

立法會
Legislative Council

LC Paper No. LS72/14-15

**Paper for the House Committee Meeting
on 19 June 2015**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 June 2015**

Tabling in LegCo : Council meeting of 17 June 2015

Amendment to be made by : The second Council meeting in the next session (or the first Council meeting after 21 days from that second Council meeting if extended by resolution)

Patents Ordinance (Amendment of Schedule 1) Order 2015 (L.N. 121)

Registered Designs Ordinance (Amendment of Schedule) Regulation 2015 (L.N. 122)

Trade Marks Ordinance (Amendment of Schedule 1) Regulation 2015 (L.N. 123)

Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) (Amendment) Regulation 2015 (L.N. 124)

L.N. 121 to L.N. 124 amend the respective Schedules to the Patents Ordinance (Cap. 514), the Registered Designs Ordinance (Cap. 522), the Trade Marks Ordinance (Cap. 559) and the Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation (Cap. 445B) to update the list of contracting parties to the Convention for the Protection of Industrial Property¹ (Paris Convention) and the membership list of the World Trade Organization² (WTO) as set out in these Schedules.

¹ Signed at Paris on 20 March 1883, as revised or amended from time to time.

² Established in Geneva on 1 January 1995 under the World Trade Organization Agreement.

2. L.N. 121 to L.N. 124 seek to -
- (a) add "The State of Kuwait" to the list of countries that have acceded to the Paris Convention (L.N. 121 to L.N. 123);
 - (b) add "The Republic of Yemen" to the list of WTO member countries, territories and areas (L.N. 123 and L.N. 124);
 - (c) replace the reference to "The Republic of Cape Verde" by that of "The Republic of Cabo Verde" (L.N. 121 to L.N. 124) on the list of WTO members; and
 - (d) make a textual amendment to a Chinese heading in the Schedule to achieve consistency with the English heading (L.N. 122)³.

3. In compliance with the Paris Convention, as extended by the Central People's Government (CPG) to the Hong Kong Special Administrative Region (HKSAR), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) under the WTO, of which HKSAR is a member in its own right, HKSAR has enacted specific provisions in Cap. 514, Cap. 522 and Cap. 559⁴ to the effect that a person who has filed an application in or for a Paris Convention country or WTO member country, territory or area on the corresponding list in the respective Schedules to these ordinances will enjoy a right of priority in respect of the same invention, design or trade mark when filing the application in HKSAR during a prescribed period. To comply with the TRIPS Agreement, provisions have been made in the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445)⁵ to the effect that the same level of intellectual property protection for layout-designs (topographies) of integrated circuits is to be granted to nationals of other WTO members, as to HKSAR residents. Cap. 445B sets out, in its Schedule, a list of WTO members as qualifying countries, territories or areas for such protection.

4. According to paragraph 6 of the LegCo Brief, since the last annual revision in 2014 (L.N. 68 to L.N. 71 of 2014), one more country (i.e. The State of Kuwait) has become a contracting party to the Paris Convention and another

³ In the Schedule to Cap. 522, "或" is replaced by "及" in the Chinese heading for the list of WTO members (not including countries which have acceded to the Paris Convention) to correspond with the word "and" in the English heading.

⁴ Section 110 of Cap. 514, section 15 of Cap. 522 and section 41 of Cap. 559.

⁵ Section 4 of Cap. 445 protects the rights of a qualified owner. Section 2(1) defines "qualified owner" to mean, among others, a qualified person. Section 2(1) defines "qualified person" to mean, among others, a natural person which has a real and effective industrial or commercial establishment for the creation of layout-designs (topographies) or for the production of integrated circuits in Hong Kong or in a qualifying country, territory or area. Section 24(2) provides that the Chief Executive may by a regulation designate a country, territory or area as a qualifying country, territory or area.

(i.e. The Republic of Yemen) has acceded to the WTO Agreement. In addition, the official English name of one WTO member (i.e. The Republic of Cape Verde) has to be updated with reference to the United Nations Multilingual Terminology Database with a view to achieving consistency in terminology. According to paragraph 8 of the LegCo Brief, as the application of the Paris Convention was extended to HKSAR by CPG, the Administration has sought the prior agreement of CPG via the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in HKSAR before the amendments relating to the list of Paris Convention countries in the relevant Schedules to Cap. 514, Cap. 522 and Cap. 559 are made.

5. Members may refer to the LegCo Brief (File Ref.: CITB 80/18/2) issued by the Commerce and Economic Development Bureau on 9 June 2015 for other background information.

6. L.N. 121 to L.N. 124 come into operation on 27 November 2015.

7. The Clerk to the Panel on Commerce and Industry has advised that the information paper provided by the Administration on the four pieces of subsidiary legislation has been circulated to members of the Panel on Commerce and Industry vide LC Paper No. CB(1)509/14-15 issued on 4 February 2015. Panel members noted at the meeting held on 10 February 2015 that the proposed amendments to the relevant schedules reflect the updated list of contracting parties to the Paris Convention and membership position of the WTO.

8. The amendments are technical in nature. No difficulties have been identified in the legal and drafting aspects of the above items of subsidiary legislation.

Prepared by

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