

## **All About The Designs Act, 2000**

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**Q1. What is meant by a design?**

Ans. A Design is a physical characteristic of an article which could be of any size, shape, pattern perceivable by the eye and it could be in a two dimensional or three dimensional form. A design could be applied to an article either manually or by an industrial, mechanical process. But a design does not include a trademark (a trademark serves as an important link between the product and the originator or maker of that product so that the customer can relate), also a design does not include the mode or principle of construction. The major focus is upon the visual appearance of the aesthetic feature of an article. These designs also bind the government as they bind any other ordinary person. So, its always beneficial to register a design.

**Q2. What is Designs Act, 2000?**

Ans. It is a legislation that protects the originality of an article's design and a registered design would help in acting against the instances of piracy. It is clear that the intent of the act is to protect designs. Further, the act amplifies the scope of Designs like the lapse of design, restoration of lapsed designs, duration till which a design remains in force. The very first act for the protection of designs came in the year 1911 but due to the increase in registration of designs and development of science a new law was required. The aim of the act is to provide more effective protection to the registered designs, compulsory registration of any document for transfer of right in the registered design and to promote design activity and also to put a block on the rampant piracy.

**Q3. What are Designs Rules, 2001?**

Ans. The Act empowers the Central Government to prescribe the rules while the Department of Industry Policy & Promotion under the Ministry of Commerce & Industry is the authority of the Central Government concerned with the enforcement of this act. The Design Rules are enacted under the authority of the Act in order to specify certain prescriptions regarding some dynamic issues like the amount of fee payable, who can apply for registration of a design (i.e. a natural person or a registered corporate entity), how much amount would be paid by the small entity. Therefore, there's a distinction between amount of fee and other procedural requirements which apply differently to corporate entities ranging from small entities defined under the Micro, Small & Medium Enterprises Development Act, 2006. So, the manner of actual conduct of day to day procedures like the application procedure, number of forms requires to be submitted, kinds of forms required to be submitted, application to claim as a small entity and amount of costs that can be claimed in the proceedings before the Controller have elaborately been provided under the Rules. The Designs Rules have been amended form time to time and the following are in force at the moment:

- Design Rules, 2001- These are the very basic rules which provide for very minute details about the practical aspects related to Designs namely- leaving and serving document, Address for Service, payment of Fees (available in First Schedule of the Rules, now amended by the Designs Rules 2014, kind of Forms set forth in the Second Schedule, Classification of Goods, Application for Registration, Inspections and Searches, Register of Designs, Registering designs
- Designs (Amendment) Rules, 2014- It amended the Designs Rules of 2001 and has replaced erstwhile provisions regarding the application made by the natural person, small entity and others.
- Designs (Amendment) Rules, 2008- It amended the rules (of 2001) as to service of notice, amount of costs that could be claimed and added class of products for which a design could be registered.

**Q4. What is registration of Designs and effect of registration? What is the purpose of register of Designs?**

Ans. Registration of Design is a medium through which protection of design could be ensured, since there's a register of designs in which the record of all the registered designs is preserved. This also keeps a check on same designs getting registered more than once. Further, once the design is registered the applicant gets a copyright as a proprietor of that design, a registered design gives a Monopoly Period of 10 years which could again be extended for years, also it gives a Unique Selling Point (USP) and a registered design is an asset & can be licensed. The register of designs is maintained and any kind of assignments and transmission in register could be made by making an application to the Controller.

**Q5. Who can file the application for registration of design?**

Ans. Any person, which would include a natural person as well as an artificial person such as a firm, a Partnership/ Corporate Body, any other recognized legal entity who is/ which is proprietor of a design can register a design.

**Q6. How to register a Design?**

Ans. For the purpose of registration of Design an application has to be made by the concerned natural person/ entity or a small entity registered under the Micro, Small and Medium Enterprises Development Act, 2006, on a form prescribed under the Designs rules with a requisite fee.

**Q7. What are the designs could not be registered under the Act?**

Ans. The act provides that in certain circumstances an application made for the registration of designs can be rejected because a design which is purported to be registered (hereinafter referred to as 'such design') is not a new design or original design; or the design has been disclosed to the public (example exhibition) in any part of India or any other country before an application for registration is made. Further a design which is scandalous or obscene or contains such matter or is similar to already existing designs cannot be registered.

**Q8. For how long a registered design remains in force?**

Ans. The act provides a period of 10 years during which rights over the design could be exercised by a particular originator and it is extendable by 5 years.

**Q9. What is the prescribed fee for registration?**

Ans. Whilst, the Act provides for registration of the Design, the Rules (latest Amended in 2014) i.e. Designs Rules prescribe the procedure for submitting the application along with the amount of fee chargeable.

Application For	From No.	Fee- Natural Person	Fee- Small entity	Fee- Other person/ entities
1. Registration in India or under A reciprocal arrangement	1	₹1000	₹2000	₹4000
2. Extension of Copyright	3	₹2000	₹4000	₹8000
3. Restoration of a lapsed design	4	₹1000	₹2000	₹4000
4. Alteration of names or address of service in the register of design	22	₹200	₹400	₹800

5. Claim status of small entity	24	No Fee	No Fee	No Fee
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**Q10. Who is to be approached to register a design?**

Ans. An application for registration has to be made to the Controller of Designs, under Section 5 of the Act with 4 copies of a representation of the design, such copies should be signed and dated either by the applicant or by his agent. The application shall also specify the class in which the design is to be registered (for example as a biscuit in a bakery item) while a separate application can also be made for registration in a separate class but every application has to be accompanied by a statement of an applicant regarding the novelty of the Design.

**Q11. Who is a Controller?**

Ans. A Controller General of Patents appointed under the Trade & Merchandise Marks Act, 1958 serves as a Controller General of Designs. It is an authority appointed by the Central Government to carry out the purposes of the Act. He decides whether to allow registration of a Design or to refuse it and all the matters related to practical aspects of designs. The Controller has power to hear any person who makes a claim before him but he must give the applicant an opportunity of being heard.

**Q12. How the proceedings before the Controller are conducted?**

Ans. In the proceedings before a Controller, a representation could be made by through a legal practitioner or through an agent whose name and address had been entered in the register of patent agents (this register specifies the names of those persons who can appear and practice in the matters before the Controller).

**Q13. What is meant by a lapsed design?**

Ans. When the design ceases to have an effect, the proprietor may apply for the restoration of the lapsed design. Also, there's no right of proprietor to institute a suit with respect to the instances of piracy for the period between lapse of design and restoration of a lapsed design.

**Q14. When can the registration of a design be cancelled?**

Ans. This is quite tricky area, whereby any person may present an objection for cancellation of the registration of design. This application lies to the Controller General of Designs and may be made at any time after the design has been registered. However, any of the grounds for cancellation such as the design having been previously registered, or that it had been published in India or in any other country before the registration; or it is not new or original, must be established.

**Q15. Can the Designs be exhibited?**

Ans. Yes, the designs can be exhibited but a notice for using the design in an exhibition should be given to the Controller.

**Q16. What could be the Legal remedies under the Act?**

Ans. When a the copyright of a design exists and there is any imitation of a registered design for the purpose of sale; or import of a design without the consent of the proprietor; or there has been a wilful imitation and publication of the same design for the purpose of fraud, in such a case the person who is guilty shall be liable to pay a fine of ₹ 25000 or a suit for injunction of damages may also be brought by the proprietor under Specific Relief Act, 1963.

**Q17. Can an appeal be filed against the decision of the Controller?**

Ans. An appeal from the order of refusal of the Controller General to register a Design lies to the High Court of the concerned state within 3 months of the date of the order of the Controller.

**Q18. What are international aspects of this Act?**

Ans. The act provides a reciprocal arrangement between countries such as the United Kingdom (the countries could be more) with which India has entered into a convention. Through this, provisions have been made which give priority to the applicant belonging to the countries of the convention over the other applicants.