

IN THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

REPORT OF THE COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS

ON THE

INDUSTRIAL DESIGNS (AMENDMENT) BILL, 2018

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**IN THE THIRD MEETING OF THE FOURTH SESSION OF THE SEVENTH
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(AMENDMENT) BILL, 2018**

1.0 INTRODUCTION

- 1.1 The Industrial Designs (Amendment) Bill, 2018 was laid in Parliament on 26th April, 2018 by the Hon. Attorney-General and Minister for Justice, Miss Gloria Afua Akuffo in accordance with Article 106 of the 1992 Constitution.
- 1.2 Consequently, the Bill was referred by the Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Hon. Attorney-General and Minister for Justice, Officials of the Office of the Attorney-General and Ministry of Justice, and the Registrar-General's Department to consider the Bill.

The Committee expresses its profound gratitude to the Hon. Attorney-General and the Officials for assisting the Committee in its deliberations.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The Constitution of the Republic of Ghana, 1992;
- ii. The Standing Orders of Parliament, 2000;
- iii. The Industrial Designs Act, 2003 (Act 660);
- iv. The Hague Agreement for International Deposit of Industrial Designs; and
- v. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

4.0 BACKGROUND INFORMATION

- 4.1 On 31st December, 2003, the Industrial Designs Act, 2003 (Act 660) was passed to provide the legal and institutional frameworks for the protection of industrial designs in Ghana.
- 4.2 Additionally, Ghana has signed up to international agreements which seek to complement the protection of industrial designs in Ghana. Among the International Agreements are the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Hague Agreement for International Deposit of Industrial Designs.
- 4.3 The Hague Agreement for International Deposit of Industrial Designs provides the mechanism for the registration of industrial designs in several countries by means of a single application.
- 4.4 For the purpose of implementing the country's obligations under these International Agreements and to achieve greater protection of industrial designs in the country, it has become imperative to incorporate the provisions of the Agreements into the Country's domestic laws through the amendment of the Act 660.

5.0 OBJECT OF THE BILL

The object of the Bill is to amend the Industrial Designs Act, 2003 (Act 660) to provide for the protection of industrial designs in other jurisdictions in accordance with the Hague Agreement for the International Deposit of Industrial Designs.

6.0 OBSERVATION

During the consideration of the Bill, the Committee made the following observations:

6.1 Implementation of the Hague Agreement

The Committee noted that the amendment of Act 660 has become necessary to ensure that Ghana's legislation on industrial designs incorporates the provisions of international agreements of which Ghana is a party. These international agreements include the Hague Agreement for the International Deposit of Industrial Designs, and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Per the provisions of the Bill, the Registrar-General would be required to process international applications in accordance with the Hague Agreement concerning the International registration of Industrial Designs adopted in

Geneva on the 2nd of July, 1999, and the Regulations made under the Hague Agreement and administrative instructions issued under the Agreement. The Minister is also empowered to make further provisions for the implementation of the Hague Agreement.

This measure will enable the Country comply with its international obligations on the subject and also strengthen its system for the protection of industries and businesses.

6.2 Extension of duration for Protection for Textiles

The Committee noted that the Bill also seeks to extend the minimum protection period for textile designs from fifteen years to twenty-five years (Clause 3). This amendment is in line with best practices around the world and would also help to maximise protection to creators of industrial designs in the country.

6.3 Deferral of Publication of Industrial Designs

It was again noted that the Bill introduces an amendment that would allow for deferral of the publication of industrial designs in the country. Per this provision, an applicant may request the Registrar-General to defer the publication of his or her industrial design for a maximum period of thirty months. The Registrar-General would be required to keep the filed industrial design a secret where the application is withdrawn before the expiration of the deferral period or on the expiration of the deferral period.

6.4 Power to detain counterfeit trade mark goods

Finally, the Committee observed that the Bill makes provision for measures to be taken by the Commissioner of the Ghana Revenue Authority to detain counterfeit trade mark goods being imported into the country. The Commissioner would then be required to notify the holder of the right, if known, of the possible infringement of the right. The counterfeit goods would be liable for forfeiture if found to be in contravention of the law.

7.0 PROPOSED AMENDMENT

The Committee proposes that the provision be amended to read as follows:

- i. **Clause 1** - **Amendment proposed** – Subclause (2), line 2, paragraph (e), line (5), *delete* "it" and *insert* "the application".

- i. **Clause 1** - **Amendment proposed** – Subclause (5), line 5, *delete* “it” and insert “the application”.
- ii. **Clause 1** - **Amendment proposed** – Subclause (6), line 1, *delete* “requirement” and insert “requirements”.
- iii. **Clause 5** - **Amendment proposed** – Subclause (9), line 1, *delete* “mark” and *insert* “marks”.
- iv. **Clause 5** - **Amendment proposed** – Subclause (9), line 4, *delete* “is” and insert “are”.
- v. **Clause 6** - **Amendment proposed** – Delete entire clause and insert the following:

“The principal enactment is amended by the substitution for section 25 of “**Regulations**

25. (1) The Minister may, by legislative instrument, make Regulations for the effective implementation of this Act and in particular, prescribe

 - (a) the fees payable in respect of applications and other matters;
 - (b) the details of the requirements and procedures on the filing and examination of applications;
 - (c) the details in relation to the consultation of the Register;
 - (d) the procedure for extracting copies from the Register;
 - (e) the procedure for the making of applications for international registration of industrial designs;
 - (f) the procedure to be adopted, where the Registrar receives from the International Bureau, a request for an extension of protection to the Republic;
 - (g) the effects of a successful request for an extension of protection to the Republic;
 - (h) the procedure for the communication of information to the International Bureau;

- (i) the fees payable in respect of applications for the international registration, extension of protection and renewal; and
- (j) other matters required to be prescribed under this Act.”.

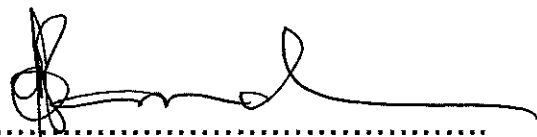
vi. **Clause 7** - **Amendment proposed** – At definition of “Commissioner” line 1, *delete* “Commissioner” and *insert* “Commissioner-General”.

8.0 CONCLUSION AND RECOMMENDATION

The Committee believes that the passage of the Bill would significantly complement efforts aimed at strengthening initiatives and enterprise in the sub-region and to reward owners of industrial designs with recognition and financial profit. This would ultimately impact significantly on improving the protection of industrial designs in the country.

On the basis of the above, the Committee recommends to the House to adopt this Report and to pass the Industrial Designs (Amendment) Bill, 2018 in accordance with Article 108 of the Constitution and the Standing Orders of the House.

Respectfully submitted.



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HON. BEN ABDALLAH BANDA
(CHAIRMAN, COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS)



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AKUA DUROWAA OWUSU AGYEKUM (MRS)
CLERK TO THE COMMITTEE