

LEGISLATIVE COUNCIL BRIEF

Trade Marks Ordinance
(Chapter 43)
Director of Intellectual Property (Establishment) Ordinance
(Chapter 412)
Layout-Design (Topography) of Integrated Circuits Ordinance
(Chapter 445)
Patents Ordinance
(Chapter 514)
Registered Designs Ordinance
(Chapter 522)
Copyright Ordinance
(Chapter 528)

ADAPTATION OF LAWS (NO. 11) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 30 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Adaptation of Laws (No.11) 1999, as set out at the Annex, should be introduced into the Legislative Council, to effect necessary adaptations to six Ordinances relating to intellectual property and their subsidiary legislation.

BACKGROUND AND ARGUMENT

2. Article 160 of the Basic Law states that -

"Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as

laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law."

Article 8 of the Basic Law states that -

"The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

3. On 23 February 1997, the Standing Committee of the National People's Congress published a decision on the treatment of laws previously in force in Hong Kong. It provides, among other things, that apart from parts or the whole of 24 Ordinances which are not adopted, the existing Hong Kong laws are to be adopted as laws of the Hong Kong Special Administrative Region and these laws shall, unless the context otherwise requires, be construed in accordance with specified principles of interpretation. These interpretative principles are included in the Hong Kong Reunification Ordinance and are now incorporated as section 2A and Schedule 8 in the Interpretation and General Clauses Ordinance. However, although the Interpretation and General Clauses Ordinance laid down how terminology inconsistent with the Basic Law or with the status of Hong Kong as a Special Administrative Region of the People's Republic of China are to be construed, it is considered unacceptable to retain such terminology in our laws. Accordingly, we now need to introduce further legislation to effect the necessary textual amendments.

THE BILL

4. Most of the proposed amendments are merely terminological changes, e.g. references to "the Governor in Council" and "立法局" are replaced by "the Chief Executive in Council" and "立法會" respectively. Similarly, a reference to "the Governor" will be replaced by "the Chief Executive". Where a provision previously conferred power on "the Governor" to make subsidiary legislation, the reference to "the Governor" will still be adapted to "the Chief Executive". Although the requirement under Article 56 of the Basic Law that the

Chief Executive shall consult the Executive Council before making subordinate legislation is then not expressly set out, the Council will still have to be consulted if the Chief Executive is to exercise this legislative function. A reference to the United Kingdom Act is proposed to be replaced by a reference to the local legislation.

5. The following changes should be specifically noted -

- (a) The definition of "seal" in section 2 of the Trade Marks Ordinance is amended by deleting the description of the seal kept in the Trade Marks Registry Hong Kong on or before 30 June 1997, as the seal so described is substituted by a new seal after 30 June 1997. A savings provision providing for the validity of any document sealed with the seal of the Registrar of Trade Marks, Hong Kong on or before 30 June 1997 is also added.
- (b) References to "country or territory" in sections 37(2A) and 41A(4), and references to "country" in section 87(2) of the Trade Marks Ordinance are replaced by "country, territory or place" and "country or place" respectively, to clarify the position to cover mainland China.
- (c) Sections 84 and 85 of the Trade Marks Ordinance provide, inter alia, for evidence of entries in the United Kingdom Register and evidence of entries made or of things done by the Comptroller-General of the United Kingdom Patent Office. References to "the United Kingdom Register" and "the Comptroller-General of the United Kingdom Patent Office" are repealed so as to conform with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. A savings provision regarding the validity of, or the admissibility in evidence or evidentiary value of, the instruments issued by Comptroller General of the United Kingdom Patent office on or before 30 June 1997 is also added.
- (d) Section 88 of the Trade Marks Ordinance and rule 4 of the Trade Marks Rules, which relate to the restraint of use of Royal Arms and to the representations of the Royal Arms etc

on trade marks, are repealed so as to conform with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. Similarly, rule 3(b) of the Trade Marks Rules is also repealed.

- (e) References to "Crown" in sections 131(7), 132(i) and 133(11), (12)(i) and (14) of the Copyright Ordinance are replaced by "Government" as the legislative intent is that any article, vessel, aircraft, vehicle or thing seized or detained by an authorized officer under the Ordinance is to be forfeited to the Hong Kong Special Administrative Region Government.
- (f) Section 185(3) of the Copyright Ordinance is amended to cover bills published in the Gazette after 30 June 1997.

COMMENCEMENT

6. The Bill provides that, subject to Article 12 of the Hong Kong Bill of Rights, the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be -

Publication in the Gazette	16 April 1999
First Reading and commencement of Second Reading debate	5 May 1999
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

9. The amendments will not affect the current binding effect of the existing provisions of the various Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

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

PUBLIC CONSULTATION

11. Since the amendments are essentially straightforward adaptations, consultation with the public is not considered necessary.

PUBLICITY

12. A Legislative Council brief and a press release will be issued on 14 April. A spokesman will be available to handle media enquiries.

ENQUIRIES

13. Any enquiries on this brief should be directed to Mr Johann Wong, Assistant Secretary for Trade and Industry at 2918 7482 or by facsimile at 2869 4420.

Trade and Industry Bureau

File Ref. : TIBCR 43/18/3

[#14/adapt-bill11-leg-brf]

ADAPTATION OF LAWS (NO. 11) BILL 1999

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A BILL

To

Adapt certain Ordinances to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws (No. 11) Ordinance 1999.

2. Commencement

(1) This Ordinance shall be deemed to have come into operation on 1 July 1997.

(2) Subsection (1) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

3. Amendment of Ordinances

The Ordinances specified in the Schedules are amended in the manner indicated in those Schedules.

SCHEDULE 1

[s. 3]

TRADE MARKS ORDINANCE AND ITS SUBSIDIARY LEGISLATION

Trade Marks Ordinance

1. Section 2(1) of the Trade Marks Ordinance (Cap. 43) is amended -

- (a) in the definition of “Registrar”, by repealing “Governor” and substituting “Chief Executive”;
- (b) in the definition of “seal”, by repealing everything after “Trade Marks Registry Hong Kong” and substituting a semicolon.

2. Section 13A is amended -

- (a) in subsection (6) (a), by repealing “United Kingdom” and substituting “China”;
- (b) in subsection (7) -
 - (i) by repealing “Governor” and substituting “Chief Executive”;
 - (ii) in paragraph (a) (ii), by repealing “(other than the United Kingdom)” where it twice appears.

3. Section 17(1) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 37(2A)(a) and (b) is amended by repealing “or territory” and substituting “, territory or place”.

5. Section 41A(4) is amended by repealing “or territory” and substituting “, territory or place”.

6. Section 54(1) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

7. Section 84 is amended by repealing “or of any entry in or extract from the United Kingdom Register, purporting to be certified by the Comptroller-General of the United Kingdom Patent Office and sealed with the seal of the Patent Office,”.

8. Section 85 is amended by repealing “or of the Comptroller-General of the United Kingdom Patent Office,”.

9. The heading before section 86 is amended by repealing “, AND RESTRAINT OF USE OF ROYAL ARMS”.

10. Section 87(2) (a) and (c) is amended by adding “or place” after “country” wherever it appears.

11. Section 88 is repealed.

12. Section 90(1) is amended by repealing “Governor in Council” where it twice appears and substituting “Chief Executive in Council”.

13. The following is added -

“93. Savings

The amendments made to this Ordinance by the Adaptation of Laws (No. 11) Ordinance 1999 (of 1999) shall not affect the validity of, or the admissibility in evidence or evidentiary value of -

- (a) any printed or written copy of an entry in or extract from the register, purporting to be

certified by the Registrar and sealed with the seal used by the Registrar before 1 July 1997;

- (b) any certificate purporting to be under the hand of the Registrar as to any entry, matter or thing which he is authorized to make or do, issued by the Registrar before 1 July 1997;
- (c) any other document sealed with the seal used by the Registrar before 1 July 1997;
- (d) any printed or written copy of an entry in or extract from the United Kingdom Register of Trade Marks, purporting to be certified by the Comptroller-General of the United Kingdom Patent Office and sealed with the seal of the United Kingdom Patent Office before 1 July 1997; or
- (e) any certificate purporting to be under the hand of the Comptroller-General of the United Kingdom Patent Office, as to any entry, matter or thing which he is authorized to make or do, issued by the Comptroller-General before 1 July 1997.”.

14. The Schedule is amended -

- (a) in the heading, by repealing “**(excluding the United Kingdom)**” and substituting “**(excluding China)**”;
- (b) by repealing “China”;
- (c) by adding “United Kingdom”.

Trade Marks Rules

15. Rule 3(1) (b) of the Trade Marks Rules (Cap. 43 sub. leg.) is repealed.
16. Rule 4 is repealed.

SCHEDULE 2

[s. 3]

DIRECTOR OF INTELLECTUAL PROPERTY (ESTABLISHMENT) ORDINANCE

1. Section 3(1) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) is amended by repealing “Governor” and substituting “Chief Executive”.
2. Section 6 is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 3

[s. 3]

LAYOUT-DESIGN (TOPOGRAPHY) OF INTEGRATED CIRCUITS ORDINANCE

1. Section 2 of the Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445) is amended, in the definition of “qualifying country, territory or area”, by repealing “Governor” and substituting “Chief Executive”.
2. Section 18 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

3. Section 19(1) is amended by repealing “Governor” and substituting “Chief Executive”.
4. Section 24(2) is amended by repealing “Governor” and substituting “Chief Executive”.

SCHEDULE 4

[s. 3]

PATENTS ORDINANCE

1. Section 8 of the Patents Ordinance (Cap. 514) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 33(11) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
3. Section 39(6) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
4. Section 68 is amended by repealing “Governor in Council” and “he” and substituting “Chief Executive in Council” in both places.
5. Section 69(1) is amended by repealing “Governor” and substituting “Chief Executive”.
6. Section 126(6) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

7. Section 153 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

8. Section 158(1) is amended -

- (a) by repealing “Governor in Council” and substituting “Chief Executive in Council”;
- (b) by repealing “立法局” and substituting “立法會”.

SCHEDULE 5

[s. 3]

REGISTERED DESIGNS ORDINANCE

1. Section 2(1) of the Registered Designs Ordinance (Cap. 522) is amended, in the definition of “corresponding design”, by repealing “Part I of the Copyright, Designs and Patents Act 1988 (1988 c. 48 U.K.)” and substituting “Part II of the Copyright Ordinance (Cap. 528)”.

2. Section 36 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

3. Section 37(1) is amended by repealing “Governor” and substituting “Chief Executive”.

4. Section 83 is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.

SCHEDULE 6

[s. 3]

COPYRIGHT ORDINANCE

1. Section 9(3) of the Copyright Ordinance (Cap. 528) is amended by repealing “Governor in Council” and substituting “Chief Executive in Council”.
2. Section 16 is amended by repealing “立法局” and substituting “立法會”.
3. Section 17(8) is amended by repealing “立法局” and substituting “立法會”.
4. Section 54(1) is amended by repealing “立法局” and substituting “立法會”.
5. Section 56(4) and (5) is amended by repealing “Governor” and substituting “Chief Executive”.
6. Section 58(2) is amended by repealing “立法局” and substituting “立法會”.
7. Section 91(4) (d) and (7) (a) is amended by repealing “立法局” and substituting “立法會”.
8. Section 94(1) (b) is amended by repealing “立法局” and substituting “立法會”.

9. Section 115(2) (b) is amended by repealing “立法局” and substituting “立法會”.
10. Section 126 is amended by repealing “總監” wherever it appears and substituting “關長”.
11. Section 128 is amended by repealing “總監” wherever it appears and substituting “關長”.
12. Section 129 is amended by repealing “總監” where it twice appears and substituting “關長”.
13. Section 131 is amended -
 - (a) in subsections (2), (4), (5) and (6), by repealing “總監” wherever it appears and substituting “關長”;
 - (b) in subsection (7) -
 - (i) by repealing “Crown” and substituting “Government”;
 - (ii) by repealing “總監” and substituting “關長”.
14. Section 132(i) is amended by repealing “Crown” and substituting “Government”.
15. Section 133 is amended -
 - (a) in subsections (1), (2), (3), (5), (6), (8) and (9), by repealing “總監” wherever it appears and substituting “關長”;

- (b) in subsections (11) and (12) (i), by repealing “Crown” and substituting “Government”;
- (c) in subsection (14) -
 - (i) in paragraph (a), by repealing “Crown” and substituting “Government”;
 - (ii) by repealing “總監” and substituting “關長”.

- 16. Section 136(2) and (3) (f) is amended by repealing “總監” and substituting “關長”.
- 17. Section 137 is amended by repealing “總監” wherever it appears and substituting “關長”.
- 18. Section 138 is amended by repealing “總監” wherever it appears and substituting “關長”.
- 19. Section 139(1) and (6) is amended by repealing “總監” wherever it appears and substituting “關長”.
- 20. Section 140 is amended by repealing “總監” wherever it appears and substituting “關長”.
- 21. Section 141 is amended by repealing “總監” wherever it appears and substituting “關長”.
- 22. Section 142(1) is amended by repealing “總監” and substituting “關長”.

23. Section 169(2) is amended by repealing “Governor” and substituting “Chief Executive”.

24. Section 170(2), (3) and (4) is amended by repealing “Governor” wherever it appears and substituting “Chief Executive”.

25. Section 177(2) is amended by repealing “立法局” and substituting “立法會”.

26. Section 180(1), (2) and (4) is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.

27. The heading before section 182 is amended by repealing “立法局” and substituting “立法會”.

28. Section 182(6) is amended by repealing “立法局” where it twice appears and substituting “立法會”.

29. Section 184 is amended by repealing “立法局” wherever it appears and substituting “立法會”.

30. Section 185 is amended -

(a) in subsections (1) and (2), by repealing “立法局” and substituting “立法會”;

(b) by repealing subsection (3) and substituting -

“(3) Copyright under this section subsists from the date of the first publication of a bill in the Gazette until -

- (a) in the case of a bill which was published in the Gazette before 1 July 1997 -
 - (i) the bill received assent; or
 - (ii) if the bill did not receive assent, the end of the period of 50 years from the end of the calendar year of the first publication; and
- (b) in the case of a bill which is published in the Gazette on or after 1 July 1997 -
 - (i) the bill is signed by the Chief Executive; or
 - (ii) if the bill is not signed by the Chief Executive, the end of the period of 50 years from the end of the calendar year of the first publication.”;
- (c) in subsections (5), (6) and (7), by repealing “立法局” wherever it appears and substituting“立法

會”.

31. Section 186 is amended by repealing “立法局” wherever it appears and substituting “立法會”.

32. Section 188(2) and (4) is amended by repealing “Governor” and substituting “Chief Executive”.

33. Section 190 is amended by repealing “總監” where it twice appears and substituting “關長”.

34. Section 192(1) (c) is amended by repealing “立法局” and substituting “立法會”.

35. Section 198 is amended by repealing the definition of “Commissioner” and substituting -

““Commissioner” (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise;”.

36. Section 199 is amended -

- (a) by repealing “立法局” and substituting “立法會”;
- (b) by repealing “總監” and substituting “關長”.

37. Section 236(1), (2) and (5) is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.

38. Section 238(1) is amended by repealing “總監” and substituting “關長”.
39. Section 247(1) is amended by repealing “立法局” and substituting “立法會”.
40. Section 263(2) and (3) (f) is amended by repealing “總監” and substituting “關長”.
41. Section 264 is amended by repealing “總監” wherever it appears and substituting “關長”.
42. Section 265 is amended by repealing “總監” wherever it appears and substituting “關長”.
43. Section 266(1) and (6) is amended by repealing “總監” wherever it appears and substituting “關長”.
44. Section 267 is amended by repealing “總監” wherever it appears and substituting “關長”.
45. Section 268 is amended by repealing “總監” wherever it appears and substituting “關長”.
46. Section 269(1) is amended by repealing “總監” and substituting “關長”.
47. Section 272 is amended by repealing “總監” where it twice appears and substituting “關長”.

48. Section 276 is amended by repealing “Governor in Council” wherever it appears and substituting “Chief Executive in Council”.

49. Section 278 is amended by repealing “總監” and substituting “關長”.

50. Schedule 2 is amended -

- (a) in paragraph 13(7), by repealing “立法局” and substituting “立法會”;
- (b) in paragraph 34(1), by repealing “立法局” and substituting “立法會”;
- (c) in paragraph 37(1), by repealing “立法局” and substituting “立法會”.

Explanatory Memorandum

The purpose of this Bill is to adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with Hong Kong’s status as a Special Administrative Region of the People’s Republic of China (Clause 3, Schedules 1 to 6).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -

Copyright Ordinance (Cap. 528)	Schedule 6
Director of Intellectual Property (Establishment) Ordinance (Cap. 412)	Schedule 2
Layout-design (Topography) of	Schedule 3

Integrated Circuits Ordinance (Cap.
445)

Patents Ordinance (Cap. 514)

Schedule 4

Registered Designs Ordinance (Cap.
522)

Schedule 5

Trade Marks Ordinance (Cap. 43)

Schedule 1

3. The Bill also provides that the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region (clause 2).