

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

EMERGENCY (LAYOUT DESIGNS) ORDER, 1999

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No. S 8

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (LAYOUT DESIGNS) ORDER, 1999

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY, INTERPRETATION AND APPLICATION

Citation,
commence-
ment, long
title and
application.

1. (1) This Order may be cited as the Emergency (Layout Designs) Order, 1999 and shall commence on the day appointed for the commencement of the Emergency (Copyright) Order, 1999.

(2) The long title of this Order is "An Order to provide for the protection of layout designs of integrated circuits".

(3) This Order applies to things done —

(a) in or on the continental shelf (being the area proclaimed by His Highness the Sultan on 30th. June, 1954 by the Continental Shelf Proclamation 1954) on a structure or vessel which is present there for purposes directly connected with the exploration of the seabed and its subsoil or with the exploitation of their natural resources;

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(b) on a Brunei ship, as defined in section 2 of the Merchant Shipping Act; or

(c) on an aircraft or hovercraft registered in Brunei Darussalam,

as it applies to things done in Brunei Darussalam.

Interpretation.

2. In this Order, unless the context otherwise requires —

"commercially exploited" shall be construed in accordance with section 3;

"court" means the High Court or an Intermediate Court;

"eligible layout design" means an original layout design —

(a) the maker or, in relation to a jointly-made layout design, any one or more of the makers, of which was, at the time that layout design was made, an eligible person; or

(b) that was first commercially exploited in Brunei Darussalam or in a qualifying country;

"eligible person" means —

(a) a citizen of, or an individual ordinarily resident in, Brunei Darussalam;

(b) a body incorporated under the law of Brunei Darussalam;

(c) a citizen of, or an individual ordinarily resident in, a qualifying country;

(d) a body incorporated under the law of a qualifying country,

and includes the Government and the government of a qualifying country;

"exclusive licence" means a licence in writing, signed by or on behalf of the owner or prospective owner of layout design rights, authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise in the manner authorised by that licence, any right which, under this Order, would otherwise be exercisable by such owner;

"exclusive right" shall be construed in accordance with section 4;

"future rights" means layout design rights that will or may come into existence in respect of a future layout design or on the occurrence of a future event;

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

"layout design" means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections, of an integrated circuit; and includes such a three-dimensional

disposition prepared for an integrated circuit intended for manufacture;

"layout design rights" means the exclusive rights specified in section 12 in relation to an eligible layout design;

"make", in relation to an eligible layout design, shall be construed in accordance with section 5;

"material form", in relation to a layout design, includes any form of storage or expression, whether visible or not, from which the layout design, or a substantial part of it, can be reproduced;

"original", in relation to a layout design, shall be construed in accordance with section 6;

"other party", in sections 29, 31 and 32, has the meaning set out in subsection (2) of section 29;

"prospective owner" means —

(a) in relation to future layout design rights that are not the subject of an agreement of the kind referred to in subsection (1) of section 36, the person who will be the owner of those rights when they come into existence; or

(b) in relation to future layout design rights that are the subject of such an agreement, the person in whom those rights will vest under that subsection when they come into existence;

"protection period", in relation to an eligible layout design, means the period beginning on the day on which it was made and ending —

(a) if it was first commercially exploited within five years after the year in which it was made, at the end of the tenth year after the year in which it was first commercially exploited;

(b) in any other case, at the end of the period of fifteen years after the year in which it was made;

"qualifying country" means a country or territory designated under section 35 to be a qualifying country.

Meaning of
"commercially
exploited".

3. For the purpose of this Order —

(a) a layout design is commercially exploited if the layout design, a copy of the layout design, or an integrated circuit

made in accordance with the layout design, whether or not the integrated circuit is incorporated in another thing, is by way of trade —

- (i) sold or let for hire or otherwise distributed;
- (ii) offered or exposed for sale or hire or other distribution; or
- (iii) imported for the purpose of sale or hire or other distribution;

(b) a copy of a layout design or an integrated circuit made in accordance with a layout design is commercially exploited if it is, by way of trade —

- (i) sold or let for hire or otherwise distributed;
- (ii) offered or exposed for sale or hire or other distribution; or
- (iii) imported for the purpose of sale or hire or other distribution.

4. For the purpose of this Order, the exclusive right to do an act in relation to an eligible layout design, or an integrated circuit made in accordance with an eligible layout design, includes the exclusive right to authorise a person to do that act in relation to that layout design or integrated circuit.

Meaning of "exclusive right".

5. (1) For the purpose of this Order but without limiting the ordinary meaning of the word "make" in relation to an eligible layout design, a person who used a computer to make an eligible layout design is deemed to have made the design.

Meaning of "make" in relation to eligible layout design.

(2) A layout design shall be deemed not to have been made until it has been recorded in documentary form or incorporated into an integrated circuit, whichever is earlier.

6. For the purpose of this Order but without limiting the ordinary meaning of the word "original" in relation to a layout design, a layout design is not original if —

Meaning of "original".

(a) its making involved no intellectual effort by the maker;

(b) it was common place among makers of layout design and manufacturers of integrated circuits at the time it was made; or

(c) in the case of a combination of elements and interconnections that are common place among makers of layout designs and manufacturers of integrated circuits, the combination as a whole involved no intellectual effort by the maker.

Licence of owner of layout design rights.

7. For the purpose of this Order, an act is done with the licence of the owner of layout design rights if the doing of that act was authorised by a licence binding the owner.

Eligible layout design includes substantial part of design.

8. In this Order —

(a) a reference to the doing of an act (other than making) in relation to an eligible layout design includes a reference to the doing of that act in relation to a substantial part of that design;

(b) a reference to a copy of an eligible layout design includes a reference to a copy of a substantial part of that design;

(c) a reference to an integrated circuit made in accordance with an eligible layout design includes a reference to an integrated circuit made in accordance with a substantial part of that design.

Reference to joint makers.

9. Unless the context otherwise requires, a reference in this Order to the maker of an eligible layout design is, in relation to a jointly-made eligible layout design, a reference to all the makers of that design.

Application to layout designs made before commencement.

10. This Order applies in relation to a layout design whether made before or after the commencement of this Order, but an action does not lie under Part IV in respect of any act done before that commencement in relation to the layout design, a copy of the layout design, or an integrated circuit made in accordance with the layout design.

PART II

OWNERSHIP AND NATURE OF LAYOUT DESIGN RIGHTS

Ownership of layout design rights.

11. (1) Subject to this section, the person who makes an eligible layout design is the first owner of the layout design rights in that eligible layout design.

(2) Where a layout design is made by a person in the course of his employment or apprenticeship, his employer is the first owner of the layout design rights in that eligible layout design, subject to any agreement to the contrary.

(3) Where a person commissions the making of a layout design for valuable consideration, and the layout design is made in carrying out that commission, the person who commissioned the work is the first owner of the layout design rights in that eligible layout design, subject to any agreement to the contrary.

(4) This Order protects all independently made layout designs during the protection period, even if they are identical and regardless of when they were made.

(5) Where an eligible layout design is owned by more than one person, a reference in this Order to the owner is to all the owners and a reference in this Order to the eligible owner is to all the eligible owners, so that in particular any requirement of the consent of an eligible owner requires the consent of all the eligible owners.

12. The owner of the layout design rights in an eligible layout design has, during the protection period of the layout design, the following exclusive rights —

Nature of layout design rights.

(a) the right to copy, and to authorise the copying of, that layout design in a material form;

(b) the right to make an integrated circuit in accordance with that layout design or with a copy of that layout design;

(c) the right to commercially exploit, and to authorise the commercial exploitation of, the layout design in Brunei Darussalam.

13. The layout design rights in an eligible layout design are infringed by any person who, during the protection period, without the licence of the owner of those layout design rights does, or authorises another person to do, anything which under section 12 is the exclusive right of the owner of those layout design rights.

Infringement of layout design rights.

PART III

EXCEPTIONS

14. (1) The layout design rights in an eligible layout design are not infringed by a person who commercially exploits, or authorises the commercial exploitation of, an unauthorised integrated circuit in

Innocent commercial exploitation.

Brunei Darussalam, being an integrated circuit made in accordance with the layout design if, at the time when he acquired the integrated circuit, he did not know and could not reasonably be expected to have known, that it was unauthorised.

(2) Where a person referred to in subsection (1) —

(a) has in his possession or has contracted to purchase an integrated circuit that was unauthorised; and

(b) becomes aware or could reasonably be expected to have become aware that the integrated circuit was unauthorised,

subsection (1) continues to apply to any subsequent commercial exploitation of the integrated circuit only if he pays to the owner or exclusive licensee of the layout design rights in the layout design such remuneration as may be agreed or determined by a method agreed between him and the owner or exclusive licensee or, in default of agreement, as may be determined by the court on the application of either of them.

(3) In this section, "unauthorised", in relation to an integrated circuit made in accordance with an eligible layout design, means made without the licence of the owner of the layout design rights in that layout design.

Copying for
private use.

15. (1) The layout design rights in an eligible layout design are not infringed by the making of —

(a) a copy of that layout design; or

(b) an integrated circuit in accordance with that layout design or with a copy of it,

solely for the private use of the person who makes the copy or integrated circuit.

(2) For the purpose of subsection (1), a copy of an eligible layout design, or an integrated circuit made in accordance with an eligible layout design or with a copy of such a layout design, is not to be taken to have been made for the private use of a person if the copy or integrated circuit is commercially exploited or distributed.

Copying for
research or
teaching
purposes.

16. The layout design rights in an eligible layout design are not infringed by the making of —

(a) a copy of that layout design; or

(b) an integrated circuit in accordance with that layout design or with a copy of it,

solely for research or teaching purposes.

17. (1) The layout design rights in an eligible layout design are not infringed by — Evaluation or analysis.

(a) the making of a copy or copies of the layout design for the purpose of evaluating or analysing that layout design;

(b) the making of an original layout design based on an evaluation or analysis carried out with the use of a copy or copies referred to in paragraph *(a)*;

(c) the making of an integrated circuit in accordance with an original layout design referred to in paragraph *(b)*; or

(d) copying or commercially exploiting in Brunei Darussalam an original layout design referred to in paragraph *(b)*.

(2) The layout design rights in an eligible layout design are not infringed by —

(a) the making of an integrated circuit in accordance with that layout design, or with a copy of that layout design, for the purpose of evaluating or analysing that layout design;

(b) the making of an original layout design based on an evaluation or analysis carried out with the use of an integrated circuit referred to in paragraph *(a)*;

(c) the making of an integrated circuit in accordance with an original layout design referred to in paragraph *(b)*; or

(d) copying or commercially exploiting in Brunei Darussalam an original layout design referred to in paragraph *(b)*.

18. (1) Where —

(a) an eligible layout design is commercially exploited, whether in Brunei Darussalam or elsewhere by, or with the licence of, the owner of the layout design rights in that layout design; and

Commercial exploitation of eligible layout design previously exploited under licence.

(b) a person acquires a copy of that layout design, or an integrated circuit made in accordance with that layout design, as a result of that commercial exploitation,

it is not an infringement of the layout design rights in that layout design if he commercially exploits the copy or integrated circuit in Brunei Darussalam.

(2) Notwithstanding sections 26 and 27, and subsection (2) of section 31, of the Emergency (Copyright) Order, 1999 to the extent that they apply to imported articles, where the commercial exploitation of an integrated circuit containing a copy or adaptation of a work (being an integrated circuit made in accordance with an eligible layout design) is not, under this section, an infringement of the layout design rights in that layout design, that commercial exploitation is not an infringement of the copyright in that work unless the making of that copy or adaptation was an infringement of that copyright.

(3) Expressions used in subsection (2) that are defined in the Emergency (Copyright) Order, 1999 have the same meaning as they have in that Order.

Use by
Government
for security,
defence, etc.

19. (1) An act done by or on behalf of the Government, in relation to an eligible layout design is not an infringement of the rights in that layout design if it appears to the Government necessary or expedient that the act was done —

(a) to avoid prejudice to the security or defence of Brunei Darussalam or for the efficient prosecution of any war in which Brunei Darussalam may be engaged;

(b) to assist in the exercise of powers and the implementation of measures during a period of national emergency or other circumstances of extreme urgency; or

(c) for public non-commercial purposes,

and before doing that act, the Government, having taken all reasonable steps to do so, has been unable to obtain the licence of the owner of the layout design rights, on reasonable terms, to do the act.

(2) A person may be authorised to act on behalf of the Government under subsection (1) before or after the act in respect of which he was authorised has been done.

(3) In this section, "period of national emergency" means any period beginning with such date as may be declared by the Attorney

General by order published in the *Gazette* to be the commencement, and ending with such date as may be so declared to be the termination, of a period of national emergency for the purpose of this section.

20. (1) The right to use an eligible layout design under section 19 —

Nature and scope of rights under section 19.

(a) is both non-exclusive and non-assignable;

(b) is limited to the purposes specified in that section;

(c) is subject to the terms of any authorisation under that section;

(d) does not permit the sale of the layout design to the public; and

(e) is limited to use of the layout design predominantly in Brunei Darussalam.

(2) An act done under section 19 in relation to an eligible layout design shall not be taken into account in calculating the protection period of that layout design.

(3) Where an exclusive licence is in force in relation to any layout design rights, sections 19, 21 and 22 shall have effect as if for references to the owner of the layout design rights there were references to the exclusive licensee.

21. (1) Where an act has been done under section 19 in relation to an eligible layout design, the Government shall, as soon as practicable, inform the owner of the layout design rights in that layout design that it has been done and give him such information about it as he may require.

Duty to inform owner.

(2) Nothing in subsection (1) requires the Government to inform or disclose information to the owner if doing so would, or might reasonably be expected to, prejudice the security or defence of Brunei Darussalam.

22. Where an act has been done under section 19 in relation to an eligible layout design, the Government shall pay to the owner of the layout design rights such remuneration as may be agreed or determined by a method agreed between the Government and the owner or, in default of agreement, as may be determined by the court on the application of either of them.

Owner of layout design rights entitled to remuneration.

PART IV

REMEDIES FOR INFRINGEMENT

Actions for
damages,
account,
delivery up,
etc.

23. (1) A court may, on the application of the owner of layout design rights in an eligible layout design, if it is satisfied that those rights have been infringed, make an order —

(a) for the payment of damages against the person by whom they were infringed;

(b) requiring an account of profits to be taken as between the owner of the rights and the person by whom they were infringed;

(c) for the delivery up of any article which has been or is to be predominantly used to make an integrated circuit in which an eligible layout design is incorporated; and

(d) that any article delivered up under paragraph (c) be forfeited to the eligible owner, destroyed or disposed of as it may direct.

(2) The rights of an owner in an eligible layout design are not infringed by a person who commercially exploits, or authorises the commercial exploitation of —

(a) a copy of that eligible layout design;

(b) an unauthorised integrated circuit, being an integrated circuit in which that eligible layout design is incorporated; or

(c) an article containing such an integrated circuit,

if, at the time when he acquired that copy, integrated circuit or article, he did not know and could not reasonably be expected to have known that the copy or integrated circuit was unauthorised or that the article contained an unauthorised integrated circuit.

(3) The court may, in proceedings under subsection (1), having regard to all the circumstances including —

(a) the flagrancy of the infringement; and

(b) any benefit accruing to the defendant by reason of the infringement,

award such damages or additional damages as the justice of the case may require.

24. A court may, on the application of the owner of layout design rights in an eligible layout design, grant an injunction restraining a person from engaging in conduct that constitutes, or would constitute, an infringement of those rights. **Injunctions.**

25. Sections 26 to 32 apply to an exclusive licensee of layout design rights under a licence that is in force at the time the conduct constituting an infringement of those rights took place. **Application of sections 26 to 32 to exclusive licensee.**

26. (1) Subject to subsection (2), an exclusive licensee has the same rights and remedies as the owner of the layout design rights has under sections 23 and 24 as if the licensee were the owner. **Rights of exclusive licensee.**

(2) The rights and remedies of the exclusive licensee are held concurrently with the owner but may not be exercised against him.

27. (1) Where —

(a) proceedings are brought by the owner of layout design rights or an exclusive licensee under sections 23 or 24; and

(b) the proceedings relate, whether wholly or partly, to an infringement in respect of which they have concurrent rights of action,

Exercise of concurrent rights.

such owner or exclusive licensee may not, without the leave of the court, proceed with the action unless the other of them has either been joined as a plaintiff or added as a defendant.

(2) An owner of layout design rights or exclusive licensee who is added as a defendant is not liable for any costs in the action unless he has taken part in the proceedings.

(3) Nothing in subsection (1) applies to an application for an interim injunction by the owner of the layout design rights or an exclusive licensee.

28. In proceedings under sections 23 or 24 by an exclusive licensee, a defence under this Order that would have been available to a defendant if the proceedings had been brought by the owner of the layout design rights is available to the defendant against the exclusive licensee. **Defences in proceedings by exclusive licensee.**

Assessment of damages where exclusive licence granted.

29. (1) Where, in proceedings to which section 27 applies, the owner of the layout design rights and the exclusive licensee are not both plaintiffs, the court, in assessing damages in respect of the infringement, shall —

(a) if the plaintiff is the exclusive licensee, take into account any royalties and other similar liabilities to which the licence is subject; and

(b) whether the plaintiff is the owner of the layout design rights or the exclusive licensee, take into account any pecuniary remedy already awarded to the other party under section 23 in respect of that infringement or any right of action exercisable by the other party under that section in respect of that infringement.

(2) In this section and in sections 31 and 32, the expression "the other party", in relation to the owner of layout design rights, means the exclusive licensee and, in relation to the exclusive licensee, means the owner of the layout design rights.

Apportionment of profits between owner and exclusive licensee.

30. Where —

(a) proceedings under section 23 relate, wholly or partly, to an infringement in respect of which the owner of the layout design rights and the exclusive licensee have concurrent rights of action under that section, whether or not they are both parties; and

(b) an account of profits has been directed to be taken in respect of that infringement,

the court shall, subject to any agreement of which it is aware by which the application of those profits is determined as between the owner of the layout design rights and the exclusive licensee, apportion the profits between them in such manner as the justice of the case may require and shall give such directions as it considers appropriate for giving effect to that apportionment.

Limitation on relief where separate proceedings relate to same infringement.

31. In proceedings under section 23 brought by the owner of layout design rights or by the exclusive licensee —

(a) a judgment or order for the payment of damages in respect of an infringement of those rights shall not be given or made if a final judgment or order has been given or made in favour of the other party directing an account of profits under that section in respect of the same infringement; and

(b) a judgment or order for an account of profits in respect of an infringement of those rights shall not be given or made if a final judgment or order has been given or made in favour of the other party awarding damages or directing an account of profits under that section in respect of the same infringement.

32. Where, in proceedings to which section 27 applies, whether brought by the owner of layout design rights in an eligible layout design or by the exclusive licensee, the other party is not joined as a plaintiff, either at the commencement of the proceedings or subsequently, but is added as a defendant, the other party is not liable for any costs of the proceedings unless he has entered an appearance and taken part in the proceedings.

Liability for costs.

33. In proceedings under sections 23 or 24 —

Presumptions.

(a) layout design rights shall be presumed to subsist in the layout design to which the proceedings relate if the defendant does not put in issue the question whether those rights subsist in the layout design; and

(b) where layout design rights are proved, admitted, or presumed under paragraph *(a)*, to subsist in a layout design, the plaintiff shall be presumed to be the owner of those rights if it is alleged that the plaintiff is the owner of the rights and the defendant does not put in issue the question of ownership.

34. If, at the time when an eligible layout design, a copy of an eligible layout design, an integrated circuit made in accordance with an eligible layout design, or an article in which such an integrated circuit is incorporated, was first commercially exploited, the layout design, copy, integrated circuit or package containing it, or article was clearly and legibly labelled or marked so as to indicate the following claims —

Proof of certain facts.

(a) that layout design rights subsisted in the layout design; and

(b) that the person named on the label or mark as the maker of the layout design was the maker of the layout design and any person named as an exclusive licensee of the owner was an exclusive licensee; and

(c) that the layout design was first commercially exploited in the country in the year specified on the label or mark,

it shall be presumed in any proceedings under sections 23 or 24, in the absence of evidence to the contrary, that —

- (i) at all material times any person dealing with the layout design, copy or integrated circuit had knowledge of each of the claims specified in paragraphs (a), (b) and (c); and
- (ii) the layout design was first commercially exploited in the year specified.

PART V

MISCELLANEOUS

Qualifying countries.

35. The Attorney General, with the approval of His Majesty the Sultan and Yang Di-Pertuan, may by order designate as a qualifying country for the purpose of this Order –

(a) a country or territory which is a party to a treaty or convention relating to the protection of layout designs to which Brunei Darussalam is also a party; or

(b) a country or territory as to which the Attorney General is satisfied that, if it is not a party to such a treaty or convention, provision has been or will be made under its law providing adequate protection to layout designs made by persons referred to in paragraphs (a) or (b) of the definition of "eligible person" in section 2 and to layout designs first commercially exploited in Brunei Darussalam.

Prospective ownership of layout design rights.

36. (1) Where by an agreement made in relation to future layout design rights and entered into by or on behalf of the person who would, apart from this section, be the owner of the rights on their coming into existence, that person purports to assign the future layout design rights, whether wholly or partly, to another person, then if, on those rights coming into existence, the assignee or any person claiming under him would be entitled as against all other persons to require the rights to be vested in him, those rights shall vest in the assignee or his successor in title.

(2) Where, at the time when layout design rights come into existence, the person who would be entitled to them is dead, they shall devolve as if, immediately before his death, he had been the owner of those rights.

(3) A licence granted in respect of future layout design rights by the prospective owner of those rights binds each of his successors in title to the prospective interest in the rights to the same extent as the licence was binding on the grantor.

37. (1) A layout design right and any right in or under it is property within the meaning of paragraph (a) of the definition of "property" in subsection (1) of section 3 of the Interpretation and General Clauses Act and, subject to this section, is capable of assignment and may pass by will or by operation of law.

Assignments
and licences of
layout design
rights.

Cap. 4.

(2) An assignment of layout design rights may be limited in any way, including any one or more of the following ways —

(a) so as to apply to one or more of the classes of acts that, under this Order, the owner of the layout design rights has the exclusive right to do, including a class of acts that is not separately specified in this Order as being comprised in layout design rights but which falls within a class of acts that is so specified;

(b) so as to apply to part of the protection period of the layout design in which the layout design rights subsist.

(3) An assignment of layout design rights, whether total or partial, is not effective unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of layout design rights by the owner of the rights is binding on every successor in title to the interest in the right of such owner, except —

(a) a purchaser in good faith for valuable consideration and without notice, actual or constructive, of the licence; and

(b) a person deriving title from such a purchaser,

to the same extent as the licence was binding on the grantor.

38. (1) Subject to subsection (2), where a person has commenced proceedings alleging an infringement of layout design rights in an eligible layout design, the court may, on the application of any person against whom such proceedings are brought, if it is satisfied that they were unjustified —

Groundless
legal
proceedings.

(a) make an order striking out the proceedings; and

(b) make an order for the payment of damages for any loss suffered by the person against whom the proceedings were brought.

(2) The court shall not grant relief under this section if the defendant proves that the acts in respect of which the proceedings

were brought constituted, or if done, would have constituted, an infringement of the layout design rights.

Rules. 39. The Attorney General may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for giving effect to the objects and purposes of this Order and for the due administration thereof.

Order binding on Government. 40. This Order is binding on the Government.

Made this 10th. day of Ramadan, 1420 Hijriah corresponding to the 18th. day of December, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM