Circuit Layouts Amendment Regulations 2003 (No. 1) 2003 No. 336

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 336

Issued by the authority of the Attorney-General

Circuit Layouts Act 1989

Circuit Layouts Amendment Regulations 2003 (No. 1)

A circuit layout is the plan showing the three-dimensional location of the electronic components of an integrated circuit/computer chip.

The *Circuit Layouts Act 1989* (the Act) grants and determines the scope of circuit layout rights in Australia. The Act protects original circuit layouts made by an Australian citizen or an Australian corporation, or first commercially exploited in Australia. In addition any layout originating from a country declared in the *Circuit Layout Regulations* (the Principal Regulations) will also be an eligible layout given protection by the Act.

Section 48 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed for carrying out or giving effect to the Act.

`Eligible foreign country' is defined in section 5 of the Act as a foreign country declared by the Regulations to be an eligible foreign country for the purposes of the Act.

Regulation 3 of the Principal Regulations provides that a foreign country specified in the Schedule to the Principal Regulations is an eligible foreign country for the purposes of the Act.

The purpose of the Regulations is to update the list of eligible foreign countries to which Australia extends protection of circuit layouts.

Section 42 of the Act provides that a foreign country shall not be declared to be an eligible foreign country for the purposes of the Act unless:

(a)   the country is a party to a convention relating to the protection of circuit layouts and:

i.   Australia is also a party to the convention; or

ii.   Australia, although not a party to the convention, has taken all necessary steps to become such a party; or

(b)   the Governor-General is satisfied that, although the foreign country is not a party to such a convention, provision is or will be made under the law of that country under which adequate protection is or will be given to circuit layouts made by persons referred to in paragraph (a) or (b) of the definition of eligible person in section 5 of the Act and to circuit layouts first commercially exploited in Australia.

Protection of circuit layouts is an international requirement under the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Member countries of the World Trade Organization (the WTO) are required by the TRIPS Agreement, which forms part of the WTO Agreement, to protect circuit layout-designs in accordance with the provisions of an earlier treaty, the Washington Treaty, which was concluded in 1989 and in accordance with

Articles 35-38 of the TRIPS Agreement. The TRIPS Agreement came into force in Australia on 1 January 1995.

In accordance with section 42 of the Act, any WTO member may be declared to be an eligible foreign country.

The Regulations amend the Schedule to the Principal Regulations to bring up to date the list of countries that are eligible foreign countries, by virtue of their membership of the World Trade Organization.

The countries listed as eligible foreign countries for the purposes of the Act by the proposed Regulations are Albania, Armenia, China, Chinese Taipei, Croatia, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Moldova and Oman.

The Regulations also make a minor technical amendment to modify the definition of `the Act' in accordance with modern drafting practice.

Details of the Regulations are set out in the <u>Attachment</u>.

The Regulations commence on gazettal.

ATTACHMENT

Details of the proposed *Circuit Layouts Amendment Regulations 2003 (No. 1)*

Regulation 1 describes how the regulations are to be cited.

Regulation 2 provides that the regulations commence on gazettal.

Regulation 3 provides that the *Circuit Layouts Regulations 1990* are amended in accordance with Schedule 1.

Schedule 1, item 1 substitutes a new reference to the `Act' to accord with modern drafting practice.

Schedule 1, item 2 inserts `Albania' before `Angola' in the Schedule. This amendment has the effect of placing Albania into its appropriate alphabetical position in the list of eligible foreign countries in the Schedule.

Schedule 1, item 3 inserts reference to the following foreign countries into the Schedule: Armenia, China, Chinese Taipei, Croatia, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Jordan, Kyrgyz Republic, Latvia, Lithuania, Moldova and Oman. Each item in the table inserts the country or countries into the list of foreign countries, that are declared to be eligible foreign countries after the country listed in the column titled `after'. The effect of item 3 is to place each new country into its appropriate alphabetical position in the Schedule.