

Bills Committee on Trade Marks Bill

**List of issues (including both policy and drafting) raised
in submissions to the Bills Committee (Revised as at 22 February 2000)**

Clause No.	Name of organization	Issues	Administration's Response
2 & 91(a)	LSD	"The Chief Executive in Council may by regulation designate any country as a country which has acceded to the Paris Convention or the World Trade Organization Agreement". What if a country has withdrawn from the Convention? How about using the wordings "The Chief Executive in Council may delete or amend the Schedule the name of the Paris Convention countries" or wordings as in the Patents Ordinance to reflect the Administration's intention accurately?	Under Cap. 1, Chief Executive in Council is empowered to amend regulation. Not necessary to expressly provide in the Bill.
3(1) and 10(1)(b) (see extracts)	Deacons	<p>In clause 3(1), replace the words "capable of distinguishing" with "for the purpose of distinguishing" or even "distinguishing".</p> <p><u>Second response</u></p> <p>Extend the definition of "trade mark" to signs which are either "capable of distinguishing or which are capable of acquiring distinctiveness through use".</p>	<ul style="list-style-type: none"> ● Wordings adopted from TRIPS Agreement, the UK Trade Marks Act 1994 and there are now cases on interpretation of "capable of distinguishing" and "devoid of distinctive character". ● Clauses 3(1) and 10(1)(a) together mean that the Registrar must be convinced that the mark indicates origin of goods. Further, it has to be distinctive before it could be registered.

3(2)	<p>LS</p> <p>INTA</p> <p>LSD</p>	<p>Add "a colour or" before "a combination of colours".</p> <p>Should add "sound, smell and taste marks" to make matters clearer.</p> <p>Add "sound, smell and taste" mark to reflect the Administration's intention expressly. It is not clear whether the Chinese term "標誌" can refer to "smell" and "taste".</p>	<p>Will propose a CSA to add "a colour".</p> <p>A "sign" is wide enough to include sound, smell and taste marks. Nonetheless, will propose a CSA to refer to "sound" and "smell" but not "taste".</p> <p>Will propose a CSA to refer to "sound" and "smell".</p>
4(1)	<p>INTA</p> <p>LS</p>	<p>Should include a definition of "well-known" mark which is provided in Resolution of WIPO.</p> <p>Delete "in Hong Kong".</p>	<p>Will propose a CSA if there is international consensus on "well-known" mark.</p> <p>Do not agree. Hong Kong should maintain a separate intellectual property regime from other parts of China. "Well-known" should be judged to "well-known" in Hong Kong.</p>
4(1)(c)	LSD	<p>Use "有效的工業機構" instead of "實際的工業機構". The term "有效" is used in the Chinese version of Paris Convention.</p>	<p>"實際" reflects more accurately the Administration's intention.</p>

7 & 17 (see extracts)	Deacons LS	In clause 7, review "the use is likely to cause confusion" and "the use is likely to be associated with an earlier trade mark". <u>Second response</u> Imprecise wording has already required U.K. judicial consideration of "association". Definition of "association" needs to be improved.	No need to amend clause 7. Clause 17(2) requires the element of "confusion", and "likelihood of association" (clause 7(2)) is included as one of circumstances which are likely to lead to confusion. No need to amend clause 7. The difference in wording is to make it clear that "likelihood of association" is not an alternative to "likelihood of confusion".
9(3)	LSD	Add a comma before the words "or organ". This clause is under review. In the Arbitration Bill and the Electronic Transactions Bill, the Administration has withdrawn this application formula and replaces with wordings "This Ordinance binds the Government".	The word "organ" covers organs of both public and private nature. The offices set up by the Central People's Government in HKSAR would be covered.
10 & 11	INTA & Deacons	Should have express presumption of registrability.	Not necessary.
10(1)	ITMP	Add "Subject to subsections 2, 4, 6, 7, 8 and 9 below a sign qualifying as a trade mark under section 3(1) shall be registrable".	Not acceptable.
10(1)(b) (see extracts on clauses 3 and 10(1)(b))	LS, ITMP and Deacons	The term "devoid of any distinctive character" is unclear and should be replaced with "trade marks which are not capable of distinguishing the goods or services of one undertaking from those of another undertaking", or the whole clause 10(1)(b) should be deleted.	<ul style="list-style-type: none">● Not accepted.● Interpretation by UK courts has been practical and just.● IPD will set out relevant considerations in its Work Manual on what marks will be regarded as distinctive.

10(1)(d)	LSD	Add "or business" after "trade".	No need to amend.
10(2)	LS	Delete the wordings after "it" and substitute "in fact distinguishes or is capable of distinguishing the goods or services of the applicant as a result of the use or intended use made of it or any other circumstances".	Do not agree.
10(3)	LS	"shape" should not be excluded from registration.	<ul style="list-style-type: none"> ● Exclusion of "shape" has been in our law (s.12(3) of TMO) since 1996. ● No amendment is required.
10(4)(a)	LSD	Add "public order" after "morality". Article 6 ^{quinquies} B(3) of the Paris Convention states that registration of a trade mark can be refused if it is contrary to public order.	Concept of "public order" should not be introduced in the Bill.
11(8)	CC ITMP LSD Barry Yen	<p>Guidelines should be made as to Registrar's exercise of power.</p> <p>Change to "Nothing in this section prevents the registration of a trade mark where the owner of the earlier trade mark or other earlier right consents to the registration."</p> <p>Different from the U.K. Act. Any guidelines made available to the public on how the Registrar is going to exercise his power of refusal?</p> <p>Letters of consent should be conclusive.</p>	<p>Will be in Trade Marks Work Manual.</p> <p>In some cases it may not be possible to accept an application (for an identical mark and goods) even with the consent of the owner of an earlier mark owner.</p> <p>Guidelines will be set out in the Work Manual.</p>
12(1)(b)	LSD	Too wide a discretion for Registrar to register a trade mark. Should add "just and equitable" before the word "circumstances".	Would propose CSA and add the word "special" before "circumstances". "Special" means "a fact peculiar to the applicant in relation to the subject matter of the application".

16(2)	ITMP	Potential loophole if infringing trade mark was applied to goods before trade mark was registered.	No loophole. Before a mark is registered, the offending goods are outside the scope of clause 16(2) and the mark owner's remedy lies in passing off.
16(2)(a)	LS	Add "or would constitute an infringement if applied to goods in Hong Kong" at the end of clause.	<ul style="list-style-type: none"> ● Not agreed. ● Clause 13(1) establishes a territorial test so that a trade mark owner's rights are infringed only by the "use of the trade mark in Hong Kong".
16(3)(b)	LS	Add "if applied to goods in Hong Kong" at the end of clause.	See clause 16(2)(a).
17(2)(b)	ITMP, Deacons and LS	Clause should be deleted or revised, i.e. no confusion is necessary.	Clause deals with element of confusion and is defined in clause 7.
17(4)	Deacons	<p>Dichotomy. Owner of a famous trade mark may be able to protect the mark for use on unrelated goods but may not be able to protect the mark for use on identical goods if he cannot show public confusion.</p> <p><u>Second response</u></p> <p>Absurdity noted by the House of Lords during the Committee Stage of the UK Bill.</p>	<p>Not understood.</p> <p>Consistent with Article 16(3) of the TRIPS Agreement.</p>
17(5)(a)	LS	Add "whether or not such packaging is to be applied to goods in Hong Kong or elsewhere" at the end of clause.	See clause 16(2)(a).
17(5)(g) and 17(6)	LS	Add "including electronic documents, whether or not in human readable form".	Wordings wide and clear and embraces electronic use.

17(6)(a)	LS	Add "whether or not such packaging or labeling is to be applied to goods in Hong Kong or elsewhere" at the end of clause.	See clause 16(2)(a).
17(7) (see extracts)	<p>LS</p> <p>Deacons and ITMP</p> <p>Deacons</p> <p>LSD</p>	<p>Add "for the purpose of identifying in an advertising circular or other advertisement issued to the public goods or services as those of the owner of the registered trade mark or a licensee".</p> <ul style="list-style-type: none"> ● Drafting was a mess. ● "if the use is without due course and takes unfair advantage of" should be reviewed. <p><u>Second response</u></p> <p>UK judges have struggled to interpret this section. Hong Kong does not have fair trading legislation or effective policing of advertising standards. Hong Kong is not bound by the EC Directive and lacks the underlying legislation of the UK which governs advertising generally. Hong Kong should have a clause drafted both appropriate for Hong Kong and more importantly, self-contained.</p> <p>Should have a comprehensive law on advertisement first. Will there be a surge of litigation if clause enacted?</p>	<p>Unnecessarily restrictive. What if the comparative advertising takes place on the container surrounding a particular product?</p> <ul style="list-style-type: none"> ● No need to change as we can rely on English decisions for guidance. ● Words followed in Singapore Trade Marks Act and the Irish Trade Marks Act. <p>Section 10(6) of the UK Act has been applied in a number of cases without difficulty.</p> <p>Clause 17(7) is based on section 10(6) of the UK Act and should be construed as in a UK decision to be independent of codes of practices on advertisement, statutory or otherwise.</p>

19 (see extracts)	LS INTA	<p>Changed to "A registered trade mark is not infringed by the use of a trade mark in relation to any goods in respect of which the owner or any licensee of the trade mark has at any time expressly or impliedly consented to the use of that trademark in Hong Kong whether by putting those goods on the market in Hong Kong or elsewhere".</p> <p>National exhaustion of trade mark rights is preferable to parallel importation (<i>sic</i>) or add "This section does not apply where the goods sought to be imported are materially different from those on the Hong Kong market".</p>	<p>Drafting is not defective.</p> <p>International exhaustion is in line with Hong Kong's free trade policy.</p>
20 - 24, 34 - 35, and 92	INTA	<p>Civil and criminal remedies under Part III of TRIPS Agreement should be specifically included into this Bill.</p>	<p>Hong Kong is fully compliant with TRIPS. Criminal sanction is in Trade Descriptions Ordinance. Injunction and discovery process for civil litigation are provided. Not necessary to specify interim measures in the Bill.</p>
23	LSD	<p>For action such as an order for disposal, should jurisdiction go to the District Court as in the Copyright Ordinance?</p>	<p>Judiciary has made no comment on this point.</p>

24	<p>LSD</p> <p>ITMP</p> <p>LS</p>	<p>To add a clause exempting liability of lawyers similar to section 187(4) of the Copyright Ordinance -</p> <p>"(4) Nothing in this section makes a barrister or solicitor liable to an action under this section in respect of an act done by him in his professional capacity on behalf of his client".</p> <p>Add "24(7) This section does not make a barrister, solicitor or member of the Hong Kong Institute of Trade Mark Practitioners liable to an action for an act done in a professional capacity on behalf of a client".</p> <p>Provision unnecessary or exempt practitioners.</p>	<p>No intention to exempt a legal advisor.</p> <p>No intention to exempt a legal advisor. Not found in UK Trade Marks Act, Singapore Trade Marks Act or Irish Trade Marks Act. Why exempt a member of ITMP, but not all trade mark agents practising in Hong Kong? Adequate safeguards in clause 24(5) and (6).</p> <p>Do not agree.</p>
25(5)	Deacons	<p>Add "subject to any other method which may be specified by the Articles of Association or other rules of the corporation governing execution of documents on behalf of the corporation" at the end of clause.</p> <p><u>Second response</u></p> <p>The word "signed" in Clause 25(4) should be amended to "executed" in order to remove the internal consistency (<i>sic</i>) within Clause 25(4) and 25(5).</p>	<ul style="list-style-type: none"> ● Clause 25(4) and (5) should be read together. Clause 25(5) indicates one way of executing an assignment. It does not purport to stipulate the various ways in which an assignment can be executed by a company. ● No amendment is required.

27(3)	Deacons	The term "in ignorance" is unusual.	<ul style="list-style-type: none"> ● Section 25(3)(a) of the U.K. Trade Marks Act, section 29(3)(a) of the Irish Trade Marks Act and section 39(3)(a) of the Singapore Trade Marks Act all use the word "in ignorance". ● No amendment is required.
27(4)(a)	Deacons	<p>Does not address possible contractual rights of licensees to claim damages or account of profits before the relevant transaction date.</p> <p><u>Second response</u></p> <p>Add "applied to be" before the last word "registered".</p> <p>LS "date of transaction" ambiguous. Add "effective" before the "date of transaction" or "upon the date of the document recording the transaction".</p> <p>ITMP "date of transaction" should be defined. Does it mean the date of signing of the assignment or its effective date?</p>	<ul style="list-style-type: none"> ● The purpose of clause 27(4) is to encourage the registration of a registrable transaction. The sanction against entitlement to damages contained in this clause only applies to a period <u>after</u> the date of transaction. ● No amendment is required. <p>Do not agree. "Date of transaction" is amply clear. No amendment is necessary.</p> <p>To interpret the term "date of transaction" in clause 27(4), clause 27(2) is relevant.</p>
28(3)	LSD	Clause 28(3) is added and not found in section 26 of the UK Act.	Clause 28(3) is added for greater clarity; to remove doubt whether or not a trustee can register a trade mark or registrable transaction.
30 - 35	INTA	Should include a specific requirement for licensors to maintain control over use of marks by licensees.	It is in the trade mark owner's interest to maintain control over use. No amendment is necessary.

34(6)	Deacons	The term "takes part" is unclear.	The term can be found in Stroud's Judicial Dictionary. It is broad enough to include cases where a party has done something official e.g. filing into court an address for service etc.
36(2)(e) and (4)	LSD	New (not TMO nor UK Trade Marks Act 1994).	<ul style="list-style-type: none"> ● Clause 36(2)(e) is to cater for flexibility. ● Clause 36(4) is necessary as HKSAR now has 2 official languages.
39	LSD	Any arrangement between the Mainland of China and Hong Kong on the according of registration of trade mark priority?	This issue is beyond the ambit of this Bill.
40(3) and 42 (see extracts)	ITMP INTA and LS Lloyd Wise	<p>Extension of time limit not stipulated in the Bill is totally unacceptable.</p> <p>Extension of time should be outlined in the Bill/Rules.</p> <p>This Bill/The Rules should provide for a fair and equitable arrangement for extension of time.</p>	<p>Will be in Trade Marks Rules.</p> <p>CSA will be proposed to Clause 40(3) such that the time limit will be prescribed in the Trade Marks Rules. But we do not agree that there should be more extensions of time for filing notices of opposition.</p>
40(5) & (6)	LSD	New.	Clause 40(5) & (6) have been added to empower the Registrar to withdraw acceptance if decision was made in error. It reflects section 17(1) of TMO.
43(2)	ITMP	Requirement for publication of withdrawal of application should not result in the applicant paying a publication fee.	No time limits are specified in the Bill as these will be set out in the draft Trade Mark Rules.

50(8)	Deacons LSD ITMP	<p>Poorly drafted and difficult to understand.</p> <p><u>Second response</u></p> <p>Wordings nebulous and should not be carried over into the new Ordinance. A plain English approach would be more satisfactory.</p> <p>New.</p> <p>Clause tortuous.</p>	<ul style="list-style-type: none"> • Wordings from section 39(1A) of TMO. • No amendment is required. <p>Clause 50(8) makes it clear that services provided outside HK can constitute use of trade mark in HK for revocation purposes. (cf. section 39 (1A) of TMO).</p> <p>To put beyond doubt that one can use a mark even though the services or goods represented by the mark are to be provided outside Hong Kong.</p>
51(7)	LSD	New.	There can be no declaration of invalidity if a mark has been registered on the basis of honest concurrent use. There may be a gap in the UK law.

69(3)	LSD	"Any order made by the Registrar under this section shall, with leave of the court, be enforceable in like manner as an order of the court." What power, in like manner, does the Registrar have? Can he commit a party to committal?	The Registrar has neither the power of committal nor the power of enforcing any order made under clause 69(1). An application will have to be made by the Registrar to the Court of First Instance to enforce against any failure to comply with his directions.
71	LSD	New.	This provides flexibility in the event of, for example, outsourcing of publications regarding the applications.
72	LSD	<ul style="list-style-type: none"> ● New. ● These notices are not subsidiary legislation and they are not subject to vetting of the Legislative Council. 	Noted.
73	LSD	New.	Noted.
74	LSD	<ul style="list-style-type: none"> ● New. ● Should be reviewed. ● cf. section 23A of Land Registration Ordinance (Cap. 128), section 303B of Companies Ordinance (Cap. 32) and section 75 of Occupational Retirement Schemes Ordinance (Cap. 426) (see pages annexed) 	<ul style="list-style-type: none"> ● The Registrar should be immune from liability as regards official acts. ● Registrar is bound by the principles of natural justice to act fairly, reasonably and judicially.
75	LSD	New.	To accommodate bilingual official languages.
76(2)	LSD	New.	Puts the position beyond doubt.

<p>77 (see extracts)</p>	<p>ITMP and Deacons</p> <p>Deacons</p> <p>LSD</p>	<p>Should be deleted. The Registrar should be bound by the same rules of evidence as the court.</p> <p><u>Second response</u></p> <ul style="list-style-type: none"> ● Fundamental contradiction that an appeal can be taken to the Court on a decision which may be based on evidence which the court itself would consider to be inadmissible. ● "Except as provided in this Ordinance" does not qualify the clause in any meaningful way. <p><u>Third response</u></p> <ul style="list-style-type: none"> ● If the Registry applied a lower standard than the courts regarding admissibility of evidence, this will encourage forum shopping and encourage use of Registry proceedings as a "dry run" to test and perfect their case. ● <i>Dualit Limited v Rowlett Catering Appliances Limited</i> referred. <p>New.</p>	<p>Important to retain this provision.</p> <p>The tribunals of law (as opposed to courts) should have a more informal approach to evidence is well illustrated by various tribunals such as Small Claims Tribunal, Labour Tribunal.</p> <p>This Clause is designed to nullify the effect of St. Trudo's case (1995) FSR 345.</p>
<p>81</p>	<p>LSD</p>	<ul style="list-style-type: none"> ● New. ● Add "or the licensee" after "the owner". 	<p>The owner is the best person to prove whether a mark has been used. No need to add "or the licensee".</p>
<p>84</p>	<p>LSD</p>	<p>New.</p>	<p>Section 79(2) of TMO is covered by clause 84.</p>

85(1)	LSD	<ul style="list-style-type: none"> ● Why is that "the Registrar shall not be ordered to pay the costs of any other of the parties"? ● Any ordinance other than those intellectual Property Ordinance has this provision? 	<ul style="list-style-type: none"> ● The Judiciary has not raised any queries. This provision is intended to provide for a general indemnity for public officers against judgments made in exercising statutory duties. ● Mirrored in section 62(1) of the Registered Designs Ordinance.
85(2) & (3)	LSD	New.	<ul style="list-style-type: none"> ● Clause 85(2) and 85(3) are added for clarity. ● Clause 85(3) defines "any other of the parties" referred to in section 85(1).
86(2) & (3)	LSD	New.	<ul style="list-style-type: none"> ● Clause 86(2) of the Bill is not new. It is similar to section 82 of the TMO. (see below) ● Clause 86(3) expands on section 15(10) of the TMO as it applies to any proceedings before the Registrar.

Trade Marks Ordinance (Cap. 43)

Section 82 Costs of proceedings before the Registrar

Save as otherwise provided in this Ordinance, in all proceedings before the Registrar, he shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may, by leave of the Court or a judge thereof, be enforced in the same manner as a judgment or order of the Court to the same effect.

<p>87</p>	<p>ITMP and Lloyd Wise</p> <p>LS</p>	<p>Provision should be made for keeping in the future a register of trade mark attorneys.</p> <p>Add:</p> <p>(1) Rules made under section 90 may provide for the keeping of a register of persons who act as agents for others for the purpose of applying for or obtaining the registration of trade marks.</p> <p>(2) The rules may contain such provisions as the Registrar thinks fit regulating the registration of such persons and the designation of such persons so registered.</p> <p>(3) the Registrar may delegate to another person the keeping of any register set up under the rules.</p>	<p>Premature. Impractical when the basic outline of such a scheme has not been properly thought out.</p> <p>Needs further consideration. Not possible to plan for a register in the absence of any professional body providing the proper training.</p>
<p>87(2)(3)</p>	<p>LSD</p>	<ul style="list-style-type: none"> ● New. ● In UK, a register of agents will be kept (section 83 of the UK Act.) 	<p>No register of agents is provided for as no system has yet been established to determine qualification for trade mark agents, nor has the merit of such a register been fully established.</p>

88	Deacons	<p>"business day" will include Saturday. This is inconsistent with international practice. Also, it should be clearly specified that documents may be filed up to midnight on any particular day and provision should be made for on-line and physical filing of documents using, for instance, a deposit box which automatically locks at midnight.</p> <p><u>Second response</u></p> <p>Totally disagree. Majority of Hong Kong trade mark owners are based overseas. Hong Kong should follow the rest of the world.</p>	<ul style="list-style-type: none"> ● Most institutions in HK are open on Saturdays. The position is the same in other Asian countries. See Rules 79 and 80 of the Singapore Trade Mark Rules. ● No amendment is required.
88(2)	<p>ITMP</p> <p>Barry Yen</p>	<p>Add "on a Saturday or" after the word "expires".</p> <p>Saturday be excluded.</p>	<p>Saturday is a working day. Not an excluded day in Singapore.</p>
89	LSD	New.	Noted.
90	LSD	<ul style="list-style-type: none"> ● The Registrar may make rules which are more detailed. ● Rules prescribing fees shall be made with the consent of the Financial Secretary and may be fixed at levels that provide for the recovery of expenditure incurred. 	Noted.

92 -95	LSD INTA	<p>Should criminal offences relating to trade marks in the Trade Descriptions Ordinance be incorporated into this Bill so that this Bill can be self-contained?</p> <p>Should specifically state imprisonment/fines for willful infringement in addition to offences under section 92 - 95. Trade Description Ordinance should be consequentially amended.</p>	<p>Inappropriate to incorporate Trade Descriptions Ordinance into the Bill.</p> <p>Criminal procedures and sanctions are in Trade Descriptions Ordinance.</p>
92	LSD	<ul style="list-style-type: none"> ● In TMO, any person who makes a false entry in the register commits an offence and is liable on conviction upon indictment to a fine of \$50,000 and to imprisonment for 7 years. ● In the Bill, <ul style="list-style-type: none"> (a) on summary conviction, to a fine at level 5 and to imprisonment for 6 months; and (b) on conviction on indictment, to a fine at level 5 and to imprisonment for 2 years. 	cf. section 94 of UK Act 1994.
93	LSD	<ul style="list-style-type: none"> ● In TMO, the fine is \$500. ● In the Bill, any person is liable on conviction to a fine at level 3 (i.e. \$5,001 to \$10,000). 	The penalty level has been updated to a more reasonable level.
94	LSD	<ul style="list-style-type: none"> ● New. ● Any person who uses in his place of business the words "Trade Marks Registry" commits an offence and is liable on summary conviction to a fine at level 4. 	A new offence is created to cater for misuse of the title "Trade Marks Registry".

95	Deacons LSD	Definition of "director" in Companies Ordinance should apply. Wrong to include a manager as an officer of a company. New.	No drafting error. Under section 2 of the Companies Ordinance, "officer" includes "a director, manager or secretary". The word "manager" is present in corresponding sections of the Copyright Ordinance, the Patents Ordinance and the Registered Designs Ordinance. cf. section 101(2) and (5) of UK Act 1994.
95(4)	LSD	Please review the Chinese and English version.	Will consider amendments.
96	LSD	<ul style="list-style-type: none">● New.● Chief Executive in Council may make regulations for transitional or savings matters.● Provisions of Schedule 3 shall prevail over any regulations made under this section in the event of an inconsistency.	They are necessary to provide for the transition from the TMO to the new trade marks law.
98	LSD	Positive vetting by LegCo of the Trade Mark Rules? Any substitute provision for the Trade Marks (Emergency) Ordinance (Cap. 263).	The Rules concern mainly technical and procedural matters, negative vetting should suffice. No substitute as it is considered not necessary.

<p>Schedule 4 Sections 6-8</p> <p>Section 11</p>	<p>LSD</p>	<ul style="list-style-type: none"> ● Definition of "trade mark" is amended in Trade Descriptions Ordinance (Cap. 362). Section 9A is added. This creates a new offence in respect of certain goods and articles made outside Hong Kong. ● The reference of "section 27 or 67 of the Trade Marks Ordinance (Cap. 43)" and the reference of "the proprietor of trade marks" in section 9(3) of the Trade Descriptions Ordinance should be amended. ● Any person who forges trade marks, imports or exports goods with forged trade mark, makes any die for the purpose of forging trade mark etc. commits an offence and is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 8 years. (In TMO, the imprisonment term used to be 5 years). 	<ul style="list-style-type: none"> ● CSAs will be submitted. ● Updated penalty levels more in keeping with present day circumstances.
<p>Others</p>	<p>INTA</p>	<ul style="list-style-type: none"> ● Border protection measures against importation of goods which infringe trade mark rights be included in this legislation and Trade Description Ordinance be amended. ● Specific provision should be made to provide for protection of geographical indications, certification marks, collective marks and trademarks that are geographical terms which have acquired a secondary meaning. 	<ul style="list-style-type: none"> ● Already provided in Trade Descriptions Ordinance. ● No need for border measures to be dealt with in the Bill. ● A geographical indication which has acquired a secondary meaning could be registered as an ordinary trade mark.

- * CC - Consumer Council (CB(1)1918/98-99(02))
- Deacons - Deacons, Graham & James (CB(1)1970/98-99)
second response under. CB(1)698/99-00 and
third response under CB(1)871/99-00
- INTA - International Trademark Association (CB(1)1903/98-99)
- ITMP - Hong Kong Institute of Trade Mark Practitioners (CB(1)1953/98-99)
- Lloyd Wise - Lloyd Wise & Co. (CB(1)1891/98-99(07))
- LS - The Law Society of Hong Kong and the Hong Kong Group of the
Asian Patent Attorneys Association (CB(1)278/99-00(01))
- LSD - Legal Service Division, Legislative Council Secretariat
(CB(1)1897/98-99(04), CB(1)305/99-00(01), CB(1)305/99-00(02) and
(CB(1)676/99-00(06))
- Barry Yen - Solicitor of So, Keung, Yip & Sin (CB(1)206/99-00(05))
- Administration's Response to Deacons (CB(1)302/99-00(01))
- Administration's Second Response to Deacons (CB(1)874/99-00(02))
- Administration's Response to INTA (CB(1)676/99-00(03))
- Administration's Response to ITMP (CB(1)676/99-00(04))
- Administration's Response to LS CB(1)874/99-00(01)

Prepared by

Legal Service Division
Legislative Council Secretariat
22 February 2000

Encl.

**BLIS ON
INTERNET**

- [Previous section of enactment](#)
- [Next section of enactment](#)
- [Switch language](#)
- [Back to the List of Laws](#)

Section of Enactment



Chapter:	426	Title:	OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE	Gazette Number:
Section:	75	Heading:	Immunity	Version Date: 30/06/1997

(1) No personal liability shall be incurred by any person appointed under section 36(2) or public officer in respect of any act done, or omitted to be done, by him in good faith in the performance or purported performance of any function under this Ordinance.

(2) The protection conferred on public officers by subsection (1) in respect of any act or omission shall not in any way affect any liability of the Crown in tort for that act or omission.

(3) A person who-

(a) complies with a requirement under this Ordinance; or

(b) responds in good faith to an inquiry so made by the Registrar,

shall not incur any liability to any person solely by reason of that compliance or response.

(Enacted 1992)

- [Previous section of enactment](#)
- [Next section of enactment](#)
- [Switch language](#)
- [Back to the List of Laws](#)

**BLIS ON
INTERNET**

Previous section of enactment Next section of enactment Switch language Back to the List of Laws

Section of Enactment

Chapter:	32	Title:	COMPANIES ORDINANCE	Gazette Number:	L.N. 239 of 1999
Section:	303B	Heading:	Protection of Registrar etc. where computerized information etc. is used	Version Date:	11/11/1999

(1) Where for the purposes of this Ordinance the Registrar provides a service or information involving computerized information or by means of magnetic tapes or any electronic modes, a relevant person shall not be personally liable for any loss or damage suffered by a user of the service or information by reason of an error or omission of whatever nature appearing therein or however caused if the error or omission, as the case may be, was made in good faith and in the ordinary course of the discharge of the duties of the relevant person.

(2) The protection conferred on a relevant person by subsection (1) in respect of an error or omission shall not in any way affect any liability of the Government in tort for the error or omission.

(3) In this section, "relevant person" (有關人士) means-

- (a) the Registrar;
- (b) any other person appointed under section 303(2);
- (c) a person supplying information falling within subsection (1).

(Added 30 of 1999 s. 25)

Previous section of enactment Next section of enactment Switch language Back to the List of Laws

**BLIS ON
INTERNET**

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

Section of Enactment

▼

Chapter:	128	Title:	LAND REGISTRATION ORDINANCE	Gazette Number:	
Section:	23A	Heading:	Liability of Land Registrar and others	Version Date:	30/06/1997

If the Land Registrar or any other person employed in the Land Registry wilfully or negligently fails to comply with section 23, he shall be liable for any loss or damage thereby caused, but he shall not be liable in damages- (Amended 8 of 1993 ss. 2 & 3)

(a) for registering, in good faith, any deed, conveyance or other instrument in writing, or judgment, notwithstanding any error, omission or defect therein;

(b) for registering, in good faith, any deed, conveyance, or other instrument in writing, or judgment, which does not affect any parcels of ground, tenements or premises in Hong Kong; or

(c) for any damage to or loss or destruction of any memorial or any deed, conveyance or other instrument in writing, or judgment, registered or delivered for registration or any document in his custody unless such damage, loss or destruction was due to his act and such act-

(i) was not authorized by or under this Ordinance; and

(ii) was done negligently or with intent to cause such damage, loss or destruction.

(Added 56 of 1980 s. 6. Amended 56 of 1992 s. 15)

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)