

Non completion  
of registration.

**112.** Where, by reason of default on the part of the applicant, the registration of a mark is not completed within twelve months from the date of receipt by the Director-General of the application, the Director-General shall, after giving notice of non-completion to the applicant in writing in the prescribed form, treat the application as abandoned, unless it is completed within the time specified in that behalf in such notice.

Register of marks  
and issue of  
certificate.

**113.** (1) The Director-General shall keep and maintain a register called the “Register of Marks” wherein shall be recorded in the order of their registration, all registered marks and such other matters relating to marks as are authorized or directed by this Part to be so recorded or may from time to time be prescribed.

(2) The registration of a mark shall include a representation of the mark and shall specify its number, the name and address of the registered owner and, if the registered owner’s address is outside Sri Lanka, a postal address for service in Sri Lanka, the dates of application and registration ; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed, if a valid certificate has been filed relating to the use of a mark at an international exhibition, the contents of such certificate, the list of goods and services in respect of which registration of the mark has been granted with an indication of the corresponding class or classes.

(3) Upon the registration of a mark the Director-General shall issue to the registered owner thereof a certificate of registration and shall, at the request of the registered owner, send such certificate to him by registered post to his last recorded postal address in Sri Lanka, or if he is resident outside Sri Lanka to his last recorded postal address in Sri Lanka.

**114.** The Director-General shall cause to be published in the Gazette, in the prescribed form, all registered marks in the order of their registration, including in respect of each mark so published reference to such particulars as may be prescribed.

Publication of registered marks.

**115.** Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Examination of register and certified copies.

**116.** Where application is made for the registration of a mark identical with or so closely resembling a mark of the applicant already on the register for the same goods or services, the same description of goods or services as to be likely to mislead or cause confusion if used by a person other than the applicant, the Director-General may require as a condition of registration that such marks shall be entered on the register as associated marks.

Associated marks.

**117.** Associated marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate marks :

Assignment and user of associated marks.

Provided that where under the provisions of this Part user of a registered mark is required to be proved for any purpose, the Director-General may, in so far as is considered necessary accept the user of an associated registered mark, or of the mark, with additions or alterations not substantially affecting its identity, as an equivalent for such user.

## CHAPTER XXII

### DURATION OF REGISTRATION OF A MARK

**118.** (1) Subject and without prejudice to the other provisions of this Part, registration of a mark shall expire ten years after the date of registration of such mark.

Duration of registration.

(2) A mark when registered shall be registered with reference to the date of receipt of the application for registration by the Director-General, and such date shall be deemed for the purposes of this Part to be the date of registration.

Renewal.

**119.** (1) Registration of a mark may be renewed for consecutive periods of ten years each on payment of the prescribed fee.

(2) Renewal of registration of a mark shall not be subject to any further examination of the mark by the Director-General or to opposition by any person.

(3) The renewal fee shall be paid within the twelve months preceding the date of expiration of the period of registration :

Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(4) The Director-General shall record in the register and cause to be published in the Gazette in the prescribed form all renewals of registration specifying any removal from the lists of goods or services.

(5) Where the renewal fee has not been paid within such period or such extended period specified in subsection (3), the Director-General shall remove the mark from the register.

Alteration of  
registered mark.

**120.** The registered owner of any mark may apply in the prescribed manner and with prescribed fee to the Director-General for leave to add to or alter such mark in any manner not substantially affecting the identity of the same, and the Director-General may refuse such leave or may grant the same on such terms and subject to such limitations as to mode or place of use as he may think fit. If leave be granted, the mark as altered shall be published in the prescribed manner.

## CHAPTER XXIII

### RIGHTS OF THE REGISTERED OWNER OF A MARK

**121.** (1) Subject and without prejudice to the other provisions of this Part, the registered owner of a mark shall have the following exclusive rights in relation to the mark :—

Rights of  
registered owner.

- (a) to use the mark ;
- (b) to assign or transmit the registration of the mark ;
- (c) to conclude licence contracts.

(2) Without the consent of the registered owner of the mark third parties are precluded from the following acts :—

- (a) any use of the mark, or a sign resembling it in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered or for similar goods or services in connection with which the use of the mark or sign is likely to mislead the public ; and
- (b) any other use of the mark, or of a sign or trade name resembling it, without just cause and in conditions likely to be prejudicial to the interests of the registered owner of the mark.

(3) The application (whether by way of printing, painting or otherwise) or the affixing in Sri Lanka by a third party, of a mark or any sign resembling such mark in such a way as to be likely to mislead the public, on or in connection with, goods in respect of which such mark has been registered (whether such goods are intended for sale in Sri Lanka, or for export from Sri Lanka) shall be deemed to be an act prohibited under Subsection (2).

(4) The court shall presume the likelihood of misleading the public in instances where a person uses a mark identical to the registered mark for identical goods or services in respect of which the mark is registered.

Limitation of  
registered  
owners's rights.

**122.** The registration of the mark shall not confer on its registered owner the right to preclude third parties –

- (a) from using their *bona fide* names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production or of supply of their goods and services, in so far as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services ;
- (b) from using the mark in relation to goods lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka under that mark, provided that such goods have not undergone any change.

## CHAPTER XXIV

### ASSIGNMENT AND TRANSMISSION OF APPLICATIONS AND REGISTRATIONS OF MARKS

Assignment and  
transmission of  
applications and  
registrations.

**123.** (1) An application for registration or the registration of a mark may be assigned or transmitted independently of the transfer of all or part of the enterprise using the mark, in respect of all or part of the goods or services for which the application was filed or the mark registered and such assignment or transmission shall be in writing signed by or on behalf of the contracting parties.

(2) Such assignment or transmission shall be invalid if the purpose or effect thereof is to mislead the public, in particular in respect of the nature, source, manufacturing process, characteristics or suitability for their purpose of the goods or services to which the mark is applied.

(3) Any person becoming entitled by assignment or transmission to an application for registration or the registration of a mark may apply to the Director-General in the prescribed manner to have such assignment or transmission recorded in the register.

(4) No such assignment or transmission shall be recorded in the register unless the prescribed fee has been paid to the Director-General.

(5) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

## CHAPTER XXV

### LICENCE CONTRACTS

**124.** (1) For the purposes of this Part licence contract means any contract by which the registered owner of a mark (hereinafter referred to as “the licensor”) grants to another person or enterprise (hereinafter referred to as “the licensee”) a licence to use the mark for all or part of the goods or services in respect of which the mark is registered.

Interpretation.

(2) Use of the mark by the licensee shall be deemed to be use of the mark by the registered owner.

**125.** (1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

Form and record of licence contract.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Director-General shall, on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto might wish to have recorded :

Provided that the parties shall not be required to disclose or have recorded any other particulars relating to such contract.

**126.** In the absence of any provision to the contrary in the licence contract, the licensee shall –

Rights of licensee.

- (a) be entitled to use the mark within the territory of Sri Lanka, during the entire period of registration of the mark, including renewals, in respect of all the goods or services for which the mark is registered ;

- (b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licences to third parties.

Rights of licensor.

**127.** (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licences to third parties in respect of the same mark or himself use the mark.

(2) Where the licence contract provides the licence to be exclusive, the licensor shall not grant further licences to third parties in respect of the same mark or himself use the mark unless the contract otherwise provides.

Nullity of licence contract and certain clauses.

**128.** (1) A licence contract shall be null and void in the absence of stipulations ensuring effective control by the licensor of the quality of the goods or services in respect of which the mark may be used.

(2) Any clause or condition in a licence contract shall be null and void in so far as it imposes upon the licensee restrictions not derived from the rights conferred by this Part on the registered owner of the mark, or which are unnecessary for the safeguarding of such rights :

Provided that –

- (a) restrictions concerning the scope, extent, duration of use of the mark or the geographical area in or the quality or quantity of the goods or services in connection with which the mark may be used ;
- (b) restrictions justified by the stipulations referred to in subsection (1) ; and
- (c) obligations imposed upon the licensee to abstain from all acts capable of prejudicing the validity of the registration of the mark,

shall not be deemed to constitute a restrictions as mentioned above.

**129.** The Court may on the application of any person showing a legitimate interest, or of any Authority including the Director-General, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, annul and cancel the said contract if—

Cancellation of  
licence contracts.

- (a) the licensor has lost effective control over the quality of the goods or services in respect of which the mark is used ;
- (b) the licensee has used the mark in such a way as to mislead or confuse the public.

**130.** (1) Where the Director-General has reasonable cause to believe that any licence contract or any amendment or renewal thereof –

Licence contracts  
involving  
payments abroad.

- (a) which involves the payment of royalties abroad ; or
- (b) which by reason of other circumstances relating to such licence contract,

is detrimental to the economic development of Sri Lanka he shall in writing communicate such fact to the Governor of the Central Bank and transmit all papers in his custody relevant to a decision on such matter, to the Governor of the Central Bank.

(2) Where the Governor of the Central Bank on receipt of any communication under subsection (1) informs the Director-General in writing that the said licence contract or any amendment or renewal thereof is detrimental to the economic development of Sri Lanka the Director-General shall cancel and invalidate the record of such contract in the register.

(3) The provisions of this section shall, *mutatis mutandis*, apply to assignments and transmissions.

(4) The provisions of this Chapter shall, *mutatis mutandis*, apply to sub-licences.



Effect of nullity  
of registration on  
licence contract.

**131.** Where, before the expiration of the licence contract, the registration is declared null and void, the licensee shall no longer be required to make any payment to the licensor under the licence contract, and shall be entitled to repayment of the payments already made :

Provided that the licensor shall not be required to make any repayment, or shall be required to make repayment only in part, to the extent that he can prove that any such repayment would be inequitable under all the circumstances, in particular if the licensee has effectively profited from the licence.

Expiry,  
termination or  
invalidation of  
licence contract.

**132.** The Director-General shall –

- (a) if he is satisfied that a licence contract recorded under subsection (2) of section 125 has expired or been terminated, record that fact in the register upon a request made in writing to that effect signed by or on behalf of the parties thereto ;
- (b) record in the register the expiry, termination, annulment or invalidation of a licence contract under any provision of this Part.

## CHAPTER XXVI

### RENUNCIATION AND NULLITY OF REGISTRATION OF A MARK

Renunciation of  
registration.

**133.** (1) The registered owner of a mark may renounce the registration, either wholly or in respect of part of the goods or services for which the mark is registered, by a declaration in writing signed by him or on his behalf and forwarded to the Director-General.

(2) The Director-General shall, on receipt of the said declaration, record it in the register and cause such record to be published in the Gazette.

(3) The renunciation shall take effect from the date that the Director-General receives the said declaration.

(4) Where a licence contract in respect of a mark is recorded in the register the Director-General shall not, in the absence of provision to the contrary in such licence contract, accept or record the said renunciation except upon receipt of a signed declaration by which any assignee, licensee or sub-licensee on record consents to the renunciation, unless his consent is expressly waived in the licence contract.

**134.** (1) The Court may on the application of any person showing a legitimate interest, or of any competent Authority including the Director-General, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, declare the registration of the mark null and void if its registration is precluded under the provisions of sections 103 and 104 :

Nullity of  
registration.

Provided, however, that grounds of nullity which do not exist on the date of the application to Court, shall not be taken into account.

(2) Where the grounds for nullity of registration of the mark exist in respect of only part of the goods or services for which the mark is registered, nullity of the registration shall be declared for that part only for such goods or services.

(3) An application for a declaration of nullity based on any of the grounds specified in subsection (1) of section 104 shall be made within five years from the date of issue of the certificate of registration under subsection (3) of section 113.

**135.** (1) Upon a final decision of the Court declaring total or partial nullity of registration of a mark, the registration shall be deemed to have been null and void totally or partially, as the case may be, from the date of such registration.

Date and effect of  
nullity.

(2) When a declaration of nullity becomes final the Registrar of the Court shall notify the Director-General of such fact and he shall record the said declaration in the register and cause it to be published in the Gazette.

## CHAPTER XXVII

## REMOVAL OF MARK

Removal of mark.

**136.** (1) The Court may on the application of any person showing a legitimate interest, or of any Competent Authority including the Director-General, to which the registered owner of the mark and every assignee, licensee or sub-licensee on record shall be made party, remove any registered mark from the register—

- (a) if the registered owner has, without valid grounds, failed to use the mark within Sri Lanka or cause it to be used within Sri Lanka by virtue of a licence, during five consecutive years immediately preceding the date of the application to Court ;
- (b) if the registered owner has caused, provoked or tolerated the transformation of the mark into a generic name for one or more of the goods or services in respect of which the mark is registered so that in trade circles and in the eyes of the public its significance as a mark has been lost.

(2) In any application under paragraph (a) of subsection (1) the Court may take into account the fact that non-use of the mark was due to circumstances beyond the control of the registered owner. The Court shall not take into account the lack of funds of the registered owner as a ground for non-use of the mark.

(3) The use of a mark—

- (a) in a form differing, in elements which do not alter the distinctive character of the mark, from the form in which it was registered, shall not be a ground for removal of the mark ;
- (b) in connection with one or more of the goods or services belonging to any given class in respect of which the mark is registered, shall suffice to prevent the removal of the mark in respect of all the other goods or services of the same class.

**137.** Upon a final decision of the Court in respect of removing any registered mark from the register—

Date and effect of removal of mark.

- (1) the Court may, taking into account the date of the events and other circumstances which occasioned the removal of the mark, determine the date on which the registration of the mark shall be deemed to have ceased to have any legal effect ;
- (2) the Registrar of the Court shall communicate the decision of the Court to the Director-General who shall, if the Court decides that the mark be removed, enter in the register a record of such removal and cause the decision of Court to be published in the Gazette.

## CHAPTER XXVIII

### COLLECTIVE MARKS

**138.** (1) Subject to the provisions of this Chapter the provisions relating to marks shall apply to collective marks.

Collective marks.

(2) In relation to a collective mark, the reference in section 101 (signs of which a trade mark or service mark may consist) to distinguish goods or services of one enterprise from those of other enterprises shall be construed as a reference to distinguish goods or services of the enterprise which uses the collective mark from those of other enterprises.

(3) Notwithstanding the provisions of section 103 a collective mark may be registered which consists of a sign or indication which may serve, in trade, to indicate the geographical origin of the goods or services :

Provided, however, the owner of such a mark shall not be entitled to prohibit the use of such sign or indication in accordance with honest practices in industrial or commercial matters and in particular, by a person who is entitled to use a geographical name.

Application for  
registration of  
collective marks.

**139.** (1) An application for registration of a collective mark shall not be entertained unless in such application the mark is designated as a collective mark and the application is accompanied by a copy of conditions governing the use of the mark duly certified by the applicant.

(2) The conditions governing the use of the mark under subsection (1) shall define the common characteristics or quality of the goods or services which the collective mark shall designate, the conditions in which, and the person by whom it may be used, the exercise of effective control of the use of the mark and proper sanctions against the use of the mark contrary to such conditions. They shall contain further prescribed requirements under this section.

(3) A collective mark shall not be registered unless the conditions governing the use of the mark—

- (a) comply with the provisions of subsection (2) and any requirement imposed by any regulation made thereunder ;
- (b) are not contrary to public policy or accepted principles of morality.

(4) (a) An authorised user shall, subject to any agreement to the contrary between him and registered owner of the collective mark, be entitled to require the owner to take infringement proceedings in respect of any matter which affects his interests.

(b) If the owner—

- (i) refuses to do so ; or
- (ii) fails to do so within two months after being called upon to do so,

the authorised user may bring the proceedings in his own name as if he was the owner. The registered owner shall be made party to the action.

(c) In infringement proceedings brought by the owner of a registered collective mark, any loss suffered or likely to be suffered by any authorised user shall be taken into consideration by Court.

(5) The registration of the collective mark may be removed on the following grounds in addition to the grounds specified in section 136 :—

- (i) that the manner in which the mark has been used by the owner has caused it to become liable to mislead the public to understand or think that the mark has state patronage ;
- (ii) that the owner has failed to observe, or to secure the observance of, the conditions governing use of the mark ; or
- (iii) that an amendment of the conditions has been made so that the conditions—
  - (a) no longer comply with subsection (2) and any other condition imposed by regulation made under this Act ; or
  - (b) are contrary to public policy or to the accepted principles of morality.

(6) The registration of a collective mark shall be declared null and void in addition to the grounds of nullity specified in section 134 if it was registered in violation of the provisions of subsections (1), (2) and (3) of section 139.

**140.** (1) Registration of a collective mark shall be in such Part of the register as the Director-General may decide and a copy of the conditions governing the use of the mark shall be appended to the registration.

Registration and publication of collective marks.

(2) The publication of an application for a collective mark in accordance with subsection (9) of section 111 shall include a summary of the conditions to be appended to the registration.

(3) When a collective mark, is registered under subsection (1) it shall be deemed in all respects to be a registered mark.

(4) The conditions governing the use of a registered collective mark shall be open for public inspection in the same way as the register.

Changes in condition governing the use of collective marks.

**141.** (1) The registered owner of a collective mark shall notify the Director-General in the prescribed manner of any change or amendments effected in the conditions governing the use of the collective mark.

(2) Any notification of such change or amendment shall be recorded in the register on payment of the prescribed fee. Any such change or amendment in the condition shall be effectual only if they have been recorded.

(3) The Director-General shall cause a summary of such changes and amendments made in the conditions and recorded under subsection (2) to be published in the Gazette.

## CHAPTER XXIX

### CERTIFICATION MARKS

Certification marks.

**142.** (1) Subject to the provisions of this Chapter, provisions relating to marks shall apply to certification marks.

(2) In relation to a certification mark the reference in section 101 (signs of which a trade mark or service mark may consist) to distinguish goods or services of one enterprise from those of another enterprise shall be construed as a reference to distinguish goods or services which are certified from those which are not certified.

(3) Notwithstanding the provisions of section 103, a certification mark which consists of a sign or indication which may serve in trade to designate the geographical origin of the goods and services may be registered :

Provided, however, the owner of such mark is not entitled to prohibit the use of such sign or indication in accordance with honest practices in industrial or commercial matters and in particular by a person who is entitled to use a geographical name.

(4) An application for registration of a certification mark shall not be filed unless in the application the mark is designated as a certification mark and is accompanied by a copy of the conditions governing the use of the mark duly certified by the applicant.

(5) The conditions shall indicate the name of the person authorised to use the mark, the characteristics to be certified by the mark, how the owner is to test those characteristics and to supervise the use of the mark, the fees (if any) to be paid in connection with the operation of the mark and the procedures for resolving disputes. They may in addition contain further prescribed requirements under this section.

(6) A certification mark shall not be registered—

(a) if the owner of the certification mark carries on a business involving the supply of goods or services of the kind certified ; and

(b) unless the conditions governing the use of the mark,—

(i) comply with the provisions of subsection (5) and any other requirement imposed by regulations made under that subsection ; and

(ii) are not contrary to public policy or accepted principles of morality.

(7) In infringement proceedings brought by the owner of the registered certification mark any loss suffered, or likely to be suffered, by any authorised user shall be taken into account ; and the Court may give such directions as it thinks fit as to the extent to which the owner is to hold the proceeds of any pecuniary remedy on behalf of such users.



(8) Apart from the grounds of removal of a mark provided for in section 136, the registration of a certification mark may be removed on the ground—

- (a) that the owner has commenced such a business as is mentioned in paragraph (a) of subsection (6) ;
- (b) that the manner in which the mark has been used by the owner has caused it to become liable to mislead the public as to the character of significance of the mark ;
- (c) that the owner has failed to observe, or to secure observance of, the conditions governing the use of the mark ;
- (d) that the owner is no longer competent to certify the goods or services for which the mark is registered ;
- (e) that an amendment of the conditions have been made so that the conditions—
  - (i) no longer comply with the provisions of subsection (5) and any other condition imposed by regulations ;
  - (ii) are contrary to public policy and order or to the accepted principles of morality.

(9) Apart from the grounds of nullity provided in section 134 the registration of a certification mark may be declared null and void if it was registered contrary to the provisions of subsections (3), (4) and (5).

(10) (a) Registration of a certification mark shall be in such part of the register as the Director-General may decide, and a copy of the conditions, governing the use of the mark, shall be appended to such registration.

(b) The publication of an application of a certification mark shall be in accordance with subsection (9) of section 111, which shall include a summary of the conditions to be appended to the registration.

(c) A certification mark registered under subsection (4) shall be deemed for all purposes be a registered mark.

(d) The conditions governing the use of a certification mark shall be open for public inspection in the same manner as the register.

(11) (a) The registered owner of a certification mark shall notify the Director-General in prescribed manner of any changes or amendments effected to the conditions governing the use of the mark.

(b) Any notification of such changes and amendments shall be recorded in the register on the payment of prescribed fee. Any change or amendment of conditions shall come into force only if they have been so recorded.

(c) The Director-General shall cause to be published in the Gazette a summary of the changes or amendments so recorded in the register.

## PART VI

### CHAPTER XXX

#### TRADE NAMES

**143.** A name or designation shall not be admissible as a trade name if, by reason of its nature or the uses to which it may be put, it is contrary to morality or public order or is likely to offend the religious or racial susceptibilities of any community or is likely to mislead trade circles or the public as to the nature of the enterprise identified by that name.

Prohibited trade names.

Protection of  
trade name.

**144.** (1) Notwithstanding the provisions of any written law providing for the registration of a trade name, such name shall be protected, even prior to or without registration, against any unlawful act committed by a third party.

(2) Any subsequent use of a trade name by a third party, whether as a trade name or as a trade mark, service mark, collective mark or certification mark or any such use of similar trade name, trade mark, service mark or collective mark or certification mark likely to mislead the public shall be deemed to be unlawful.

(3) Section 122 of this Act shall apply to trade names.

Assignment and  
transmission of  
trade names.

**145.** (1) A trade name may be assigned or transmitted together with the assignment or transmission of the enterprise or part of the enterprise identified by that name.

(2) The provisions of section 123 shall apply, *mutatis mutandis*, to trade names.

## PART VII

### CHAPTER XXXI

#### LAYOUT DESIGNS OF INTEGRATED CIRCUITS

Right to  
protection.

**146.** (1) The right to protection of a layout design shall belong to the creator of layout design. Where several persons have jointly created a layout design such persons shall be co-owners of the right to protection.

(2) The right to protection of a layout design made or created in the performance of a contract of employment or in the execution of a work shall, unless the terms of such contract of employment or contract for the execution of such work otherwise provides, belong to the employer or the person who commissioned the work, as the case may be.

**147.** (1) The protection provided under this Act shall apply to any layout design which is original. For the purposes of this section a layout design is original if —

Originality.

- (a) it has not been produced by the mere reproduction of another layout design or of any substantial part thereof; and
- (b) it is the result of an intellectual effort of a creator and is not common place among creators of layout designs and manufacturers of integrated circuits at the time of the creation of such layout design.

(2) Where a layout design consists of a combination of elements and interconnections that are common place among creators of layout designs or manufacturers of integrated circuits, such layout designs shall be protected only if the combination, taken as a whole, meets the conditions referred to in subsection (1).

**148.** (1) The protection afforded to a layout design under this Part shall not be dependent on the integrated circuit which incorporates such layout design being incorporated in an article. Subject to the provisions of subsection (2) the right holder of a layout design shall have the exclusive right to do or authorize any person to do any of the following acts :—

Scope of protection.

- (i) to reproduce whether by incorporation in an integrated circuit or otherwise, the protected layout design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in subsections (1) and (2) of section 147.
- (ii) to import, offer for sale, sell or otherwise distribute for commercial purposes, the protected layout design or an integrated circuit in which the protected layout design is incorporated or an article incorporating such an integrated circuit in so far as it does not contain an unlawfully reproduced layout design.

(2) The scope of the protection of a layout design afforded by this Part, shall not extend to—

- (i) the reproduction of the protected layout design for the purpose of evaluation, analysis, research or non profit teaching or education ;
- (ii) the incorporation in an integrated circuit of a layout design, created on the basis of such analysis, evaluation or research referred to in paragraph (i), if such layout design is itself original within the meaning of subsections (1) and (2) of section 147, or for the performance of any of the acts referred to in subsection (1) of this section in respect of such layout design ;
- (iii) the performance of any of the acts referred to in paragraph (ii) of subsection (1), where the act is performed in respect of a protected layout design, or in respect of an integrated circuit in which such layout design is incorporated, and such layout design or integrated circuit has been put on the market by, or with the consent of, the right holder; or
- (iv) the performance of any act referred to in paragraph (ii) of subsection (1) in respect of an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating such an integrated circuit, where the person performing or ordering such an act unknowingly performs or orders such an act and has no reasonable grounds of knowing at the time of acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design :

Provided however, where the person performing or ordering any act under this paragraph, is notified that such layout design is an unlawful reproduction, then such person may, perform or order any act only

with respect to the stock in hand or ordered before he was so notified and shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such layout design; or

- (v) protection under this Part shall not be available for any layout design which has been commercially exploited in or outside Sri Lanka for more than two years prior to the commencement of this Act.

**149.** (1) Protection of a layout design under this Act shall commence—

Commencement and duration of protection.

- (i) on the date of the first commercial exploitation in or outside Sri Lanka of the layout design by, or with the consent of the right holder, provided an application for protection is filed by the right holder with the Director-General within the time specified in subsection (2) of section 150 ; or
- (ii) on the filing date accorded to the application for the registration of the layout design filed by the right holder, if the layout design has not been previously exploited commercially in or out side Sri Lanka.

(2) Protection of a layout design under this Part shall terminate at the end of the tenth calendar year from the date of commencement of such protection.

**150.** (1) The application for the registration of a layout design shall be in the prescribed form, and shall be accompanied by the prescribed fee and shall be filed in the Office. A separate application shall be filed in respect of each different layout design.

Requirements of the Application.

(2) Any person may apply for registration of a layout design if such layout design has not been commercially exploited, or if exploited, in or outside Sri Lanka the application for registration shall be made before the expiry of a period of two years from the date of such exploitation.

- (3) The application shall—
- (a) contain a request for the registration of the layout design in the Register of Layout Designs and a brief and precise description thereof ;
  - (b) specify the name, address, nationality of the applicant, and if he is resident outside Sri Lanka a postal address for service in Sri Lanka ;
  - (c) be accompanied by a copy of a drawing of the layout design along with information defining the electronic function which the integrated circuit is intended to perform ; however, the application may omit such parts in the copy or drawing that relate to the manner or manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout design ;
  - (d) specify whether the layout design is exploited in or outside Sri Lanka and the date of its first commercial exploitation, if any ;
  - (e) provide particulars establishing the right to protection under section 146 ;
  - (f) be accompanied by a declaration as to the originality of the layout design ;
  - (g) be accompanied by a power of attorney granted to the agent by the applicant, where the application is made through an agent.

(4) (a) Where the applicant fails to comply with the requirements specified in subsection (3) of this section the Director-General shall, notify the applicant of the same and require him to correct the defect made in the application within a period of two months from the date of such notification.

(b) Where the applicant complies with such requirements specified in paragraph (a) of this subsection, the Director-General shall accord the date of filing as the date of receipt of the application :

Provided however, such application should contain written statement of the need for the registration of the layout design, and information whereby the identity of the applicant can be established and shall be accompanied by a copy of the drawings of the layout design.

(c) Where the applicant fails to submit drawings of a layout design with the original application, but corrects the application for the registration of the layout design within the period specified in paragraph (a), the date of receipt of the corrections shall be deemed to be the date of filing of the application. The Director-General shall by a written communication confirm the filing date of the application to the applicant.

(d) Where the applicant fails, after notification by the Director-General, to correct the application within the period specified in paragraph (a), such application shall be deemed not to have been filed.

**151.** (1) The Director-General shall maintain a Register of Layout Designs and he shall register or cause to be registered of each protected layout design, in respect of which applications for registration have been accepted.

Registration of  
layout design in  
the Register.

(2) Where any application conforms to the requirements of section 150, the Director-General shall register the layout design in the Register of Layout Designs without examination of the originality of the layout design, the applicant's right to protection or the correctness of the facts stated in the application.



(3) The Register of Layout Designs shall contain the number, title, filing date and where indicated in the application under section 150 the date of first commercial exploitation in or outside Sri Lanka of the layout design as well as the name and address of the right holder, details relating to assignment, transfer, license contract and other prescribed particulars.

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

(5) Every registration of a layout design shall be published in the Gazette.

Right to transfer  
and rectification  
of the Register.

**152.** (1) Where the essential elements of a layout design has been taken from a layout design of another person without his consent in writing, the second mentioned person may, in writing together with all relevant material necessary to substantiate his claim and the prescribed fee, request the Director-General to transfer the application to him. Where the application has already been registered the second mentioned person may, within one year from the date of publication of such registration write to the Director-General together with all relevant material necessary to substantiate his claim and the prescribed fee, requesting the Director-General to transfer the registration to him and to rectify the entry in the register accordingly.

(2) The Director-General shall forthwith send a copy of such request to the applicant or registered right holder, as the case may be, requiring him to furnish him with a counter claim within a period of two months from the date of such notice in the prescribed manner together with any material if any in his possession to prove his ownership of the layout design in question and the prescribed fee. The applicant or the registered right holder may send the Director-General a counter claim.

(3) Where the registered right holder or the applicant fails to provide any information as required under subsection (2) of this section, within the period specified, the Director-General shall allow the request of the second mentioned person and rectify the entry in the register.

(4) If the applicant or the right holder sends a counter-claim, as provided in subsection (2), the Director-General shall after hearing both parties and taking into consideration the merits of the case, shall make his determination and notify the parties of his determination.

(5) Where after the filing of the application the person to whom the right to protection belongs, gives his consent to the filing of that application, such consent shall, for all purposes, be deemed to be effective from the date of filing of such application.

**153.** (1) A protected layout design may be assigned or transmitted and such assignment or transmission shall be in writing, signed by or on behalf of the contracting parties.

Changes in the ownership and contractual licenses.

(2) Upon a request in writing signed by or on behalf of the assignor or transferor of the layout design the Director-General shall on payment of the prescribed fee, record in the register such particulars of change of ownership and publish such change. Such change shall have no effect against third parties until such recording is made.

(3) The right holder of layout design may grant a licence to another person or enterprise authorizing it to do any or all of the acts referred to in subsection (1) of section 148. Such license contract shall be in writing and signed by or on behalf of the contracting parties. Such license contract shall upon registration of the layout design be submitted to the Director-General together with prescribed fee, who shall record or cause to be recorded the existence of such license contract in the register. A license contract shall have no effect against third parties until it is so recorded.

**154.** (1) Any person interested in a layout design registered under section 151, or an appropriate Authority including the Director-General may file an application in the Court, for the cancellation of such registration on the following grounds :—

Cancellation of a Registration of a layout design.

(a) that the layout design is not protected under sections 147 ;

- (b) that the right holder is not entitled to protection under section 146; or
- (c) that the layout design has been commercially exploited in or out side Sri Lanka, before the filing of the application for registration of the layout design, and the application was not filed within the time limit specified in subsection (2) of section 148 and subsection (2) of section 150.

(2) On the establishment of grounds for cancellation of a part of a layout design, the registration applicable to such corresponding part only of the layout design, shall be cancelled.

(3) The Court may on an application made to it in writing by an interested party or any appropriate Authority including the Director-General, and where the registered owner of the layout design and every assignee, licensee or sub-licensee on record shall be made party, make order for the cancellation or partial cancellation of such registration.

(4) Any cancellation of a registration of layout design or part thereof, shall have the effect of making null and void the registration of a layout design or part thereof as the case may be, and as such it shall be effective from the date of commencement of the protection of such layout design.

(5) The Court shall notify the Director-General of its decision and the Director-General shall record such decision and publish a notice to that effect, in the Gazette.

Representation by  
an Agent.

**155.** Where the ordinary residence, or principal, of the applicant place of business, of the applicant is outside Sri Lanka, he shall be represented by an agent registered under section 175 of the Act.

Infringement.

**156.** (1) Infringement shall consist of the performance of any act in contravention of the provisions of section 148.

(2) The Court may grant an injunction, award damages or grant any other proper remedy —

(a) to a right holder to prevent an infringement or imminent infringement if he makes an application having reason to believe that a layout design has been made infringing the rights protected under section 148 of the Act ; or

(b) to a licensee, where the licensee makes an application to court, in the event of the right holder failing or neglecting to make an application to Court on his being made aware of such infringement by the licensee.

(3) The provisions of Chapter XXXV of this Act shall apply in respect of an infringement and the remedies available to a right holder or a licensee.

(4) Any action under subsection (2) may be initiated only after an application for registration of the layout design being filed with the Director-General.

**157.** Any person who, knowingly or intentionally contravenes the provisions of section 148, shall be guilty of an offence, and shall on conviction after trial before a Magistrate be liable to a fine not exceeding rupees five hundred thousand or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment and in the case of a second or subsequent conviction such fine or term of imprisonment or both such fine and imprisonment may be doubled. The Court may in addition order the seizure, forfeiture and destruction of the layout design, integrated circuits, articles or any material or implement, which have been used for or in the commission of the offence.

Offences.

**158.** The provisions of sections 125A and 125B of the Customs Ordinance and sections 163 to 174, 177, 180, 187, 191, 195 to 204 of the Act shall apply to and in relation to the layout designs of integrated circuits.

Application of certain provisions of the Act.

Interpretation.

**159.** In this Part unless the context otherwise requires—

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

“layout design” is synonymous with “topography” and means the three dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture ;

“right holder” means the natural person who, or the legal entity which, is to be regarded as the beneficiary of the protection referred to in section 146.

## PART VIII

### CHAPTER XXXII

#### UNFAIR COMPETITION AND UNDISCLOSED INFORMATION

Unfair  
competition and  
undisclosed  
information.

**160.** (1) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

(b) The provisions of this section shall apply independently of, and in addition to, other provisions of the Act protecting inventions, industrial designs, marks, trade names, literary, scientific and artistic works and other intellectual property.

(2) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Confusion may, in particular, be caused with respect to —

- (i) a mark, whether registered or not ;
- (ii) a trade name ;
- (iii) a business identifier other than a mark or trade name ;
- (iv) the appearance of a product ;
- (v) the presentation of products or services ;
- (vi) celebrity or a well known fictional character.

(3) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another's enterprise shall constitute an act of unfair competition, whether or not such act or practice actually causes confusion.

(b) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to—

- (i) a mark, whether registered or not ;
- (ii) a trade name ;
- (iii) a business identifier other than a mark or a trade name ;

- (iv) the appearance of product ;
- (v) the presentation of products or services;
- (vi) celebrity or a well-known fictional character.

(c) For the purposes of these provisions, “dilution of goodwill or reputation” means the lessening of the distinctive character or advertising value of a mark, trade name or other business identifier, the appearance of a product or the presentations of products or services or of a celebrity or well known fictional character.

(4) (a) Any act or practice carried out or engaged in, in the course of any industrial or commercial activity, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Misleading may arise out of advertising or promotion and may, in particular occur with respect to —

- (i) the manufacturing process of a product ;
- (ii) the suitability of a product or service for a particular purpose ;
- (iii) the quality or quantity or other characteristics of products or services ;
- (iv) the geographical indication of products or services ;
- (v) the conditions on which products or services are offered or provided ;
- (vi) the price of products or services or the manner in which it is calculated.

(5) (a) any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, an enterprise of another person or the activities of such enterprise, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to—

- (i) the manufacturing process of a product ;
- (ii) the suitability of a product or service for a particular purpose ;
- (iii) the quality or quantity or other characteristics of products or services ;
- (iv) the conditions on which products or services are offered or provided ;
- (v) the price of products or services or the manner in which it is calculated.

(6) (a) Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others, of undisclosed information without the consent of the person lawfully in control of that information (in this section referred to as “the rightful holder”) and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

(b) Disclosure, acquisition or use of undisclosed information by others without the consent of the rightful holder may, in particular, result from—

- (i) industrial or commercial espionage ;
- (ii) breach of contract ;
- (iii) breach of confidence ;
- (iv) inducement to commit any of the acts referred to in sub-paragraphs (i) to (iii) ;



- (v) acquisition of undisclosed information by a third party who knew or was grossly negligent in failing to know, that an act referred to in sub-paragraphs (i) to (iv) was involved in the acquisition.

(c) For the purposes of this Act, information shall be considered “undisclosed information” if—

- (i) it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question ;
- (ii) it has actual or potential commercial value because it is secret ; and
- (iii) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.

(d) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists of results in—

- (i) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to appropriate authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural or chemical products which utilize new chemical entities ; or
- (ii) the disclosure of such data, except where necessary to protect the public, or unless steps have been taken to ensure that the data is protected against unfair commercial use.

(e) The undisclosed information for the purpose of this Act shall include—

- (i) technical information related to the manufacture of goods or the provision of services ; or

- (ii) business information which includes the internal information which an enterprise has developed so as to be used within the enterprise.

In this section the word “enterprise” has the same meaning as in section 101 of the Act.

(7) Any person or enterprise or association of producers, manufacturers or traders aggrieved by any act or practice referred to in this Part, may institute proceedings in Court to prohibit the continuance of such act or practice and obtain damages for losses suffered as a result of such act or practice. The provisions of Chapter XXXV of this Act relating to infringement shall apply, *mutatis mutandis*, to such proceeding.

(8) (a) Any person, who willfully and without lawful authority, discloses any undisclosed information shall be guilty of an offence under this Act and shall on conviction after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(b) The provisions of Chapter XXXVIII of the Act shall apply, *mutatis mutandis*, to the offence specified under this subsection.

(9) The rights conferred by the provisions of subsection (6) shall be in addition to, and not in derogation of, any common law rights.

## PART IX

### CHAPTER XXXIII

#### GEOGRAPHICAL INDICATIONS

**161.** (1) Any interested party shall be entitled to prevent—

Protection of geographical indications.

- (i) the use of any means in the designation or presentation of goods that indicates or suggests that the goods including an agricultural product, food, wine or spirit in question originates in a

geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of goods ; or

- (ii) any use of a geographical indication which constitutes an act of unfair competition within the meaning of section 160 ;
- (iii) the use of a geographical indication identifying goods including an agricultural product, food, wine or spirit not originating in the place indicated by the geographical indication in question or identifying goods not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expression such as kind, type, style or imitation or the like.

(2) The protection accorded to geographical indications under sections 103, 160 and 161 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

(3) In the case of homonymous geographical indications for goods including an agricultural product, food, wine or spirit, protection shall be accorded to each indication, subject to the provisions of subsection (2) of this section. The Minister, in case of permitted concurrent use of such indications, shall determine by prescribed practical conditions under which the homonymous indications in question will be differentiated from each other, taking into consideration the need to ensure equitable treatment of the producers concerned and the protection of consumers from false or deceptive indications.

(4) The Court shall have power and jurisdiction to grant an injunction and any other relief deemed appropriate to prevent any such use as is referred to in this section. The provisions of Chapter XXXV of the Act shall, *mutatis mutandis*, apply to such proceedings.

(5) For the purposes of this section “geographical indications” shall have the same meaning as in section 101.

## PART X

### CHAPTER XXXIV

#### CONSTITUTION AND POWERS OF ADVISORY COMMISSION

**162.** (1) The Minister may constitute an Advisory Commission (hereinafter referred to as the “Commission”) for the purpose of advising him on any matter referred to him in relation to the law relating to Copyright, Industrial Designs, Marks, Patents and Unfair Competition and any other area or subject of Intellectual Property.

Appointments &c.  
of Advisory  
Commission.

(2) The Commission constituted under subsection (1) shall consist of—

- (a) not less than five and not more than ten members appointed by the Minister from among persons who have shown capacity in law or commerce or related fields, (hereinafter referred to as an “*appointed member*”) ; and
- (b) the Director-General who shall be an *ex-officio* member and who shall function as the Secretary to the Commission ;

(3) (a) Subject to the provisions of subsection (4), the term of office of an appointed member of the Commission shall be three years :

Provided that a member appointed in place of a member who resigns or is removed or otherwise vacates office, shall hold office for the unexpired portion of the part of term of office of the member whom he succeeds ;

(b) An appointed member of the Commission who vacates office by effluxion of time shall be eligible for re -appointment.

(4) (a) An appointed member of the Commission may resign from office by letter to that effect addressed to the Minister and such resignation shall take effect on such resignation being accepted by the Minister in writing.

(b) The Minister may at any time remove an appointed member from office, assigning any reason therefor.

(c) Where an appointed member is temporarily unable to discharge the duties of his office on account of illness, absence from Sri Lanka or any other cause, the Minister may appoint another person to act as a member in his place.

(5) (a) The Minister shall appoint a Chairman of the Commission (in this Part referred to as the “Chairman”) from among the appointed members of the Commission ;

(b) If the Chairman is by reason of illness, other infirmity or absence from Sri Lanka, temporarily unable to perform the duties of his office, the Minister may appoint another appointed member to act in his place.

(c) The Minister may at any time remove the Chairman from office, assigning any reason therefor ;

(d) The Chairman may resign from the office of Chairman by a letter to that effect addressed to the Minister in writing and such resignation shall take effect on such resignation being accepted by the Minister.

(e) Subject to the provisions of paragraphs (c) and (d), the term of office of the Chairman shall be his period of membership of the Commission.

(6) There may be appointed such officers and servants as may be necessary to assist the Commission in performing its duties under this Part.

(7) The members of the Commission may be paid such remuneration out of the Fund as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

(8) It shall be the duty of the Commission –

- (a) to inquire into and report to the Minister, on any matter or question relating to the law of Copyright, Industrial Designs, Trade Marks, Patents and Unfair Competition or any other matter relating to Intellectual Property as may be referred to it by the Minister from time to time ;
- (b) to review the law relating to, and applicable to, Copyright, Industrial Designs, Trade Marks, Patents and Unfair Competition or any other matter relating to intellectual property from time to time and to make proposals to the Minister for the alteration, modification or addition to such law ;
- (c) in making the report or proposals referred to in paragraph (a) or (b), to consult and take into consideration where the Commission deems it necessary to do so, the views of trade chambers, professional organizations, related institutions, government departments and the general public.

(9) The Minister may give special or general directions in writing to the Commission, as to the performance of its duties and the exercise of the powers, and the Commission shall give effect to such directions.

## PART XI

### CHAPTER XXXV

#### APPLICATIONS TO AND PROCEEDINGS BEFORE, THE DIRECTOR-GENERAL AND COURT

Correction and  
rectification of  
register.

**163.** (1) The Director-General may, on application made in the prescribed manner by or on behalf of the registered owner of an industrial design, patent, trade mark or any other registration provided for under the Act, correct any error or make any change—

- (a) in the name, address or description of the registered owner of any Industrial Design, Patent or Mark or any other registration provided for under the Act ;
- (b) concerning any other particulars relating to the registration of an Industrial Design, Patent or Mark or any other registration as may be prescribed.

(2) Subject and without prejudice to other provisions of the Act—

- (a) the Court may on the application of any person aggrieved by the non-insertion in or omission from any register, of any entry, or by any entry made in any register without sufficient cause, or by any entry wrongly remaining on any register, or by any error or defect in any entry in any register, make such order for making, expunging, or varying such entry, as it may think fit ;
- (b) the Court may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of any register ;

- (c) in case of fraud in the registration, assignment or transmission of any registered Industrial Design, Patent or Mark, or any other registration provided for under the Act, the Director-General himself may apply to the Court under the provisions of this section.

(3) In any proceedings under this Act in which the relief sought includes correction, alteration or rectification of any register, the Director-General shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Director-General in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issue, and within his knowledge as such Director-General shall think fit, and such statement shall be deemed to form part of the evidence in the proceedings.

(4) The Court, in dealing with any question of the correction, alteration or rectification of any register shall have power to review any decision of the Director-General relating to the entry in question or the correction, alteration or rectification sought to be made.

**164.** (1) Where the Director-General is satisfied that any volume of any register kept under this Act has been so damaged as to render that volume incapable of being mended, he may cause a copy thereof to be made and authenticated in such manner as he may direct.

Power to make copies of damaged volumes of any register, to prepare and insert reconstructed folios.

(2) Any copy made and authenticated under the provisions of subsection (1) shall replace the volume of which it is a copy, and shall for all purposes be deemed to have the same legal force and effect as the volume which such copy replaces.



(3) The Director-General shall cause every damaged volume of which a copy has been made under the provisions of subsection (1) to be preserved as long as it is reasonably practicable for any reference which may be necessary.

(4) Where the Director-General, after due investigation, is satisfied that any folio of any volume of any register has been lost and cannot be recovered or that any such folio has been permanently mutilated or so obliterated or damaged as to render the entries or any material part of the entries therein illegible, he may cause a reconstructed folio to be prepared.

(5) No folio shall be reconstructed as provided in subsection (4) except in accordance with the prescribed procedure, providing—

- (a) for evidence to be admitted and used by the Director-General in ascertaining the particulars originally contained in the lost or mutilated or damaged folio ;
- (b) for the giving of notice by the Director-General of the preparation of the reconstructed folio ;
- (c) for the lodging of objections by any person affected by any of the particulars contained in the folio to be reconstructed ; and
- (d) for the holding of an inquiry by the Director-General into any such objections.

(6) Where any folio has been reconstructed by the Director-General in accordance with the preceding provisions of this section, the Director-General shall authenticate the reconstructed folio in the prescribed manner and shall thereafter cause the reconstructed folio to be inserted in the appropriate volume of the register in the place formerly occupied by the lost folio or in place of the mutilated or damaged folio, or in a copy of a volume prepared under the provisions of this section, as the case may be, and the reconstructed folio, when so authenticated and inserted, shall for all purposes be deemed to have the same legal force and effect as the folio which such reconstructed folio replaces.

(7) The Director-General may, after such inquiry as he may deem necessary, correct any clerical error or omission which may be discovered in any entry in any register or in any certificate kept or issued under the provisions of this Act and for that purpose may recall any such certificate and amend the same or issue a fresh certificate in its place.

**165.** A certificate purporting to be under the hand of the Director-General as to any entry, matter, or thing which he is authorized by this Act or regulations made thereunder to make or do, shall be, *prima facie*, evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Certificate of  
Director-General  
to be evidence.

**166.** Printed, mechanically produced, typed or written copies or extracts, certified by the Director-General, of or from any document, register, or other book filed or kept under this Act in the office shall be admitted in evidence in any Court of Sri Lanka, without further proof or production of the originals.

Certified copies to  
be evidence.

**167.** (1) In any proceeding under this Act before the Court, the evidence shall be given by affidavit in the absence of directions to the contrary. However in any case in which the Court shall think it right so to do, the Court may take evidence, *viva voce*, in lieu of or in addition to evidence by affidavit.

Mode of giving  
evidence.

(2) The provisions of subsection (1) shall, *mutatis mutandis*, apply in respect of the giving of evidence at an inquiry before the Director-General.

(3) In case any part of the evidence is taken *viva voce*, the Director-General may exercise the powers conferred on a Commission appointed under the provisions of the Commissions of Inquiry Act for compelling the attendance of witnesses and the production of documents and for administering oaths to all persons who shall be examined before him.

Exercise of  
discretionary  
power by  
Director-General.

**168.** Where any discretionary or other power is given to the Director-General by this Act or any regulation made thereunder, he shall not exercise that power adversely in respect of the applicant for registration or the registered owner of an Industrial Design, Patent or Mark or any other matter provided under this Act without (if duly required so to do within the prescribed time) giving such applicant or registered owner an opportunity of being heard.

Director-General  
may seek  
assistance of  
Attorney-General.

**169.** The Director-General may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, seek the assistance of the Attorney-General.

Infringement and  
the remedies.

**170.** (1) Where a person to whom any recognised rights granted under this Act, proves to the satisfaction of the Court that any person is threatening to infringe or has infringed his rights or is performing acts which makes it likely to infringe a right under this Act, will occur, the Court may grant an injunction restraining any such person from commencing or continuing such infringement or performing such acts and may order damages and such other relief as the Court may deem just and equitable. The injunction may be granted along with an award of damages and shall not be denied only for the reason that the applicant is entitled to damages.

(2) The defendant may in the proceedings referred to in subsection (1) request the Court to declare the registration of an Industrial Design, Patent, Mark or any other registration provided for under the Act, as the case may be, or any part of it, null and void, in which event the provisions of the section relating to the nullity of such registration shall apply as appropriate.

(3) (a) The court shall have the power to order—

- (i) the infringer to pay the right holder such damages as are adequate to compensate him for the loss suffered by him, by reason of such infringement, in addition to the recovery of any profits ;

- (ii) the infringing goods to be disposed of outside the channels of commerce or to be destroyed without the payment of any compensation ; and
- (iii) subject to the protection of confidential information, the tendering of any evidence by the opposing party which evidence is relevant to the substantiation of the claim and is in the control of the opposing party, in cases where a party has presented reasonably available evidence in support of the claim and has specified that evidence relevant to the substantiation of such claim lies in the control of the opposing party.

(b) The court may make any order specified in subsection (1) in respect of materials and implements used in the creation of the infringing goods.

(4) In making such orders the need for maintaining a balance between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties shall be taken into consideration. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not other than in exceptional cases, be sufficient, to permit the release of the goods into the channels of commerce.

(5) The Court may, other than in an instance where it would not be in proportion to the seriousness of the infringement, order the infringer to inform the right holder of the identity of the persons involved in the production and distribution of the infringing goods or services and of channels of distribution used by them.

(6) The Court shall have power to order interim measures relating to protection, *ex-parte*, where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

(7) Where interim measures have been ordered *ex-parte* the parties affected shall be given notice and shall on receipt of such notice be entitled to be heard as to whether the interim measures ordered should be modified or revoked.

(8) Where the interim measures are modified or revoked or it is subsequently found that there has been no infringement of a protected right, the Court shall have the power to order the applicant, upon the request of the defendant to pay appropriate compensation for any injury caused.

(9) The Court may require the applicant to provide security or other equivalent assurance sufficient to protect the defendant and to prevent abuse of any interim measures referred to in the preceding provisions of this section.

(10) Any owner of the rights protected under this Act may, notwithstanding any provision in the Act relating to the award of damages, elect at any time before final judgment to recover, instead of proved actual damages, an award of statutory damages for any infringement involved in the action of a sum not less than rupees fifty thousand and not more than rupees one million as the court may consider appropriate and just.

(11) No suit or prosecution shall lie against any official for any act which is done in good faith and in pursuance of any provisions of this Act.

Infringement  
proceedings by or  
at the request of  
licensee.

**171.** In the absence of any provision to the contrary in a licence contract relating to an Industrial Design, Patent or Mark or any other matter provided for by the Act, the licensee may—

- (a) in respect of the threatened infringement, infringement or acts referred to in section 170 request the registered owner of the Industrial Design, Patent or Mark or any other matter provided for by the Act, to apply for an injunction :

Provided that the licensee shall indicate the threatened infringement, infringement or acts being performed in relation to such infringement and specify the relief sought under the Act ; and

- (b) if the owner of the said Industrial Design, Patent or Mark or any other matter provided for by this Act refuses or fails to apply for an injunction within three months from the receipt of the said request, apply for an injunction in his own name, with notice to the registered owner who may join in the proceedings :

Provided that the Court may, on the application of the licensee, prior to the expiry of the period of three months, specified in paragraph (b) of this section grant an injunction if he proves that immediate action is necessary to avoid substantial damage.

**172.** (1) The Court may on the application of any person showing a legitimate interest to which the registered owner of the Industrial Design, Patent or Mark, or any other matter provided for under the Act as the case may be, shall be made party, declare that the threatened performance or performance of a specific act does not constitute a threatened infringement or infringement of the said Industrial Design, Patent or Mark or any other matter provided for under the Act.

Declaration of  
non-infringement.

(2) The registered owner of the industrial design, patent or Mark or any other register provided for under the Act, as the case may be, shall give notice of the said application to any assignee or licensee, who shall be entitled to join in the proceedings in the absence of any provision to the contrary in any agreement with the registered owner.

(3) The proceedings for a declaration of non-infringement may be instituted concurrently with proceedings to declare the registration of an Industrial Design, Patent or Mark or any other matter provided for by the Act be null and void :

Provided that the matters in issue in the proceedings for a declaration of non-infringement are not already the subject of infringement proceedings.

(4) The provisions of the Judicature Act, No. 2 of 1978, and the Civil Procedure Code shall apply to every application for an injunction made to the Court under this Act.

Appeals.

**173.** (1) Any person aggrieved by any decision made by the Director-General under any provision of the Act may appeal therefrom to the Court within a period of six months from the date of such decision.

(2) Such person may prefer an appeal to the Court by way of a petition of appeal with a certified copy of the decision appealed from, accompanied by copies of all relevant documents and affidavits from the file of the Intellectual Property Office. A copy of the petition of appeal and the accompanying documents and the affidavits shall be served on the Director-General and other respondents named in the petition of appeal. Proof of such service shall be furnished with the petition of appeal to the Court. The respondents may file a statement of objections.

(3) Court may call for the original file from the Director-General and may receive and admit new evidence by way of affidavit and documents, additional to, or supplementary of, the evidence already given before the Director-General in respect of the matter issue as the Court may require.

(4) On any such appeal, the Court may affirm, reverse or vary the decision of the Director-General or may issue such directions to the Director-General, or order a further hearing by the Director-General, as the court may require.

(5) Any person who is dissatisfied with any Order made by the Court under subsection (4) to which such person is a party may prefer an appeal to the Supreme Court against such Order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.

(6) Every appeal to the Supreme Court under subsection (5) shall be made as nearly as may be in accordance with the procedure prescribed by the rules of the Supreme Court with respect to special leave to appeal to the Supreme Court.

**174.** (1) In all proceedings before the Director-General under this Act, the Director-General shall have power to award any party such costs as he may consider reasonable, and to direct to whom and to what parties they are to be paid, and such order may be filed in Court, and thereupon such order may be enforced as if it were an order of the Court.

Costs of proceedings before Director-General and Court.

(2) In any proceedings before a Court under this Act, the Director-General shall not be ordered to pay costs. The Court may however in its descretion Order the payment of costs to the Director-General.

## CHAPTER XXXVI

### REGISTERED AGENTS

**175.** (1) An Agent referred to in this Act means an agent registered under the provisions of the Act or in accordance with any regulation made thereunder.

Registered agents.

(2) Any person registered as an agent under this Act shall have the authority and be competent to act as an agent under this Act.

(3) A person may be admitted and registered as an agent if he—

- (a) is a citizen of Sri Lanka and is ordinarily resident in Sri Lanka ; and
- (b) (i) is an Attorney-At-Law of the Supreme Court of Sri Lanka ; or
  - (ii) is a person possessing the qualifications prescribed for an agent ; and
- (c) pays the prescribed fee.



(4) A corporate body or a firm may act as an agent if the majority of the Directors of such corporate body or if the majority of the partners of the firm, as the case may be, are registered agents.

(5) The registration of an agent under this Act shall be valid for a period of three years and shall be renewable, subject to the payment of a prescribed fee, for a consecutive period of three years provided, however, that a period of grace of six months shall be allowed for renewal upon payment of such surcharge as may be prescribed.

(6) Notwithstanding anything in the provisions of subsection (2), any duly appointed agent, irrespective of not being registered under this Chapter, may represent his clients, for a period of two years from the date on which the provisions of this Chapter comes into operation.

(7) The power of attorney referred to in this Act means a power of attorney duly executed or a letter of authorisation duly signed by the principal.

## CHAPTER XXXVII

### FUND

Fund.

**176.** (1) For the purposes of this Act there shall be established a Fund which shall be maintained in such manner as the Secretary to the Ministry of the Minister in charge of the subject of Trade in consultation with the Director-General may direct.

(2) There shall be paid into the Fund two-thirds of every fee or charge, levied or recoverable under this Act or any regulation made thereunder.

(3) There shall be paid out of the Fund referred to in subsection (1) all sums of money required to defray any expenditure incurred by the Director-General in the exercise, discharge and performance of his powers, functions and