

**The Industrial Design Law**  
**(The Pyidaungsu Hluttaw Law No. 2, 2019)**  
**The 10<sup>th</sup> Waning Day of Pyatho, 1380 M.E.**  
**(30<sup>th</sup>, January 2019)**

The Pyidaungsu Hluttaw hereby enacts this Law.

**Chapter I**

**Title, Enforcement and Definitions**

1. (a) This Law shall be called **the Industrial Design Law**.  
(b) This Law shall come into force on the date prescribed, by notification, by the President.
2. The following expressions in this Law shall have the meanings given below:
  - (a) **State** means the Republic of the Union of Myanmar;
  - (b) **Central Committee** means the Central Committee of Intellectual Property formed under this Law;
  - (c) **Ministry** means the Ministry of Commerce of the Union Government;
  - (d) **Relevant Ministry** means the Ministry of Information, Ministry of Industry, Ministry of Agriculture, Livestock and Irrigation or Ministry of Education of the Union Government;
  - (e) **Agency** means the Intellectual Property Agency formed under this Law;
  - (f) **Department** means the Department assigned by the Ministry to carry out intellectual property matters;
  - (g) **Registrar** means the Director General of the Department who carries out the functions relating to the registration of intellectual property;
  - (h) **Examiner** means an officer from the department who is at the level of assistant director or higher level thereof conducting examination of the registration process of intellectual property;

- (i) **Intellectual property rights** means the rights vested by law to protect the own intellectual creations. This expression includes copyright, patent, industrial design, trademark and other forms of intellectual property rights;
- (j) **Industrial design** means the appearance of the whole or a part of any industrial or handicraft product resulting from the features of, in particular, the lines, contours, colors, shapes, textures or materials of the said product itself and/ or its ornamentation;
- (k) **Product** means any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer program;
- (l) **Owner of industrial design** means a person or legal entity recorded as the owner of registered industrial design in the register of the Department;
- (m) **Creator** means a person who creates any industrial design;
- (n) **Right holder** means the owner of industrial design and its legal person or legal entity that is entitled to exercise the rights of the owner of industrial design;
- (o) **Employer** means any authorized person, government department, government organization or legal entity who carries out by hiring one or more employees on wages of mutual consent under the employment agreement, including a person who manages, supervises and administers directly or indirectly, and is responsible to pay wages to the workers and responsible for employing and terminating the employment of the employee. This expression includes the legal managerial agent of the employer and in private business if the employer passed away, his heir and legal successor of shares are also included;
- (p) **Employee** means a person who earns his living by wages obtained by using his physical or mental capacity. In this expression, the

service personnel of any government departments, organizations or legal entity are also included under this Law;

- (q) **Member State** means any member State of the conventions, treaties or agreements or of international organizations or regional organizations relating to intellectual property of which the State is a member;
- (r) **Intellectual Property Court** means the court established by the Supreme Court of the Union under the law to adjudicate intellectual property matters or the court conferred jurisdiction and authority of such court;
- (s) **Right of priority** means the right of priority in section 39;
- (t) **Right of exhibition priority** means the right of exhibition priority in section 40.

## **Chapter II**

### **Objectives**

3. The objectives of this Law are as follows:
  - (a) to protect the rights and interests of the owner of industrial design and creator in accordance with this Law;
  - (b) to contribute the development of industry by promoting the protection of creation of industrial designs;
  - (c) to contribute to the development and dissemination of industrial design technology;
  - (d) to contribute to the mutual advantage of creators and industrial design-users of technological knowledge and in a manner conducive to social and economic welfare;
  - (e) to contribute to a balance of rights and obligations of creators and industrial design-users.

## **Chapter III**

### **Formation of the Central Committee and its Functions and Duties**

4. The Union Government:
  - (a) shall, to deal with intellectual property matters, form the Central Committee of Intellectual Property as follows:
    - (i) Vice President Chairperson

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|--|---------------------|
| (ii) Union Minister of the Ministry  | Vice-Chairperson    |
| (iii) Deputy Ministers from the relevant Ministries                          | Members             |
| (iv) Deputy Ministers or Directors General from other appropriate Ministries | Members             |
| (v) No more than four intellectual property experts                          | Members             |
| (vi) Two representatives from non-governmental organizations                 | Members             |
| (vii) The person assigned by the President                                   | Secretary           |
| (viii) Director General of the Department                                    | Associate Secretary |
- (b) may re-form the Central Committee under subsection (a), as may be necessary.

5. The functions and duties of the Central Committee are as follows:

- (a) adopting the intellectual property policies, strategies and action plans to develop the intellectual property matters in the State;
- (b) supervising the implementation of the intellectual property policies, strategies and action plans;
- (c) guiding, through the intellectual property system, to encourage the development of national economy, foreign investment and small and medium enterprises of the State;
- (d) encouraging training and nurturing the necessary human resources for the development of the intellectual property matters;
- (e) coordinating with the relevant government departments, government organizations, other organizations and private entrepreneurs to practice and develop the intellectual property system effectively;
- (f) encouraging and promoting the coordination with local and foreign organizations for technical and other necessary assistance;
- (g) carrying out the functions and duties relating to intellectual property assigned by the Union Government from time to time.

## Chapter IV

### Formation of Agency and its Functions and Duties

6. The Central Committee:

(a) shall form the Intellectual Property Agency with the approval of the Union Government as follows:

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| (i) Secretary of the Central Committee   | Chairperson           |
| (ii) Directors General who are concerned with the Agency from the Ministry and the relevant Ministries | Members               |
| (iii) No more than eight intellectual property experts   | Members               |
| (iv) No more than five representatives from non-governmental organizations                             | Members               |
| (v) Director General of the Department   | Secretary             |
| (vi) Division Heads of the Department  | Associate Secretaries |

(b) may re-form the Agency under subsection (a), as may be necessary.

7. The Chairperson of the Agency shall be considered to be a person who is at the level of the Deputy Minister.

8. The functions and duties of the Agency are as follows:

- (a) coordinating the functions relating to industrial design;
- (b) implementing industrial design policies, strategies and action plans adopted by the Central Committee, and training and nurturing human resources for the development of the industrial design system;
- (c) observing the conventions, treaties and agreements relating to industrial design and giving suggestion that the State should accede to them to be a member, to the Central Committee;
- (d) implementing the functions of industrial design in line with the provisions of the conventions, treaties and agreements relating to industrial design of which the State is a member;
- (e) cooperating with the relevant local, international and regional organizations relating to the industrial design and member States;

- (f) forming necessary working groups and prescribing their functions and duties with the approval of the Central Committee to take action on infringement of industrial design right;
- (g) forming necessary working groups to implement functions relating to industrial design and prescribing their functions and duties with the approval of the Central Committee;
- (h) making a decision on an appeal against the decision of the Registrar;
- (i) prescribing the fees to be collected in accordance with this Law with the approval of the Union Government through the Central Committee;
- (j) approving the seal to be used in granting registration of industrial design;
- (k) submitting the task reports and other necessary reports to the Central Committee;
- (l) submitting the annual industrial design report to the Central Committee;
- (m) carrying out the functions and duties relating to intellectual property assigned by the Central Committee from time to time.

## **Chapter V**

### **Functions and Duties of the Department**

9. The functions and duties of the Department are as follows:
  - (a) publishing the matters on registration of industrial design;
  - (b) maintaining the register of industrial design;
  - (c) supervising the performance of the Divisions formed in the respective field of intellectual property;
  - (d) carrying out the functions and duties relating to industrial design assigned by the Agency from time to time.

## **Chapter VI**

### **Appointing Registrar and Examiners and Prescribing their Functions and Duties**

10. The Ministry may appoint the Registrar and necessary Examiners in the Department according to the submission of the Agency to carry out the functions relating to intellectual property.

11. The duties of the Registrar are as follows:

- (a) supervising the functions relating to the application for and examination of the registration of industrial design;
- (b) coordinating upon the submission of the Examiner's report in carrying out the registration of industrial design;
- (c) making a decision on the registration of industrial design;
- (d) carrying out the functions and duties relating to intellectual property assigned by the Central Committee and the Agency.

12. The duties of the Examiner are as follows:

- (a) examining the applications for the registration of industrial design;
- (b) submitting the findings with remarks to the Registrar after examining the opposition and objection in respect of the application for the registration of industrial design;
- (c) summoning and examining the necessary persons and calling for the documents with the approval of the Registrar in carrying out the registration of industrial design;
- (d) submitting the remarks to the Registrar whether the registration should be granted or not after examining the application of industrial design;
- (e) carrying out the functions and duties relating to intellectual property assigned by the Agency, Department and Registrar.

## **Chapter VII**

### **Requirements for Protection of Industrial Design**

13. Any industrial design shall be protected if it is new and independently created.

14. An industrial design is new if it has not been disclosed to the public inside or outside of the country, by writing, by using, by publishing, by displaying or by any other way, prior to the filing date of the application or date of priority if the right of priority is claimed in the application for the registration of industrial design in the State.

15. An industrial design is not new if it does not significantly differ from known designs or it is the combinations of known design features.

## **Chapter VIII**

### **Matter Excluded from Protection of Industrial Design**

16. The industrial design which falls under any of the following matters shall not be protected:

- (a) being the design dictated essentially by technical or functional considerations;
- (b) being contrary to public order, morality, faith or cherished culture of the State.

## **Chapter IX**

### **Persons Entitled to File the Registration of Industrial Design**

17. The creator of any industrial design or his legal successor in title or legal transferee is entitled to file the registration of industrial design.

18. If the industrial design was created by more than one person, all of them shall jointly be entitled to file the registration of such industrial design.

19. When the industrial design is created in the course of or as a consequence of employment agreement:

- (a) where there is no contrary to an employment agreement, when the industrial design is created by an employee, only the employer shall have the right to file the registration of such industrial design;
- (b) where the employer fails to file the industrial design application within six months from the date on which the creation of such industrial design is notified in writing to him, it shall be presumed that the employer has abandoned it and the employee has the right to file the registration of such industrial design;
- (c) where there is no contrary to an agreement when the industrial design created within one year after the expiry of the person's employment agreement is filed the application for registration, if it



is the creation of the employee who falls within the scope of his former employer and the employee does not produce evidence to the contrary, the industrial design shall be presumed to have been made under the expired employment agreement and the employer shall be entitled to registration of industrial design. However, the employee shall be entitled to file the registration of industrial design under the following conditions:

- (i) the former employer agrees that there is no claim on the creation of such industrial design;
- (ii) the former employer cannot overcome the evidence presented by the employee;
- (iii) the employee files the application when the former employer fails to file it under subsection (b);
- (d) Where there is no contrary to an employment agreement, when the industrial design which relates to employer's work by using his materials, data or know-how, is created by an employee but not under his assignment, the employee shall only be entitled to file the registration of such industrial design;
- (e) where there is no contrary to an employment agreement when the employee made any other creation of the industrial design except the creation of industrial design mentioned in subsections (a), (c) and (d), the employee has the right to file the registration of such industrial design.

## **Chapter X**

### **Application**

20. Any person entitled to file the registration of industrial design under this Law shall, if he desires to have the right of registered industrial design, file an application for registration of the industrial design to the Registrar, in the manner prescribed.

21. The applicant for the registration of industrial design:

- (a) may file an application for one or more industrial designs provided that all the products which constitute the industrial design, or in

relation to which the industrial designs are to be used, belong to the same class of the Locarno Agreement Establishing an International Classification for Industrial Designs;

- (b) may write the application for registration either in Myanmar or English language;
- (c) shall translate the application from Myanmar into English or English into Myanmar if requested by the Registrar;
- (d) shall certify the translation under subsection (c).

22. The applicant for the registration of industrial design:

- (a) shall mention the following facts in the application:
  - (i) a request for registration;
  - (ii) name and address of the applicant or legal entity;
  - (iii) name, citizenship scrutiny card number and address of the representative where the application is filed by the representative;
  - (iv) a sufficiently clear representation of the industrial design;
  - (v) indication of the products to which the industrial design is applied or embodied.
- (b) shall attach the following facts, if necessary, in addition to the facts in subsection (a):
  - (i) where the application is filed for a legal entity, registration number, type and name of the country of that legal entity;
  - (ii) where the applicant wants to take advantage of the priority of an earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of the declaration of priority;
  - (iii) where the applicant wants to take advantage of any priority resulting from the display of industrial design in an exhibition, a declaration to that effect, together with indications and evidence in support of that declaration of exhibition priority;

- (iv) any other elements prescribed by the Agency and Department from time to time.

23. The date on which the application of industrial design, in accordance with subsection (a) of section 22, received by the Department, shall be presumed to be the filing date of the application for registration in the State, subject to the payment of fees.

24. The Registrar shall:

- (a) where more than one party applies to register identical or similar industrial designs on different dates and any dispute arises, grant registration to the earliest applicant submitting the application consistent with the requirements for registration;
- (b) where each and every applicant claims the right of priority or the right of exhibition priority under subsection (a) and any dispute arises, grant registration to the applicant submitting the application for the registration of the industrial design that has earliest filing date and conforms with the requirements for registration.

25. Where more than one applicant have filed the application for the registration of identical or similar industrial design on the same date or have requested for the same priority date:

- (a) the Registrar shall direct all applicants to submit the name of a person whom they want to prescribe as the applicant for industrial design after consultation among themselves, within the prescribed period.
- (b) the applicants shall, in accordance with the direction of the Registrar, resubmit the name of a person whom they have agreed to specify as an industrial design applicant after consultation among them or if desire to prescribe as joint applicant, such point to the Registrar.
- (c) although the Registrar directs all applicants under subsection (a), if no agreement is reached among them, the applicants shall follow the Registrar's decision in the prescribed manner.

26. (a) The applicant for the registration of industrial design:

(i) may file with the Registrar to correct any error of translation or transcription, clerical error or other mistakes in any application or document after subscribing the prescribed fees before the Registrar makes the decision on grant of or refusal to an application or before the Agency makes the decision on the appeal against the decision of the Registrar;

(ii) may request to withdraw the application with respect to all or some of industrial designs if the application contains more than one industrial design;

(iii) may apply to divide any application listing several designs into two or more new application by paying the prescribed fees.

(b) shall presume the filing date of a new divisional application for registration under clause (iii) of subsection (a) to be the same filing date of original application.

27. The Registrar may amend the application under section 26 in accordance with the stipulations after examining.

## **Chapter XI**

### **Examination, Opposition and Registration**

28. With regard to the application for registration of industrial design, the Examiner shall:

(a) submit the applications which conform to the provisions of sections 21 and 22 to the Registrar together with remarks after examining whether the application complies with the requirements;

(b) notify the applicant to amend the application which does not conform to the provisions of sections 21 and 22 with the permission of the Registrar after examining whether the

application complies with the requirements. If the applicant fails to amend the application within 30 days from the date of receipt of the notice, the application for the registration shall be considered as withdrawn;

- (c) submit the application to the Registrar together with remarks after examining if the amendment in accordance with the provisions of subsection (b) has been received;
- (d) refuse the application with respect to the industrial design not complying with the definition set out in subsection (j) of section 2 or conforming to subsection (b) of section 16 and submit to the Registrar together with his remarks.

29. (a) Where an applicant for the registration of industrial design has failed to comply with a time limit for an action in a procedure and that failure has the consequence of causing a loss of rights with respect to an application for the registration of industrial design, he may reapply for the registration of industrial design to the Registrar if it meets the following requirements:

- (i) submitting a request within 60 days from the date of withdrawal of the application in respect of the cause of failure to comply with the time limit;
- (ii) providing the requirements, information or explanations in respect of the cause of failure to comply with the time limit;
- (iii) describing the sufficient reasons in the request for the failure to comply with the time limit;
- (iv) fees which had been paid.

(b) The Registrar shall suspend the reinstatement of rights under subsection (a) within the period of appeal.

30. The Registrar:

- (a) may allow the request after examining the application if it is likely to cause the loss of rights in respect of the application for the registration of abandoned industrial design and reapplying the application under subsection (a) of section 29;

- (b) shall publish the application in order to oppose for any person in the prescribed manner and that application complies with sections 21 and 22;
- (c) shall not publish until the expiration of the period of deferment if the deferment of publication has been requested by the applicant under section 36.

31. Any person may oppose with respect to the application for the registration of industrial design within 60 days from the date of publication and submit objections in writing on the following grounds to the Registrar together with the prescribed fees:

- (a) the industrial design does not meet with the definition of industrial design set out in subsection (j) of section 2;
- (b) the industrial design lacks novelty;
- (c) the industrial design falls in matter excluded from the protection of industrial design under section 16;
- (d) the sufficient ground appears for evidence that the applicant is not entitled to file.

32. If the Registrar receives the opposition, he shall send a notice to the applicant to defend the objections within the prescribed period.

33. With respect to application for registration of industrial design, the Registrar:

- (a) may grant the application for registration of industrial design if the opposition is not filed within 60 days from the date of publication;
- (b) may grant or refuse the opposition after examining it if the opposition is filed;
- (c) shall record such grant or refusal in the register and notify the applicant. In addition, he shall publish such grant or refusal in the prescribed manner;
- (d) shall issue the certificate of registered industrial design to the applicant if the registration is granted.

34. The owner of industrial design:

- (a) may apply to the Registrar to issue the certified copy of the certificate of a registered industrial design after subscribing the prescribed fees if the original certificate is damaged or lost;
- (b) may apply to the Registrar to correct clerical error or other mistakes that may be permitted to correct or to change nationality and address recorded in the register after subscribing the prescribed fees.

35. The Registrar:

- (a) shall issue the certified copy of the certificate of registered industrial design after examining the application under subsection (a) of section 34;
- (b) may amend the application after examining under subsection (b) of section 34.

## **Chapter XII**

### **Deferment of Publication of Industrial Design**

36. An applicant may request to the Registrar to defer the publication of industrial design and describe the period of deferment in the application in the manner prescribed. Such period of deferment shall not exceed 18 months from the filing date of application for the registration of industrial design or from the date of priority if right of priority is claimed.

37. Even if the applicant has requested to defer the publication under section 36, he may withdraw that request and request to the Registrar to publish the industrial design at any time within such period.

38. The Registrar, with respect to the deferment of industrial design publication:

- (a) shall record it in the register and keep file related to the industrial design confidential if the deferment is made under section 36;
- (b) shall publish the deferment of the publication and identification of the applicant, the filing date of application, the length of the period for which it has been requested and any other prescribed particulars during the period of deferment;

- (c) shall publish the industrial design application for registration after expiring of the period of that deferment.

### **Chapter XIII**

#### **Right of Priority**

39. An applicant who has duly filed an application for the registration of the industrial design in a state that is party to the Paris Convention or the agreement establishing the World Trade Organization, or a successor to such an applicant, shall, when filing an application to the Department of the same industrial design, enjoy the right of priority of six months from the filing date of the first application.

40. Where the applicant has disclosed the industrial design at an official or officially recognized international exhibition held in a member State of the Paris Convention or the World Trade Organization, he may claim a right of priority from the date of the first disclosure of such industrial design in the exhibition, if he files the application within a period of 6 months from that date.

41. The exhibition priority shall not extend the priority term established under section 39.

### **Chapter XIV**

#### **Term of the Registration of Industrial Design and Renewal**

42. The term of the registered industrial design shall be 5 years from the filing date of the registration of industrial design and may be renewal, for not more than two consecutive periods of five years each.

43. The owner of the registered industrial design shall carry out the followings, if he wants to renew of his registered industrial design:

- (a) he shall apply to renew within 6 months before the expiry of the term of the registration of industrial design by subscribing the prescribed fee;
- (b) he may apply to renew within the grace period of 6 months after the expiry of the term of registration of industrial design. He shall pay the prescribed registration fees and late fees when applying as such.



44. The Registrar shall:

- (a) grant the request for renewal which conforms with the requirements. The renewal shall come into force from the date of expiry of the previous registration.
- (b) renew the term of five years in accordance with the stipulations and publish it in the prescribed manner after examining the application for renewal of registration.
- (c) record the renewal and subscribed fee in the register.
- (d) lapse the registered industrial design if the owner of the registered industrial design does not subscribe the renewal fee within the grace period of six months.
- (e) record the lapse of registered industrial design in the register and publish it in the prescribed manner.

## **Chapter XV**

### **Rights of Registered Industrial Design**

45. If the owner of registered industrial design complies with the provisions in Chapter XIV, he enjoys the rights of registered industrial design in this Chapter within the period of the registration of industrial design.

46. Without prejudice to the provisions in sections 49 and 50, the owner of the registered industrial design is entitled:

- (a) as an exclusive right:
  - (i) to prevent a third party not having the owner's consent from making, selling or importing the products bearing or embodying an industrial design which is a copy or substantially a copy of the registered industrial design when such acts are undertaken for commercial purposes in accordance with this law.
  - (ii) to file litigation against the infringer of the rights of registered industrial design in a civil action.

- (b) to transfer or license the rights of registered industrial design to any other person in accordance with the provisions in Chapters XVI and XVII.

47. The employer shall have a non-exclusive licence on the industrial design that only the employee is entitled to the registration of industrial design under subsection (d) of section 19.

48. Where the industrial design is owned by more than one person, unless agreed otherwise among themselves:

- (a) each and every owner of the registered industrial design has the right to enjoy an equal and undivided share in the rights of registered industrial design;
- (b) each and every owner of the registered industrial design may transfer or license his equal and undivided share in the rights of registered industrial design to any other person;
- (c) each and every owner of the registered industrial design has the right to file litigation against the infringer of the right of registered industrial design in a civil action without obtaining the consent of other joint-owners of the registered industrial design;
- (d) the successor or legal entity in title of each and every owner of the industrial design has the rights mentioned in subsections (a), (b) and (c).

49. The owner of the registered industrial design shall not exercise his rights of industrial design in any of the following points:

- (a) acts done for a private non-commercial purpose;
- (b) acts done for a purpose of experiment or research;
- (c) acts of reproduction for the purpose of making citations or of teaching.

50. The rights conferred by the registration of the industrial design shall not extend to act, in respect of a product embodying the protected industrial design, after the product has been lawfully imported or sold in the State by the registered owner or by a person acting with the owner's consent.

## **Chapter XVI**

### **Transfer of the Rights of Industrial Design**

51. (a) The applicant for the registration of industrial design may apply to the Registrar to record the transfer of his application of design to any person or legal entity in the prescribed manner.
- (b) The owner of industrial design may apply to the Registrar to record the transfer of the ownership of registered industrial design to any person or legal entity in the prescribed manner.
52. The Registrar shall record and publish any change in ownership of the registration of the industrial design where the applicant or the transferee under subsection (a) of section 51 or the owner of registered industrial design or the transferred industrial design owner under subsection (b) of section 51 requests to record in the prescribed manner, by subscribing the prescribed fees.
53. A transfer in the ownership of the registered industrial design shall have no effect unless it is applied to record to the Registrar.

## **Chapter XVII**

### **Licence of the Registered Industrial Design**

54. The owner of the industrial design may license any person or legal entity to use the registered industrial design by determining the terms and conditions.
55. The owner of the registered industrial design or his licensee may apply to the Registrar to record the licence together with the certified copy of licensing documents by subscribing the prescribed fees.
56. The Registrar shall record the licence under section 55 and publish it in the prescribed manner.
57. The Registrar shall cancel the record of a licence, and publish it in the prescribed manners if the owner of industrial design or his licensee applies for cancellation of the record of a licence in the prescribed manner.

58. A licence shall have no effect unless it is applied to record to the Registrar.

## **Chapter XVIII**

### **Invalidation and Cancellation of Registration of Industrial Design**

59. If it is found that any registered industrial design, contrary to section 60, affects the interest of a person or public, a relevant person or legal entity may apply to the Registrar for invalidation or cancellation of the whole or part of the registration of the said industrial design.

60. The Registrar may invalid or cancel the whole or part of the registration of industrial design based on the application of the relevant person or legal entity if the registered industrial design is involved with any of the following facts:

- (a) that the industrial design falls under section 16;
- (b) that the industrial design does not meet with the definition of industrial design set out in subsection (j) of section 2;
- (c) that the industrial design lacks novelty;
- (d) that the sufficient ground appears for evidence that the applicant is not entitled to file;
- (e) that the registered industrial design was obtained by fraud, misrepresentation or concealment of any prescribed fact;
- (f) based on a final decision or judgment of the Intellectual Property Court regarding with the application of invalidation for registered industrial design.

61. The Registrar may cancel the registered industrial design from the register upon any of the following facts:

- (a) failure to apply for renewal within the grace period of 6 months after expiry of the term of registration;

- (b) surrender to the owner of the registered industrial design;
- (c) invalidate publication of industrial design which falls under section 60.

62. The Registrar shall record the cancellation of the registered industrial design and notify it to the owner of industrial design and publish it in the prescribed manner.

## **Chapter XIX**

### **Application for International Registration**

63. The applicants for the registration of industrial design from Myanmar or foreign country may file with the Registrar in the prescribed manner if they want to exercise the International Industrial Design Registration System after the State has become a member of the Agreement concerning the International Registration of Industrial Design System.

## **Chapter XX**

### **Appeal**

64. (a) Any person who is dissatisfied with any decision made by the Registrar under this Law may appeal to the Agency within 60 days from the date of publication of such decision.
- (b) The Agency may confirm, cancel or revise the decision of the Registrar or direct that further evidence shall be produced in the appeal under subsection (a).
- (c) The Agency may confirm, cancel or revise the decision of the Registrar if further evidence is produced under subsection (b).

65. Any person who is dissatisfied with the decision made by the Agency may file a case in the Intellectual Property Court which is vested the jurisdiction by the Supreme Court of the Union for this purpose within 90 days from the date of receiving the notice of such decision.

## **Chapter XXI**

### **Establishment of the Intellectual Property Courts**

**66. The Supreme Court of the Union:**

- (a) may establish the Intellectual Property Courts in any appropriate places and appoint judges to adjudicate on the criminal or civil cases with respect to intellectual property matters;
- (b) may confer the jurisdiction and authority to the judges appointed under subsection (a) to adjudicate on the intellectual property matters;
- (c) may confer the jurisdiction and authority of the Intellectual Property Courts to the appropriate courts to adjudicate on the intellectual property matters before the establishment of the Intellectual Property Courts under subsection (a);
- (d) shall confer the jurisdiction and authority to the Intellectual Property Courts that have jurisdiction over appeal and revision cases against any judgment, order and decision made by the Intellectual Property Courts;
- (e) shall confer the jurisdiction and authority to the appropriate Intellectual Property Courts to adjudicate on the cases under section 65.

## **Chapter XXII**

### **Authority of the Intellectual Property Court on Infringement of Right of Registered Industrial Design**

67. (a) The right holder may file a civil miscellaneous case for his grievance in the Intellectual Property Court to order provisional measures under sections 68 and 69;
- (b) The right holder may file a civil case in the Intellectual Property Court.
68. (a) The Intellectual Property Court may order the following one or more provisional measures where it is applied under subsection (a) of section 67 in respect of the infringement of right of registered industrial design:
- (i) an order as if thinks fit to prevent the infringement of right of registered industrial design and to prevent the entry into the

channels of commerce of the State of the registered industrial design infringing goods including imported goods after paying leviable duties to the Customs Department and customs clearance;

- (ii) an order as if thinks fit to preserve relevant evidence in regard to the alleged infringement of right of registered industrial design.
- (b) The Intellectual Property Court may direct the applicant to provide the following to take provisional measures:
  - (i) valid evidence that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent;
  - (ii) sufficient assurance to prevent abuse of provisional measures.
- (c) The Intellectual Property Court may further direct the applicant to supply additional information necessary for the identification of the alleged industrial design infringing goods when ordering the provisional measures under subsection (a).
- (d) The Intellectual Property Court shall revoke or cease to have effect the provisional measures ordered under subsection (a) of section 68 and subsection (a) of section 69 upon request of the respondent without prejudice to subsection (b) of section 69, if the civil proceeding is not initiated, within the reasonable period determined by the Intellectual Property Court or in the absence of such determination, within 30 days from the date of ordering the provisional measures, to decide on merits of the case for the injury commencing from the date of execution of the requested provisional measures.
- (e) Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or probability of infringement of right of registered industrial design,

the Intellectual Property Court may order the applicant, upon request of the respondent, to provide the respondent appropriate compensation for any injury caused by these measures.

69. (a) The Intellectual Property Court may make an ex parte order of provisional measures in any of the following conditions:

- (i) where any delay is likely to cause irreparable harm to the right holder;
- (ii) where there is a demonstrable risk of evidence being destroyed.

(b) Where making an ex parte order of provisional measures, the Intellectual Property Court shall:

- (i) notify the respondent of the provisional measures without delay after the execution of the measures;
- (ii) execute the provisional measures within the period determined by the Intellectual Property Court, or in the absence of such determination, within 30 days from the date of notification, if the respondent does not follow the notification;
- (iii) review the provisional measure upon request of the respondent by hearing both sides within the reasonable period, in order to make decision on whether these measures to be modified, revoked or confirmed.

70. The Intellectual Property Court may, in case of infringement of industrial design rights, pass any one or more of the following orders without prejudice to the Civil Law and the Code of Civil Procedure in the proceedings under subsection (b) of section 67:

- (a) an injunction against the infringement of industrial design rights, including the prevention of the entry into the channels of the commerce of the State of imported industrial design infringing goods after paying leviable duties to the Customs Department and customs clearance;
- (b) an order to pay the right holder sufficient damages for the injury that the right holder has suffered due to the infringement of



industrial design rights by the infringer or an order to pay the right holder for pre-established damages or the profits obtained by the infringer or both, in appropriate cases;

- (c) an order to pay the right holder appropriate expenses including legal costs and attorney's fees.

71. (a) When making the final decision on the infringement upon request of the right holder, the Intellectual Property Court may pass the following orders regarding exhibits in accordance with the Code of Civil Procedure:

- (i) destroying the infringing goods or preventing such goods from entering into the channels of commerce;
- (ii) preventing the materials or implements used in creating the infringing goods without compensation of any sort entry into the channels of commerce to minimize the risks of further infringement.

(b) The Intellectual Property Court shall take into account the following facts in exercising under subsection (a):

- (i) the deterrent effects of issuing the injunction;
- (ii) the destruction shall be proportional to the seriousness of the infringement;
- (iii) the effect on the environment of the manner of destruction;  
and
- (iv) negative effect on the legitimate interests of third parties.

72. The Intellectual Property Court may order the applicant to pay the respondent compensation and legal costs including attorney's fees and other expenses of the respondent who has been wrongfully restrained by the complaint where the complaint about the infringement of right of registered industrial design is appeared incorrect and dishonest.

73. (a) The Intellectual Property Court may order the adverse party to produce evidence, by ensuring the protection of confidential

information in appropriate cases, without prejudice to the provisions of existing laws, for the following conditions:

- (i) when the right holder has produced valid evidence to support his claims sufficiently;
  - (ii) when the right holder has specified that the valid evidence relevant to his claims are in the hand of the adverse party.
- (b) The Intellectual Property Court may, in voluntary infringement without sufficient reason, make preliminary and final determinations such as affirmation or rejection based on the information including allegation and declination, subject to providing the parties an opportunity to be heard on allegation or evidence in the following situations:
- (i) refusing to provide necessary information;
  - (ii) not providing necessary information within a reasonable period;
  - (iii) significantly impeding the procedure relating to an enforcement action.

74. The Intellectual Property Court may apply the provisions in the Evidence Act, the Code of Civil Procedure and other relevant existing laws if it is not provided expressly in this Law in respect of the enforcement actions for the infringement of right of registered industrial design.

## **Chapter XXIII**

### **Penalties**

75. Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a term not exceeding one year or with a fine not exceeding two million kyats, or with both:

- (a) irregular issue or causing to issue the certificate of registered industrial design;

- (b) irregular entering or causing to enter dishonestly in the register;
- (c) disclosing the confidential industrial design to the irrelevant person during the confidential period;
- (d) giving the documents related to the application of industrial design to the irrelevant person, disclosing them to the public, or allowing them to use before publication during the prescribed period without permission.

## **Chapter XXIV**

### **Miscellaneous**

76. Notwithstanding anything in any other existing laws, action shall be taken only under this Law for any offence related to the industrial design of this Law.

77. Where any party is adversely affected, the Registrar shall give him an opportunity to be heard in accordance with the stipulation in the exercise of any power vested in him by this Law.

78. The copy of a certificate of the industrial design registration and documents certified and sealed by the Registrar may be presented as evidence in the relevant Intellectual Property Court.

79. The infringement of right of registered industrial design in this Law shall not apply to the use of any goods bearing the registration of industrial design by any government department and legal entity, provided that such use is not made on the commercial purposes and is limited to specific cases of the national emergency or public disaster.

80. The disputes on industrial design between the two parties may be settled by means of mutual consultation amicably or arbitration or judicial proceedings.

81. The Ministry shall be responsible for office works of the Central Committee and Agency and bear their expenses to implement the provisions of this Law.

82. The Ministry shall fix honorarium and allowance for the members of the Central Committee, the Agency and Working Groups who are non-civil service personnel with the approval of the Union Government.

83. The term of the person at the Union level under this Law is normally the same as that of the President.

84. The Ministry may form and assign the Department and its divisions in the respective field of intellectual property to carry out the functions and duties of the Agency.

85. The Central Committee and the Agency established under this Law shall be considered to encompass all intellectual property laws.

86. In implementing the provisions of this Law:

- (a) the Supreme Court of the Union may issue rules, regulations, bye-laws notifications, orders, directives and procedures relating to judiciary.
- (b) the Ministry and the relevant Ministries may:
  - (i) issue rules, regulations and bye-laws with the approval of the Union Government.
  - (ii) issue notifications, orders, directives and procedures.
- (c) the Agency and the Department may issue notifications, orders, directives and procedures with the approval of the Ministry.

87. The Myanmar Patents and Designs (Emergency Provisions) Act, 1946 is hereby repealed.

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I hereby sign in accordance with the Constitution of the Republic of the Union of Myanmar.

Sd./ Win Myint  
President  
Republic of the Union of Myanmar