

LEGISLATIVE COUNCIL BRIEF

Interpretation and General Clauses Ordinance
(Chapter 1)

SPECIFICATION OF PUBLIC OFFICES UNDER SECTION 43 OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

INTRODUCTION

At the meeting of the Executive Council on 27 October 1998, the Council ADVISED and the Acting Chief Executive ORDERED that the Notice of Specification of Public Offices at the Annex should be made.

BACKGROUND AND ARGUMENT

General Background

2. Section 43(1) of the Interpretation and General Clauses Ordinance stipulates that -

“Where any Ordinance confers powers or imposes duties upon a specified public officer, such public officer may delegate any other public officer or the person for the time being holding any office designated by him to exercise such powers or perform such duties on his behalf, and thereupon, or from the date specified by such specified public officer, the person delegated shall have and may exercise such powers and perform such duties.”

3. As the Head of the Intellectual Property Department, DIP is designated as the holder of the following offices by virtue of section 4 of the Director of Intellectual Property (Establishment) Ordinance (the Ordinance)-

- (a) the Registrar of Trade Marks;
- (b) the Registrar of Patents; and
- (c) the Registrar of Designs.

The Director of Intellectual Property (Establishment) Ordinance

4. At present, DIP is relying on this Ordinance to delegate his powers and duties, including those conferred upon him by virtue of his official capacity as the Registrars of the various offices mentioned above. Section 5 of the Ordinance provides that the holder of an office specified in Schedule 1 to that Ordinance, i.e. any officer from the rank of Deputy Director of Intellectual Property to the rank of Intellectual Property Examiner II, may exercise the powers or perform the duties of the office of DIP subject to certain conditions.

5. However, in relying solely on the Ordinance, DIP may not be able to delegate his powers and duties under the various intellectual property laws to clerical officers who are not included in Schedule 1 to the Ordinance. This has posed some constraints for the daily administration of registry operations in Intellectual Property Department. DIP would therefore like to improve the situation by having his clerical officers to be properly delegated with the powers, in order to perform some minor statutory duties which are merely administrative and do not involve any discretion affecting rights (e.g. sending reminder notices before the expiration of registrations). To ensure that the delegation is lawful and proper, we propose that DIP be specified as a “public officer” under section 43(1) of the Interpretation and General Clauses Ordinance.

6. As DIP is also holding the offices of the Registrar of Trade Marks, the Registrar of Patents and the Registrar of Designs, he is therefore specified separately in his capacities as those three Registrars in the proposed Notice for the purposes of enabling him to delegate his different powers and duties under the three respective sets of Ordinances and subsidiary legislation to his staff and other public officers.

THE NOTICE

7. The proposed Notice is to enable DIP to delegate to his staff and other public officers the powers and duties of the office of DIP proper, and his powers and duties as the Registrar of Trade Marks, the Registrar of Patents and the Registrar of Designs under the legislation listed in the Schedule to the proposed Notice.

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the proposed Notice has no human rights implications.

BINDING EFFECT OF THE LEGISLATION

9. The proposed Notice is made pursuant to section 43 of the Interpretation and General Clauses Ordinance. The Interpretation and General Clauses Ordinance is binding on the State.

FINANCIAL AND STAFFING IMPLICATIONS

10. There are no financial or staffing implications arising from the proposed Notice.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be -

Publication in the Gazette	06 November 1998
Table in the Legislative Council	11 November 1998

PUBLICITY

12. A press release will be issued on 5 November 1998. The Notice will be published in the Gazette on 6 November 1998.

ENQUIRIES

13. 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

SPECIFICATION OF PUBLIC OFFICES

(Made by the Chief Executive in Council under section 43
of the Interpretation and General Clauses Ordinance
(Cap. 1))

1. The public offices mentioned in column 1 of the Schedule are specified for the purposes of the Ordinances mentioned opposite such public offices in column 2 of the Schedule.

SCHEDULE

[s. 1]

Public Office	Ordinance for which specified
Director of Intellectual Property	Director of Intellectual Property (Establishment) Ordinance (Chapter 412).
Director of Intellectual Property as Registrar of Trade Marks	Trade Marks Ordinance (Chapter 43). Trade Marks Rules (Chapter 43 subsidiary legislation). Trade Marks (Emergency) Ordinance (Chapter 263). Trade Marks (Emergency) Rules (Chapter 263 subsidiary legislation).
Director of Intellectual Property as Registrar of Patents	Patents Ordinance (Chapter 514). Patents (Transitional Arrangements) Rules (Chapter 514 subsidiary legislation). Patents (General) Rules (Chapter 514 subsidiary legislation).
Director of Intellectual Property as Registrar of Designs	Registered Designs Ordinance (Chapter 522). Registered Designs Rules (Chapter 522 subsidiary legislation).

Clerk to the Executive Council

COUNCIL CHAMBER

1998

Explanatory Note

The effect of this Notice is to enable the Director of Intellectual Property to delegate to other public officers the powers and duties of the office of the Director of Intellectual Property proper and his powers and duties as the Registrar of Trade Marks, the Registrar of Patents and the Registrar of Designs under the legislation listed in the Schedule to this Notice.