

**Act No. 28 of the Year A.D. 2010
relating to Industrial Designs**

In the name of the people.

The President of the Republic,

having examined the Constitution of the Republic of Yemen, and with the agreement of Parliament,

has issued the following Act:

**Chapter One
Name and Definitions**

Article 1

This Act shall be known as the "Industrial Designs Act".

Article 2

For the purposes of applying the provisions of this Act, the following words and expressions shall have the meanings given below, unless the context requires a different meaning:

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|-------------------------------|--|
| The Republic: | The Republic of Yemen |
| The Minister: | The Minister of Industry and Trade |
| The Ministry: | The Ministry of Industry and Trade |
| The Regulations: | The Regulations implementing this Act |
| The competent Administration: | The general Administration within the Ministry with the function of protecting intellectual property |
| The Registrar: | The Director-General of the Administration |
| The Tribunal: | The competent commercial Tribunal |

Article 3

Industrial design is the aesthetic and decorative external appearance of a product. It may include lines or colours, or a three-dimensional form either coloured or uncoloured which can be used in industrialised or handcrafted production, including textile design. This composition or form must be such as to confer a specific appearance on the industrial or handcrafted product.

**Chapter Two
Conditions and Procedures for Registration**

Article 4

An industrial design may be registered if the following conditions are met:

1. It must be new, not previously disclosed to the public anywhere in the world by any means, including by use or publication, before the date of filing the request for registration, or the priority date of the request for registration, if any. Disclosure of an industrial design to the public shall not be taken into consideration if it took place within the six months preceding the date of filing the request for registration, or the date of claiming the right of priority, when such

disclosure was the result of an act committed by the applicant, or of an unlawful act committed by a third party against the applicant.

2. It must not contravene public security or public morals, or include religious slogans or symbols, or seals or flags belonging to the Republic, other States or regional or international organisations.
3. It must not have been principally dictated by the functional or technical considerations of a product.

Article 5

The right to register an industrial design shall be allocated as follows:

1. To the inventor or to whomever the rights of the industrial design shall pass thereafter.
2. To all participants equally if the industrial design is the result of their joint efforts, unless those participants agree otherwise.
3. To the party holding right of priority, in the case of there being more than one registration request for the same industrial design.

Article 6

The request for registration of the industrial design shall be presented to the Registrar in writing. The Regulations explain what information must be included in the request, the way it is to be entered in the registers of the competent Administration, as well as the rules, procedures and deadlines for the request to be examined and a decision taken thereon.

Article 7

The Registrar shall issue a decision, either accepting or rejecting the request to register the industrial design, or accepting it on condition that certain modifications are made to the design for the sake of clarity and to avoid ambiguities with other industrial designs which are under the protection of this Act.

Article 8

If the Registrar makes a decision to reject the request for registration of the industrial design, or to accept it on condition that the design be modified, that decision must include reasons. It falls to the competent Administration to inform the applicant of the decision in writing.

Article 9

If within thirty days of the date of being informed of the Registrar's decision to modify the industrial design, as per article 7 of this Act, the applicant does not respond or lodge a complaint, he is deemed to have relinquished the request for registration.

Article 10

The party applying to register the industrial design can, within thirty days of being informed of the decision taken by the Registrar under article 7 of this Act, lodge a complaint against that decision before a Committee created by the Minister. The rules for creating the Committee are defined in the Regulations. The applicant can also appeal to the Tribunal against the decision of the Committee, within thirty days of being informed thereof.

Article 11

If the request for registration of the industrial design is accepted, the competent Administration shall undertake to announce as much, using means of mass communication as defined in the Regulations.

Article 12

Any interested party can present a written objection to the Registrar concerning an announced request for the registration of an industrial design. The objection must include reasons and be presented within ninety days of the date of the announcement of the request pursuant to article 11 of this Act. The competent Administration shall supply the applicant with a copy of the objection, and it is up to the applicant to respond in writing within thirty days of the date of receiving notification thereof, otherwise he is deemed to have relinquished the request for registration.

Article 13

The Registrar shall issue a decision, including reasons, either accepting or rejecting an objection presented within the legal deadlines against a request for registration of a design.

Article 14

The applicant making the request for registration and the party objecting thereto both have the right to appeal to the Tribunal against the decision made by the Registrar under article 13 of this Act, within thirty days of their being informed of that decision. An appeal against a decision to reject the objection shall not halt the registration procedure, unless the Tribunal decides otherwise.

Article 15

The applicant making the request to register the industrial design is granted a period of twelve months from the conclusion of the objection period defined in article 12 of this Act, if no objection against the request to register the design has been lodged, or from the date of issue of a final decision concerning the objection, in order to complete the registration procedures, otherwise he is deemed to have relinquished the request for registration.

Article 16

A register, called the "Industrial Designs Register", shall be kept by the competent Authority, wherein shall be recorded all information relative to industrial designs, as well as any changes, cessions, transfers, hypothecations, permits to use the design, annulments, or any other actions specified in this Act.

Article 17

The registration of the industrial design shall have effect from the date of the payment of the fees for filing the registration request. The holder of the industrial design shall be given a certificate of registration containing the information defined by the Regulations, and the registration shall be made public by the same means of communication as those stipulated under article 11 of this Act.

Article 18

It is incumbent upon the holder of the registered industrial design to present a request to the competent Administration to record any changes to his name, nationality or address, in accordance with the procedures stipulated in the Regulations.

Article 19

All interested parties have the right to obtain an extract of the information and entries recorded in the Industrial Designs Register.

Chapter Three Effects of Registration

Article 20

Anyone obtaining registration of an industrial design enjoys the following rights:

1. Protection of the industrial design for a period of ten years from the date of filing the request for registration.
2. Parties who have not obtained the consent of the holder are forbidden from manufacturing, selling or importing products that contain or embody a copy, or a substantial copy, of the protected design, when such acts are undertaken for commercial purposes.
3. The holder may dispose of the industrial design by ceding it to third parties, permitting its use or hypothecating it, in accordance with the procedures laid down in the Regulations. These acts must be written and certified, and are not valid until recorded in the Industrial Designs Register and made public via the means of communication defined in the Regulations.

Article 21

The following activities are not covered by the protection this Act affords to industrial designs:

1. Use of an industrial design for purposes of general research.
 2. Use of an industrial design for purposes of training and tuition.
 3. Use of an industrial design for other non-commercial purposes.
- On condition that these exceptions do not unreasonably conflict with the ordinary use of the industrial design, or unreasonably violate the lawful interests of the holder of the design.

Article 22

All interested parties may request the Tribunal to rule that the registration of an industrial design is invalid, if such registration was contrary to the provisions of this Act. The competent Administration shall undertake to cancel the registration when presented with a definitive legal ruling to that effect.

Article 23

The industrial design holder's right to prevent others from importing, using, selling or distributing products incorporating that design, shall expire if the holder markets those products in another State or licenses another party to do so.

Article 24

- (a) Ownership of the industrial design may be transferred or hypothecated in accordance with the rules and procedures defined in the Regulations, so long as this does not mislead or confuse the public.
- (b) The contract transferring ownership of the design must be made in writing and certified by the competent authorities.
- (c) The contract transferring or hypothecating the industrial design shall have no effect, and cannot be used as evidence against others, until recorded in the Industrial Designs Register and made public via the means of communication defined in the Regulations.

Article 25

- (a) The holder of the industrial design may license a third party to use that design while, at the same time, he may use it himself, unless the parties agree otherwise. The licence period shall not exceed the period stipulated for the protection of the design.
- (b) The licensing contract must be made in writing and certified by the competent authorities.
- (c) The licensee may not cede the licence to a third party, or grant sublicenses, unless the licensing contract explicitly grants him the right to do so.

Article 26

The holder of the industrial design, or the licensee, shall forward a request to the competent Administration to register the licence to use the design. The licence shall have no effect until recorded in the Industrial Designs Register and made public via the means of communication defined in the Regulations.

Article 27

- (a) The holder of the industrial design, or the licensee, may forward a request to the competent Administration to cancel the record of the licence from the Industrial Designs Register. Evidence of the expiry or termination of the licensing contract must be annexed to the request.
- (b) Before cancelling the record of the licence, the competent Administration shall inform the other party of the request to do so, and the other party may object to the request for cancellation. The Regulations define the procedures for cancelling the record of a licence.
- (c) The cancellation of a license shall be made public via the means of communication defined in the Regulations.

Chapter Four Temporary Measures

Article 28

- (a) The holder of an industrial design may at any time, even before filing a case, by means of a petition accompanied by an official certificate proving the design has been registered, request the Tribunal to issue an order for precautionary measures to be taken, in particular the following:
 - 1. The preparation of an inventory and a detailed description of the machines and tools that are or were being used in any of the violations described in this Act, as well as of the products, goods, etc., which may have used the protected industrial design in question.
 - 2. The seizure of the items mentioned under clause (a) paragraph 1 of this article, on condition that they are not seized until after the party requesting the seizure has deposited a monetary surety which a preliminary evaluation of the Tribunal considers sufficient to compensate, if necessary, the party whose goods are seized. Following the seizure, the sufficiency of the monetary surety deposited by the party requesting the seizure may be disputed in accordance with current legislation.
- (b) The Tribunal's order for the precautionary seizure may include the designation of one or more experts to assist the official responsible for carrying out the precautionary measures.

Article 29

The precautionary measures under article 28 of this Act will be considered null and void unless followed, within eight days of the date of the seizure, by the filing of a case against the party whose goods have been seized.

Article 30

The party whose goods have been seized may present the Tribunal with a claim for compensation against the party who applied for the seizure within ninety days of the expiry of the term stipulated under article 29 of this Act, if that term has passed and the applicant for the seizure has filed no case, or from the date of issue of final judgement in the case. In both these circumstances the monetary surety shall not be returned to the party requesting the seizure until a definitive judicial judgement has been issued in the compensation case against him, or until the expiry of the specified term with no compensation claim having been made, unless the judgment issued in the applicant's case resolves the issue of the monetary surety.

Article 31

(a) The holder of a registered industrial design may, by means of a petition, request the Tribunal to issue an order stopping the Customs Department from releasing imported or exported goods which incorporate counterfeited or forged designs. The Tribunal can issue an order blocking the release of those goods once the holder of the design has presented the following:

1. Sufficient evidence of the existence of an evident violation of the holder's rights.
2. A detailed description of the offending goods.
3. A monetary surety evaluated by the Tribunal as sufficient to protect the rights of the defendant and to prevent the misuse of rights.

(b) The Tribunal shall inform both the party requesting the stoppage, and the defendant, of its decision to block the goods mentioned in clause (a) of this article.

(c) The Customs Department may not release the blocked goods except by order of the Tribunal which issued the decision under clause (a) of this article, or after ten days from the issue of that decision, unless the Tribunal informs the Customs Department that the party in whose interest the order was issued has brought a legal case. The Tribunal may extend the stoppage on the release of the goods for a further ten days, if circumstances require.

(d) The Tribunal shall give the holder of the design and the importer of the goods the opportunity to examine the goods held at the Customs Department, in order to prove or refute the claim.

(e) The Tribunal may order that the importer of the blocked goods be appropriately compensated for any damages caused to him by their erroneous seizure. The compensation shall be paid from the monetary surety deposited with the Tribunal. The remainder of the surety shall be returned to the party who requested the impounding of the goods or, if the monetary surety is not sufficient to cover the compensation, he shall be compelled to pay an additional sum.

Article 32

(a) The Tribunal may take any of the measures described in article 31 of this Act, by way of precaution and without informing the other party, in circumstances in which delaying those measures could damage the rightful party or lead to a loss of evidence proving the violation. The party against whom the measures have been taken shall be informed immediately after they have been implemented. In this case, the party against whom the measures have been taken may request the Tribunal to convene a sitting to hear his account, in the light of which the Tribunal may confirm, amend or cancel the precautionary measures.

(b) The Tribunal may, if necessary, order the violator to inform the rightful party of the identity of others who participated in the production and distribution of the goods incorporating the counterfeited industrial design, and the distribution channels, unless this is not in keeping with the gravity of the violation. The competent authorities may, if necessary and once a judgement has been issued in the case, inform the rightful party of the names and addresses of the supplier, the importer and the recipient of the goods, and the quantity of goods involved in the violation.

Article 33

Small quantities of goods of a non-commercial nature contained in the personal effects of travellers or in small postal packages are exempt from the provisions of articles 31 and 32 of this Act.

Chapter Five Penalties

Article 34

Without detriment to any more severe penalty laid down by another law, imprisonment of up to two years and/or a fine of up to 1 million rial shall be imposed upon anyone who:

- (a) Forges or counterfeits a registered industrial design protected by this Act.
- (b) Uses, in bad faith, a forged or counterfeited industrial design.
- (c) Uses, in bad faith, an industrial design which is the property of another.
- (d) Sells, puts on sale, or possesses with the intention of selling, products which he knows incorporate a forged or counterfeited industrial design.

If any of the offences described in this article is repeated the penalty shall be redoubled and the offending premises shall be closed for a period of up to three months.

Article 35

Anyone violating any other provision of this Act shall be punished by a fine of up to 500,000 rial.

Article 36

The Tribunal may, depending on the gravity of the offence, impose one or more of the following supplementary penalties on the offender:

- (a) Confiscate the seized goods incorporating a counterfeited or forged industrial design, dispose of them outside commercial channels and, if necessary, destroy them.
- (b) Confiscate machines and equipment used to falsify or counterfeit the industrial design, dispose of them outside commercial channels and, if necessary, destroy them.
- (c) Refuse to allow the re-exportation of the goods incorporating a counterfeited or forged industrial design.
- (d) Publish the judgement in one or more newspapers at the expense of the guilty party.

Article 37

Anyone who has suffered damages as a result of any of the offences stipulated in articles 34 and 35 of this Act may file a case before the Tribunal demanding compensation from the perpetrators.

Chapter Six General and Concluding Provisions

Article 38

Temporary protection is granted to industrial designs exhibited at national or international trade fairs which take place in the Republic. Such temporary protection shall not lead to an extension of the period of protection stipulated under article 20 of the this Act. The Regulations define the conditions and procedures for granting such protection.

Article 39

Any natural or juridical person, whether Yemeni or foreigner, who chooses to base their effective activities in the Republic, or in a State or entity which is linked to the Republic by an international agreement on intellectual property or which has relations of reciprocity with the Republic, has the right to request the registration of an industrial design in accordance with the provisions of this Act.

Article 40

Right of priority in requesting the registration of an industrial design is granted to the party who files a request before the competent Administration within six months of filing a request for registration before the competent authorities in a member State of the Paris Convention for the Protection of Industrial Property, on condition that the party presents an official copy testifying to the filing of the first request before the authorities in the other State within ninety days of the date of filing the request to obtain registration of the industrial design before the competent Administration. In this case, the date of filing the request for registration of the industrial design before the competent Administration is considered as being the date of presentation of the request to register the industrial design in the other country.

Article 41

- (a) Officials of the competent Administration, appointed by decision of the Prosecutor General following a proposal from the Minister, shall have the status of law-enforcement officers.
- (b) The law-enforcement officers mentioned in clause (a) of this article may, during working hours, enter and search any premises and warehouses used to sell, distribute or produce counterfeited industrial designs. They shall establish the facts behind any violations described in this Act, and seize and impound the materials and means used in committing those violations; in case of need, they can request the assistance of security personnel.

Article 42

It is the task of the Tribunal to examine all cases and disputes arising from the implementation of the provisions of this Act.

Article 43

The fees prescribed for the services stipulated in this Act shall be set by decision of the Council of Ministers, following a proposal from the Minister, on condition that 20 per cent of those fees be allocated for technical support to develop and modernise business requirements.

Article 44

The Regulations implementing this Act shall be issued by decision of the Prime Minister, having obtained the agreement of the Council of Ministers and following a proposal from the Minister, within no more than six months from the date of issue of the Act.

Article 45

This Act shall be published in the Official Gazette and will come into force after three months from the date of its issue. The provisions relating to industrial drawings and models contained in Presidential Decree No. 19 of the Year A.D. 1994 in respect of Intellectual Property, and everything which violates the provisions of this Act, shall be cancelled from that date.

**Issued by the Presidency of the Republic in Sana'a
on 20 Muharram A.H. 1432 (26 December A.D. 2010)**

Ali Abdullah Saleh

President of the Republic