

Zimbabwe

## Industrial Designs Act

### Chapter 26:02

Legislation as at 31 December 2016

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## Industrial Designs Act (Chapter 26:02)

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# Zimbabwe

## Industrial Designs Act

### Chapter 26:02

Commenced on 1 April 1972

*[This is the version of this document at 31 December 2016 and includes any amendments published up to 31 December 2017.]*

*[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe. This version is up-to-date as at 31st December 2016.]*

**AN ACT to consolidate and amend the law relating to the registration of industrial designs; and to provide for matters incidental to or connected with the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Industrial Designs Act *[Chapter 26:02]*.

#### 2. Interpretation

(1) In this Act—

**"appointed day"** means the 1st April, 1972;

**"article"** means any article of manufacture and includes any part of an article if that part is made and sold separately;

**"artistic work"** means a work of any of the following descriptions, that is to say—

- (a) the following, irrespective of artistic quality, namely, paintings, sculptures, drawings, engravings and photographs;
- (b) works of architecture, being either buildings or models for buildings;
- (c) works of artistic craftsmanship, not falling within paragraph (a) or (b);

**"assignee"**, in relation to a design, means—

- (a) a person who has derived his title to the design for Zimbabwe directly or indirectly from the proprietor thereof or from the proprietor's assignee; or
- (b) the legal representative of a person referred to in paragraph (a);

**"certificate of registration"** means a certificate of registration issued in terms of section twenty-nine;

*[definition amended by Act 25 of 2001]*

**"Controller"** means the Controller of Patents, Trade Marks and Industrial Designs appointed in terms of paragraph (a) of subsection (2) of section 3 of the Patents Act;

**"Convention application"** means an application made by a person referred to in subsection (2), as read with subsection (3), of section eight;

**"Convention country"** means a country or territory declared in terms of section 79 of the Patents Act to be a Convention country for the purposes of that Act;

"**copyright**", in relation to a registered design, has the meaning assigned to it by subsection (1) of section fifteen;

"**Copyright Act**" means the Copyright and Neighbouring Rights Act [Chapter 26:05];

[definition amended by Act 25 of 2001]

"**corresponding design**", in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work;

"**Court**" [definition repealed by Act 25 of 2001]

"**department of the State**" means any—

- (a) department of the State; or
- (b) statutory corporation or authority which is prescribed for the purposes of this definition;

"**design**" means features of shape, configuration, pattern or ornamentation applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by the function which the article to be made in that shape or configuration has to perform;

"**Designs Office**" means the Industrial Designs Office established under section three;

"**exclusive licence**" means a licence from the registered proprietor of the design which confers on the licensee, or the licensee and persons authorized by him, to the exclusion of all other persons, including the registered proprietor, any right in respect of the registered design;

"**Journal**" means the Patent and Trade Marks Journal published in terms of section 95 of the Patents Act;

"**legal representative**" means—

- (a) the liquidator or receiver of a company; or
- (b) the representative recognized by law of any person who has died, become insolvent or bankrupt or assigned his estate, is an infant or a minor, is of unsound mind or is otherwise under a disability;

"**Minister**" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may assign the administration of this Act,

"**Patents Act**" means the Patents Act [Chapter 26:03];

"**proprietor**" means the proprietor as provided in section seven;

"**Register**" means the Register of Industrial Designs kept at the Designs Office under section five;

"**registered proprietor**", in relation to a design, means the person or persons for the time being entered in the Register as the proprietor of that design;

"**Registrar**" means the Controller or a registrar of industrial designs appointed under paragraph (a) of subsection (3) of section three;

"**repealed Act**" means the Registered Designs Act, 1958 (No. 12 of 1958);

"**set of articles**" means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied;

**"Tribunal"** means the Intellectual Property Tribunal established by section 3 of the Intellectual Property Tribunal Act [Chapter 26:06].

*[definition amended by Act 25 of 2001]*

- (2) Any reference in this Act to an article in respect of which a design is registered shall, in the case of a design registered in respect of a set of articles, be construed as a reference to any article of that set.
- (3) Any question arising under this Act whether a number of articles constitutes a set of articles shall be determined by the Registrar and, notwithstanding anything in this Act, any determination of the Registrar under this subsection shall be final.

## Part II – Administration

### 3. Industrial designs office, controller, registrars of industrial designs and other officers

- (1) There shall be established an office, to be called the Industrial Designs Office, for the registration of designs and other matters in terms of this Act.
- (2) The Controller shall exercise general supervision and direction of the Industrial Designs Office.
- (3) The Minister shall appoint—
  - (a) one or more registrars of industrial designs who shall, subject to the control of the Controller, have all the powers conferred by this Act upon the Registrar; and
  - (b) such examiners and other officers as the Minister considers necessary for the better carrying out of this Act.
- (4) An examiner or other officer referred to in paragraph (b) of subsection (3) shall, if the Minister so directs, have the power to do any act or thing which may be lawfully done by a registrar of industrial designs under this Act or any other enactment.

### 4. Seal

The seal of the Patent Office kept in terms of the Patents Act shall also be the seal of the Designs Office, and impressions thereof made for the purposes of this Act shall be judicially noticed.

*[section amended by section 13 of Act 25 of 2001]*

### 5. Register of industrial designs

- (1) There shall be kept at the Designs Office for the purposes of this Act a Register of Industrial Designs, in which shall be entered—
  - (a) particulars of all registered designs in force and of assignments and transmissions of such registered designs; and
  - (b) notice of all matters which are required by or under this Act to be entered in the Register and of such other matters relating to registered designs as the Registrar thinks fit.
- (2) *[subsection repealed by Act 25 of 2001]*
- (3) Subject to this Act, the Register shall, at all convenient times, be open to inspection by the public, and a certified copy, sealed with the seal of the Patent Office, of any entry in the Register shall be given on payment of the prescribed fee to any person requiring it.
- (4) The Register shall be *prima facie* evidence of any matters required or authorized by or under this Act to be entered therein.

*[subsection amended by Act 25 of 2001]*

- (5) No notice of any trust, whether expressed, implied or constructive, shall be entered in the Register, and the Registrar shall not be affected by any such notice.

### **Part III – Registrable designs and proceedings for registration**

#### **6. Designs registrable under Act**

- (1) Subject to this Act, a design may be registered under this Act in respect of any article or set of articles specified in the application.
- (2) Subject to this Act, a design shall not be registered under this Act unless it is new or original.
- (3) A design shall be deemed, for the purposes of this Act, to be a new or original design if, on or before the date of application for registration thereof, such design or a design which differs from such design only in immaterial details or in features which are variants commonly used in the trade, was not—
- (a) known or used in Zimbabwe by anyone other than the applicant, his agent or any person from or through whom the applicant has derived his right or title:  

Provided that secret knowledge or secret user otherwise than on a commercial scale shall be disregarded for the purposes of this paragraph; or
  - (b) described or illustrated in a publication, whether in or outside Zimbabwe; or
  - (c) registered in Zimbabwe; or
  - (d) the subject of an application for the registration of a design in Zimbabwe or of an application in a Convention country for the registration of a design which has subsequently been registered in Zimbabwe in accordance with the provisions of section thirteen.
- (4) Regulations made under section fifty-eight may provide for excluding from registration thereunder designs for such articles, being articles which are primarily literary or artistic in character, as the Minister thinks fit.

#### **7. Proprietorship of designs**

- (1) Subject to this section, the author of a design shall be treated for the purposes of this Act as the proprietor of the design:  

Provided that where the design is executed by the author for another person for valuable consideration, that other person shall be treated for the purposes of this Act as the proprietor.
- (2) Where a design, or the right to apply a design to any article, becomes vested, whether by assignment, transmission or operation of law, in any person other than the original proprietor, either alone or jointly with the original proprietor, that other person or, as the case may be, the original proprietor and that other person shall be treated, for the purposes of this Act, as the proprietor of the design or as the proprietor of the design in relation to that article, as the case may be.

#### **8. Persons entitled to apply for registration**

- (1) An application for the registration of a design may be made by any of the following persons—
- (a) a person claiming to be the proprietor of the design; or
  - (b) an assignee; and
- may be made by that person either alone or jointly with any other person.



- (2) Without prejudice to subsection (1), an application for the registration of a design in respect of which an application for protection has been made in a Convention country may be made by the person by whom the application in the Convention country was made or by the assignee of that person:

Provided that no application shall be made under this subsection after the expiration of six months from the date the application for protection was made in the Convention country or, where more than one such application has been made, from the date of the first such application.

- (3) An application for the registration of a design may be made under subsection (1) or (2) by the legal representative of—
- (a) a deceased person who, immediately before his death, was entitled to make such an application; or
  - (b) a person under disability who, had it not been for such disability, would himself have been entitled to make such application.

## 9. Application for registration

- (1) An application for the registration of a design shall be made in the prescribed form and shall be lodged at the Designs Office in the prescribed manner.
- (2) For the purpose of deciding whether a design is new or original, the Registrar may make such searches as he thinks fit.
- (3) On receipt of an application in terms of subsection (1), the Registrar may—
- (a) refuse the application; or
  - (b) accept the application absolutely or subject to such amendments, modifications, conditions or limitations as he thinks fit.
- (4) The Registrar may, at any time before or after acceptance of an application under subsection (3)—
- (a) correct any error in or in connection with the application; or
  - (b) permit the applicant to amend his application upon such terms as the Registrar thinks fit:
- Provided that the Registrar shall not permit an amendment which substantially affects the identity of the design.
- (5) An application which, through any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to have been abandoned.
- (6) An appeal shall lie from any decision of the Registrar under subsection (3).
- (7) Where the Registrar has refused an application under subsection (3) or accepted it subject to any amendment modification, condition or limitation, he shall, if required to do so by the applicant, state in writing the grounds of his decision and the materials he used in arriving at it.
- (8) An appeal against a decision of the Registrar under this section shall be heard on the materials stated by him in terms of subsection (7), and he shall not be allowed to take any further grounds of objection to the application, other than those so stated by him, except by leave of the Tribunal, and where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.
- (9) Where the Tribunal is considering an appeal from a decision of the Registrar in terms of subsection (3), the Tribunal may permit the applicant to amend his application without an application for

amendment being made to the Registrar, but in such a case the Registrar's views on the amendment shall be obtained.

*[section substituted by Act 25 of 2001]*

## 9A. Publication of application and opposition thereto

- (1) As soon as practicable after an application for the registration of a design has been accepted, whether absolutely or subject to any amendment, modification, condition or limitation, the applicant shall advertise in the prescribed manner the application as accepted, and the advertisement shall set forth all conditions and limitations subject to which the application has been accepted:  
  
Provided that in exceptional circumstances the Registrar may direct that an application shall be advertised before acceptance and, where an application has been so advertised, the Registrar may direct that it shall be advertised again when it has been accepted.
- (2) Any person may, within two months from the date on which an application was advertised, give the Registrar notice of opposition to the registration, which notice shall—
  - (a) be given in writing in the prescribed manner; and
  - (b) include a statement of the grounds of opposition.
- (3) The Registrar shall send a copy of any notice in terms of subsection (2) to the applicant and, within the prescribed time after its receipt, the applicant shall send the Registrar in the prescribed manner a counter-statement of the grounds on which he relies for his application and, if he does not do so, he shall be deemed to have abandoned his application.
- (4) If the applicant sends a counter-statement in terms of subsection (3), the Registrar shall—
  - (a) furnish a copy of it to the persons who gave notice of opposition; and
  - (b) after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what amendments, modifications, conditions or limitations, if any, registration is to be permitted.
- (5) An appeal shall lie from any decision of the Registrar under this section.
- (6) On the hearing of an appeal under this section, any party may, either in the manner prescribed or by special leave of the Tribunal, bring forward further material for the Tribunal's consideration.
- (7) On an appeal under this section, no further grounds of objection to the registration of the design concerned shall be allowed to be taken by the opponent or the Registrar, other than those stated in terms of this section by the opponent, except by leave of the Tribunal and, where any further grounds of objection are taken, the applicant, on giving notice as prescribed, shall be entitled to withdraw his application without payment of the opponent's costs.

*[section inserted by Act 25 of 2001]*

## 9B. Registration

If—

- (a) no notice of opposition is lodged in terms of subsection (2) of section nine A in respect of an application for registration of a design; or
- (b) the Registrar has decided, in terms of paragraph (b) of subsection (4) of section nine A, that registration of a design is to be permitted, and no appeal has been lodged against that decision; or

- (c) the Tribunal, on an appeal against a decision of the Registrar in terms of section nine A, directs that a design should be registered;

the Registrar shall register the design concerned.

*[section inserted by Act 25 of 2001]*

### 9C. Effective date of registration

Except as otherwise expressly provided by this Act, the effective date of registration of a design shall be the date on which the application for its registration was made or such other date, whether earlier or later than that date, as the Registrar may direct in any particular case:

Provided that no proceedings shall be taken in respect of any infringement of copyright in that design where the infringement was committed before the date on which the certificate of registration for the design was issued.

*[section inserted by Act 25 of 2001]*

## 10. Registration of same design in respect of other articles, etc.

- (1) Where the registered proprietor of a design registered in respect of any article makes an application for registration—
- (a) in respect of one or more other articles, of the registered design; or
  - (b) in respect of the same or one or more other articles, of a design consisting of the registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof;

the application shall not be refused and the registration made on that application shall not be invalidated by reason only of the previous registration or publication of the registered design:

Provided that the period of copyright in a design registered by virtue of this section shall not extend beyond the expiration of the period of copyright in the original registered design.

- (2) Where any person makes an application for the registration of a design in respect of any article and either—
- (a) that design has been previously registered by another person in respect of some other article; or
  - (b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof;

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, subsection (1) shall apply as if at the time of making the application the applicant had been the registered proprietor of that design.

## 11. Provisions for secrecy of certain designs

- (1) Where, before or after the appointed day, an application for the registration of a design has been made, and it appears to the Registrar that the design is one of a class notified to him by the competent authority as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the design or the communication of such information to any person or class of persons specified in the directions.
- (2) Regulations shall be made in terms of section fifty-eight for securing that the representation or specimen of a design in the case of which directions are given under subsection (1) shall not be open to inspection at the Designs Office during the continuance in force of those directions.

- (3) Where the Registrar gives any directions in terms of subsection (1), he shall give notice of the application and of the directions to the competent authority and thereupon the following provisions shall have effect, that is to say—
- (a) the competent authority shall, upon receipt of such notice, consider whether the publication of the design would be prejudicial to the defence of Zimbabwe and, unless a notice under paragraph (c) has previously been given by the competent authority to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for registration of the design and at least once in every subsequent year;
  - (b) for the purposes of paragraph (a), the competent authority may, at any time after the design has been registered or, with the consent of the applicant, at any time before the design has been registered, inspect the representation or specimen of the design lodged in pursuance of the application;
  - (c) if, upon consideration of the design, at any time it appears to the competent authority that the publication of the design would not, or would no longer, be prejudicial to the defence of Zimbabwe, the competent authority shall give notice to the Registrar to that effect;
  - (d) on the receipt of any notice in terms of paragraph (c), the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorized to be done by or under this Act in connection with the application or registration, whether or not that time has previously expired.
- (4) No person ordinarily resident or domiciled in Zimbabwe shall, while in Zimbabwe, except under the authority of a written permit granted by or on behalf of the Registrar, make or cause to be made any application outside Zimbabwe for the registration of a design of any class prescribed for the purposes of this subsection unless—
- (a) an application for registration of the same design has been made in Zimbabwe not less than six weeks before the application outside Zimbabwe; and
  - (b) either no directions have been given under subsection (1) in relation to the application in Zimbabwe or all such directions have been revoked.
- (5) If any person fails to comply with any direction given under this section or makes or causes to be made an application for the registration of a design in contravention of subsection (4), he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- [subsection as amended by section 4 of Act No. 22 of 2001]*
- (6) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence is a director, general manager, secretary or other similar officer of the body corporate, or is purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that—
- (a) the offence was committed without his consent or connivance; and
  - (b) he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.
- (7) In this section—
- "competent authority" means the Minister responsible for defence or any other Minister whom the President, by statutory instrument, designates as being the competent authority for the purposes of this section.

## 12. Provisions as to confidential disclosure, etc.

- (1) An application for the registration of a design shall not be refused and the registration of a design shall not be held to be invalid by reason only of—
  - (a) the disclosure of the design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design; or
  - (b) the disclosure of the design in breach of good faith by any person other than the proprietor of the design; or
  - (c) the acceptance of a first and confidential order for goods bearing the design; or
  - (d) the communication of the design by the proprietor thereof to a department of the State or to any person authorized by the Minister to consider the merits of the design or of anything done in consequence of such a communication; or
  - (e) the exhibition at an industrial or international exhibition, certified as such by the Minister, or the exhibition elsewhere during the period of the holding of such an exhibition without the privity or consent of the proprietor, of a design or of any article to which a design is applied or the publication during the holding of any such exhibition of a description, illustration or specimen of such design if—
    - (i) the exhibitor, before exhibiting the design or article or publishing a description, illustration or specimen of the design, gives the Registrar the prescribed notice of his intention to do so; and
    - (ii) the application for registration is made before or within six months from the date of the opening of the exhibition.
- (2) Where copyright subsists in an artistic work and an application is made by, or with the consent of, the owner of that copyright for the registration of a corresponding design, that design shall not be treated for the purposes of this Act as being other than new or original by reason only of any use previously made of the artistic work, unless—
  - (a) the previous use consisted of or included the sale, letting for hire or offer for sale or hire of articles to which the design in question, or a design differing from it only as mentioned in subsection (3) of section six, had been applied industrially, other than articles of a description specified in regulations referred to in subsection (4) of section six; and
  - (b) that previous use was made by, or with the consent of, the owner of the copyright in the artistic work.

## 13. Convention applications

- (1) The registration of a design as a result of an application by a person in terms of subsection (2), as read with subsection (3), of section eight shall have the same date as the date of the application in the Convention country or where more than one such application for protection has been made, the date of the first such application:

Provided that no proceedings shall be taken in respect of any infringement of copyright in that design committed before the date on which the certificate of registration thereof is issued.
- (2) A Convention application shall not be refused, and the registration of a design on such an application shall not be held to be invalid, by reason only of the registration or publication of the design in Zimbabwe during the period specified in the proviso to subsection (2) of section eight as that within which the application for registration may be made.
- (3) Where an applicant referred to in subsection (1) has applied for protection for any design by an application which, in accordance with the law of any Convention country, is equivalent to an

application duly made in that Convention country, he shall be deemed, for the purposes of this section, to have applied in that Convention country.

#### 14. Protocol on patents and industrial designs

- (1) Subject to this section, the Protocol set out in the Schedule, which was contracted within the framework of the African Regional Industrial Property Organization, shall have the force of law within Zimbabwe.
- (2) Any industrial design, in respect of which Zimbabwe is a designated State, registered in accordance with the Protocol set out in the Schedule shall have, *mutatis mutandis*, the same effect in Zimbabwe as an industrial design granted under this Act subject to such exceptions, additions, adaptations and modifications as may be necessary to provisions of the Protocol.
- (3) Subject to subsection (2) of section eight, an industrial design registered under the Protocol set out in the schedule, shall have, *mutatis mutandis*, such protection, where applicable, as is afforded under the patents act [Chapter 26:03] to a patent granted in fulfilment of any international agreement in respect of a Convention country under the provisions of section 80 of that Act.

### Part IV – Effect of registration, etc.

#### 15. Right given by registration

- (1) The registration of a design under this Act shall give to the registered proprietor the copyright in the registered design, that is to say, the exclusive right in Zimbabwe to make, import or export for sale or for use for the purposes of any trade or business or to sell, hire or offer for sale or hire any article in respect of which the design is registered, being an article to which the registered design or a design not substantially different from the registered design has been applied, and to make anything for enabling any such article to be made as aforesaid.

*[subsection amended by section 5 of Act 25 of 2001]*

- (2) Subject to this Act, the registration of a design shall have the same effect against the State as it has against a subject.

#### 16. Period of copyright in registered design and renewal of registration

- (1) Copyright in a registered design shall subsist for so long as the design remains registered.
- (2) The registration of a design shall be for a period of ten years, but the proprietor may renew it for a single further period of five years in accordance with this section.
- (3) An application for the renewal of the registration of a registered design shall be made in the prescribed form and manner and within the prescribed period.
- (4) Before the expiry of the initial ten-year registration of a design, the Registrar shall notify the design's proprietor in the prescribed manner of the date on which the registration will expire and the conditions as to payment of fees and otherwise upon which it may be renewed and if those conditions have not been duly complied within the prescribed time, the Registrar may remove the design from the Register, subject to such conditions, if any, as to its restoration to the Register as may be prescribed.
- (5) Where a design has been removed from the Register for non-payment of the fee for renewal, it shall nevertheless be deemed to be a registered design for the purpose of any application for the registration of a design made within one year after the date of the removal:

Provided that this subsection shall not apply where the Registrar is satisfied that—

- (a) there has been no *bona fide* use in Zimbabwe of the design that has been removed during the three years immediately preceding its removal; or

- (b) no deception or confusion would be likely to arise from the use of the design that is the subject of the application for registration through any previous use of the design that has been removed from the Register.
- (6) Where—
  - (a) a design has been removed from the Register for non-payment of the fee for renewal; and
  - (b) the proprietor of the design—
    - (i) applies in the prescribed manner within three years after the date of its removal for it to be restored to the Register; and
    - (ii) furnishes with his application a declaration in the prescribed form that the design has *bona fide* been used in trade in Zimbabwe during the period from the date of its removal, or provides reasons satisfactory to the Registrar as to why there has been no such *bona fide* trade use;

the Registrar may, subject to any conditions referred to in subsection (4), restore that design to the Register with effect from the date on which it was removed, and thereupon that design shall be regarded for all purposes as though it had not been removed from the Register.

- (7) An appeal shall lie from any decision of the Registrar under this section.
- (8) Notwithstanding any other provision of this section, copyright in a design that was registered before the date of commencement of the Industrial Designs Amendment Act, 2001, shall subsist for a period of fifteen years from the date of registration, and its registration shall not be subject to renewal in terms of this section.

[section substituted by section 6 of Act [25 of 2001](#)]

## 17. Compulsory licence in respect of registered design

- (1) At any time after a design has been registered, any person interested may apply to the Registrar for the grant of a compulsory licence in respect of the design on the ground that the design is not applied in Zimbabwe by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case, and the Registrar may make such order on the application as he thinks fit.
- (2) An order for the grant of a licence in terms of subsection (1) shall, without prejudice to any other method of enforcement, have effect as if it were a deed executed by the registered proprietor and all other necessary parties, granting a licence in accordance with the order.
- (3) No order shall be made under subsection (1) which would be at variance with any of the provisions of any convention to which Zimbabwe is a party.
- (4) An appeal shall lie from any order of the Registrar under subsection (1).

## Part V – Use of registered designs for services of State, etc.

### 18. Use of registered designs for service of State

- (1) Notwithstanding anything in this Act, any department of the State or any person authorized in writing by the Minister may use any registered design for the service of the State in accordance with this section.
- (2) If and so far as a design has before the date of registration thereof been duly recorded by or applied by or on behalf of a department of the State otherwise than in consequence of the communication thereof directly or indirectly by the registered proprietor or any person from whom he derives title, any use of the design by virtue of subsection (1) may be made free of any royalty or other payment to the registered proprietor.



- (3) If and so far as a design has not been so recorded or applied as is mentioned in subsection (2), any use of the design made by virtue of subsection (1) at any time after the date of registration thereof or in consequence of any such communication as is mentioned in subsection (2) shall be made upon such terms as may be agreed upon, either before or after the use, between the Minister and the registered proprietor with the approval of the Minister of Finance or as may, in default of agreement, be determined by the Tribunal on a reference under subsection (1) of section twenty-one.
- (4) The authority of the Minister in respect of a design may be given under subsection (1)—
  - (a) either before or after the design is registered and either before or after the acts in respect of which the authority is given are done; and
  - (b) to any person, whether or not he is authorized directly or indirectly by the registered proprietor to use the design.
- (5) Where any use of a design is made by a department of the State or any person authorized by the Minister under subsection (1), then, unless it appears to the Minister that it would be contrary to the public interest so to do, the Minister shall notify the registered proprietor as soon as practicable after the use is begun and furnish him with such information as to the extent of the use as he may from time to time require.
- (6) For the purposes of this Part, any use of a design for the supply to the government of any country outside Zimbabwe, in pursuance of any agreement or arrangement between the Government of Zimbabwe and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the design for the service of the State, and the power of a department of the State or a person authorized by the Minister under subsection (1) to use a design shall include power—
  - (a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid; and
  - (b) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.
- (7) The purchaser of any articles sold in the exercise of powers conferred by this section and any person claiming through him shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of the State.

## 19. Right of third parties in respect of State use

- (1) In relation to any use of a registered design or a design in respect of which an application for registration is pending, made for the service of the State—
  - (a) by a department of the State or a person authorized by the Minister under section eighteen; or
  - (b) by the registered proprietor or applicant for registration to the order of a department of the State;

the provisions of any licence, assignment or agreement made, whether before, on or after the appointed day, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a department of the State shall be of no effect so far as those provisions restrict or regulate the use of the design or any model, document or information relating thereto or provide for the making of payments in respect of any such use or calculated by reference thereto, and the reproduction or publication of any model or document in connection with the said use shall not be deemed to be an infringement of any copyright subsisting in the model or document.



- (2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design, then—
  - (a) in relation to any use of the design which, but for this section and section eighteen, would constitute an infringement of the rights of the licensee, subsection (3) of section eighteen shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee; and
  - (b) in relation to any use of the design by the licensee by virtue of an authority given under section eighteen, that section shall have effect as if subsection (3) thereof were omitted.
- (3) Subject to the provisions of subsection (2), where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then—
  - (a) in relation to any use of the design by virtue of section eighteen—
    - (i) subsection (3) of that section shall have effect as if the reference to the registered proprietor included a reference to the assignor; and
    - (ii) any sum payable by virtue of that subsection shall be divided between the registered proprietor and the assignor in such proportions as may be agreed upon between them or as may, in default of agreement, be determined by the Tribunal on a reference under section twenty-one; and
  - (b) in relation to any use of the design made for the service of the State by the registered proprietor to the order of a department of the State, subsection (3) of section eighteen shall have effect as if that use were made by virtue of an authority given under that section.
- (4) Where, under subsection (3) of section eighteen, payments are required to be made by a department of the State to a registered proprietor in respect of any use of a design, any person being the holder of an exclusive licence under the registered design, not being such a licence as is mentioned in subsection (2) of this section, authorizing him to make that use of the design shall be entitled to recover from the registered proprietor such part, if any, of those payments as may be agreed upon between that person and the registered proprietor or as may, in default of agreement, be determined by the Tribunal on a reference under section twenty-one to be just having regard to any expenditure incurred by that person—
  - (a) in developing the said design; or
  - (b) in making payments to the registered proprietor, other than royalties or other payments determined by reference to the use of the design, in consideration of the licence; and if, at any time before the amount of any such payment has been agreed upon between the department of the State and the registered proprietor, that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.

## 20. Special provisions as to State use during emergency

- (1) During any period of emergency the powers exercisable in relation to a design by a department of the State or a person authorized by the Minister under section eighteen shall include power to use the design for any purpose which appears to the Minister necessary or expedient—
  - (a) for the efficient prosecution of any war in which Zimbabwe may be engaged; or
  - (b) for the maintenance of supplies and services essential to the life of the community; or
  - (c) for securing a sufficiency of supplies and services essential to the well-being of the community; or
  - (d) for promoting the productivity of industry, commerce or agriculture; or

- (e) for fostering and directing exports and reducing imports or imports of any classes from all or any countries and for redressing the balance of trade; or
  - (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
  - (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in Zimbabwe or any foreign country that is in grave distress as the result of war; and any reference in this Part to the service of the State shall be construed as including a reference to the purposes referred to in paragraphs (a) to (g).
- (2) In subsection (1)—
- "period of emergency" means any period beginning on such date as may be declared by the Minister, by statutory instrument, to be the commencement and ending on such date as may be so declared to be the termination of a period of emergency.

## 21. Reference of disputes as to State use

- (1) Any dispute as to—
- (a) the exercise by a department of the State or a person authorized by the Minister of the powers conferred by section eighteen; or
  - (b) the terms for the use of a design for the service of the State thereunder; or
  - (c) the right of any person to receive any part of a payment made in pursuance of subsection (3) of section eighteen;
- may be referred to the Tribunal by any party to the dispute in such manner as may be prescribed.
- (2) In any proceedings under this section to which a department of the State is a party, the department of the State may—
- (a) if the registered proprietor is a party to the proceedings, apply for cancellation of the registration of the design upon any ground upon which the cancellation of the registration of a design may be ordered by the Tribunal under section twenty-five;
  - (b) in any case, put in issue the validity of the registration of the design without applying for its cancellation.
- (3) If, in any proceedings under this section, any question arises whether a design has been recorded or applied as mentioned in section eighteen and the disclosure of any document recording the design or of any evidence of the application thereof would, in the opinion of the Minister, be prejudicial to the public interest, the disclosure may be made confidentially to the legal practitioner, if any, appearing for the other party or to an independent expert agreed upon by the parties.
- (4) In determining under this section any dispute between a department of the State and any person as to terms for the use of a design for the service of the State, the Tribunal shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received or may be entitled to receive, directly or indirectly, from any department of the State in respect of the design in question.

## Part VI – Assignments, corrections and cancellation

## 22. Registration of assignments, etc.

- (1) Where any person becomes entitled—
- (a) by assignment, transmission or operation of law to a registered design or to a share in a registered design; or

- (b) as mortgagee, licensee or otherwise to any other interest in a registered design;

he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest in the Register.

- (2) Without prejudice to subsection (1), an application for the registration of the title of any person becoming entitled—

- (a) by assignment to a registered design or a share in a registered design; or
- (b) by virtue of a mortgage, licence or other instrument to any other interest in a registered design;

may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

- (3) Where application is made under this section for the registration of title of any person, the Registrar shall, upon proof of title to his satisfaction—
  - (a) where that person is entitled to a registered design or a share in a registered design, register him in the Register as proprietor or co-proprietor of the design and enter in the Register particulars of the instrument or event by which he derives title; or
  - (b) where that person is entitled to any other interest in the registered design, enter in the Register notice of his interest, with particulars of the instrument, if any, creating it.
- (4) Subject to any rights vested in any other person of which notice is entered in the Register, the person or persons registered as proprietor of a registered design shall have power to assign, grant licences under or otherwise deal with the design and to give effectual receipts for any consideration for any such assignment, licence or dealing.
- (5) Except for the purposes of an application to rectify the Register under the provisions of this Part, a document in respect of which no entry has been made in the Register under subsection (3) shall not be admitted in any proceedings as evidence of the title of any person to a registered design or share of, or interest in, a registered design unless the Tribunal or the court before which the proceedings have been brought, as the case may be, otherwise directs.

*[subsection amended by section 13 of Act 25 of 2001]*

## 23. Power of Registrar to authorize corrections

- (1) The Registrar may authorize the correction of—
  - (a) any clerical error or omission or error in translation in any application for the registration, or in the representation, of a design; or
  - (b) any error in the Register.
- (2) A correction may be made in terms of subsection (1) either upon a request in writing made by any person interested and accompanied by the prescribed fee or without such a request.
- (3) Where it is proposed to make a correction otherwise than upon a request in writing, the Registrar shall give notice of the proposal to the registered proprietor or the applicant for registration of the design, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity to be heard before the correction is made.

## 24. Rectification of Register

- (1) The Tribunal may, on the application of any person aggrieved, order the Register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

- (2) The Tribunal may determine any question which it may be necessary or expedient to decide in connexion with the rectification of the Register.
- (3) Notice of any application to the Tribunal in terms of subsection (1) shall be given in the prescribed manner to the Registrar and to any other person appearing from the Register to be interested in the design, and the Registrar and any such person shall be entitled to appear and be heard on the application.
- (4) A notice of any order made by the Tribunal under this section shall be served on the Registrar in the prescribed manner, and the Registrar shall, on receipt of the notice, rectify the Register accordingly.

## 25. Cancellation of registration by Registrar

- (1) The Registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.
- (2) At any time after a design has been registered any person interested may apply to the Registrar for the cancellation of the registration of the design—
  - (a) on the ground that—
    - (i) the design was not, at the date of the registration thereof, new or original; or
    - (ii) the design, at the time when it was registered, was a corresponding design in relation to an artistic work in which copyright subsisted under the Copyright Act or any law repealed by that Act; or
    - (iii) by reason of a previous use of that artistic work, the design would not have been registrable under this Act but for subsection (2) of section twelve; or
    - (iv) the copyright in that work under the Copyright Act has expired; or
  - (b) on any other ground on which the Registrar could have refused to register the design; and the Registrar may make such order on the application as he thinks fit.
- (3) An appeal shall lie from any order of the Registrar under subsection (2).

## Part VII – Functions of Registrar in relation to certain evidence, documents and powers

### 26. Evidence of certain entries and documents

- (1) A certificate purporting to be signed by the Registrar and certifying that any entry, the making of which is or was at the time authorized by or under this Act, has or has not been made or that any other thing which is or was at the time so authorized to be done has or has not been done shall be *prima facie* evidence of the matters so certified.  
*[section amended by section 13 of Act 25 of 2001]*
- (2) A copy of any entry in the Register or of any representation, specimen or document kept in the Designs Office or an extract from the Register or any such document purporting to be certified by the Registrar and sealed with the seal of the Patent Office shall be admitted in evidence without further proof and without production of the original.

## 27. Inspection of registered designs

- (1) Subject to this section and any regulations referred to in subsection (2) of section eleven, the representation or specimen of a design registered under this Act shall be open to public inspection at the Designs Office on and after the day on which the certificate of registration is issued.

*[section amended by section 13 of Act 25 of 2001]*

- (2) In the case of a design registered in respect of an article of any class prescribed for the purposes of this subsection, no representation or specimen of the design lodged in pursuance of the application shall, until the expiration of such period after the day on which the certificate of registration is issued as may be prescribed in relation to articles of that class, be open to public inspection at the Designs Office except by—
  - (a) the registered proprietor or a person authorized in writing by the registered proprietor; or
  - (b) a person authorized by the Registrar, the Tribunal or the Court:

Provided that where the Registrar proposes to refuse an application for the registration of any other design on the ground that it is the same as the first-mentioned design or differs from that design only in immaterial details or in features which are variants commonly used in the trade, the applicant shall be entitled to inspect the representation or specimen of the first-mentioned design lodged in pursuance of the application for registration of that design.

- (3) The representation or specimen of a design referred to in subsection (2) shall not, during the period prescribed as referred to in that subsection, be inspected by any person by virtue of that subsection except in the presence of the Registrar or of an officer acting under him and, except in the case of an inspection authorized by the proviso to that subsection, the person making the inspection shall not be entitled to take a copy of the representation or specimen of the design or any part thereof.
- (4) Where an application for the registration of a design has been abandoned or refused, neither the application for registration nor any representation or specimen of the design lodged in pursuance thereof shall at any time be open to public inspection at the Designs Office or be published by the Registrar.

## 28. Information as to existence of copyright

The Registrar shall, on request made to him by any person furnishing such information as may enable the Registrar to identify the design, and on payment of the prescribed fee, inform that person whether the design is registered and, if so, in respect of what articles, the date of registration and the name and address of the registered proprietor.

## 29. Certificate of registration

The Registrar shall issue a certificate of registration in the prescribed form to the registered proprietor of a design when the design is registered.

## 30. Copies of certificate of registration

The Registrar may—

- (a) where he is satisfied that the certificate of registration has been lost or destroyed; or
- (b) in any other case in which he thinks it expedient;

furnish one or more copies of the certificate of registration.

### 31. Exercise of discretionary powers of Registrar

Without prejudice to any provision of this Act requiring the Registrar to hear any party to proceedings thereunder or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for registration of a design an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

*[section amended by section 13 of Act 25 of 2001]*

### 32. Proceedings before Registrar

- (1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid and may allow any witness to be cross-examined on his affidavit or oral evidence.
- (2) For the purposes of any proceedings before the Registrar under this Act, the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him.

### 33. Registrar may award costs

- (1) In any proceedings before the Registrar under this Act, the Registrar may award to any party such costs as he may consider reasonable and may direct how and by what parties they are to be paid.
- (2) Any costs awarded by the Registrar in terms of subsection (1) shall be taxed by the Registrar of the Tribunal and payment thereof may be enforced in the same manner as if they were costs allowed by the Tribunal.

### 34. Power of Registrar to fix time and place of sitting and adjourn proceedings

The Registrar may in any proceedings held before him decide the hours, times and places at which he will sit and he may adjourn the proceedings for such time and to such place as he may think fit.

## Part VIII – Appeals and legal proceedings

### 35. Appeals from Registrar

Where this Act provides for an appeal against a decision of the Registrar, the appeal shall be made to the Tribunal in accordance with this Part and the Intellectual Property Tribunal Act [Chapter 26:06].

*[section substituted by section 7 of Act 25 of 2001]*

### 36. Time for appeals

An appeal referred to in section thirty-five shall be lodged with the Tribunal within two months after the appellant was notified of the decision or order against which the appeal is brought or within such further time as the Tribunal may for good cause allow.

*[section substituted by section 7 of Act 25 of 2001]*

### 37. Powers of Tribunal on appeal

Without derogation from section 8 of the Intellectual Property Tribunal Act [Chapter 26:06], in any appeal under this Act the Tribunal may—

- (a) confirm, set aside or vary the order or decision against which the appeal is brought;
- (b) exercise any of the powers which could have been exercised by the Registrar in the proceedings in connection with which the appeal is brought.

*[section substituted by section 7 of Act 25 of 2001]*

### 38. References to Tribunal by Registrar

- (1) If it appears to the Registrar that any matter to be decided by him under this Act involves a point of law or to be of unusual importance or complexity, he may, after giving notice to the parties, refer the matter to the Tribunal for decision, and thereafter in relation to that matter he shall act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to the Supreme Court.
- (2) Where a matter has been referred to the Tribunal in terms of subsection (1), the Registrar and the parties shall be entitled to be heard by and appear before the Tribunal before any decision is made in the matter.

*[section substituted by section 7 of Act 25 of 2001]*

### 39. Costs of Registrar

In all proceedings before the Tribunal under this Act, the costs of the Registrar shall be in the discretion of the Tribunal, but the Registrar shall not be ordered to pay the costs of any of the other parties.

### 40. \*\*\*

*[section repealed by section 8 of Act 25 of 2001]*

### 41. \*\*\*

*[section repealed by section 8 of Act 25 of 2001]*

### 42. \*\*\*

*[section repealed by section 8 of Act 25 of 2001]*

### 43. \*\*\*

*[section repealed by section 8 of Act 25 of 2001]*

### 44. \*\*\*

*[section repealed by section 8 of Act 25 of 2001]*

### 45. Certification of validity

In any legal proceedings in which the validity of the registration of a design is contested and is decided in favour of the registered proprietor of the design, the Tribunal or the court which gave the decision, as the case may be, may certify to that effect and, if it so certifies, then, in any subsequent legal proceedings in which the validity of the registration comes into question, the registered proprietor of the design, on obtaining a final order or judgment in his favour, shall have his full costs, charges and expenses as between

legal practitioner and client, unless in those subsequent proceedings the Tribunal or the court concerned directs that he ought not to have them.

*[section amended by section 13 of Act 25 of 2001]*

#### **46. Provisions relating to action for infringement**

(1) In this section—

"Court", in relation to proceedings for infringement of copyright in a registered industrial design, means the Tribunal or the court in which the proceedings have been instituted.

*[subsection substituted by section 9 of Act 25 of 2001]*

(1a) An action for infringement of a registered industrial design may be instituted—

- (a) in the Tribunal; or
- (b) in the High Court; or
- (c) subject to the jurisdictional limits provided for in the Magistrates Court Act [Chapter 7:10], in a magistrates court.

*[subsection inserted by section 9 of Act 25 of 2001]*

(2) Subject to any rules of court, the following provisions shall apply in connection with an action for infringement—

- (a) any ground upon which the registration of a design may be cancelled in terms of subsection (2) of section twenty-five may be relied upon by way of defence;
- (b) the defendant may, by way of counterclaim in the action, apply for the cancellation of the registration of the design;
- (c) the plaintiff shall, with his statement of claim or declaration or on the order of the Court at any subsequent time, deliver full particulars of the infringement complained of;
- (d) the defendant shall, with his statement of defence or plea or on the order of the Court at any subsequent time, deliver particulars of any objections on which he relies in support thereof;
- (e) at the hearing no evidence shall, except by leave of the Court, be admitted of any infringement or on any objections of which particulars have not been so delivered in terms of paragraph (c) or (d).

*[subsection amended by section 9 of Act 25 of 2001]*

(3) In any action under this section where an exclusive licensee is the plaintiff, the registered proprietor shall, unless he is joined as plaintiff in such action, be added as defendant:

Provided that a registered proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

- (4) If the registered proprietor is the plaintiff in any action under this section, he shall give notice thereof to the exclusive licensee of the design in question and any such licensee shall be entitled to intervene as a co-plaintiff and to recover any damages he may have suffered as a result of the infringement.
- (5) No action under this section shall lie in respect of an infringement which took place before the registration of the design.



- (6) No action for infringement of copyright in a registered design may be instituted more than three years after the expiration of the period of copyright in that design.
- (7) *[subsection repealed by section 9 of Act 25 of 2001]*
- (8) *[subsection repealed by section 9 of Act 25 of 2001]*

#### 46A. Remedies available in action for infringement

- (1) Subject to this Act, in an action for infringement of copyright in a registered design the plaintiff shall be entitled to any appropriate remedy, whether damages, interdict, attachment, the rendering of account, the delivery of infringing copies or articles used or intended to be used for making infringing copies or otherwise, that is available in respect of the infringement of any other proprietary right.
- (2) Damages for infringement of copyright in a registered design may, at the option of the person seeking them, be calculated on the basis of the amount that an exclusive licensee would reasonably have been expected to pay under the circumstances for his use of the design concerned:

Provided that, if the person seeking damages intends to exercise this option, he shall give notice of his intention, in writing, to any exclusive licensee of the registered design concerned.

- (3) In determining the amount of damages in an action for infringement of copyright in a registered design, the Tribunal or the court, as the case may be, shall take the following factors into account, in addition to all other material considerations—
  - (a) the extent and nature of the infringement; and
  - (b) the amount which could be payable to the proprietor in respect of the use of the design by some other person; and
  - (c) any dilatory conduct on the part of the proprietor of the design or the plaintiff in making the infringer aware that the design was registered.
- (4) If it is established, in an action for infringement of copyright in a registered design, that an infringement was committed and the Tribunal or the court, having regard to—
  - (a) the flagrancy of the infringement; and
  - (b) any benefit shown to have accrued to the person responsible for the infringement as a result of it;

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Tribunal or the court, as the case may be, shall have power to award such additional damages as it thinks fit.

- (5) If it is established, in an action for an infringement of copyright in a registered design, that an infringement was committed but that at the time of the infringement the person responsible for it was not aware and had no reasonable grounds for suspecting that he was not entitled to engage in the infringing activity, the plaintiff shall not be entitled under this section to any damages against that person in respect of the infringement.
- (6) Where—
  - (a) there has been a change in the proprietorship of a registered design, whether through assignment, transmission, operation of law or otherwise; or
  - (b) an exclusive licence has been granted in respect of a registered design;

the new proprietor or co-proprietor or the exclusive licensee, as the case may be, shall not be entitled to recover damages for any infringement of the copyright in that design which occurred during the period from the change in the proprietorship or the grant of the exclusive licence, as the

case may be, until the change or the grant was registered in terms of section twenty-two, unless the registration was effected within six months of the change or the grant.

[subsection inserted by section 10 of Act 25 of 2001]

#### 46B. Orders without notice (*Anton Piller* orders)

- (1) If a person who has instituted or intends instituting proceedings for an infringement of copyright in a registered industrial design satisfies the Tribunal or a court that, *prima facie*—
  - (a) he has a cause of action against another person which he intends to pursue; and
  - (b) the other person has in his possession documents or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and
  - (c) there is a real and well-founded apprehension that the documents or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;

the Tribunal or court, as the case may be, may make such order, commonly known as *Anton Piller* order, as it considers necessary or appropriate to secure the preservation of the documents or things as evidence.

- (2) An order in terms of subsection (1) may be granted without notice to the person who is allegedly in possession of the documents or other things to which the order relates, and the Tribunal or court may sit *in camera* for the purpose of hearing an application for such an order:

Provided that the Tribunal or Court shall not grant an order without such notice unless it is satisfied that there is a real possibility that the documents or things will be hidden, destroyed or rendered inaccessible if notice is given.

- (3) An order in terms of subsection (1) may be granted on such conditions, including the giving of security by the applicant, as the Tribunal or court may fix.
- (4) This section shall not be taken to limit any power a court may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

[subsection inserted by section 10 of Act 25 of 2001]

#### 47. Remedy for groundless threats of infringement proceedings

- (1) Where any person, whether entitled to or interested in a registered design or an application for registration of a design or not, by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of the copyright in a registered design, any person aggrieved thereby may bring an action against him in the High Court in accordance with the rules of that Court for any such relief as is mentioned in subsection (2).

[subsection amended by section 13 of Act 25 of 2001]

- (2) Unless, in any action brought by virtue of subsection (1), the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of the copyright in a registered design, the registration of which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say—
  - (a) a declaration to the effect that the threats are unjustifiable;
  - (b) an interdict against the continuance of the threats;
  - (c) such damages, if any, as he has sustained thereby.
- (3) For the avoidance of doubt, it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of subsection (1).

- (4) The defendant in any action brought in terms of subsection (1) may apply, by way of counter-claim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the copyright in the design to which the threats relate.

*[section amended by section 13 of Act 25 of 2001]*

#### **47A. Restriction on importation or exportation of infringing articles**

- (1) In this section—

"infringing article" means any article to which there has been applied a design that infringes the copyright in a registered design.

- (2) If the proprietor of a registered design, by written notice to the Director of Customs and Excise—
- (a) informs the Director that he is the proprietor of the registered design; and
  - (b) satisfies the Director that there are reasonable grounds to suspect that infringing articles have been or may be imported into or exported from Zimbabwe; and
  - (c) requests the Director to treat the infringing articles referred to in paragraph (b) as prohibited goods; and
  - (d) describes the articles concerned with sufficient particularity to make them readily identifiable;

the Director shall forthwith comply with the request and ensure that no such articles are imported into or exported from Zimbabwe, and that any such articles that have been imported but not yet entered are not released to the importer:

Provided that the Director need not comply with such a request until the proprietor furnishes him with security in such form and for such amount as the Director may require to secure the fulfilment of any liability and the payment of any expense which he may incur as a result of the detention of any articles to which the request relates or as a result of anything done by him in relation to articles so detained.

- (3) Where a request has been made under subsection (1) and has not been withdrawn, the importation into or exportation from Zimbabwe of any articles to which the request relates shall be prohibited for a period of ten working days from the date on which the Director of Customs and Excise complies with the request:

Provided that—

- (i) if within that period the proprietor has instituted proceedings for an order in terms of subsection (4), or proceedings for any other order leading to a decision on the merits of the matter, the importation or exportation of the articles concerned shall continue to be prohibited until the determination of those proceedings or until the court or Tribunal concerned orders otherwise;
  - (ii) this subsection shall not apply to the importation or exportation of a single article by a person for his personal and private use.
- (4) If the proprietor of a registered design satisfies the Tribunal or a court that—
- (a) he is the proprietor of the registered design; and
  - (b) there are reasonable grounds to suspect that infringing articles have been or may be imported into or exported from Zimbabwe;

the Tribunal or court may issue an order directing the Director of Customs and Excise to prevent the importation or exportation, as the case may be, of those articles.

- (5) An order under subsection (4)—
- (a) shall describe the articles concerned with sufficient particularity to make them readily identifiable; and
  - (b) may be granted subject to conditions, including the giving of security by the applicant and the inspection of the articles concerned.
- (6) For so long as an order under subsection (4) is in force, the Director of Customs and Excise shall treat the articles to which the order relates as if—
- (a) they were prohibited from importation in terms of section 47 of the Customs and Excise Act [Chapter 23:02]; or
  - (b) their exportation was prohibited for the purpose of section 61 of the Customs and Excise Act [Chapter 23:02];
- as the case may be.
- (7) The Director of Customs and Excise shall take all necessary steps to inform an importer or exporter or intended importer or exporter of articles whose importation or exportation is prohibited by virtue of this section of the reasons for the prohibition.
- (8) While any articles are detained pursuant to a request or an order under this section—
- (a) the proprietor at whose instance the request or order was made; and
  - (b) the importer of the articles;
- shall be given an adequate opportunity to inspect the articles in order to determine whether or not they are infringing articles.
- (9) Notwithstanding anything in the Customs and Excise Act [Chapter 23:02], a person shall not be liable to any penalty under that Act, other than forfeiture of the articles, as a result of their importation or exportation being prohibited by virtue of this section.
- [section inserted by section 11 of Act 25 of 2001]*

## Part IX – Offences and penalties

### 48. Falsification of certain documents

Any person who—

- (a) makes or causes to be made a false entry in the Register, knowing the entry to be false; or
- (b) makes or causes to be made or produces or tenders or causes to be produced or tendered in evidence, any writing falsely purporting to be a copy of an entry in the Register, knowing the writing to be false;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*[subsection as amended by section 4 of Act No. 22 of 2001]*

### 49. Deceiving or influencing the Registrar or officer

- (1) Any person who, for the purpose of—
- (a) deceiving the Registrar or examiner or any other officer of the Designs Office in the execution of his functions under this Act; or

*[paragraph amended by section 13 of Act 25 of 2001]*

- (b) procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder;

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*[subsection as amended by section 4 of Act [No. 22 of 2001](#) and by section 13 of Act [25 of 2001](#)]*

- (2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder and who, on becoming aware that such statement or representation was false, fails to advise the Registrar forthwith of such falsity, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*[subsection as amended by section 4 of Act [No. 22 of 2001](#) and by section 13 of Act [25 of 2001](#)]*

## 50. Witness giving false evidence

Any person who, after having been sworn or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceedings in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*[subsection as amended by section 4 of Act [No. 22 of 2001](#)]*

## 51. Penalty for falsely representing design as registered

- (1) Any person who—

- (a) falsely represents that a design applied to any article sold by him is registered in respect of that article; or
- (b) after the copyright in a registered design has expired, marks any article to which the design has been applied with the word "registered" or any word or words implying that there is a subsisting copyright in the design or causes any such article to be so marked;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection as amended by section 4 of Act [No. 22 of 2001](#)]*

- (2) For the purpose of subsection (1), a person who sells an article on which he has, or has caused to have, stamped, engraved or impressed or to which he has, or has caused to have, otherwise applied the word "registered" or any other word expressing or implying that the design is registered shall be deemed to represent that the design applied to the article is registered in respect of that article.

## 52. \*\*\*

*[section repealed by Act [No. 22 of 2001](#)]*

## Part X – General

### 53. Recognition of agents

Where by this Act any act has to be done by or to any person in connection with a design or any procedure relating thereto, the act may be done by or to an agent of that person duly authorized in the prescribed manner who is—

- (a) a legal practitioner; or
- (b) registered as a patent agent in the Register of Patent Agents kept in terms of the Patents Act; or
- (c) registered as a trade mark agent in the Register of Trade Mark Agents kept in terms of the Trade Marks Act [Chapter 26:04].

### 54. Lodging and authentication of documents

- (1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Designs Office or to the Registrar or to any other person, may be delivered by hand or sent by registered post.
- (2) No authentication shall be required in respect of any document lodged in the Designs Office under this Act or used in proceedings before the Registrar or the Tribunal.

### 55. Provisions as to fees

- (1) Where, under this Act, a fee is payable—
  - (a) in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid; or
  - (b) in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or
  - (c) in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.
- (2) All fees shall be paid at the Designs Office in such manner as the Registrar, with the approval of the Minister, may accept.

### 56. Publication of matters in Journal

The Minister may direct the publication by the Registrar in the Journal of any reports of cases on designs and other relevant matters as the Minister may deem fit.

### 57. Savings

- (1) Nothing in this Act shall be construed as authorizing or requiring the Registrar to register a design the use of which would, in his opinion, be contrary to law or morality.
- (2) Nothing in this Act shall affect the right of the State or of any person deriving title directly or indirectly from the State to sell or use articles forfeited to the President under the provisions of any enactment.

### 58. Power to make regulations

- (1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Regulations made by the Minister may provide for—

- (a) the form of applications for registration of designs and of any representations or specimens of designs or other documents which may be lodged at the Designs Office, and for requiring copies to be furnished of any such representations, specimens or documents;
- (b) the procedure to be followed in connection with any application or request to the Registrar or any proceedings before him and the authorizing of the rectification of irregularities of procedure;
- (c) the service of notices and other documents required to be served in connection with proceedings under this Act;
- (d) a tariff of the fees which shall be payable in respect of any application, registration or other matter under this Act;
- (e) determining the circumstances in which a design is to be taken, for the purposes of section 12 of the Copyright Act, to be applied industrially;
- (f) the conduct of the business of the Designs Office;
- (g) authorizing the publication and the sale of copies of representations of designs and other documents in the Designs Office.

59. \*\*\*

*[section repealed by section 12 of Act [25 of 2001](#)]*

## **Schedule (Section 14)**

### **Protocol on Patents and Industrial Designs Within the Framework of the African Regional Industrial Property Organization (ARIPO)**

#### ***Preamble***

The Contracting States of this Protocol,

Having regard to the Agreement on the creation of African Regional Industrial Property Organization concluded in Lusaka (Zambia) on December 9, 1976, and in particular to its Article III (C), in accordance with the objectives of the Organization include the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the industrial property activities affecting its members.

Considering the advantages to be gained by the pooling of resources in respect of industrial property administration.

Hereby agree as follows:

#### **Section – 1 General**

The African Regional Industrial Property Organization (ARIPO) is empowered to grant patents and to register industrial designs and to administer such patents and industrial designs on behalf of the Contracting States in accordance with the provisions of this Protocol, through its Secretariat (hereinafter referred to as "the Office").

#### **Section – 2 Filing and transmittal of applications**

- (1) Applications for the grant of patents or the registration of industrial designs by the Office shall be filed by the authorized representative of the applicant or by the applicant with the industrial property office of a

Contracting State. An applicant may be represented by an attorney, agent or legal practitioner who has the right to represent applicants before the industrial property office of the Contracting State with which the application is filed and, where the applicant's ordinary residence or principal place of business is outside the country, he shall be so represented.

- (2) The industrial property office with which the application is filed shall, without delay, transmit that application to the Office.

### Section – 3 Patents

- (1) A patent application shall—
  - (i) identify the applicant;
  - (ii) contain, as prescribed, a description of the invention, a claim or claims, a drawing or drawings, where necessary, and an abstract;
  - (iii) designate the Contracting States for which the patent is requested to be granted;
  - (iv) be subject to the payment of the prescribed fees.
- (2)
  - (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.
  - (b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.
  - (c) The Office shall notify each designated State of the fact that a patent application has been filed which complies with the prescribed formal requirements.
- (3) The Office shall undertake, or arrange for, the substantive examination of the patent application. If it finds that the invention claimed in the application does not comply with the requirements of patentability referred to in subsection (9), it shall refuse the application.
- (4) Where under subsection (2) (b) or (3) the Office refuses the application, the applicant may, within the prescribed period, request the Office to reconsider the matter.
- (5) If the Office decides to grant the patent, it shall notify the applicant and each designated State. Where the examination was based on a search report or an examination report, a copy of the same shall be attached to the said notification.
- (6) Before the expiration of six months from the date of the notification referred to in subsection (5), a designated State may make a written communication to the Office that, if a patent is granted by the Office, that patent shall have no effect in its territory for the reason—
  - (i) that the invention is not patentable in accordance with the provisions of this Protocol; or
  - (ii) that, because of the nature of the invention, a patent cannot be registered or granted or has no effect under the national law of that State.
- (7) After the expiration of the said six months, the Office shall grant the patent, which shall have effect in those designated States which have not made the communication referred to in subsection (6). The Office shall publish the patent granted.
- (8) If the Office refuses the application notwithstanding a request for reconsideration under subsection (4), the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.
- (9) Inventions for which patents are granted by the Office shall be new, shall involve an inventive step and shall be industrially applicable. An invention is new if it is not anticipated by prior art. Everything



made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or by use or exhibition shall be considered prior art provided that such making available occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof and further provided that a disclosure of the invention at an official or officially recognized exhibition shall not be taken into consideration if it occurred not more than six months before the date of filing of the application or, if priority is claimed, before the priority date validity claimed in respect thereof.

- (10) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fee, part of which shall be distributed among the designated States concerned. The amount of the fee shall depend on the number of States in respect of which the application or patent is maintained. Provided it is maintained, a patent granted by the Office shall in each designated State have the same effect as a patent registered, granted or otherwise having effect under the applicable national law but not beyond the maximum duration provided for under the said law.
- (11) A patent granted by the Office shall in each designated State be subject to provisions of the applicable national law on compulsory licences, forfeiture or the use of patent inventions in the public interest.

### Section – 4 Industrial designs

- (1) An application for the registration of an industrial design filed shall—
  - (i) identify the applicant;
  - (ii) contain a reproduction of the industrial design;
  - (iii) designate the Contracting States for which the registration is requested to have effect;
  - (iv) be subject to the payment of the prescribed fees.
- (2)
  - (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.
  - (b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.
  - (c) The Office shall notify each designated State of the fact that an application for the registration of an industrial design has been filed which complies with the prescribed formal requirements.
- (3) Before the expiration of six months from the date of the notification referred to in subsection (2) (c), each designated State may make a written communication to the Office that, if the industrial design is registered by the Office, that registration shall have no effect in its territory for the reason—
  - (i) that the industrial design is not new;
  - (ii) that, because of the nature of the industrial design, it cannot be registered or a registration has no effect under the national law of that State; or
  - (iii) that, in the case of a textile design, it is the subject a special register.
- (4) After the expiration of the said six months, the Office shall effect the registration of the industrial design which shall have effect in those designated States which have not made the communication referred to in subsection (3). The Office shall publish the registration.
- (5) If the Office refuses the application, the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.
- (6) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fee, part of which shall be distributed among the designated States concerned. The amount

of the fee shall depend on the number of States in respect of which the application or registration is maintained. Provided it is maintained, the registration of an industrial design effected by the Office shall in each designated State have the same effect as a registration effected or otherwise in force under the applicable national law but not beyond the maximum duration provided for under the said law.

- (7) An industrial design registered by the Office shall in each designated State be subject to the provisions of the applicable national law on compulsory licences or the use of registered industrial designs in the public interest.

### **Section – 5 Regulations**

- (1) The Administrative Council of ARIPO shall make Regulations for the implementation of this Protocol and may amend them, where necessary.
- (2) The Regulations shall in particular relate to—
- (i) any administrative requirements, matters of procedure or any details necessary for the implementation of the provisions of this Protocol and any relevant international treaties;
  - (ii) the fees to be charged by the Office and the details of the distribution of part of those fees among the Contracting States.

### **Section – 6 Entry into force and final provisions**

- (1) (a) Any State which is a member of the Organization or any State to which membership of the Organization is open in accordance with Article IV (1) of the Agreement on the Creation of the Creation of the African Regional Property Organization may become party to this protocol by—
- (i) signature followed by the deposit of an instrument of ratification; or
  - (ii) deposit of an instrument of accession.
- (b) Instruments of ratification or accession shall be deposited with the Government of the Republic of Zimbabwe.
- (c) This Protocol shall enter into force three months after three States have deposited their instruments of ratification or accession.
- (d) Any State which is not party to this Protocol upon its entry into force under subsection (1) (c) of this Section shall become bound by this Protocol three months after the date on which such State deposits its instrument of ratification or accession.
- (2) (a) Ratification of, or accession to, this Protocol shall entail acceptance of the Agreement on the Creation of the Creation of the African Regional Property Organization.
- (b) The deposit of an instrument of ratification of, or accession to, this Protocol by a State which is not a party to the Agreement referred to in paragraph (a) of this subsection shall have the effect that the said State shall become party to the said Agreement on the date on which it deposits its instrument of ratification of, or accession to, this Protocol.
- (3) (a) Any Contracting State may denounce this Protocol by notification addressed to the Government of the Republic of Zimbabwe.
- (b) Denunciation shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe. It shall not affect any patent application or application for the registration of an industrial design filed with the Office prior to the expiration of the said six-month period or any patent granted or registration of an industrial design effected upon such an application.

- (4) (a) This Protocol shall be signed in a single copy and shall be deposited with the Government of the Republic of Zimbabwe.
- (b) The Government of the Republic of Zimbabwe shall transmit certified copies of this Protocol to the Contracting States, other States members of the African Regional Industrial Property Organization, and the States to which membership of the Organization is open in accordance with Article IV (1) of the Agreement on the Creation of the African Regional Property Organization, the World Intellectual Property Organization and the United Nations Economic Commission for Africa