

INDIA UPDATE: The Designs (Amendment) Rules 2021

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In furtherance to the Draft rules published in 2019, the Government of India, on January 25, 2021, issued a gazette notification to formalize and introduce the Designs (Amendment) Rules, 2021.

The new amendment rules have come into force with effect from January 25, 2021.

Key amendments to the rules are as follows:

1. LOCARNO CLASSIFICATION FOR CLASSIFYING ARTICLES

The new rules confirm that for the purposes of the registration of designs, the articles shall be classified as per current edition of “International Classification for Industrial Designs (Locarno Classification)” published by World Intellectual Property Organization (WIPO), provided designs for which protection is sought fulfil the definition of “article” as well as “design” as stipulated under Section 2(a) and 2(d) of the Indian Design Act respectively.

2. DEFINITION OF “STARTUP” INTRODUCED IN THE NEW RULES

The new rules define a ‘*startup*’ under rule 2 (eb) as-

- a. an **entity in India** recognised as a startup by the competent authority under Startup India initiative; and
- b. in case of a **foreign entity**, an entity fulfilling the criteria for turnover and period of incorporation or registration as per Startup India Initiative and submitting declaration to that effect.

The definition of start-up as per Start-up India initiative can be accessed [here](#).

3. FEE

The fee for Natural person/Startup and Small Entity has been combined into a single category and a concession of 75% in the official fee is extended in comparison to the second category of Other than Natural person(s)/Startup(s)/Small entit(y)/(ies).

4. EXISTING PROVISIONS AND FORMS

- i. The existing sub-rule (2e) of Rule 5, of the Indian Design Rules (2001), has accordingly been amended to read as-

- In case an application processed by a natural person or startup or small entity is transferred to a person other than a natural person, startup, or small entity, the difference in the scale of fees shall be paid by the new applicant with the request for transfer.

Further, an explanation has been inserted to this effect-

- During the course of the design application if a startup or small entity ceases to remain as a startup or small entity due to the lapse of the period during which it is recognized by the competent authority, or its turnover subsequently crosses the financial threshold limit as notified by the competent authority,

No difference in the scale of fees shall be payable.

- ii. Formal changes in the required forms of Form 1 [related to application for registration of design] and Form 24 [related to claiming Small Entity and Start-up status] has been included.

5. CONSEQUENCES OF SUBMITTING INCORRECT OR FALSE INFORMATION

- i. The new rules indicate that availing benefit of reduction in fee on the basis of incorrect information/misrepresentation of facts with regard to status as a small entity or startup would mean that the entire fee did not accompany the document, as mandated by rule 5(2)(b). In such a case, in accordance with section 24(2), the filing of the document shall be of no effect unless the fee has been fully paid.
- ii. A design entered into the Register of designs by making any false suggestion or false representation as to the status as small entity or startup may attract the provisions of section 31 of the Designs Act, 2000 which empower the Controller to expunge or vary any entry as he thinks fit and rectify the register accordingly.

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