time limit.

40. Restoration of right of priority

(1) An applicant may, where he has an international filing date, which is later than the date on which the priority period expired but within the period of 2 months from that date, request that the right of priority of the earlier application be restored.

(2) The Office shall restore the right of priority with respect to that international application where it finds that the failure to file the international application within the priority period –

(a) was unintentional; or

(b) occurred in spite of due care required by the circumstances having been taken.
(3) The Office shall not refuse a request made under subsection (1) without giving the applicant the opportunity to make observations on the intended refusal within a prescribed time limit.

41. Processing international application

(1) The Office shall process every international application in accordance with this Act, the Patent Cooperation Treaty and the regulations made thereunder.

(2) For the purpose of subsection (1), in the event of conflict, the Patent Cooperation Treaty and the regulations made thereunder shall prevail over this Act.

(3) Further details concerning the processing of international applications by, and other functions of, the Office in connection with the Patent Cooperation Treaty, including fees payable, time limits, prescribed languages and other requirements in relation to international applications, may be prescribed in regulations made under this Act.

PART IV – LAYOUT-DESIGNS

42. Application of layout-design

(1) An application for the registration of a layout-design shall be –

(a) filed with the Office in such form and manner as may be prescribed;

(b) subject to payment of the prescribed fee.

(2) Where the prescribed fee is not paid, the Director shall notify the applicant that the application shall be considered not to have been filed unless payment is made within 2 months from the date of the notification.

(3) The application shall –

(a) contain a brief and precise designation of the layout-design;

(b) indicate the name, address and nationality of the applicant and, if different from the address, the habitual residence of the applicant;

(c) be accompanied, where necessary, by an authorisation of the agent appointed to be the representative of the applicant;

(d) subject to subsection (4), be accompanied by a copy or drawing of the layout-design together with information defining the electronic function which the integrated circuit is intended to perform;
(e) specify the date of the first commercial exploitation of the layout-design anywhere in the world or indicate that the exploitation has not commenced; and

(f) provide particulars establishing the right to protection under section 46.

(4) Any copy or drawing referred in subsection (3)(d) may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, where the parts submitted are sufficient to allow the identification of the layout-design.

43. **Filing Date of layout-design**

(1) The filing date of an application for registration of a layout-design shall be the earliest date on which the application contains –

(a) indications allowing the identity of the applicant to be established and allowing the applicant to be contacted; and

(b) graphic representation of the layout-design for which registration is sought.

(2) Where an application does not comply with section 42(3), the Director shall immediately notify the applicant of the defect and invite him to correct it within 2 months.

(3) (a) Where the defect is corrected within the time limit specified in subsection (2), the Director shall grant the date of receipt of the application as the filing date.

(b) The Director shall confirm the filing date and communicate it to the applicant.

(c) Where the defect is not corrected within the time limit specified in subsection (2), the application shall be considered not to have been filed.

44. **Registration of layout-design**

(1) Where the Director is satisfied that –

(a) an application complies with the requirements of section 42;

(b) is original; and

(c) has not been commercially exploited; or

(d) has been commercially exploited for not more than 2 years,
he shall issue to the applicant a certificate to that effect and register the layout-design in the Register.

(2) The Register shall contain –

(a) the title of the layout-design;
(b) the filing date; and
(c) where appropriate –

(i) the date of the first commercial exploitation of the layout-design anywhere in the world; and
(ii) the name and address of the right holder and such other particulars as may be prescribed.

(3) The registration of a layout-design shall be published in such form and manner as may be prescribed.

45. Originality

(1) A layout-design shall be considered to be original where it is –

(a) the result of its creator’s own intellectual effort; and
(b) not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

(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.

46. Right to protection

(1) (a) The right to a layout-design which has been registered shall belong to the creator of the layout-design.

(b) A right to a layout-design may be assigned or transferred by succession.

(2) Where several persons have jointly created a layout-design, the right shall belong to them jointly.

(3) Where 2 or more persons have created the same layout-design independently of each other, the person whose application has the earliest filing date shall have the right to the layout-design, as long as the application for registration is not withdrawn, abandoned or rejected.
(4) Where a creation is made in the execution of, or under, an employment contract, the right to the creation shall belong, in the absence of any express provision to the contrary, to the employer.

(5) (a) Every layout-design shall contain the name of the creator unless he indicates, in a special written declaration signed by him and addressed to the Office, that he wishes not to be named.

(b) Any promise or undertaking that the creator makes to any person to the effect that he will make a declaration under paragraph (a) shall be void and be of no effect.

47. Scope of protection

(1) The registration of a layout-design shall confer on its registered holder the right to prevent any unauthorised person from –

(a) whether by incorporation in an integrated circuit or otherwise, reproducing the protected layout-design in its entirety or in part, otherwise than by reproducing a part that does not comply with the requirement of originality defined in section 45; or

(b) importing, selling or otherwise distributing for commercial purpose the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.

(2) The right conferred by the registration of a layout-design shall not prevent –

(a) the reproduction or use of the protected layout-design for private non-commercial purposes;

(b) acts done in respect of the protected layout-design for purposes of teaching, education or scientific research in academic, educational or research institutions;

(c) the reproduction or use of the protected layout-design for the sole purpose of its evaluation or analysis;

(d) the incorporation in an integrated circuit of a layout-design created on the basis of such evaluation or analysis and which is itself original within the meaning of section 45 or the performance of any act referred to in subsection (1) in respect of a layout-design so created;

(e) the performance of any act specified in subsection (1)(b) where the integrated circuit in which such a layout-design is incorporated, or the article incorporating such an integrated
circuit, has been put on the market in Mauritius or abroad by the right holder or by a person acting with the right holder’s consent or having an economic tie to the right holder;

(f) subject to subsection (3), the performance of any act specified in subsection (1)(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 the act did not know and had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design;

(g) the performance of any act specified in subsection (1)(b) where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party; or

(h) the use of an integrated circuit in which the layout-design is incorporated, or of an article incorporating such an integrated circuit, in the body or gear of an aircraft, a land vehicle or vessel that temporarily or accidentally enters the jurisdiction of Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, vehicle or vessel.

(3) Where a person referred to in subsection (2)(f) receives notice that a layout-design was unlawfully reproduced, he—

(a) may perform an act specified in subsection (1)(b) only with respect to stock in hand or ordered before he received the notice; and

(b) shall be liable to pay to the right holder a sum equivalent to the reasonable royalty that would be payable under a freshly negotiated licence.

48. Duration of layout-design

A registration of a layout-design shall lapse at the end of –

(a) 10 years from the date the application for registration is filed in Mauritius, where the layout-design has not been previously exploited commercially anywhere in the world; or

(b) 10 years from the date of the first commercial exploitation of the layout-design anywhere in the world, by or with the consent of the right holder;

whichever expires earlier.

49. Invalidation of layout-design
(1) Any interested person may apply to the Tribunal for the invalidation of the registration of a layout-design where –

(a) the layout-design is not entitled to protection under section 45;

(b) the right holder is not entitled to protection under section 46;

(2) Where the ground for invalidation is established with respect only to a part of the layout-design, only the corresponding part of the registration shall be invalidated.

(3) An invalidated layout-design shall be considered as null and void ab initio.

(4) The final decision of the Tribunal shall be notified to the Director who shall record it and publish a reference thereto as soon as possible.

50. Compulsory licence for a registered layout-design.

Section 23 shall, with the exception of subsection (2) apply to a compulsory licence for a registered layout-design.

PART V – PROTECTION OF NEW VARIETIES PLANTS

51. Interpretation of Part V

In this Part –

“breeder” means –

(a) the person who bred, or discovered and developed, a plant variety;

(b) the person who is the employer of the person aforementioned referred to in paragraph (a) or who has commissioned the latter’s work; or

(c) the successor in title of either of the persons referred to in paragraph (a) or (b);

“breeder’s right” means the right of a breeder provided for in this Part;

“material”, in relation to a variety, means –

(a) propagating material of any kind;

(b) harvested material, including entire plants and parts of plants; and

(c) any product made directly from the harvested material.

“member of UPOV” means a State party to the UPOV Convention;
“nationals” means –

(a) where the member of UPOV is a State, the nationals of that State;

(b) where the member of UPOV is an inter-governmental organisation, the nationals of the States which are members of that organisation;


“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged.

52. National treatment

(1) Without prejudice to the rights specified in this Part, nationals of a member of UPOV as well as natural persons resident and legal entities having their registered offices within the territory of a member of UPOV shall, insofar as the grant and protection of breeders’ rights are concerned, enjoy the same treatment as is accorded to nationals of Mauritius.

(2) Every national, natural person or legal entity of a member of UPOV shall comply with the conditions and formalities imposed on nationals of Mauritius.

53. Conditions for protection

(1) A breeder’s right shall be granted where a variety is –

(a) new;

(b) distinct;

(c) uniform; and

(d) stable.

(2) No grant of a breeder’s right shall be subject to any further condition where the variety is designated by a denomination in accordance with section 70 and the applicant complies with the formalities provided for in this Act, including payment of the prescribed fee.

54. Novelty
(1) A variety shall be considered to be new where, at the date of filing of the application for a breeder’s right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety –

(a) in Mauritius earlier than one year before the filing date.; or

(b) in a State other than Mauritius earlier than 4 years or, in the case of trees or of vines, earlier than 6 years before the filing date.

(2) Where the application for a breeder’s right is made within one year of the commencement of this Act, the variety shall be considered to be new notwithstanding the fact that propagating or harvested material of the variety has been sold or disposed of, in Mauritius, earlier than 4 years or, in the case of trees or of vines, earlier than 6 years before the filing date of the application.

55. Distinctness

(1) A variety shall be considered to be distinct where it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application for the grant of a breeder’s right.

(2) Where an application for the grant of a breeder’s right in respect of a variety or for the entering of a variety in the relevant official register in a foreign State has been granted, the existence of that variety shall be considered to be a matter of common knowledge in Mauritius.

56. Uniformity

A variety shall, subject to any variation that may be expected from the particular features of its propagation, be considered to be uniform where it is sufficiently uniform in its relevant characteristics.

57. Stability

A variety shall be considered to be stable where its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

58 Application of breeder’s right

(1) An application for a breeder’s right shall be –

(a) filed with the Director in such form and manner as may be prescribed;

(b) subject to payment of the prescribed fee.
(2) The application shall contain –

(a) a description of the plant variety;

(b) the proposed denomination for the plant variety which qualifies for approval and registration under section 70;

(c) an address within Mauritius for service of any document where the applicant’s ordinary residence or principal place of business is outside Mauritius.

(3) Where the Director is satisfied that the application complies with subsections (1) & (2), he shall cause information relating to application for breeder’s rights, and proposed denomination to be published in the Gazette, in such form and manner as may be prescribed.
59.  Filing date of breeder’s right

(1)  The Director shall consider the date of receipt of an application for a breeder’s right as the filing date where it complies with section 58(1) and (2).

(2)  (a)  Where an application does not, at the time of receipt, comply with subsection (1), the Director shall invite the applicant to file the required correction within such time as he may determine.

          (b)  Where the applicant does not file the necessary correction within the required time limit, the application shall be considered to be abandoned.

60.  Provisional protection

Where a grant of protection for a plant variety has been made under section 63, the holder of the right shall have the right to seek appropriate remedy in respect of the protected variety under this Act as if the grant of protection had been made on the date the application for the grant of protection was published under section 58.

61.  Right of priority

(1)  A breeder who files an application for the protection of a variety in one of the members of UPOV shall, for the purpose of filing an application for the grant of a breeder’s right for the same variety with the Office, enjoy a right of priority for a period of 12 months from the filing date of the first application.

(2)  (a)  A breeder who wishes to benefit from the right of priority shall, in the application filed with the Office, claim the priority of the first application.

          (b)  The Director shall require the breeder to furnish, within 3 months from the filing date of the application –

                  (i)  a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that first application was filed; and

                  (ii)  samples or other evidence that the variety which is the subject matter of both applications is the same.

          (c)  Where a breeder fails to comply with subsection (2)(b), the application shall be dealt with as if no priority has been claimed.

(3)  The breeder shall be allowed a period of 2 years after the expiry of the period of priority or, where the first application is rejected or withdrawn, a period of 3 months after such rejection or withdrawal in which to furnish to the Office any necessary information, document or material required for the purpose of the examination under section 62.
(4) Any event occurring within the period specified in subsection (1), such as the filing of another application or the publication or use of the variety that was the subject of the first application, shall not constitute a ground for rejecting the application or give rise to any third party right.

62. Examination of application

(1) The Director shall examine an application to verify that it complies with the conditions specified in sections 53 to 57.

(2) For the purpose of the examination, the Director may –

(a) cause the growing of the variety;

(b) carry out other necessary tests;

(c) take into consideration the results of growing tests or other trials which have already been carried out; or

(d) require the breeder to furnish such information, documents or material as he considers necessary.

(3) The Office may enter into agreements with any other authority or person, in or outside Mauritius for the purpose of an examination referred in subsection (1).

63. Grant or refusal of breeder’s right

(1) Where the Director is of the opinion that an application for a breeder’s right complies with the conditions specified in sections 53 to 57, he shall grant a breeder’s right.

(2) Where the Director refuses an application for a breeder’s right, he shall notify the applicant in writing.

(3) Where a breeder’s right is granted, the Director shall –

(a) issue the applicant a certificate of the grant of the breeder’s right;

(b) register the breeder’s right; and

(c) cause to be published in the Gazette, in such form and manner as may be prescribed, information relating to the grant of the breeder’s right and the approved denomination.

(4) The Director shall not refuse to grant a breeder’s right or limit its duration on the ground that protection for the same variety in a foreign State or by an intergovernmental organisation has not been applied for, refused or expired.
64. Scope of breeder's right

(1) Where 2 or more persons have jointly bred, or discovered and developed a variety, the breeder's right shall belong to them jointly.

(2) Where 2 or more persons have bred, or discovered and developed, the same variety independently of each other, the person who filed his application for a breeder’s right first shall have the breeder’s right.

(3) (a) Subject to sections 66 and 67, the following acts in respect of the propagating material of a protected variety shall require the authorisation of the breeder for –

(i) production or multiplication;
(ii) conditioning for the purpose of propagation;
(iii) offering for sale;
(iv) selling or other marketing;
(v) exporting;
(vi) importing;
(vii) stocking for any of the purposes referred to in subparagraphs (i) to (vi).

(b) Subject to subsection 3(a), a breeder may on such conditions and limitations as he may determine, give his authorisation.

(4) Subject to sections 66 and 67, the acts specified in subsection (3)(a) shall be in respect of –

(a) harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the propagating material.

(b) products made directly from harvested material of the protected variety through the unauthorised use of the harvested material shall require the authorisation of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the harvested material.

(5) (a) Subsections (3) and (4) shall also apply in relation to varieties–
(i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(ii) which are not clearly distinguishable in accordance with section 55 from the protected variety; and

(iii) whose production requires the repeated use of the protected variety.

(b) For the purpose of paragraph (a)(i), a variety shall be considered to be essentially derived from another variety where –

(i) it is predominantly derived from the other variety, or from a variety that is itself predominantly derived from the other variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the other variety;

(ii) it is clearly distinguishable from the other variety; and

(iii) except for the differences which result from the act of derivation, it conforms to the other variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the other variety.

(c) Essentially derived varieties may be obtained by –

(i) selection of a natural or induced mutant;

(ii) selection of a somaclonal variant;

(iii) selection of a variant individual from plants of the initial variety;

(iv) backcrossing; or

(v) transformation by genetic engineering.

(6) Any breeder’s right may be assigned, or may be transferred by succession.

65. Duration of breeder’s right

(1) Subject to subsection (2), a breeder’s right shall expire 25 years after the filing date of the application.
(2) (a) For the purpose of maintaining a breeder’s right, an annual fee may be prescribed which shall be payable by the breeder’s right owner to the Director at such time as may be prescribed.

(b) The Director may allow a delay of 6 months for the late payment of the prescribed annual fee subject to payment of a surcharge fee.

(c) Where the prescribed annual fee is not paid in accordance with this subsection-

(i) the application for breeder’s right shall be considered to have been withdrawn;

(ii) the breeder’s right shall lapse.

(d) Where the Director is satisfied that the non-payment of the prescribed annual fee was justifiable, and that rights of third parties that may have arisen are not unreasonably infringed, the Director may, not later than one year after the time at which the payment should have been made, restore the lapsed breeder’s right.

66. **Exceptions to breeder’s right**

(1) No breeder’s right shall extend to an act done –

(a) privately and for non-commercial purposes;

(b) for experimental purposes;

(c) for the purpose of breeding other varieties.

(2) Notwithstanding section 64 a breeder’s right shall, under such conditions as may be prescribed, be restricted in relation to the varieties specified in a list of agricultural and vegetable crops with a historical common practice of saving seed in Mauritius to be drawn up by the Office, in order to permit farmers to use, for propagating purposes on their own holdings, the product of the harvest which they have obtained by planting the protected variety or a variety covered by section 64(5)(a)(i) or (ii), where this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.

(3) Fruits, ornaments and forest plants shall be excluded from the exception under subsection (2).

67. **Exhaustion of breeder’s right**

No breeder’s right shall extend to an act concerning any material of the protected variety, or of a variety covered by section 64(5), which has been sold or otherwise marketed by the breeder or with his consent, or any material derived from the said material, unless the act involves –
(a) further propagation of the variety; or

(b) an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, unless the exported material is for final consumption.

68. Restrictions on exercise of breeder's right

(1) Subject to this Act, the free exercise of a breeder's right shall not be restricted unless the Office considers that it is in the public interest to do so.

(2) Where any restriction has the effect of the Office authorising a third party to perform an act for which the breeder's authorisation is required, the third party shall pay reasonable compensation to the breeder.

69. Measures regulating commerce

A breeder's right shall be independent of any measure taken by the relevant authority to regulate the production, certification and marketing of material of varieties or the importing or exporting of such material.

70. Variety denomination

(1) (a) A variety shall be designated by a denomination which shall be its generic designation.

(b) Subject to subsection (4), no right in the designation registered as the denomination of a variety shall hamper the free use of the denomination in connection with the variety, even after the expiry of the breeder's right.

(2) A denomination shall –

(a) enable the variety to be identified;

(b) not consist solely of figures except where this is an established practice for designating varieties;

(c) not be liable to mislead;

(d) not cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder; or

(e) be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(3) (a) A breeder shall, on making an application for a breeder's right, submit the denomination of the variety to the Office.
Where the denomination does not satisfy the requirements of subsection (2), the Office shall –

(i) refuse to register it; and

(ii) require the breeder to propose another denomination within such time as the Director may determine.

(c) The Office shall register the denomination at the same time as the breeder’s right is granted.

(4) Where by virtue of a prior right, the use of a denomination for a variety is forbidden to a person who, in accordance with subsection (7), would be obliged to use it, the Office shall require the breeder to submit another denomination for the variety.

(5) (a) A variety shall be submitted to every member of UPOV under the same denomination.

(b) The Office shall register the denomination submitted under subsection (3) unless it considers the denomination unsuitable and requires the breeder to submit another denomination.

(6) (a) The Office shall ensure that the relevant authority of every member of UPOV is informed of the submission, registration and cancellation of variety denomination.

(b) Any authority wishing to make observations on the registration of a denomination submitted under subsection (3)(a) may address his observation to the Office.

(7) Any person who offers for sale or markets propagating material of a variety protected in Mauritius is obliged to use the denomination of that variety, even after the expiry of the breeder’s right in that variety, except where, in accordance with subsection (4), prior rights prevent the use.

(8) (a) Where a variety is offered for sale or marketed, it shall be permitted to associate a mark, geographical indication, trade name, business sign or other similar indication with a registered variety denomination.

(b) Where an indication is associated under subsection (8)(a), the variety denomination shall be recognisable.

71. Invalidation of breeder’s right

(1) Any interested person may apply to the Tribunal for the invalidation of the grant of a breeder’s right where—

(a) the conditions laid down in section 54 or 55 have not been complied with at the time of the grant of the breeder’s right;
(b) the grant of the breeder’s right was essentially based on information and documents furnished by the breeder, and the conditions specified in section 56 or 57 have not been complied with at the time of the grant of the breeder’s right; or

(c) the breeder’s right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(2) An invalidated breeder’s right shall be considered as null and void ab initio.

(3) The final decision of the Tribunal shall be notified to the Director who shall record it and publish a reference thereto as soon as possible.

72. Cancellation of breeder’s right

The Director may cancel a breeder’s right where –

(a) the conditions specified in section 56 or 57 are no longer satisfied; or

(b) the breeder –

(i) does not provide the Office with the information, documents or material necessary for verifying the maintenance of the variety;

(ii) fails to pay such fee as may be payable to keep his right in force; or

(iii) does not, where the denomination of a variety is cancelled after the grant of the right, propose another suitable denomination.

PART VI – INDUSTRIAL DESIGNS, THE HAGUE AGREEMENT
Sub-Part A – Industrial Designs

73. Conditions for protection –

(1) An industrial design shall be –

(a) protected where it is new and original.

(b) considered as new where it has not been disclosed to the public anywhere in the world by publication in tangible form, exhibition, use in trade or in any other way, before the filing date or, where applicable, the priority date of the application for registration.

(2) An industrial design shall not be regarded as original if it does not significantly differ from known designs or combinations of known designs features.
(3)  (a) An industrial design applied to or embodied in a product that is a component part of a complex product shall be considered as new where the component part remains visible during the normal use of the complex product.

   (b) For the purpose of paragraph (a) –

   “normal use” –

   (i) means use by an end user; and

   (ii) does not include maintenance, servicing or repair work.

(4)  For the purpose of determining novelty and originality, no disclosure of an industrial design shall be taken into consideration where it occurred –

   (a) within 12 months before the filing date or, where applicable, the priority date of the application; and

   (b) by reason of or in consequence of –

   (i) an abuse committed by a third party with regard to the applicant or his predecessor in title; or

   (ii) an act committed by the applicant or his predecessor in title, other than the filing of an application to register or otherwise obtain legal protection for the industrial design with an industrial property authority.

74  Design excluded from protection

No design shall be registered where –

   (a) its features are solely dictated by technical or functional considerations;

   (b) its commercial exploitation may be contrary to public order or morality.

75.  Right to registration

(1) The exclusive right to use the industrial design shall be acquired by registration.

(2) The right to an industrial design –

   (a) shall belong to the author of the design;

   (b) may be assigned or may be transferred by succession.

(3) Where 2 or more persons have created the same industrial design, the right to the industrial design shall belong to them jointly.
(4) Where 2 or more persons have created the same industrial design independently of each other, the person whose application has the earliest filing date or, where priority is claimed, the earliest validly claimed priority date, shall have the right to the industrial design, as long as the said application is not withdrawn, abandoned or rejected.

(5) Where an industrial design is made in the execution of an employment contract the purpose of which is to create one or more designs, the right to the industrial design shall belong, in the absence of any contrary contractual provision, to the employer.

(6) (a) The creator shall be named as such in the industrial design unless he indicates otherwise to the Office in writing.

(b) Any promise or undertaking made by the creator of the design to the effect that he will make a declaration not to be named shall be void and be of no effect.

76. Application of industrial design

(1) An application for the registration of an industrial design shall –

(a) be filed with the Office in such form and manner as may be prescribed;

(b) contain a graphic representation of the industrial design; and

(c) be subject to payment of the prescribed fee.

(2) Where the applicant is not the author of the design, the request shall include a statement justifying the right of the applicant to the registration of the industrial design.

(3) (a) The application may contain –

(i) up to 100 industrial designs provided they all refer to products that belong to the same class of the International Classification; and

(ii) a request that publication of the industrial design be deferred for a specified period not exceeding 12 months from the filing date or, where applicable, from the priority date of the application.

77. Amendment and withdrawal

(1) (a) An applicant may, subject to paragraph (b), amend an application at any time while it is being processed.
(b) No amendment shall be accepted where it involves a change in, or addition to, any of the designs contained in the initial application.

(2) An applicant may, at any time before an industrial design is registered, withdraw the application entirely or in respect of one or more designs.

78. Right of priority

(1) An application for registration may contain a declaration claiming, in accordance with the Paris Convention, the priority date of one or more earlier applications filed for the same industrial design by the applicant or his predecessor in title, in or for any State party to the Convention or any member of the World Trade Organisation, at any time not earlier than 6 months before the filing date of the application.

(2) Where an application contains a declaration claiming priority, the Director may request the applicant to furnish, within such time as he may determine –

(a) a copy of the earlier application certified as correct by the foreign authority;

(b) a certificate from that authority showing the date of filing; and

(c) an English translation of the document.

(3) Where the Director finds that the conditions for the right of priority or the requirements for claiming priority have not been satisfied, the declaration claiming priority shall be considered not to have been made.

(4) Where an application contains a declaration under subsection (1) –

(a) the application may not be refused because of an act done during the 6 months period as prescribed in the Paris Convention; and

(b) no such act shall give rise to such a third party right or right of personal possession.

79. Filing Date of industrial design

The filing date of an application for registration of an industrial design shall be the earliest date on which the application contains –

(a) indications allowing the identity of the applicant to be established and allowing the applicant to be contacted; and

(b) graphic representations of the industrial design for which registration is sought.
80. Examination of industrial design

(1) (a) The Director shall examine whether the application complies with the requirements of section 73 and the Regulations pertaining thereto, and whether the industrial design for which registration is sought complies with the definition in section 2.

(b) Where the application does not comply with the prescribed requirements, the Director shall notify the applicant requesting him to correct the application within 2 months from the date of the notification or such further time as he may determine.

(2) Where the required correction is not made within the specified period, the application shall be considered to have been withdrawn.

81. Registration and publication of industrial design

(1) (a) Where the conditions referred to in section 73 have been satisfied, the Director shall register the industrial design, publish a reference to the registration and issue to the applicant a certificate of registration of the industrial design upon payment of a registration fee as may be prescribed.

(b) Where an application does not satisfy the requirements of section 73, the Director shall reject the application.

(2) Where a request has been made under section 76(3)(a)(ii) for deferment of publication, the application shall not be published until the expiry of the period of deferment.

(3) The Director shall, at the expiry of the period of deferment, give public notice of the application.

82. Rights conferred by registration of industrial design

(1) Where any person, other than the registered owner, exploits a registered industrial design in Mauritius he shall require the written consent of the registered owner.

(2) For the purposes of this Act –

“exploitation” of a registered industrial design means the making, selling or importation of articles bearing or embodying a design which is a copy, or substantially a copy, of the registered industrial design.

(3) Where an industrial design is registered for a part of a product that is integral and inseparable from that product, any infringement of the registered design shall be assessed taking into account the overall appearance of the product embodying the registered design, and not only that part in isolation.
83. Limitations and exceptions

No right conferred by the registration of an industrial design shall prohibit –

(a) an act, in respect of a product that embodies the industrial design after the product has been put on the market in Mauritius or abroad by the registered holder or by a person acting with the holder's consent or having an economic tie to the holder;

(b) the use of the industrial design in the body or gear of any aircraft, land vehicle or vessel that temporarily or accidentally enters Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, land vehicle or vessel.

(c) an act done –
   (i) privately and for non-commercial purpose;
   (ii) for purposes of teaching, education or scientific research in academic, educational or research institutions; or
   (iii) only for experimental purposes relating to the industrial design;

(d) the reproduction of any features of the industrial design that –
   (i) is dictated solely by functional or technical considerations or is necessary to fulfill a technical purpose;
   (ii) shall be reproduced in their exact form in order to permit the product in which the design is embodied to be mechanically connected to or placed in, around or against another product so that each product may perform its function; or
   (iii) is embodied in a component part of a complex product, where that part is used for the purpose of repairing that product so as to restore its original appearance.

84. Duration of industrial design

(1) The registration of an industrial design shall be valid for a period of 5 years from the filing date of the application for registration.

(2) The registration of any industrial design may –

(a) on payment of the prescribed fee; and

(b) subject to the condition as may be prescribed being complied with,
be renewed for 3 further consecutive periods of 5 years.

(3) The Director may allow a delay of 6 months for the late payment of the prescribed renewal fee subject to the payment of a surcharge fee.

(4) Where the renewal is not effected in accordance with this section, the registration of the utility model shall lapse.

85. **Invalidation of industrial design**

(1) Any interested person may apply to the Tribunal for the invalidation of the registration of an industrial design where –

(a) the industrial design is not entitled to protection under section 73;

(b) the right holder is not entitled to protection under section 75;

(c) the registered owner of the industrial design is not the creator or his successor in title.

(2) Where a ground for invalidation is established with respect to only one or some of the designs included in the registration, those designs shall be invalidated.

(3) An invalidated industrial design shall be regarded null and void ab initio.

(4) Any final decision of the Tribunal on an action taken under this section shall be notified to the Office who shall record it and publish a reference thereto as prescribed.

Sub-Part B – The Hague Agreement

86. **Interpretation of Sub-Part B**

In this Sub-part –

“Hague Agreement” means the Hague Agreement Concerning the International Registration of Industrial Designs;

“1999 Act” means the Act of the Hague Agreement signed in Geneva on July 2, 1999;

“Contracting Party” means any state or intergovernmental organization party to the 1999 Act;

“International registration” means a registration made in accordance with the provision of the 1999 Act;

“International Register” means the official collection of data concerning international registrations maintained by the International Bureau;

87. Application for international design registration

An application for an international design registration may be filed either directly with The International Bureau or with the Office, on The International Bureau’s official application form.

88. Effects of international registration

(1) An international registration that designates Mauritius as a Contracting Party shall, as from the date of the international registration, have the same effect as an application for registration filed under this Act.

(2) Where, in accordance with the 1999 Act and the Common Regulations-

(a) no refusal has been notified to the International Bureau; or
(b) a refusal has been notified to the International Bureau but has been withdrawn subsequently

the international registration shall have the same effect, from the date of the international registration, as a registration of industrial design granted by the Director under this Act.

(3) A recording made in the International Register in respect of an international registration designating Mauritius as a Contracting Party shall have the same effect as a recording in the Register.

(4) Subject to renewal, an international registration designating Mauritius shall enjoy the same duration of protection provided under this Act. The renewal shall be requested with the International Bureau and be recorded in the International Register.

89. Examination of an international registration and notifications to the International Bureau

(1) Where the international registration designating Mauritius does not comply with the prescribed requirements but which is compatible with Article 12(1) of the 1999 Act, the Director shall, before the expiry of the refusal period applicable under the Common Regulations, notify a refusal of protection to the International Bureau in accordance with the Common Regulations.
2. Notwithstanding Section 80(1)(b), where a notification of refusal has been issued under subsection (1), the period of two months referred to in that provision shall be replaced by a period of three months.

3. Where a notification of refusal has been issued under subsection (1) and the refusal is withdrawn subsequently, the Director shall send to the International Bureau a statement to that effect in accordance with the Common Regulations.

4. Where no notification of refusal has been issued under subsection (1), the Director shall, within the prescribed refusal period, send a statement to the effect that protection is granted to the industrial designs that are the subject of international registration to the International Bureau in accordance with the Common Regulations.

5. Where the international registration is invalidated in Mauritius and the invalidation is not subject to appeal, the Director shall notify the International Bureau in accordance with the Common Regulations.

6. (a) The holder of the international registration who received a notification issued under subsection (1) shall enjoy the same remedies available to the applicant for the registration of an industrial design under this Act.

(b) The holder of the international registration involved in the invalidation procedure referred to in subsection (5) shall be afforded the same opportunity of defending the right available to the holder of an industrial design registered under this Act.

90. Conflict between the Act and the Hague Agreement

In the event of conflict between the provisions of this Act and those of the 1999 Act and the Common Regulations, the provisions of the 1999 Act and the Common Regulations shall prevail.

PART VIII – MARKS, TRADE NAMES, GEOGRAPHICAL INDICATIONS, MADRID PROTOCOL
Sub-Part A – Marks

91. Registration as a mark

(1) The exclusive right to use a mark shall be acquired by registration.

(2) No sign shall be registered as a mark where it –

(a) is devoid of any distinctive character or incapable of distinguishing the goods or services of one enterprise from those of other enterprises;

(b) consists solely of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of goods or of
rendering of services, or other characteristics of goods or services;

(c) consists solely of a sign or indication that has become generic in current language or in the bona fide established practices of the trade, or is a usual or recognised technical or scientific name of a product or service;

(d) consists solely of a shape that results from the nature of the goods or provides a technical result, functional advantage or substantial value to the goods;

(e) is contrary to public order or morality;

(f) is likely to mislead, in particular as regards the geographical origin of the goods or services concerned or their nature, quality or other characteristics; or

(g) contains as the armorial bearing, flag or other emblem of a State party to the Paris Convention or an international organisation, an official sign indicating control warranty adopted by any such State or organisation, or constitutes an imitation of those signs from a heraldic point of view.

(3) (a) No sign shall be registered as a mark where it conflicts with a prior third party right in force in Mauritius, in particular where the sign –

(i) is similar to an earlier registered mark or to a sign applied for as a mark having an earlier filing or priority date, in respect of similar goods or services, or so nearly resembles such a mark as to be likely to cause confusion;

(ii) constitutes a reproduction, imitation or translation liable to create confusion with a mark that is well known in Mauritius in respect of similar goods or services of another enterprise; or

(iii) cannot be used in Mauritius by virtue of any law.

(b) Notwithstanding paragraph (a), the Director may, in case of honest concurrent use, or of other circumstances in which he finds it proper to do so, allow the registration of a mark by more than one proprietor, subject to such conditions and limitations, as he may determine.

(4) The prior user of a mark that is neither registered nor the subject of a pending application under this section, may oppose an application for registration by another person of a similar mark for similar goods or services, where he submits such evidence as may be prescribed.

92. Application for registration
(1) An application for registration of a mark shall be –

(a) filed with the Director in such form and manner as may be prescribed;

(b) subject to payment of the prescribed fee.

(2) The application for registration of a mark shall include –

(a) the name and address of the applicant;

(b) a declaration, if any, claiming priority, together with indications and evidence in support;

(c) where applicable, such statement as may be prescribed, indicating the type of mark, as well as any specific requirements applicable to that type of mark;

(d) a representation of the mark; and

(e) a list of the goods or services for which registration of the mark is requested, grouped in accordance with the applicable class or classes of the International Classification.

93. Right of priority

(1) The application may contain a declaration claiming, in accordance with the Paris Convention, priority for one or more earlier applications filed for the same mark in respect of corresponding goods or services, by the applicant or his predecessor in title, in or for any State party to the said Convention or any Member of the World Trade Organisation, such priority shall be for a period of 6 months from the filing date of the application for registration.

(2) The applicant may, within 3 months of the declaration claiming priority pursuant to subsection (1), furnish –

(a) a copy of the earlier application certified as correct by the foreign authority with which it was filed in a language accepted by the Office or a translation of it; and

(b) a certificate issued by the foreign authority with which the earlier application was filed showing the date of that earlier application.

(3) Where the Director finds that the conditions for the right of priority or the requirements for claiming priority have not been satisfied, the declaration claiming priority shall be considered not to have been made.

94. Filing date of mark
(1) The filing date of an application for registration shall be the date on which the application is received by the Director where at the time of receipt, it contains the elements prescribed in the Regulations.

(2) Where the application omits one of the requirements, the Director shall –

   (a) notify the applicant in writing that the omission be corrected within a period of 2 months; and

   (b) grant, as the filing date, the date of receipt of the required correction.

(3) Where no correction is made, the application shall be treated as if it has not been filed.

95. Amendment and withdrawal

(1) The Director may correct any error of translation or transcription, clerical error or mistake in an application filed with him or in any recording effected pursuant to this Act.

(2) (a) The applicant may divide his application, in order to separate into 2 or more applications the goods or services specified in the original application.

   (b) Every divisional application shall retain the filing date and, where applicable, the right of priority of the initial application.

   (c) After a division, every divisional application shall be independent and any publication of the application effected prior to the division shall have effect for each divisional application.

(3) An applicant may at any time withdraw his application or limit the list of goods or services covered by the application.

96. Examination, publication, opposition and registration

(1) The Director shall examine whether the application complies with the requirements of section 91 and the Regulations pertaining thereto, and whether the mark for which registration is sought complies with the definition in section 2.

(2) Where the Director finds that the requirements of section 91 have not been satisfied, he shall request the applicant-

   (a) to furnish such additional information; or

   (b) to amend the application.

within such period as may be prescribed.
(3) Where the applicant fails to satisfy subsection (2), the application shall lapse.

(4) Where the conditions referred to in subsection (1) have been satisfied, the Director shall forthwith accept the application and cause it to be published in such form and manner as may be prescribed.

(5) (a) Any person may, within such period as may be prescribed and subject to payment of the prescribed fee, lodge with the Director an opposition to the registration of a mark.

(b) An opposition shall be by way of notice and shall state the grounds of opposition.

(c) The applicant shall send a copy of any counter-statement to the opposition together with the grounds on which he relies to the Director and the opponent.

(d) Where the applicant does not send a counter-statement under paragraph (c), he shall be deemed to have abandoned the application.

(e) Where the applicant sends a counter-statement, the Director shall after hearing the parties, if he so requires, decide whether the mark should be registered.

(6) (a) After an application is published and until the registration of the mark, the applicant shall have the same privileges and rights as he would have where the mark had been registered.

(b) Where the applicant establishes that the mark could not have been validly registered at the time the act was done, it shall be a defence to an action brought under this subsection

(7) Where the Director refuses an application for the registration of a mark, he shall notify the applicant in writing.

(8) Where the Director finds that the conditions referred to in subsection (1) are satisfied, and either -

(a) the registration of the mark has not been opposed within the prescribed time limit; or

(b) the registration of the mark has been opposed and the opposition has been decided in the applicant's favour,

he shall register the mark, publish a reference to the registration and issue to the applicant a certificate of registration.

97. Duration of mark
(1) The registration of a mark shall be for a term of 10 years from the filing date of the application for registration.

(2) The registration of any mark may be renewed for consecutive periods of 10 years upon payment of –

(a) a renewal fee; and

(b) any condition as may be prescribed.

(3) The Director may allow a delay of 6 months for the late payment of the prescribed renewal fee subject to the payment of a surcharge fee.

(4) Where the renewal is not effected in accordance with this section, the registration of the mark shall lapse.

98. Rights conferred by registration of mark

(1) No person, other than the registered owner, shall use a registered mark in relation to any goods or services for which it has been registered, except with the agreement of the owner.

(2) The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in Mauritius or in any other country by the registered owner or with his consent.

(3) (a) The rights conferred by registration of a mark shall, subject to paragraph (b), not prevent –

(i) an act in respect of goods lawfully bearing the mark after those goods have been put on the market in Mauritius or any other country by the registered holder or by a person acting with the holder's consent or having an economic tie to the holder, where the goods and the packaging or wrapping in direct contact with the goods have not suffered any material alteration or damage;

(ii) the use of the registered mark for the purpose of indicating truthfully in the course of trade that the goods or services that bear the mark originate with the holder of the mark or with a person authorised by the holder;

(iii) the use of the registered mark to provide information regarding the intended purpose, use or compatibility of a product or service, in particular with respect to accessories or spare parts;

(iv) the use of indications concerning the kind, quality, quantity, value, geographical origin, time of production of
goods or of rendering of services, or other characteristics of goods or services; or

(v) the use or indications, in the course of trade, of a person’s name, address, place of business or place of production or distribution of goods or services, or those of that person’s predecessor in business,

where the Act or use complies with paragraph (b).

(b) An act specified in paragraph (a) shall –

(i) be performed in accordance with honest practices and in a manner that does not cause confusion regarding the source of the goods or services;

(ii) not take unfair advantage of, or be detrimental to, the distinctive character or repute of the mark.

99. Invalidation of mark

(1) Any interested person may apply to the Tribunal for the invalidation of the registration of a mark totally or partially where:

(a) the registered sign does not comply with the definition of mark; or

(b) the mark does not comply with section 91.

(2) An invalidation of the registration of a mark shall be taken to have been effective from the date of registration.

(3) An invalidated mark shall be considered as null and void ab initio.

(4) The final decision of the Tribunal shall be notified to the Director who shall record it and publish a reference thereto as soon as possible.

100. Removal on grounds of non-use

(1) Any interested person may request the Director to remove from the Register a mark in respect of any goods or services in respect of which it is registered, on the ground that up to one month before filing the request, the mark had, after its registration, not been in use by the registered owner or a licensee during a continuous period of not less than 3 years.

(2) Notwithstanding subsection (1), no mark shall be removed from the Register unless the Director is satisfied that there –

(a) were reasonable circumstances that prevented the use of the mark; and
was no intention not to use or abandon the mark in respect of those goods or services.

101. Collective mark

(1) An application for the registration of a collective mark shall –

(a) designate the mark as a collective mark; and

(b) be accompanied by a copy of the terms of the agreement governing the use of the collective mark.

(2) A registered owner of a collective mark shall notify the Director of any changes made in respect of the terms of the agreement referred to in subsection (2), which shall be kept on record and shall be published where the Director finds it expedient.

(3) A collective mark shall not be the subject of a licence agreement.

102. Certification mark

(1) An application for the registration of a certification mark shall be accompanied by a copy of the terms of the agreement governing the use of that mark, which shall be published and kept available for consultation.

(2) The registered owner of a certification mark shall notify the Director of any change made in respect of the terms of the agreement referred to in subsection (1) which shall be kept on record and shall be published where the Director finds it expedient.

(3) The holder of a certification mark shall not use the mark to certify his own goods or services.

(4) The Tribunal shall invalidate the registration of a certification mark where the registered holder –

(a) has contravened subsection (3);

(b) has allowed the use of the mark –

(i) in contravention of the terms of the agreement referred to in subsection (1); or

(ii) in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

103. Cancellation of registered trademark
An owner of a registered trademark may apply for the cancellation of the mark in respect of some or all of the goods or services for which it is registered.

Sub-Part B – Trade Names

104. Protection of trade name

(1) No name or designation shall be used as a trade name where –

(a) by its nature or the use to which it may be put, it is contrary to public order or morality; or

(b) it is liable to deceive any person as to the nature of the enterprise identified by that name.

(2) Notwithstanding any enactment providing for an obligation to register trade names, such names shall be protected, even prior to or without registration, against an unlawful act committed by a third party.

(3) For the purpose of subsection (2), any subsequent use of the trade name by a third party as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be unlawful.

Sub-Part C – Geographical Indications

105. Scope of protection

(1) Where there are homonymous geographical indications for identical products, the Director shall, in cases of permitted concurrent use of the indications, determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

(2) The following shall not be protected as geographical indications –

(a) an indication the use of which must be prevented on grounds of public order or morality;

(b) a geographical indication that is not, or that ceases to be, protected in its country of origin, or which has fallen into disuse in that country; and

(c) an indication that is identical with the term customary in common language in Mauritius as the common name for the relevant goods or for related services.

106. Application of geographical indication
(1) An application for the registration of a geographical indication shall be

(a) filed with the Office in such form and manner as may be prescribed;

(b) subject to payment of the prescribed fee.

(2) (a) A grouping of producers or a legal entity that groups producers that operate in a specified geographical area to produce specified goods; or

(b) A competent authority on behalf of the person indicated under paragraph (a), shall have the right to apply for registration of a geographical indication.

(3) An application for the registration of a geographical indication shall contain –

(a) the name, address and domicile of the person or legal entity filing the application;

(b) the geographical indication for which registration is sought;

(c) the geographical area to which the geographical indication applies;

(d) the goods designated by the geographical indication;

(e) the specific characteristics of the goods for which the geographical indication is used;

(f) the area and method of production of the goods;

(g) the link between the characteristics of the goods and the area and method of production; and

(h) the manner in which the specific characteristics are controlled.

107. Filing date of geographical indication

(1) The Director shall consider the date of receipt of an application for the registration of a geographical indication as the filing date where it complies with Section 106.

(2) (a) Where an application does not, at the time of receipt, comply with subsection (1), the Director shall invite the applicant to file the required correction within such time as he may determine.
(b) Where the applicant does not file the necessary correction within the required time limit, the application shall be considered to be abandoned.

108. Examination, publication, opposition and registration

(1) The Director shall examine whether the application complies with the requirements of section 105 and 106 and the Regulations pertaining thereto, and whether the geographical indication for which registration is sought complies with the definition in section 2.

(2) Where the Director finds that the conditions referred to in subsection (1) are satisfied, he shall cause the application to be published in such manner as may be prescribed.

(3) (a) Any interested person may, within such time and subject to payment of such fees as may be prescribed, give notice to the Director of opposition to the registration of the geographical indication on the grounds that any requirements of sections 105 and 106 have not been satisfied

(b) The Director shall send a copy of the notice of opposition to the applicant.

(c) The applicant shall, within the prescribed period and manner send to the Director and the opponent, a counter-statement of the grounds on which he relies for his application.

(d) Where, the applicant does not send the counter-statement within the prescribed period and manner, the application shall lapse.

(4) Where the Director finds that the conditions referred to in subsection (1) have been satisfied, he shall—

(a) register the geographical indication;

(b) issue to the applicant a certificate of registration; and

(c) publish a reference to the registration in such form and manner as may be prescribed.

(5) Where the applicant fails to comply with the conditions specified in subsection (1), the Director shall refuse the application.

109. Scope of exclusive right

No person other than a producer carrying on an activity in the relevant geographical area shall have the right to use a registered geographical indication in the course of trade with respect to the goods specified in the Register.

110. Limitations and exceptions
(1) (a) Section 98(3) shall apply to geographical indications protected under this Act.

(b) Where a mark has been applied for or registered in good faith, or where rights to a mark have been acquired through use in good faith before the commencement of this Act, or before the geographical indication is protected in its country of origin –

(i) the registration or the validity of the registration of that mark; or

(ii) the right to use that mark,

shall not be affected on grounds that the mark is identical with, or similar to, a geographical indication.

(2) Nothing in this Act shall prevent continued and similar use in Mauritius of a particular foreign geographical indication by any national or domiciliary of Mauritius who has used that geographical indication in connection with goods or services in the territory of Mauritius, in a continuous manner with regard to the same or related goods or services –

(a) for at least 10 years preceding 15 April 1994; or

(b) in good faith at any time prior to that date.

111. Duration of geographical indication

(1) The registration of a geographical indication shall be for a term of 10 years from the filing date of the application for registration.

(2) The registration of any geographical indication may be renewed for consecutive periods of 10 years upon payment of –

(a) a renewal fee;

(b) any additional information as may be required; and

(c) any condition as may be prescribed.

(3) The Director may allow a delay of 6 months for the late payment of the prescribed renewal fee subject to the payment of a surcharge fee.

(4) Where the renewal is not effected in accordance with this section, the registration of the geographical indication shall lapse.

112. Invalidation and rectification of geographical indication

(1) Any interested person may apply to the Tribunal for the invalidation of the registration of a geographical indication where it does not qualify for protection.
(2) Any interested person may apply to the Tribunal for the rectification of the registration of a geographical indication where –

(a) the geographical area specified in the registration does not correspond to the geographical indication; or

(b) the indication of the products for which the geographical indication is used or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

(3) In any proceedings under this section, notice of the request for invalidation or rectification shall be –

(a) served on the person who filed the application for registration of the geographical indication or his successor in title; and

(b) given to all persons having the right to use the geographical indication under section 109,

in such manner as may be prescribed.

(4) Any person referred to in subsection (2) or any other person having an interest in the matter may, within a period which shall be specified by the Tribunal in the said notice and publication, apply to join in the proceedings.
Sub-Part D – Madrid Protocol

Sub Sub-Part I – International applications originating from Mauritius

113. Interpretation of Sub-Part D

In this Sub-part –

“basic application” means an application for registration of a mark, filed with the Office under this Act, used as a basis for the filing of an international application under the Madrid Protocol;

“basic registration” means a mark registered with the Office under this Act, used as a basis for the filing of an international application under the Madrid Protocol;

“Common Regulations” means the Common Regulations under the Madrid Agreement and Madrid Protocol;

“international application” means an application to obtain registration of a mark under the Madrid Protocol;

“International Bureau” means the International Bureau of the World Intellectual Property Organization;

“International Register” means the official collection of data concerning international registrations of marks maintained by the International Bureau;

“subsequent designation” means the request for extension of protection (territorial extension) under Article 3ter(2) of the Madrid Protocol; it also means such designation as recorded in the International Register;

“Madrid Protocol” means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted in Madrid on June 27, 1989 as amended in October 2006 and November 2007;

“Office of origin” means the office with which the basic application has been filed or in whose register the basic registration has been effected, as the case may be.

114. Language

Any communication, including an international application, for transmission to the International Bureau through the intermediary of the Office shall be in the English language.

115. Examination of international application of which Mauritius is country of origin
Where an international application is filed with the Office for transmission to the International Bureau, the Office shall verify that –

(a) it may be considered as the Office of origin in respect of that application; and

(b) the particulars furnished are in accordance with the provisions of the Madrid Protocol and the Common Regulations.

116. Certification

(1) Where an international application complies with the requirements of the Madrid Protocol and Common Regulations, the Director shall –

(a) certify the application;

(b) indicate the date of receipt; and

(c) forward the application to the International Bureau.

(2) Where the international application does not meet the prescribed requirements, the Director shall inform the applicant.

(3) The certification and transmission of an international application to the International Bureau shall be subject to the prescribed handling fee.

117. Handling Fee

The prescribed handling fee shall be due and payable to the Director for the certification and transmittal to the International Bureau of an international application originating in Mauritius.

118. Ceasing of effect of the basic application or basic registration

Where, in accordance with Article 6 of the Madrid Protocol, the registration resulting from the basic application, or the basic registration, ceases to have effect, the Director shall –

(a) inform the International Bureau accordingly; and

(b) request the cancellation of the international registration in respect of the goods and services affected.

Sub Sub-Part II– International registration where Mauritius is a designated contracting party

119. Advertisement of application and opposition

(1) The Director shall publish an application for international registration in such manner as may be prescribed.
An interested person may, lodge with the Director an opposition to the international registration.

(b) An opposition referred to in subsection (2) shall be dealt in accordance with section 94

120. Ex Officio Provisional refusal of protection

(1) Where a mark, which is the subject of an international registration, cannot be protected under this Act, the Director shall, before the expiry of the refusal period applicable under Article 5 of the Madrid Protocol, notify the International Bureau of the provisional refusal of protection for that mark.

(2) The holder of the international registration shall enjoy the same remedies as if the mark has been filed for registration directly with the Office.

121. Provisional refusal based on an opposition

(1) Where an opposition is filed with the Director in respect of an international registration designating Mauritius, the Director shall, before the expiry of the refusal period applicable under Article 5 of the Madrid Protocol, notify that fact to the International Bureau as a provisional refusal based on an opposition, in accordance with the provisions of the Madrid Protocol and the Common Regulations.

(2) The holder of that international registration shall enjoy the same remedies as if the mark filed for registration directly with the Office.

122. Statement of grant of protection

(1) Where all procedures before the Office have been completed and there is no ground for the Director to refuse protection, the Director shall, as soon as possible and before the expiry of the refusal period applicable under Article 5 of the Madrid Protocol, send to the International Bureau a statement to the effect that protection is granted to the mark in Mauritius.

(2) Where the Director is satisfied that the conditions for protection of the mark are in accordance with section 91, he shall send to the International Bureau a statement that protection is granted to that mark in Mauritius.

(3) The statement referred to in subsection (1) shall be sent before the expiry of the refusal period applicable under Article 5 of the Madrid Protocol.

123. Final decision following a provisional refusal

(1) Where the Director has notified to the International Bureau a provisional refusal of protection in accordance with sections 120 or 121 and, after the procedures before the Office having been completed, such provisional refusal has
been either totally or partially withdrawn, the Director shall send to the International Bureau, as the case may be, either –

(a) a statement to the effect that the provisional refusal is withdrawn and that protection of the mark is granted in Mauritius for all the goods and services for which protection has been requested; or

(b) a statement indicating the goods and services for which protection of the mark is granted in Mauritius.

(2) Where the Director has sent to the International Bureau a notification of total provisional refusal in accordance with sections 120 or 121 and, after the procedures before the Office having been completed, the Director has decided to confirm such refusal for all the goods and services covered by the registration for which protection has been requested in Mauritius, he shall send to the International Bureau a statement to that effect.

124. Further decision affecting protection of a mark

Where, following the sending of a statement in accordance with section 122, there is a further decision which affects the protection of a mark in an international registration designating Mauritius, the Director shall –

(a) to the extent that he is aware of such decision, send to the International Bureau a further statement indicating the goods and services for which the mark is protected in Mauritius; or

(b) indicate any other fact regarding the protection of that mark.

125. Effect of international registration

(1) An international registration shall have the same effect as an application for registration of the mark filed with the Office as regards the date of the international registration.

(2) Where the Director –

(a) does not notify his refusal to the International Bureau in accordance with the Madrid Protocol and the Common Regulations;

(b) notifies a refusal which is subsequently withdrawn; and

(c) sends the statement of grant of protection,

the protection of a mark which is subject to international registration in Mauritius shall be considered to be the same as a mark registered with the Office, on the date of the international registration.

126. Invalidation
Where the effects of an international registration are invalidated in Mauritius, and the invalidation is no longer subject to appeal, the Director shall notify the International Bureau in accordance with the relevant provisions of the Madrid Protocol and the Common Regulations.

127. Recording in international register

Any recording made in the international register for an international registration shall be considered recorded on the register of the Office where Mauritius is a designated Contracting Party.

128. Collective and certification marks

Where an international registration designating Mauritius is a collective mark or a certification mark, the regulations governing the use of such collective mark or certification mark shall be submitted directly by the holder of that international registration to the Office, within the prescribed time limit.

129. Replacement

(1) Where –

(a) a mark registered with the Office is also the subject of an international Registration, and the protection resulting there from extends to Mauritius;

(b) the same person is recorded as holder of the registration in Mauritius and of the international registration;

(c) all the goods and services listed in the registration in Mauritius are also listed in the international registration in respect of Mauritius;

(d) the extension of that international registration to Mauritius took effect after the date of registration of the mark in Mauritius,

the holder of the international registration may request the Director to take note of that international registration on the record of the mark registered with the Office.

(2) A request filed with the Director in accordance with subsection (1), shall be made on the prescribed Form and shall be subject to the payment of the prescribed fee.

(3) Where the Director has taken note of an international registration in accordance with subsection (1), he shall notify the International Bureau accordingly. Such notification shall indicate the following –

(a) the number of the international registration in question;
(b) where only some of the goods and services listed in the international registration are concerned, those goods and services;

(c) the filing date and number of the application for registration of the mark in Mauritius;

(d) the registration date and number of the registration in Mauritius;

(e) the priority date, if any, of the registration in Mauritius; and

(f) information relating to other rights, if any, acquired by virtue of the registration in Mauritius.

130. Transformation

(1) Where an international registration designating Mauritius is cancelled at the request of the office of origin in accordance with Article 6(4) of the Madrid Protocol, in respect of all or some of the goods and services listed in the international registration, an application may be made to the Director, within three months from the date on which the international registration was cancelled, by the person who was the holder of the international registration at the date of its cancellation, for registration of the same mark (“an application resulting from transformation”), in respect of goods and services covered by the list of goods and services contained in the international registration for which protection has been requested in Mauritius.

(2) Subject to subsections (3), (4), (5) and (6), the provisions applicable to an application for registration filed directly with the Director shall apply mutatis mutandis to an application resulting from transformation.

(3) An application resulting from transformation shall be made on the prescribed form and shall include the following –

(a) a statement that the application is made by way of transformation;

(b) the international registration number of the international registration which has been cancelled;

(c) the date of the said international registration, or the date of the subsequent designation as appropriate;

(d) the date on which the cancellation of the international registration was recorded;

(e) where applicable, the date of any priority claimed in the international application and recorded in the International Register.
(4) An application resulting from transformation shall be subject to the payment of the prescribed fees.

(5) Where a mark has become protected in Mauritius on or before the date on which that registration was cancelled and, provided that all the requirements relating to an application resulting from transformation have been met, the Director shall register that mark. The date of registration shall be the date of the cancelled international registration, or the date of the subsequent designation as appropriate, and that registration shall enjoy any priority enjoyed by the cancelled international registration.

(6) Where a mark has not yet become protected in Mauritius on or before the date on which that registration was cancelled, any procedures or measures already undertaken on or before the date on which an application resulting from transformation is filed for the purpose of the international registration shall be considered as having been undertaken for the purposes of the application resulting from transformation. The filing date of the application resulting from transformation shall be the date of the international registration or the date of the subsequent designation, as appropriate.

131. Voluntary cancellation of registration

A registered trade mark may be cancelled by the owner in respect of some or all of the goods or services for which it is registered.

132. Conflict between the Act and the Madrid Protocol

In the event of conflict between the provisions of the Act and those of the Madrid Protocol and the Common Regulations, the provisions of the Madrid Protocol and the Common Regulations shall prevail.

PART IX – MISCELLANEOUS

133. Changes in ownership

(1) Any application by an interested party for a change in the –

(a) ownership of a patent;

(b) ownership of a utility model;

(c) registration of a layout-design;

(d) ownership of a breeder’s right’

(e) registration of an industrial design;

(f) registration of a mark or certification mark;
registration of a geographical indication; or

(h) ownership of an application thereof,

shall be made in writing to the Director and shall be entered in the appropriate register.

(2) Subject to subsection (4), where the Director accepts a change referred to in subsection (1), he shall enter the change in the appropriate register and cause it to be published.

(3) Any change effected under subsection (1) shall have no effect against third parties until an entry has been made under subsection (2).

(4) Where any change in the ownership of the registration of a mark or a collective mark is likely to deceive or cause confusion, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used, it shall be invalid.

134. Licence

(1) Any licence issued for a right under this Act, or an application thereof, shall be submitted to the Director, who shall record it and publish a reference thereto, while keeping its contents confidential.

(2) The licence shall have no effect against third parties until such recording is effected.

135. Agents

Where an applicant’s residence or principal place of business is outside Mauritius, a law practitioner resident and practising in Mauritius or an approved agent shall represent him.

136. Appeal to Supreme Court

(1) Any person who is dissatisfied with the determination of the Tribunal as being erroneous in law may appeal to the Supreme Court by way of case stated.

(2) An appeal under this section shall be prosecuted in the manner provided by the rules made by the Supreme Court.

(3) No person shall appeal to the Supreme Court under this section unless he has exhausted the remedy available under section 9.

(4) Any appeal to the Supreme Court shall be made within 28 days of the determination of the Tribunal.

(5) The Supreme Court may make rules for ensuring the prosecution of
appeals under the Act.

(6) On the hearing of an appeal under this section, any person may, by special leave of the Supreme Court, bring forward further material for the consideration of the appeal by the Supreme Court.

137. Protection of rights

(1) Any person who is the holder of a right under this Act may, subject to subsection (2) seek an appropriate remedy before the Supreme Court against any other person who has infringed, or is likely to infringe, that right.

(2) No proceedings under this Act by the owner of a right or an exclusive licensee shall be initiated after the expiry of a period of 5 years from the date on which the claimant knew or had reason to know of the infringing act.

138. Appeal against decision of Director

(1) An interested person who is dissatisfied with any decision taken by the Director under this Act may appeal to the Tribunal.

(2) An appeal under subsection (1) shall be filed within 28 days of the date of the decision in such form and manner as may be prescribed.

139. Offences

(1) The performance of any act referred to in sections 21, 31, 47, 64, 82, 98 and 109 in Mauritius by any person other than the owner of the title of protection or the licensee and without the agreement of the owner, shall be unlawful.

(2) Any person who knowingly performs any act in breach of subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 250,000 rupees and to imprisonment for a term not exceeding 5 years.

140. Unfair practice

(1) Any act in breach of sections 21, 31, 47, 64, 82, 98 and 109 shall amount to an act of unfair practice and may give rise to a claim in damages.

(2) Any claim arising out of an unfair practice shall be prosecuted in accordance with the Protection against Unfair Practices (Industrial Property Rights) Act.

(3) In any action under subsection (1), the Court may, notwithstanding any other enactment, order the forfeiture of any article or thing that were used in or gave rise to an act of unfair practice, as the Court may determine.

141. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
(2) The regulations may provide for –

(a) the payment of fees; and

(b) the procedure for the registration of patents, utility models, layout-designs of integrated circuits, plant breeder’s rights industrial designs, marks, geographical indications, trade names and matters related thereto.

142. Repeals

The following Acts are repealed –

(a) The Geographical Indications Act 2002;

(b) The Layout-Designs (Topographies) of Integrated Circuits Act 2002; and


143. Transitional provisions

(1) Any application granted by the Office or the Director under an enactment repealed by section 142 shall be considered to have been granted under this Act.

(2) Any application made under an enactment repealed by section 142 and which has not been determined shall be considered to have been made under this Act and processed accordingly.

(3) Any person who, at the commencement of this Act, is the holder of a public office under an enactment repealed by section 142 shall be considered to have been appointed to a corresponding public office under this Act.

144. Commencement

(1) Subject to this section, this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.