

Bangladesh
Design Act, 2023
Act No. 22 of 2023
Dhaka, 11 July, 2023

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Chapter I Preliminary

1. Short title and introduction

(1) This Act will be called as Bangladesh Industrial Design Act, 2023

(2) It shall be effective immediately.

2. Definition

Unless there is anything contrary to the subject or context, in this Act

(a) **priority date** means the date of earlier filing of the application which is entitled to receive priority under Paris Convention;

(b) **priority claim** means a priority claim declared under section 8;

(c) **Directorate** means the Directorate of Patents, Industrial Designs and Trademarks established under section 3;

(d) **Court** means the Court of the District mentioned in section 3(a) of the Civil Courts Act, 1887 (Act No. XII of 1887);

(e) **International Classification** means the International Classification of Industrial Designs determined as per Locarno Classification mentioned in the Locarno Agreement, 1968;

(f) **Code of Civil Procedure** means the Code of Civil Procedure, 1908 (Act No. V of 1908).

(g) **prescribed** means prescribed by law,

(h) **Paris Convention** means the Paris Convention for the Protection of Industrial Property, 1883;

(i) **rules** means rules made under this Act,

(j) **person** includes any corporate body, firm, company, association, partnership or association, whether or not incorporated,

(k) **Director General** means the Director General of the Department of Patents, Designs and Trademarks,

(l) **licensee** means a person licensed under this Act to use any industrial design,

(m) **industrial design** means the aesthetic visibility of the characteristic shapes, lines, colors, graphical user interface, calligraphy etc. of any manufactured product;

(n) **industrial design representative** means any person registered as an industrial design representative under this Act;

(o) **use of industrial design** means manufacturing, offering for sale,

supplying or selling in the market any goods incorporating any registered industrial design or importing similar goods for all such purposes;

(p) **infringement of industrial design** means the infringement of industrial design referred to in section 21;

(q) the term **Government** shall, for the purpose of this Act, mean the Ministry of Industries of the Government of the People's Republic of Bangladesh, and

(r) **proprietor** means the proprietor of an industrial design registered under section 12;

Chapter II Establishment of Directorate for Patents, Industrial Designs and Trademarks, etc.

3. Establishment of Directorate, etc.

(1) With the introduction of this Act, the Trademark Act, 2009 (Act No. 19 of 2009), the Geographical Indication Products (Registration and Protection) Act, 2013 (Act No. 54 of 2013), the Bangladesh Patent Act, 2022 (Act No. 5 of 2022 Act) and for the purposes of this Act, the existing Department of Patents, Designs and Trademarks shall be called the Department of Patents, Designs and Trademarks and shall continue to exist as if it had been established under this Act.

(2) There shall be a Director General as the Chief Executive of the Directorate, who shall be appointed by the Government and the existing posts of Registrar, Deputy Registrar, Assistant Registrar and Examiner of the Directorate shall be regarded as the posts of Director General, Director, Deputy Director, Assistant Director respectively with the coming into force of this Act.

(3) Without prejudice to the generality of the Directorate, this Act, the Trademarks Act, 2009 (Act No. 19 of 2009), the Geographical Indication Products (Registration and Protection) Act, 2013 (Act No. 54 of 2013) and the Bangladesh Patents Act, 2022 (Act No. 5 of the year) to perform the functions mentioned in the Directorate shall have the following four units,

- (a) Industrial Design Unit,
- (b) Trademarks Unit,
- (c) Geographical indication unit, and
- (d) Patent Unit.

(4) The Department shall have a common seal, and the Industrial Design Unit, Trademarks Unit, Geographical Indication Unit and Patent Unit shall have separate official seals.

(5) The head office of the Directorate shall be at Dhaka, but the Government may, if necessary, establish its regional and branch offices at any place in Bangladesh in the public interest.

(6) The Government may appoint, in the Department, such number of

employees as may be necessary, and the conditions of service of the officers and employees shall be prescribed by rules.

(7) The Director General may, with the prior approval of the Government, assign the charge of another unit to the officers and employees of one unit of the Directorate.

Chapter III Registration of Industrial Designs

4. Lack of protection for certain industrial designs.

The following industrial designs shall not enjoy any protection under this Act, namely:

- (a) any such industrial design, in which only technical or practical aspects have been considered;
- (b) any such industrial design, the commercial use of which is contrary to public order, environment and morality;
- (c) any unregistered industrial design; And
- (d) any design consisting of national emblems.

5. Registerable industrial design

(1) An industrial design with novelty, distinctiveness and is capable of being produced or used in industry shall be registerable under this Act.

(2) Subject to the submission of a non-claim letter by the applicant, any words, letters, trademarks, numerals, etc. industrial design shall be registerable.

(3) An industrial design shall be deemed to be new if

- (a) before the date of filing of the application or, as the case may be, prior to the priority date of filing of the application for registration, it has not been disclosed to the public by publication, exhibition, trade or any other use in a visible form in Bangladesh or anywhere in the world,
- (b) Design affixed to any part of the composition of the composite product is visible during normal use,

Explanation: For the purposes of clause (b) of this sub-section,

- (i) **Composite product** means a product of which each part can be manufactured and sold separately and which, when combined, forms a complete product, and
- (ii) **Normal use** shall mean use of the composite product by the consumer, but shall not include maintenance, servicing or repair operations.

(4) If any person or organization without the consent of the applicant discloses any industrial design to the public before the

date of application or, as the case may be, the date of priority, such disclosure shall not be a bar to the consideration of the novelty of the said design.

6. Right to registration of industrial designs

(1) The right to register an industrial design shall belong to the owner or designer of the said design.

(2) In case two or more persons jointly create an industrial design, such persons shall be entitled to joint registration thereof.

(3) The right to register an industrial design is assignable and can be inherited or transferred.

(4) Where an industrial design is created by a person employed pursuant to an agreement executed for the purpose of creating one or more designs, the employer shall have the right to register the same, unless the agreement expressly provides otherwise.

7. Industrial design registration application, amendment, revocation, etc.

(1) Any person or his legal representative shall, for the purpose of registering any industrial design, apply to the Director General in the prescribed form, manner and subject to payment of fee, with the following documents, namely

(a) a photographic copy of the design, but if the design is embodied in a two-dimensional object, a sample of the object instead of a photocopy,

(b) If the applicant is not the designer himself, a statement containing the rationale on behalf of the applicant for obtaining the registration of the said industrial design; and

(c) such other documents as may be prescribed.

(2) An application shall be made separately for each industrial design and the said application shall specify the international class of goods related to the industrial design as per this Act and Rules.

(3) An applicant may at any time apply for amendment or modification of the application so filed without altering or adding to the

original design under consideration.

(4) If an applicant claims to be a joint designer of industrial design, he may apply to the Director General in the prescribed manner to add him as a joint designer or, as the case may be, a co-participant in the registration of the said industrial design.

(5) The Director General shall dispose of the application received under sub-sections (3) and (4) in the prescribed manner.

(6) An applicant may withdraw his application in the prescribed manner at any time during the pendency of his application.

(7) Any person may, in the prescribed manner and subject to payment of a fee, collect information and certified copies of applications for registration of industrial designs filed under this Act.

8. Priority claims

(1) According to the Paris Convention, if an applicant or proprietor has previously applied for the same industrial design in a country covered by the Paris Convention, he can claim the date mentioned in the said application as the priority date.

(2) The period of priority under sub-section (1) shall be 6 (six) months and the said period shall be calculated in accordance with the provisions of Article 4 of the Paris Convention.

(3) An application filed in Bangladesh before the expiry of the period mentioned in sub-section (2) shall not be invalidated by any act done within that period and no right of third party shall arise as a result of the filing of any other application, disclosure of the invention, use or any such act. .

(4) If an application filed under this section contains a declaration of priority claim, the applicant concerned shall file with the said application within the prescribed period a copy of the application certified by the said authority in the country in which the earlier application was filed and the date of filing of the application. The reference shall be made and the said certificate shall be in Bengali or English language, if necessary the Director

General Instruct the applicant to submit a translated text of the copy:

Provided, however, that if the applicant fails to prove the priority claim with proper certification, his priority claim shall not be considered.

(5) For the purposes of this section, such other matters as may be necessary shall be prescribed by rule.

9. Date of filing of application for registration of industrial design

The date on which an application for registration of an industrial design is filed shall be the date of filing of the application for registration of such industrial design.

10. Publication of application

(1) After receiving an application for registration of an industrial design, the Director General shall publish the said application in the e-Gazette or on the website of the Directorate within the prescribed manner and time.

(2) The registration application under sub-section (1) shall be open for filing objections to the said registration application up to 30 (thirty) days from the date of publication.

(3) Within 30 (thirty) days from the date of publication of the application for registration under sub-section (1), any party shall file with the Director General opposition to the application for registration of industrial design. A written objection may be filed against the procedure and subject to payment of fees.

(4) The Director General shall dispose of the said objection in the prescribed manner.

11. Industrial design registration application examination

(1) The Director General or his authorized representative officer shall examine any industrial design registration application filed under section 7.

(2) At the time of examination of an application for registration of

an industrial design under sub-section (1), the following matters shall be ascertained, namely:

- (a) the said application for registration has been duly filed in compliance with the provisions mentioned in section 7, and
- (b) Industrial design applied for registration is -
 - (i) Any industrial design as defined in clause (m) of section 2,
 - (ii) novel, distinctive and industrially producible or usable in accordance with the provisions of section 5,
 - (iii) not any industrial design referred to in section 4.

(3) Any application referred to in sub-section (2) in respect of an application for registration of an industrial design.

In case of violation of the provisions, the Director General shall inform the applicant concerned and issue a notice for explanation and the applicant shall provide an explanation within 2 (two) months from the date of issue of the notice.

Provided that the Director General may, for reasonable cause, extend the said period by one (one) month.

(4) If the applicant does not provide an explanation on the said matter within the period specified in sub-section (3), the application shall be deemed to have been withdrawn.

(5) The Director General may, in the prescribed manner, take measures in other matters relating to the examination of applications for registration of industrial designs under this section.

12. Registration of Industrial Designs, etc.

(1) The Director General shall, after considering the following matters including the matters mentioned in section 11, register any industrial design and issue Certificate of Registration in favor of the applicant, namely:

- (a) If no objection is received in writing against the said application within the prescribed period mentioned in section 10 along with the prescribed fee,
- (b) if the objection received under section 10 is disposed of in favor of the applicant, and
- (c) such other matters as may be prescribed.

(2) The Director General may, if not satisfied with the matter referred to in sub-section (1), reject the application for registration of industrial design and shall so inform the applicant in writing.

(3) If the Director General registers any industrial design under sub-section (1), he shall include it in the register referred to in section 17.

13. Rights acquired through registration.

The owner of an industrial design shall have the right to prevent the use of his registered industrial design by any other person.

Explanation: For the purposes of this section

(a) a registered industrial design shall be deemed to have been used if it has been incorporated into any product;

(b) Where an industrial design is registered only for such part of a product as is an essential and integral part of the product, the design shall be treated as the overall visibility of the integrated product;

14. Limitation of Registration Rights.

Rights in industrial design registration shall not be protected in the following cases, namely:

(a) the use of any industrial design in any part of any aircraft, land craft or watercraft, which has temporarily or accidentally entered the geographical limits of Bangladesh or any parts or accessories imported for the repair of such aircraft, land craft or watercraft.

(b) activities performed on a personal basis and for non-commercial purposes,

(c) activities carried out for educational or research purposes in educational or research institutions,

(d) works carried out for experimental purposes in respect of any industrial design; And

(e) The reproduction of any particular part of an industrial design, which is governed only by practical or technical considerations or which is necessary for the accomplishment of technical purposes.

15. Duration and renewal of registration

(1) Subject to the other provisions of this section, the term of registration of an industrial design shall be up to 10 (ten) years from the priority date or the date of filing the application for registration, as the case may be.

(2) Subject to the prescribed procedure and payment of fees, the period of registration shall be renewed every 5 (five) years not more than 3 (three) times:

Provided, however, that after the expiry of the registration period, the renewal application should be relaxed up to 6 (six) months subject to payment of additional fees prescribed for.

(3) If the registration of any industrial design is renewed under sub-section (2), it shall be entered in the register in the prescribed manner.

16. Registration cancelled

(1) Any person may apply to the Director General for cancellation of registration of an industrial design for the following reasons, subject to the prescribed procedure and payment of fees, namely:

- (a) the said industrial design is not an industrial design as defined in clause (m) of section 2,
- (b) the design is not new, distinctive and industrially producible or usable within the meaning of section 5; And
- (c) any industrial design referred to in clause 4 of said industrial design.

(2) Any person may file an application for cancellation of an industrial design registration under sub-section (1) within a period of 2 (two) years from the date of grant of such registration.

(3) After the expiry of the period mentioned in sub-section (2), the application for cancellation of registration shall be filed in the High Court Division of the Supreme Court of Bangladesh.

(4) If any industrial design registered under this section is cancelled, it shall be deemed to have been canceled from the date of registration and not to have been registered at all.

(5) Other matters relating to cancellation of industrial design registration under this section shall be determined by rules.

17. Industrial Design Register

(1) The Directorate shall maintain a register called Industrial Design Register, in which the registered industrial designs and the related information under this Act shall be included in the order of their registration.

(2) Any person may inspect the Register and shall be entitled to obtain from the Directorate, subject to the provisions of this Act and the Rules, a citation of the Register and the Register shall be open to the public at convenient times and places.

(3) A certified copy or extract of the relevant part outside the register, with the seal of the department, shall be supplied to the applicant, subject to payment of the prescribed fee.

18. Evidentiary value of certified copy outside registration.

Subject to other provisions of this Act, a certified copy of any entry outside the register shall be deemed to be prima facie evidence of the existence of such entry in all legal proceedings.

Chapter IV Change of Ownership, Licence, Infringement, and Remedies

19. Change of proprietorship or Acquisition

(1) Any application for change of ownership or appropriation of industrial design registration shall be submitted in writing to the Director General subject to the prescribed procedure and payment of fees.

(2) The application under sub-section (1) shall be recorded and the same shall be notified to the applicant by the Director General after processing the said application.

(3) No industrial design registration under sub-section (2) shall create any third party right until an application for change of ownership or appropriation is recorded.

(4) Other matters relating to change of ownership or appropriation of industrial design registration under this section shall be determined by law.

20. License Agreement

(1) The proprietor of a registered industrial design may grant a license to any third party to use the registered industrial design by any agreement to that effect.

(2) Any license agreement under sub-section (1) shall be in writing and signed and executed by the parties.

(3) The license agreement executed under sub-section (2) shall be recorded in the prescribed manner.

(4) For registration of any license agreement under sub-section (3), the applicant shall submit the following documents along with the application, namely:

(a) A certified copy of the license agreement showing the parties and any rights being licensed, or

(b) A certified statement of the license signed by the registered proprietor and the licensee.

(5) Any interested party may request the Director General to

register a license in respect of a registered industrial design and no license shall create any right of third party until so registered.

(6) If any partner of the license to be recorded is not a party to the license agreement, the said license shall not be recorded, unless the said partner consents to the said license in a document signed and submitted to the Director General.

(7) If the registration of any industrial design is canceled under this Act, the license to use the industrial design shall cease to be in force and any payments made under the said license agreement shall be recoverable by the parties, in whole or in part, unless the payer in good faith have benefit from using the said license.

(8) The form, procedure, registration, cancellation, license rights and other matters incidental to the license agreement under this section shall be determined by the rules.

21. Industrial Design Infringement

If a person, not being the owner or licensee of a registered industrial design, uses the industrial design in the following cases in his business, he shall be deemed to have infringed the registered industrial design, which

(a) is identical with the registered industrial design and the product in which it is used is similar to the registered industrial design,

(b) is similar to the registered industrial design and the goods or services in which it is used are identical to the registered industrial design; or

(c) is identical to the registered industrial design and the product in which it is used is identical to the registered industrial design, and is likely to confuse the public or create a false impression that the industrial design is similar to the registered industrial design; .

22. Imposition of administrative compensation, etc.

(1) if any person infringes an industrial design, the proprietor may apply to the Director General for administrative compensation against such infringing person by paying the prescribed form,

procedure and fee.

(2) If, after receiving an application under sub-section (1), Director General after examining the application is satisfied that the industrial design has been infringed, he shall, after giving the person concerned a reasonable opportunity of hearing, consider the amount of the industrial design infringed and the damages will order administrative compensation against the violator concerned and if violation is deemed appropriate order may be given for the confiscation of the related products or the ingredients, materials, etc. in favor of the state.

(3) If any person is ordered to pay compensation under sub-section (2), violator shall pay the compensation within 10 (ten) working days of the issuance of such order and such compensation shall be paid to the affected person concerned.

23. Filing a case in court for infringement of industrial design

(1) If the compensation amount is not paid within the period mentioned in sub-section (3) of section 22, then the concerned owner can file a case against the infringer of industrial design in the court having jurisdiction.

(2) The court may pass the following orders in cases of infringement of industrial designs,

- (a) Prohibition;
- (b) payment of compensation; or
- (c) Any other remedy granted.

24 Imposition of temporary or interim injunction

(1) The court may issue an order of interim injunction or temporary injunction pursuant to the Code of Civil Procedure, with a view to preventing infringement of the industrial design, on the filing of a suit by the proprietor of the industrial design.

(2) The Court may, for the purpose of granting interim injunction or temporary injunction, direct the proprietor to supply the following information,

- (a) appropriate certificates and evidence to the effect that the applicant is the owner of the disputed industrial design and that

his rights relating to the said industrial design are being infringed or such infringement is imminent,

(b) surety or similar bond as required by the court to protect the interests of the defendant and to prevent abuse of privilege, and

(c) Information necessary for the identification of the goods concerned.

25. Compensation

(1) If any person fails to comply with any order made under this Act, the Court may levy compensation or make such other order as it thinks fit.

(2) If any person knowingly or having reasonable cause to know infringes any industrial design registered under this Act, the court shall award against the infringing person a sum of one (one) Lac Taka or the amount of damages suffered by the person affected by such infringement, and may be ordered to pay compensation not exceeding Tk10 (ten) Lac.

(3) The court may order any violator under subsection (2) to pay costs incidental to the proceedings in favor of the proprietor.

(4) The Court may order compensation for the act connected with any contravention under this Act and the period of contravention shall be calculated in the manner set out below,

(a) the date of filing the application for registration with the Director General, and

(b) the date of issue of notice by the applicant to the alleged infringer relating to the subject matter of the application.

(5) An application for an order for compensation shall be made to the court under sub-section (4) only after the industrial design right has been granted in opposition.

26. Other remedies

Courts, in order to prevent repeated infringements of industrial designs, taking into account the gravity of the infringement and the interests of the proprietor, may, without awarding any compensation, order the seizure or destruction of the goods in which the industrial designs have been used or the materials or products which

containing counterfeit industrial designs have been prepared using the good. Those materials or products containing counterfeit industrial designs may be ordered to be disposed of in some other way.

27. Appeal

The aggrieved party against any order passed by the Court under this Act may file an appeal in the High Court Division within 60 (sixty) days from the date of the said order.

28. Application of Civil Procedure Code

Subject to other provisions of this Act, the provisions of the Code of Civil Procedure shall apply to the filing of suits and legal proceedings and proceedings under this Act.

Chapter V Powers of the director-general, etc.

29. Correction of errors by Director General

(1) The Director-General may correct any clerical error or mistake, or any mistake in translation or transcription, in any document or application submitted to him or in any record prepared by him under this Act or rules.

(2) The amendment under sub-section (1) shall be communicated to the applicant or proprietor and, where applicable, the publication notice of the amendment shall be published in the e-Gazette or on the website of the Department.

30. Appeals against administrative orders, etc.

(1) An aggrieved party against any decision given by the Director General under this Act may file an appeal with the Government within 60 (sixty) days from the date of delivery of the decision.

(2) If any party is aggrieved by the decision of the appeal filed under sub-section (1), he may file an appeal in the High Court Division within 60 (sixty) days from the date of delivery of such decision.

31. Delegation of power

The Director General may, if necessary, delegate in writing any power vested in him to any officer working in the Directorate.

Chapter VI Miscellaneous

32. Appointment of industrial design representative

(1) Where the ordinary residence or principal place of business of an applicant under this Act is outside Bangladesh, he shall appoint a person resident in Bangladesh as his industrial design representative.

(2) An applicant resident of Bangladesh may if necessary appoint any person citizen of Bangladesh as his representative of design.

(3) Eligibility and other conditions for appointment as industrial design representative, registration and other matters incidental thereto shall be determined by the rules.

33. Search

(1) Any person may apply for the search for any industrial design in the prescribed form, manner and by paying the fee.

(2) Other matters relating to inquiry shall be prescribed by rules.

34. Power to make rules

The Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

35. Implementation of Mobile Courts Act, 2009

The offences mentioned in this Act shall be tried by the Mobile Court, subject to being included in the schedule of the Mobile Court Act, 2009 (Act No. 59 of 2009).

36. Amendment of Act No. 19 of 2009

In the Trade Marks Act, 2009 (Act No. 19 of 2009), wherever the words "Registrar of Trade Marks" occur, the words "Director General" shall be substituted.

37. Amendment of Act No. 54 of 2013

In the Geographical Indications Products (Registration and Protection) Act, 2013 (Act No. 54 of 2013), wherever the word "Registrar" occurs, the word "Director-General" shall be substituted.

38. Amendment of Act No. 5 of 2022

In the Bangladesh Patents Act, 2022 (Act No. 5 of 2022), the word "Registrar" shall be replaced by the word "Director General" in all places where it occurs.

39. Application of international agreements

If Bangladesh is a party to any international agreement related to industrial design, its provisions shall apply to the relevant areas of this Act.

40. Revocation and Custody

(1) With the commencement of this Act, The Patents and Designs Act, 1911 (Act No. II of 1911), hereinafter referred to as the said Act, shall be hereby repealed.

(2) With the repeal of the said Act-

(a) Department of Patents, Designs and Trade Marks established thereunder, hereinafter referred to as the abolished Department, shall be abolished,

(b) Any suit or proceeding instituted by or against the abolished Department shall be deemed to be a suit or proceeding by or against the Department; and

(c) All officers and employees of the abolished Department shall be officers and employees of the Department and shall continue to serve on the same terms and conditions under which they were in service immediately before the commencement of this Act, until they are varied in accordance with the provisions of this Act.

(3) Notwithstanding the repeal of the said Act-

(a) provided that any act done, any measure adopted, any rule or regulation made, any notification issued, any notice published, any order, direction, notice, approval or license granted thereunder is not inconsistent with any provision of this Act, shall be deemed to have been made, adopted, made, issued, published, granted, approved and granted under the corresponding provisions of this Act and the Bangladesh Patents Act, 2022 (Act No. 5 of 2022), and shall be deemed to have been granted, and until the expiry or expiration of this Act and the Bangladesh Patents Act, 2022 (Act No. 5 of 2022) shall remain in force until repealed or amended, and

(b) Any proceeding or application pending under this Act and the Bangladesh Patents Act, 2022 (Act No. 5 of 2022) shall continue and be disposed of.

41. Publication of translated texts in English

(1) After the commencement of this Act, the Government by notification in the Gazette, an authentic English text of the original Bengali text of this Act shall publish.

(2) In case of conflict between the Bengali text and the English text of this Act, the Bengali text shall prevail.