

BILLET D'ÉTAT No. VI, 2006

22nd February, 2006

	<i>Page</i>
The Employment Protection (Guernsey) (Amendment) Law, 2005 (Commencement) Ordinance, 2006	1
The Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2006	2

**The Employment Protection (Guernsey) (Amendment) Law,
2005 (Commencement) Ordinance, 2006**

THE STATES, in exercise of the powers conferred on them by section 26 of the Employment Protection (Guernsey) (Amendment) Law, 2005, hereby order:-

Commencement of Law.

1. The Employment Protection (Guernsey) (Amendment) Law, 2005 shall come into force on the 1st March, 2006.

Citation.

2. This Ordinance may be cited as the Employment Protection (Guernsey) (Amendment) Law, 2005 (Commencement) Ordinance, 2006.

**The Unregistered Design Rights
(Semiconductor Topographies)
(Bailiwick of Guernsey) Ordinance, 2006**

ARRANGEMENT OF SECTIONS

1. Semiconductor products and semiconductor topographies.
2. Ordinance to be read with Unregistered Design Rights Ordinance.
3. Application of Unregistered Design Rights Ordinance.
4. Qualification.
5. Ownership of design right.
6. Duration of design right.
7. Confidential information.
8. Infringement.
9. Licences of right.
10. Interpretation.
11. Extent.
12. Citation.
13. Commencement.

Schedule: Additional classes of qualifying persons.

**The Unregistered Design Rights
(Semiconductor Topographies)
(Bailiwick of Guernsey) Ordinance, 2006**

THE STATES, in pursuance of their Resolution of the 27th November, 2002^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b and all other powers enabling them in that behalf, hereby order:-

Semiconductor products and semiconductor topographies.

1. In this Ordinance -

"**semiconductor product**" means an article the purpose, or one of the purposes, of which is the performance of an electronic function and which consists of two or more layers, at least one of which is composed of semiconducting material and in or upon one or more of which is fixed a pattern appertaining to that or another function, and

"**semiconductor topography**" means a design within the meaning of section 1(2) of the Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005 ("**the Unregistered Design Rights Ordinance**") which is a design of either of the following -

(a) the pattern fixed, or intended to be fixed, in or upon -

^a Article XIX of Billet d'État No. XXIII of 2002.

^b Order in Council No. XIV of 2004.

- (i) a layer of a semiconductor product, or
 - (ii) a layer of material in the course of and for the purpose of the manufacture of a semiconductor product, or
- (b) the arrangement of the patterns fixed, or intended to be fixed, in or upon the layers of a semiconductor product in relation to one another.

Ordinance to be read with Unregistered Design Rights Ordinance.

2. Except where the context requires otherwise, this Ordinance shall be construed as one with the Unregistered Design Rights Ordinance.

Application of Unregistered Design Rights Ordinance.

3. In its application to a design which is a semiconductor topography, the Unregistered Design Rights Ordinance has effect subject to sections 4 to 9 of this Ordinance.

Qualification.

4. (1) Section 2(2) of the Unregistered Design Rights Ordinance has effect subject to subsections (2) to (4) of this section.

(2) The Unregistered Design Rights Ordinance has effect as if for section 6 of that Ordinance there were substituted the following -

"Qualifying individuals and qualifying persons.

6. (1) In this Ordinance -

"qualifying individual" means a citizen or subject of, or an

individual habitually resident in, a qualifying country, and

"qualifying person" means -

- (a) a qualifying individual,
- (b) a body corporate or other body having legal personality which has in the Bailiwick or another qualifying country, or in Gibraltar, a place of business at which substantial business activity is carried on, or
- (c) a person who falls within one of the additional classes set out in Part I of the Schedule to the Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2006,

and **"qualifying person"** includes the Crown, the States of Guernsey, the States of Alderney, the Chief Pleas of Sark and the government of any other qualifying country.

(2) In this section **"qualifying country"** means -

- (a) the Bailiwick, the Bailiwick of Jersey or the Isle of Man,
- (b) an EEA State, or
- (c) to the extent that regulations under section 42

so provide, a country designated under that section as enjoying reciprocal protection.

(3) The reference in the definition of "**qualifying individual**" to a person's being a citizen or subject of a qualifying country shall be construed in relation to the Bailiwick, the United Kingdom, the Bailiwick of Jersey and the Isle of Man as a reference to his being a British citizen.

(4) In determining for the purpose of the definition of "**qualifying person**" whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country."

(3) Where -

- (a) a semiconductor topography is created in pursuance of a commission or in the course of employment, but
- (b) by virtue of section 4 of the Unregistered Design Rights Ordinance, as substituted by section 5 of this Ordinance (designer of topography created in pursuance of commission or in course of employment may be first owner of design right by virtue of agreement in writing), the designer of the topography is the first owner of design right in it,

then -

- (i) section 8 of that Ordinance (design created in

pursuance of commission or in course of employment qualifies for design right protection if person commissioning it, or employer, is qualified person) does not apply, and

- (ii) section 7(2) to (4) of that Ordinance (design not created in pursuance of commission or in course of employment qualifies for design right protection if designer is qualified person) does apply,

to the topography as if it had not been created in pursuance of a commission or in the course of employment.

(4) Section 9 of the Unregistered Design Rights Ordinance has effect subject to section 7 of this Ordinance and as if for subsection (1) of the said section 9 there were substituted the following -

"(1) A design which does not qualify for design right protection under section 7 or 8 (as modified by section 4(3) of the Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2006) or under the said section 4(3) qualifies for design right protection if the first marketing of products made to the design -

- (a) is by a qualifying person who is exclusively authorised to put such articles on the market in the Bailiwick and every EEA State, and
- (b) takes place in the Bailiwick or any EEA

State.",

and section 9(4)(b) of the Unregistered Design Rights Ordinance accordingly has effect as if the words "in the Bailiwick" were omitted.

Ownership of design right.

5. The Unregistered Design Rights Ordinance has effect as if for section 4 of that Ordinance there were substituted the following -

"Ownership of design right.

4. (1) The designer is the first owner of any design right in a design which is not created in pursuance of a commission or in the course of employment.

(2) Where a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it subject to any agreement in writing to the contrary.

(3) Where, in a case not falling within subsection (2), a design is created by an employee in the course of his employment, his employer is the first owner of any design right in the design subject to any agreement in writing to the contrary.

(4) If a design qualifies for design right protection by virtue of section 9 (as modified by section 4(4) of the Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2006), the above rules do not apply and, subject to section 7 of the said Ordinance, the person by whom the articles in question are marketed is the first owner of the design right."

Duration of design right.

6. (1) The Unregistered Design Rights Ordinance has effect as if for section 5 of that Ordinance there were substituted the following -

"Duration of design right.

5. The design right in a semiconductor topography expires -

- (a) 10 years from the end of the calendar year in which the topography or products made to the topography were first made available for sale or hire anywhere in the world by or with the licence of the design right owner, or
- (b) if neither the topography nor products made to the topography are so made available within a period of 15 years commencing with the earlier of the time when the topography was first recorded in a design document or the time when a product was first made to the topography, at the end of that period."

(2) Section 47(2) of the Unregistered Design Rights Ordinance has effect as if the words "or a semiconductor topography" were inserted after the words "in relation to a product".

(3) The substituted provision set out in subsection (1) of this section has effect subject to section 7 of this Ordinance.

Confidential information.

7. In determining, for the purposes of section 4(4), 5 or 9 of the

Unregistered Design Rights Ordinance (as modified by this Ordinance), whether there has been any marketing, or anything has been made available for sale or hire, no account shall be taken of any sale or hire, or any offer or exposure for sale or hire, which is subject to an obligation of confidence in respect of information about the semiconductor topography in question unless -

- (a) the article or semiconductor topography sold or hired or offered or exposed for sale or hire has been sold or hired on a previous occasion (whether or not subject to an obligation of confidence), or
- (b) the obligation is imposed at the behest of the Crown, the States of Guernsey, the States of Alderney, the Chief Pleas of Sark or the government of any country outside the United Kingdom, for the protection of security in connection with the production of arms, munitions or war material.

Infringement.

8. (1) Section 15 of the Unregistered Design Rights Ordinance has effect as if for subsection (1) of that section there were substituted the following -

"(1) Subject to subsection (1A), the owner of design right in a design has the exclusive right to reproduce the design -

- (a) by making products to that design, or
- (b) by making a design document recording the design for the purpose of enabling such products to be made.

(1A) Subsection (1) does not apply to -

- (a) the reproduction of a design privately for non-commercial aims, or
- (b) the reproduction of a design for the purpose of analysing or evaluating the design or analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in it."

(2) Section 16 of the Unregistered Design Rights Ordinance does not apply if the product in question has previously been sold or hired within -

- (a) the Bailiwick by or with the licence of the owner of design right in the semiconductor topography in question, or
- (b) the territory of any EEA State or the territory of Gibraltar by or with the consent of the person for the time being entitled to import it into or sell or hire it within that territory.

(3) Section 17(6) of the Unregistered Design Rights Ordinance does not apply.

(4) It is not an infringement of design right in a semiconductor topography to -

- (a) create another original semiconductor topography as a

result of an analysis or evaluation of the first topography or of the concepts, processes, systems or techniques embodied in it, or

(b) reproduce that other topography.

(5) Anything which would be an infringement of the design right in a semiconductor topography if done in relation to the topography as a whole is an infringement of the design right in the topography if done in relation to a substantial part of the topography.

Licences of right.

9. Section 28 of the Unregistered Design Rights Ordinance does not apply.

Interpretation.

10. (1) In this Ordinance, unless the context requires otherwise -

"**Bailiwick**" means the Bailiwick of Guernsey,

"**semiconductor product**" : see section 1,

"**semiconductor topography**" : see section 1,

"**Unregistered Design Rights Ordinance**" means the Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005,

and other words or expressions which are defined in the Intellectual Property

(Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^c or in the Unregistered Design Rights Ordinance have the same meanings as in that Law or (as the case may be) in that Ordinance.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of this Ordinance throughout the Bailiwick.

(3) Any reference in this Ordinance to an enactment or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Extent.

11. This Ordinance has effect throughout the Bailiwick.

Citation.

12. This Ordinance may be cited as the Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2006.

Commencement.

13. This Ordinance shall come into force on the 1st March, 2006.

^c Order in Council No. XIV of 2004.

^d Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE
ADDITIONAL CLASSES OF QUALIFYING PERSONS

Section 4(2)

PART I
DESCRIPTIONS OF ADDITIONAL CLASSES

1. British overseas territories citizens.
2. Citizens and subjects of any country specified in Part II below.
3. Habitual residents of any country specified in Part II below or any colony.
4. Firms and bodies corporate formed under the law of, or of any part of, the Bailiwick, the Bailiwick of Jersey, the Isle of Man, the United Kingdom, another EEA State, Gibraltar or any country specified in Part II below with a place of business within any country so specified at which substantial business activity is carried on.

PART II
SPECIFIED COUNTRIES: CITIZENS, SUBJECTS, HABITUAL RESIDENTS,
BODIES CORPORATE AND OTHER BODIES HAVING LEGAL
PERSONALITY

Australia.

Austria.

Finland.

French overseas territories (*French Polynesia; French Southern and Antarctic Territories; Mayotte; New Caledonia and dependencies; Saint-Pierre and Miquelon; Wallis and Futuna Islands*).

Iceland.

Japan.

Liechtenstein.

Norway.

Sweden.

Switzerland.

United States of America.