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Law No. 28 of the Year 2010 On Industrial Designs

On behalf of the people,

The President of the Republic,

After viewing the Constitution of the Republic of Yemen,

And after attaining the consent of the House of Deputies,

We hereby issue the following law:

Chapter One Citation and Definition

Article 1

This Law shall be cited "**The Law on Industrial Designs**"

Article 2

For the purposes of the implementation of this Law, the following terms and phrases shall have the meanings assigned thereto hereunder unless the context requires otherwise:

- **The Republic:** The Republic of Yemen
- **The Minister:** The Minister of Industry and Trade
- **The Ministry:** The Ministry of Industry and Trade
- **The Regulation:** The executive regulation of this Law.
- **The Competent Administration:** The public administration competent with the protection of intellectual property in the Ministry.
- **The Registrar:** the General Manager of the Competent Administration
- **The Court:** The competent commercial court

Article 3

The industrial design is the outer, ornamental appearance of a good, it can include lines, colours, or a three dimensional shape, either with colours or without, it can be used in industrial production, either in an automated or a manual way, and it includes the design of textile provided that the mentioned assembly or shape gives the industrial or the handicraft product a special shape.

Chapter Two

Conditions and Procedures for Registration

Article 4

The Industrial Design shall be registerable if the following conditions are met:

1. That the Industrial Design be new, undisclosed to the public anywhere in the world, by any means, whether use or publication, including the publication or use prior to filing, or prior to the priority date of the application for the registration, if any. Disclosure of the industrial design to the public shall not be regarded if happened within the six months immediately preceding the date of filings the application or the date of claiming the priority right, and in case the disclosure of the industrial design was as result of an action taken by the applicant or due to an illegal action taken by a third party against the applicant.
2. That It does not contradict with public order or public morals, and does not contain any religious symbols or signs, stamps, or flags pertaining to the Republic, other countries, or regional or international organizations.
3. That the same is not essentially imposed by technical or functional considerations in the product.

Article 5

The right for registering the Industrial design shall be:

1. To the creator or to the party to whom the right over the industrial design passes.
2. To all the participants equally, in case the industrial Design is the result of a collective work, unless the participants agree otherwise.

Article 6

The Application for the registration of an Industrial Design shall be submitted in writing to the Registrar. The Regulation shall provide for the information that the same shall include the method of registration thereof in the registries of the Competent Administration, as well as the rules, procedures, and durations for studying and deciding on the same.

Article 7

The Registrar shall issue a decision of accepting or rejecting the application for the registration of the Industrial Design, or of conditional acceptance thereof subject to making an amendment on the Industrial Design sought to be registered; in order to distinguish the same and to prevent the same being confused with other Industrial Design that enjoy the protection under this Law.

Article 8

If a decision is issued to dismiss the application for the registration of an Industrial Design, or the decision of accepting the registration thereof was subject to the condition of making any amendment to the Industrial Design, the decision shall be reasoned and the Competent Administration shall notify the applicant with the mentioned decision in writing.

Article 9

In case the applicant does not abide by the decision of the Registrar of effecting the amendments to the Industrial Design as per Article 7 of this Law, nor the same submitted any appeal within a period

of thirty days as of the date the same is notified of the mentioned, he shall be considered to relinquish his application.

Article 10

The applicant for the registration of the Industrial Design shall have the right to appeal against the decision of the Registrar as indicated in Article 7 of this Law within thirty days before a committee to be formed by the Minister; the Regulation shall specify the rules applicable on the formation of the mentioned committee, and the applicant shall have the right to appeal against the decision of the committee before the Court within thirty days as of the date the same is notified with the decision.

Article 11

In case the application for the registration of the Industrial Design is accepted. The Competent Administration shall publish the application in a widely spread medium as to be specified in the Regulation.

Article 12

Any person with interest shall have the right to submit a written objection against the published application for the registration, objection shall contain the reasons of objection and shall be submitted within ninety days from the date the application provided for in Article 11 of this Law is published. The Competent Administration shall serve to the applicant a copy of the objection, and the applicant shall respond to the objection in writing within thirty days as of the date the same is served with a copy of the objection, otherwise the same shall be considered to relinquish the application thereof.

Article 13

The Registrar shall issue a reasoned decision in regards to the objection submitted within the legal period to respond to the application for registration, either to accept or to reject the same.

Article 14

The applicant or the objector may appeal against the decision of the Registrar provided for in Article 13 of this Law to the Court within thirty days as of the date the same are notified with the decision, the appeal; against the decision of rejecting the objection may not result in seizing the procedures for registration unless the Court decides otherwise.

Article 15

The Applicant for the registration of an Industrial Design shall be given a period of twelve months as from the date the objection period specified in Article 12 of this Law terminate, in case no objection to the application for registration of the Industrial Design is submitted, or from the date the decision in the objection is issued in order to complete the procedures for the registration of the Industrial Design, otherwise the same shall be considered to relinquish his application.

Article 16

A registry shall be kept by the Competent Administration, to be called the **“Registry of Industrial Designs”** in which all the information relevant to the Industrial Designs shall be recorded, as well as any changes, relinquishment, assignment, mortgage, or license for use of the same, the cancellation thereof, or any other transactions provided for under this Law.

Article 17

The registration of an Industrial Design shall be effective from the date on which the fees for the filing of the application for registration are paid, and the owner of the Industrial Design shall be granted a certificate of registration that shall include the information to be specified by the Regulation, and the registration shall be published in the same mean provided for in Article 11 of this Law.

Article 18

The owner of the registered Industrial Design shall submit an application to the Competent Administration to register any change in the name, nationality, or address thereof, in accordance with the procedures to be specified in the Regulation.

Article 19

Every person with interest shall have the right to acquire an extract of the information and the data recorded in the registry of the Industrial Designs.

Chapter Three **Effects of the Registration**

Article 20

Anyone who acquires a registration for an Industrial Design shall enjoy the following rights:

1. The protection for the Industrial Design for a term of ten years as of the date of filing the application for registration.
2. The right to prevent others, who did not acquire his consent, from manufacturing, selling, or importing products containing or embodying a reproduction of the protected Industrial Design in whole or in part, in the instances where the mentioned is for commercial purposes.
3. To dispose of the Industrial Design, by assigning the same to a third party, license the use thereof, or subject the same to a mortgage, in accordance with the procedures that the Regulation specifies. Disposal shall be written and ratified, and shall not take effect unless the same is registered in the Registry and published in the mean that the Regulation provides for.

Article 21

Following acts shall be exempted from the protection provided for in this Law:

- 1- Using the Industrial Design for scientific research purposes.
- 2- Using the Industrial Design for training and educational purposes.
- 3- Using the Industrial Design for other non-commercial purposes.

Provided that such exemptions do not contradict non reasonably with the ordinary use of the Industrial Design, or non-reasonably prejudice the legitimate rights of the owner of the Industrial Design.

Article 22

Any person with interest shall have the right to request the Court to issue a decision declaring the nullification of the registration of the Industrial Design in case the same was registered in breach of the provisions of this Law, and the Competent Administration shall cancel the relevant registration as soon as the same is provided with a definite judicial decision.

Article 23

The right of the owner of the Industrial Design in preventing third parties from importing, using, selling, or distributing the product distinguished by the Industrial Design shall be exhausted in case the owner of the Industrial Design markets this product in any other country or licensed a third party for such purpose.

Article 24

- A. The title over an Industrial Design may be assigned, and the same may be mortgaged in accordance with the stipulations and the procedures provided for under the Regulation; provided that the mentioned do not result in deception or confusion amongst the public.
- B. The contract of assigning the Industrial Design shall be written, and ratified by a competent authority.
- C. The contract for the assignment of title or the mortgage of the Industrial Design shall not have any effect towards third parties until the same is recorded in the Registry and published in the mean provided for by the Regulation.

Article 25

- A. The owner of the Industrial Design shall have the right to licence the use thereof, and has the right, at the same time, to use the same by himself unless the parties agree otherwise, the term of the license shall not exceed the duration of protection of the Industrial Design.
- B. The license contract shall be written and ratified by a competent authority.
- C. The licensee shall not have the right to assign the license to a third party or grant a sub-license, unless the licensee is given such right explicitly in the license agreement.

Article 26

The owner of the Industrial Design or the licensee shall submit to the Competent Administration an application to register the license to use the Industrial Design, such license may not have any effect towards third parties until the same is registered in the Registry and published in the mean provided for in the Regulation.

Article 27

- A. The owner of the Industrial Design or the licensee may submit an application to the Competent Administration to cancel the entry of the license from the Registry, provided that a proof that license contract is terminated or revoked shall be provided.
- B. The Competent Administration shall, before cancelling the registration of the Industrial Design, notify the other party with the application to cancel the entry of the license to use the Industrial Design, and the mentioned shall have the right to object against the application for cancellation. The Regulation shall set the procedures for cancelling of the entry of the license.
- C. C- The cancellation of the license shall be published in the mean provided for under the Regulation.

Chapter Four Interim Measures

Article 28

- A. The owner of an Industrial Design, in any time, and even before lodging any case, may request the issuance, by virtue of an application accompanied with an official certification indicating the registration of the Industrial Design, by the court to take the needed precautionary interims, and in particular the following:
- The execution of a report to identify and describe in detail, all the machinery and the equipment that are or were used in any of the infringements provided for under this Law, as well as the products or the goods, and other things for which the protected Industrial Design the subject matter of the infringement was used.
 - Applying seizure on all the things provided for in clause 1 of Paragraph A of this Article, provided that such seizure may not take place until the party applying for seizure submit a financial guarantee to the Court, in the amount preliminary estimated by the Court in order to compensate the person subject to seizure in case the need arises.
It shall be permitted, after effecting the seizure, to challenge the adequacy of the financial guarantee provided by the applicant for the seizure in accordance with the provisions of the applicable laws.
- B. The order issued by the Court to apply the precautionary seizure may also provide for the appointment of an expert or more to assist the officer applying the seizure in performing the precautionary procedures.

Article 29

The precautionary procedures provided for in Article 28 of this Law shall be considered as had never taken place in case no suit was lodged against the person subject to the seizure within eight days as of the date the seizure was applied.

Article 30

The person subject to seizure shall have the right to submit a suit claiming compensation to the Court within ninety days from the date on which the period provided for in Article (29) of this Law terminates without the same lodging the case described thereunder against the person subject to seizure or from the date the final decision was issued therein. In both cases, the financial; guarantee may not be returned to the party applying for seizure until after the issuance of a final judicial decision in the compensation claim submitted against the party applying for the seizure, or the termination of the specified period without the same lodging the case, unless the decision issued in the seizure suit also settles the issue of the financial guarantee.

Article 31

- A. The Owner of the registered Industrial Design may, subject to an application, request the Court to issue an order to stop the Customs Department from completing the procedures of releasing the imported or exported goods that embody an imitated or counterfeited Industrial Design, the Court may issue an order to prevent the release of such goods when the owner of the Industrial Design submits the following:
1. Sufficient evidences to prove that there is a clear infringement on his rights.
 2. A detailed description of the infringing goods.

3. A financial guarantee to be determined by the Court, which shall be sufficient to protect the right of the defendant and prevent the abuse of the rights.
- B. The Court shall notify the party applying for preventing the release as well as the defendant with the decision of preventing the release of the goods provided for under Paragraph (A) of this Article.
- C. The Customs Department may not release the prevented goods unless pursuant to a decision by the Court that issued the decision of prevention as described in Paragraph (A) of this Article, or after the lapse of a period of ten days as of the date on which the decision was issued, unless the Court notified the Customs Department that the person to whose favour the suspension decision was issued has filed a case, and the Court may expand the period for preventing the release of the goods for an additional ten days in case the situation so requires.
- D. The Court shall give the owner of the Industrial Design and the importer of the goods an opportunity to inspect the seized goods in the Customs Department in order to affirm or deny the claim.
- E. The Court may order for the payment of the appropriate compensation for the importer of the seized goods in order to make up for any damages that the same may suffer as a result of the wrongful seizure of the goods, and such compensation shall be paid from the amount of the financial guarantee deposited therewith, and the remaining amount shall be returned to the party who submitted the application to prevent the release of the goods, whereby the same shall be imposed to pay an additional amount in case the financial guarantee is not enough to cover the compensation amount.

Article 32

- A. The Court may apply any of the procedures provided for in Article (31) of this Law in a precautionary manner and without notifying the other party, in the cases where the delay is likely to cause a damage to the owner of the right or cause the evidences that prove the infringement to be lost, and the party against whom such measure is taken shall be notified as soon the same are applied, in which case the mentioned person shall have the right to request the court to hold a session to hear him, and in light of the mentioned, the court may order to retain, amend, or cancel the precautionary measure applied.
- B. The Court, when needed, may order the infringer to notify the right owner with the identity of the other persons who participate in the production and the distribution of the goods that embody the imitated Industrial Design as well as the distribution channels, unless the mentioned is not proportionate with the seriousness of the infringement, and the Competent Administration may, when needed, and upon the issuance of a decision in the subject matter of the case, notify the right owner with the names and the addresses of the consignor, the importer, the consignee, and the quantity of the products being the subject matter of the infringement.

Article 33

Small quantities of goods, of a non-commercial nature, being part of passengers' personal luggage or that are sent in small postal parcels shall be exempted from the application of the provisions of Articles 31 and 32 of this Law.

Chapter Five Penalties

Without prejudice to any greater punishment provided for in a different law, any person who commits any of the following acts shall be punished with imprisonment for a period of no more than two years and with a fine of no more than one million Riyal or with any of the two mentioned penalties:

- A. Imitates or counterfeits an Industrial Design that enjoys the protection in accordance with the provision of this Law.
- B. Uses, in bad faith, a counterfeited or imitated Industrial Design.
- C. Uses, in bad faith, an industrial Design that is owned by a third party.
- D. Knowingly sells, offers for sale, or possess for the purpose of sale products of a counterfeited or an imitated industrial Design.

In case any of the acts mentioned under this Article is repeated, the penalty shall be doubled, and the commercial corporation shall be closed for a period of no more than three months.

Article 35

Anyone who breaches any other provisions of the provisions of this Law shall be punished with a fine of no more than five hundred thousand riyals.

Article 36

The Court may rule that the infringer, depending on the seriousness of the act of infringement, be subjected to the imposition of one or more of the following ancillary punishments:

- A. The confiscation of the seized goods which embody the imitated or counterfeited Industrial Design, and dispose of the same through non-commercial channels.
- B. The confiscation of the tools and equipment that are used in counterfeiting or imitating the Industrial Design, and dispose of the same through non-commercial channels.
- C. Prohibit the re- exportation of the goods that embody the emitted or counterfeited industrial design.
- D. Publish the decision in one or more daily newspapers at the expense of the ruled against party.

Article 37

Any person who suffers any damage as a result of any of the infringement acts provided for in Articles 34 and 35 of this law shall have the right to lodge a case against the committer of such acts in order to claim compensation for damages.

Chapter Six

General and Closing Provisions

Article 38

Provisional protection shall be granted for the Industrial Designs that are exhibited in national or international exhibitions held in the Republic, the grant of such provisional protection may not be considered a continuation of the term of protection provided for in Article (20) of this Law, and the Regulation shall set the conditions and the procedures of granting such a protection.

Article 39

Any natural or juridical person, whether Yemini, or a non-Yemini who has an actual activity in the Republic or in any of the countries or the institutions that are parties to an international intellectual property convention with the Republic, or that treats the Republic reciprocally, shall have the right to apply for the registration of the Industrial Design in accordance with the provisions of this Law.

Article 40

Priority right for the registration of an Industrial Design shall be granted to the person who files the application with the Competent Administration within six months from the date of filing the application for registration with the competent authority in a state member in Paris Convention for the Protection of Industrial Property, provided that an official copy that proves the filing of the first application with the entity with which the application was filed in the other country be provided within ninety days as of the date of submitting the application to the Competent Administration, in which case the date of filing the application of the registration of the Industrial Design with the Competent Administration will be considered the date of submitting the application for registration in the mentioned country.

Article 41

A. The employees of the Competent Administration with whose names a decision is issued by the Attorney General, upon the recommendation of the Minister, shall enjoy the capacity of judicial police.

B. Judicial police officers provided for in Paragraph A of this Article, during official working hours, shall have the authority to enter to and inspect shops and stores that sell, distribute, or produce the imitated Industrial Designs, and shall record the facts of the infringement of the provisions of this Law, apply an administrative seizure and confiscation, and the means that are used in committing any of the infringing acts provided for under this Law, and the same shall have the right to recourse to the officers of public security when needed.

Article 42

The Court shall have the competence to look into all the claims and the disputes that result from the application of this Law.

Article 43

A decision by the Council of Ministers shall be issued to set the fees for the services provided for under this Law upon the recommendation of the Minister, provided that (20%) of such fees shall be designated for the financial support to update and modernize the requirements of work.

Article 44

The Regulation for the execution of this Law shall be issued by the decision of the President of the Council of Ministers after attaining the consent of the Council of ministers, upon the recommendation of the Minister, within a period of no more than six months from the date of issuance of this Law.

Article 45

This Law shall be published in the Official Gazette, and shall enter into force three months after the date of its issuance. Provisions relating to industrial designs and models provided under the Republican Decree Law No.19 of the Year 1994 with regard to the intellectual right, and any other provision that contradicts with the provisions of this Law as from the date thereof is hereby superseded with this Law.