

LEGISLATIVE COUNCIL BRIEF

Patents Ordinance
(Chapter 514)
Registered Designs Ordinance
(Chapter 522)
Trade Marks Ordinance
(Chapter 43)

PATENTS ORDINANCE (AMENDMENT OF SCHEDULE 1) ORDER 1998

REGISTERED DESIGNS ORDINANCE (AMENDMENT OF SCHEDULE) REGULATION 1998

TRADE MARKS ORDINANCE (AMENDMENT OF SCHEDULE) ORDER 1998

INTRODUCTION

A At the meeting of the Executive Council on 27 October 1998, the Council ADVISED and the Acting Chief Executive in Council ORDERED that the Patents Ordinance (Amendment of Schedule 1) Order 1998 at Annex A, the Registered Designs Ordinance (Amendment of Schedule) Regulation 1998 at Annex B and the Trade Marks Ordinance (Amendment of Schedule) Order 1998 at Annex C should be made.

BACKGROUND AND ARGUMENT

2. The Hong Kong Special Administration Region (“HKSAR”) Government has an obligation under the Paris Convention for the Protection of Industrial Property 1883 (the “Paris Convention”) and the World Trade Organization (“WTO”) Agreement to protect rights of priority in respect of applications for patents, designs and trade marks made in other Paris Convention countries or WTO member countries, territories or areas.

Patents

3. The Patents Ordinance provides for a right of priority to an application for standard or short-term patents in respect of an earlier application made in a Paris Convention country or WTO member country, territory or area.

Registered Designs

4. Under section 15 of the Registered Designs Ordinance, an application for registration of a design in the HKSAR enjoys a priority right of six months in respect of an earlier application made in a Paris Convention country or WTO member country, territory or area.

Trade Marks

5. Section 13A of the Trade Marks Ordinance provides that if an application for registration of a trade mark has been filed in a Paris Convention country or WTO member country, territory or area, the trade mark applicant shall be entitled to registration of his trade mark in the HKSAR in priority to other applicants. The registration shall have the same date as the date of the earlier application.

The Need of Updating

6. The lists of the Paris Convention countries and the WTO member countries, territories and areas have been incorporated in Schedule 1 to the Patents Ordinance, the Schedule to the Registered Designs Ordinance and the Schedule to the Trade Marks Ordinance. As countries accede to or withdraw from the Paris Convention or the WTO Agreement from time to time, the lists incorporated in the above Ordinances are required to be updated regularly.

THE ORDERS AND REGULATION

7. The Orders and Regulation seek to amend by adding to or deleting from the countries, territories and areas listed in Schedule 1 to the

Patents Ordinance, the Schedule to the Registered Designs Ordinance and the Schedule to the Trade Marks Ordinance.

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the Orders and Regulation have no human rights implications.

BINDING EFFECT OF THE LEGISLATION

9. The Orders and Regulation do not bind the State by express provision. However, the Order to be made under the Patents Ordinance and the Regulation to be made under the Registered Designs Ordinance are binding on the HKSAR Government by virtue of express provisions in the respective principal Ordinances, namely, section 151 of the Patents Ordinance and section 4 of the Registered Designs Ordinance.

FINANCIAL AND STAFFING IMPLICATION

10. There is no financial or staffing implication arising from the Orders and Regulation.

ECONOMIC IMPLICATIONS

11. There are no economic implications arising from the Orders and Regulation.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be -

Publication in the Gazette	6 November 1998
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Table in the Legislative Council	11 November 1998
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PUBLICITY

13. A press release will be issued on 5 November 1998. The Orders and Regulation will be published in the Gazette on 6 November 1998.

ENQUIRIES

14. Any enquiries on this brief shall be directed to Mr Leung Tak Yin, Assistant Secretary for Trade and Industry at telephone number 2918 7484 or fax number 2869 4420.

Trade and Industry Bureau
November 1998