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on 10 May 2013**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 3 May 2013**

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**Amendment to be made by : 5 June 2013 (or 26 June 2013 if extended by resolution)**

**PART I UPDATE OF THE LISTS OF PARIS CONVENTION  
COUNTRIES AND WTO MEMBERS**

**Patents Ordinance (Cap. 514)**

**Patents Ordinance (Amendment of Schedule 1) Order 2013 (L.N. 62)**

**Registered Designs Ordinance (Cap. 522)**

**Registered Designs Ordinance (Amendment of Schedule) Regulation 2013 (L.N. 63)**

**Trade Marks Ordinance (Cap. 559)**

**Trade Marks Ordinance (Amendment of Schedule 1) Regulation 2013 (L.N. 64)**

**Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445)**

**Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) (Amendment) Regulation 2013 (L.N. 65)**

Background

China is a party to the Paris Convention for the Protection of Industrial Property (the Paris Convention). The Central People's Government (CPG) applied the Paris Convention to the Hong Kong Special Administrative Region (HKSAR) with effect from 1 July 1997. Hong Kong is also a member of the World Trade Organisation (WTO) in its own right. Hong Kong has the obligation to implement the Paris Convention by local legislation.

2. Under Article 4 of the Paris Convention, HKSAR is obliged to grant to a person who has filed an application for a patent or for registration of a design or trade mark in a Paris Convention country a right of priority during a prescribed period for the purpose of filing the same application in HKSAR. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides for a similar obligation on HKSAR in respect of an application filed in a WTO member country, territory or area. To meet the obligations of HKSAR under the Paris Convention and the TRIPS, provisions are made in the Patents Ordinance (Cap. 514), the Registered Designs Ordinance (Cap. 522) and the Trade Marks Ordinance (Cap. 559) with the effect that a person who has filed an application in a Paris Convention Country or WTO member country, territory or area will enjoy a right of priority.

3. TRIPS also requires HKSAR to grant the same level of intellectual property protection for layout-designs (topographies) of integrated circuits to nationals of other WTO member countries, territories or areas as to Hong Kong residents. To meet this requirement, the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445) provides that the said protection will apply to nationals of such qualifying countries, territories or areas as are designated by regulation by the Chief Executive (CE), namely, the Layout-design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation (Cap. 445 sub. leg. B).

4. Member countries of the Paris Convention and those of the WTO (not including Paris Convention countries) are listed in Schedule 1 to Cap. 514 and the Schedule to Cap. 522. A list of Paris Convention countries and that of WTO members are also set out in Schedule 1 to Cap. 559. The Schedule to Cap. 445 sub. leg. B sets out a list of those countries, territories or areas which have acceded to the WTO. These Schedules were last revised in February 2010.

### The Amendments

5. Since the last revision exercise, one country (i.e. Brunei Darussalam) has become a contracting party to the Paris Convention and five more countries (i.e. the Lao People's Democratic Republic, Montenegro, the Russian Federation, the Independent State of Samoa and the Republic of Vanuatu) have acceded to the WTO.

6. In addition, the official names (and their corresponding Chinese names) of several countries, territories or areas have the following changes -

<i>Name of Paris Convention Country as currently stated in the Schedules to the relevant Ordinance(s)</i>		<i>Updated Official Names as stated in L.N. 62, 63, 64 and 65</i>
(a)	The Great Socialist People's Libyan Arab Jamahiriya	Libya
(b)	European Community	European Union
(c)	The Republic of The Fiji Islands	The Republic of Fiji
(d)	The Union of Myanmar	The Republic of the Union of Myanmar
(e)	Netherlands - For the Kingdom in Europe and for the Netherlands Antilles	The Kingdom of the Netherlands
(f)	Negara Brunei Darussalam	Brunei Darussalam

7. Accordingly, L.N. 62 amends Schedule 1 to Cap. 514, L.N. 63 amends the Schedule to Cap. 522, L.N. 64 amends Schedule 1 to Cap. 559 and L.N. 65 amends the Schedule to Cap. 445 sub. leg. B to reflect these changes.

8. The Administration also takes the opportunity to add "European Union" to the WTO membership list in the Schedule to Cap. 445 sub. leg. B as it is a member of the WTO in its own right.

9. Members of the Panel on Commerce and Industry were informed of the proposed amendments vide LC Paper No. CB(1)697/12-13(01) issued by the Commerce and Economic Development Bureau in March 2013. As advised by the Clerk to the Panel, members noted at the Panel meeting held on 19 March 2013 that the proposed amendments were technical in nature and would unlikely to have any impact on the business community and the public. Members may refer to the LegCo Brief (ref: CITB 80/18/2) issued by Commerce and Economic Development Bureau and dated 30 April 2013 for background of the amendments.

10. As the Paris Convention was applied 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 in HKSAR before proposing the

amendments relating to the list of Paris Convention countries in the relevant Schedules to Cap. 514, Cap. 552 and Cap. 559 (paragraph 8 of LegCo Brief).

11. The above amendments are made by CE either in Council or after consultation with the Executive Council and will come into operation on 28 June 2013.

## **PART II AVOIDANCE OF DOUBLE TAXATION**

### **Inland Revenue Ordinance (Cap. 112)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Austria) (Second Protocol) Order (L.N. 66)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Canada) Order (L.N. 67)**

**Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income) (Jersey) Order (L.N. 68)**

12. L.N. 66, 67 and 68 are made by the Chief Executive (CE) in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) to give effect to the following comprehensive agreements for avoidance of double taxation (CDTA) -

- (a) the Second Protocol (the Second Protocol) Modifying the Protocol (the Austrian Protocol) to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on 25 June 2012 (the Austrian Agreement);
- (b) the Agreement between the Government of HKSAR and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 11 November 2012 (the Canadian Agreement); and
- (c) the Agreement between the Government of HKSAR and the Government of Jersey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in February 2012 (the Jersey Agreement).

13. Under section 49(1A) of Cap. 112, CE in Council may by order declare that arrangements have been made with the government of any territory outside Hong Kong with a view to affording relief from double taxation in relation to income tax and any similar tax imposed by the laws of that territory.

14. According to the LegCo Briefs (ref: TsyB R 183/800-1-1/7/0 (C) and TsyB R 183/800-1-1/71/0 (C)) issued by the Financial Services and the Treasury Bureau on 30 April 2013, while a local resident's income derived from sources outside Hong Kong would not be taxed in Hong Kong and hence would not be subject to double taxation, double taxation may occur where a foreign jurisdiction taxes its own residents' income derived from Hong Kong. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax they paid on income derived from Hong Kong, the existence of a CDTA will provide enhanced certainty and stability for the elimination of double taxation. Besides, the tax relief provided under a CDTA may exceed the level provided unilaterally by a tax jurisdiction.

15. For the purposes of section 49(1A) of Cap. 112, it is respectively declared in L.N. 66, 67 and 68 that the following arrangements have been made with a view to affording relief from double taxation in relation to income tax and any similar tax, and that it is expedient that the following arrangements should have effect -

- (a) the arrangements in Articles 1 to 3 of the Second Protocol which modifies the Austrian Protocol;
- (b) the arrangements in Articles 1 to 28 of the Canadian Agreement and paragraphs 1 to 4 of the protocol thereto; and
- (c) the arrangements in Articles 1 to 28 of the Jersey Agreement and the provisions of the protocol thereto.

16. Upon such declaration, the arrangements have effect in relation to tax under Cap. 112 despite anything in any enactment and, for the purposes of any provision of those arrangements that requires disclosure of information concerning tax of the relevant jurisdictions, have effect in relation to any tax of those jurisdictions that is the subject of that provision.

#### Austrian Agreement and the Second Protocol

17. The Austrian Agreement (together with the Austrian Protocol thereto), which is the eleventh CDTA, was signed by HKSAR and the Republic of Austria on

25 May 2010. The arrangements in the Austrian Agreement (together with the Austrian Protocol thereto) has been implemented by the Inland Revenue (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income and Capital) (Republic of Austria) Order (Cap. 112 sub. leg. BO). On 25 June 2012, HKSAR and the Republic of Austria signed the Second Protocol to modify the Austrian Protocol. Article 1 of the Second Protocol adds the words "to the extent known" to the obligation on the requesting party to provide the name and address of the person believed to be in possession of the requested information. The Second Protocol shall form an integral part of the Austrian Agreement.

18. According to the LegCo Brief (ref: TsyB R 183/800-1-1/36/0 (C)) issued by the Financial Services and the Treasury Bureau (FSTB) on 30 April 2013, the purpose of the Second Protocol is to enable the Austrian Protocol to fulfill the standard on transparency and exchange of information of the Organisation for Economic Cooperation and Development (OECD) (paragraphs 4 and 6). It does not affect the safeguards in the original exchange of information article in the Austrian Agreement.

#### Canadian Agreement and Jersey Agreement

19. The provisions in the Canadian Agreement and the Jersey Agreement set out the allocation of taxing rights between HKSAR and the respective jurisdictions and the relief on tax rates on different types of income. The Canadian Agreement and the Jersey Agreement are respectively the twenty-sixth and twenty-third CDTA concluded by Hong Kong with other jurisdictions.

20. The Canadian Agreement and Jersey Agreement contain provisions based on the model text of the OECD 2004 version of the Exchange of Information Article (the sample EoI Article), a copy of which was annexed to LC Paper No. CB(1)106/09-10(02) and presented to the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2009. According to the relevant LegCo Briefs, these Agreements have adopted all the safeguards in the sample EoI Article. It is noted that each Agreement (or its protocol) provides that information should only be exchanged upon request (i.e. no automatic or spontaneous exchange), that the requested information must be foreseeably relevant, and that the information will be disclosed only to the tax authorities and not their oversight bodies nor any third jurisdiction.

21. The Panel on Financial Affairs has not been consulted on L.N. 66, 67 and 68.

22. L.N. 66, 67 and 68 will come into operation on 28 June 2013.

### **PART III EMPLOYEES RETRAINING BODIES**

#### **Employees Retraining Ordinance (Cap. 423)**

#### **Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2013 (L.N. 69)**

23. Schedule 2 to the Employees Retraining Ordinance (Cap. 423) specifies the training bodies that may provide or conduct retraining courses for the purposes of Cap. 423.

24. L.N. 69 is made by the Employees Retraining Board under section 31(2) of Cap. 423, which amends Schedule 2 to the Ordinance as follows -

- (a) to add three training bodies;
- (b) to remove 15 training bodies; and
- (c) to revise the name of one training body in the list.

25. L.N. 69 has come into operation on publication in the Gazette (i.e. 3 May 2013).

26. Members may refer to the LegCo Brief (ref: QA/TBM/09 Part 2) issued by the Employees Retraining Board Executive Office and dated 29 April 2013 for background information including the reasons for updating the list of training bodies (paragraphs 8 to 11). The Panel on Manpower has not been consulted on L.N. 69.

27. Apart from L.N. 66, 67 and 68, which are being scrutinized by the Legal Service Division (and will report further if necessary), no difficulties in the legal and drafting aspects of the above items of subsidiary legislation have been identified.

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